



**Commission for Gender Equality**  
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**SUBMISSION TO THE SALRC ON THE RIGHT TO KNOW ONE'S BIOLOGICAL  
ORIGINS BY THE COMMISSION FOR GENDER EQUALITY : ISSUE PAPER 32 –  
PROJECT 140**

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## RESPONSE TO QUESTIONNAIRE

### CHAPTER 1

#### 1. Who is a parent?

A parent is a legal caregiver or any person or any person who has any potential or existing parental responsibilities that is recognised and enforceable in terms of any law.

#### 2. With reference to Section 28 of the Constitution does a right to parental care encompass a right to know one's own biological /genetic parents including a relationship with one's own biological / genetic parent and related siblings?

Any restriction to know or maintain a relationship with one's biological or genetic parent or siblings would amount to a limitation of a person's right to dignity. Therefore, on this basis alone the CGE does not support any limitation to a person's right to know his or her biological origins.

Furthermore, relationships change and any limitation imposed has the likelihood of becoming an unnecessary restriction in the future.

Finally, for reasons relating to marriage, succession or inheritance it may be necessary for a person to know his or her biological origins, in order to exercise any related right or make any decision such as choosing not to enter into marriage with a person with the same "genetic origins" ( eg same biological father/mother).



3. **CHAPTER 2** **Commission for Gender Equality**  
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1.1 The CGE believes that it is morally and legally right for a donor conceived child to know of his or her origins.

1.2 No because complete anonymity could have untenable consequences in the future of the child's development.

1.3 Yes, it is beneficial for donor conceived children to know of their own biological origins. This would mitigate against emotional problems and also justify the reason for choosing donor -conception amongst others.

**3.1 The factors that can be considered are :**

- (i) The health condition / risks of the genetic/biological parent
- (ii) Achievements / punitive measures such as criminal sanctions imposed.

It does not matter if the donor is related to the intended parent.

**3.2 The role of Psychological / social issues.**

The right and dignity of the donor conceived child is not subordinate to that of the biological / genetic parent or any other person for that matter. Therefore, if a person who wishes to keep his or her status such as being infertile / lesbian confidential should not affect a donor -conceived child's access to such information. However, this information may be withheld from publication.

**3.3 The role of grandparents and other family members in disclosing manner of conception to the donor conceived child.**

The right of a donor conceived child to access information of his/her origins should not be restricted. In certain instances it may be necessary for the grand parents or other family members to reveal the information eg) when immediate parents are deceased.



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### **3.4 Yes, intended parents should receive counselling.**

Since counselling must cover medical, legal and psychological / emotional aspects it would be preferable if the relevant professionals from all disciplines be included and guidelines should be developed by the Department of Social Development.

#### **4.1 Should legislation provide for donor – conceived children to have a legal right to know their biological origins?**

Yes, the right to know one's biological origins should be a legal right because of the complex emotional, psychological and legal consequences that are associated with donor – conceived children.

#### **4.2 Should the child born to a donor-conceived child also have a right to knowledge of his/her genetic heritage?**

The CGE believes that all donor conceived children irrespective of their generation should have the right to know their origins and genetic heritage. The fact that they are donor -conceived makes it imperative that they have knowledge of their origins because of social consequences such as any probability of marriage between children of the same biological parent.

#### **5.1 /5.2 /5.3and 5.4 How a child should be told of his/her biological origins?**

All donor conceived children should be advised of their origins. This should be done in a manner that takes cognisance of their age , emotional development and any relevant personal circumstances that will have a bearing on the manner in which the revelation will impact upon them.



It is advisable that they be made aware of their biological origins when they turn sixteen years old. The assessment of whether they could be advised at this age must be determined by a clinical psychologist.

**6.1 Should the donor have the choice of whether his identity can be disclosed to the child or parents?**

No. It would be an infringement of the right to dignity of the donor child if the right to confidentiality can be claimed by the donor parent instead of the donor -child. The right of the donor child should trump the right of the donor parent. Allowing a donor to determine whether he/she wishes to disclose his/her identity is an approach that will have an untenable consequence on the rights of the child concerned. Therefore, the CGE does not support a position where the donor parent has the right to withhold his/her identity from the relevant child.

**6.2.1 Will the donor having a choice whether to reveal his identity impact on the right to equality of the donor-conceived child?**

There would be a violation of the right to equality because it means that the child in such circumstances is denied the right to know his parent(s). A donor – conceived child obviously has social and biological parents. Therefore, the argument will arise that the donor-conceived child is being treated differently from other children.

**6.2.2 Could a donor conceived child take action against the State or initiate a class action where the identity is not revealed?**

It depends where the cause of action lies. If a statute allows for the identity to be confidential then the state would be liable whereas if it is the donor parent who wishes to exercise confidentiality, then the cause of action will arise from the donor-parent's conduct.



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### **6.2.3 Can the donor – conceived child take action against social parents in instances where a donor parent is chosen over one who does not have a problem with the disclosure of his identity?**

It would be unlikely for the donor child to succeed in such an action because the cause of action lies with the donor parent's conduct and not the social parent. Although in such matters both parents would be joined.

### **7. To what degree should donor children and donor parents be allowed to interact with each other.**

The level of interaction should not be prescriptive. In circumstances where the donor – child and donor parent are genetically linked then it would be highly unlikely that the surrogate parent would desire interaction. Furthermore, where a donor parent is deceased then the question of interaction would not arise. Therefore, legislation should allow and protect interaction but must not restrict the nature of any interaction.

### **8. Should the donor parent determine the extent of interaction with his / her donor conceived child?**

The level or nature of interaction should not be prescribed and should be developed in terms of the common law and existing legal framework.



**9. Would it be of benefit for the donor child to have knowledge of his donor parent's identity but to be barred from communication/interacting with the donor or his family?**

To know of his donor parent's identity and to then be prevented from communicating with the parent or his family may not be a problem with all donor conceived children. Therefore, each circumstance must be treated separately. Accordingly, a blanket approach is not supported that allows for knowledge of identity but bars communication.

**10.1 Who is responsible to tell a child about his/her biological origins?**

The duty rests on the social parents.

**10.2 Should the State provide guidelines in terms of the above?**

Yes. A duty rests on the State to protect the best interests of the child in all circumstances.

**10.3 Should the information be recorded on a child's birth certificate?**

No. It can be misused or affect the child negatively in the future where individuals or institutions are biased.

**10.4 /5 Should the State reveal information about the donor conceived child's biological origins when such a child applies for an identity document?**

No. This may have undesirable consequences such as family upheaval and emotional trauma.

**10.6 How should a child be told of his/her biological origins?**

Under the supervision of a clinical psychologist.



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## **Establishment of the Database**

### **11. Should the State maintain the database and under what terms?**

The CGE recommends that the database be managed by the State. The records should be kept indefinitely and costs for the retrieval of information by a donor- child and donor parents be kept to a minimum. The information should not be released to entities such as a credit bureaux, insurance companies, retailers or banks. Furthermore, the information must not be used for any commercial purpose and this practice must be criminalised.

### **Access to Information**

11.6 The CGE acknowledges that every person has access to information in the public domain. However, personal information and trade secrets for example can be restricted. Therefore, only the donor child, social parents and donor parents should have access to the relevant information on the database which as this is information relating to the specific child or parent.

### **Right to Privacy**

11.7 / 8 The right to privacy exercised by the donor parent must not impede the right to information, dignity and Section 28 rights enjoyed by the donor – child. The CGE believes that the right to dignity and Section 28 rights in the constitution trump the right to privacy of the donor parent.



## **12. Chapter 3 Rights in the Children's Act of 2005 : Assignment of Care to Interested Persons by a Court**

The CGE believes that Section 23 Rights in the Children's Act is relevant. In this regard, there must be no conflict between the rights provided in the Children's Act and future legislation. Accordingly, the CGE believes that Section 23 of the Children's Act also makes provision for donor parents to exercise their rights to contact and care towards a donor conceived child.

### **13. Limitation on the Number of Donor Offspring**

The CGE supports a position where the donor offspring is limited to six live births. This will limit the probability of genetically linked inter-marriage, untenable social consequences and commercialisation of reproduction by donor parents. Issues such as race, ethnicity and religious factors cannot be applied when limiting the number of offspring.

### **14. Surrogacy**

The CGE believes that the same standard of rights that vest in a donor conceived child will apply in a child commissioned relationship. In this regard, there is no reason to withhold the identity of the surrogate mother, the biological parents or donor parent.

### **15. Mitochondrial Replacement and Cloning**

The National Health Act prohibits manipulation of germ line genetics as well as any genetic manipulation. Therefore, the CGE believes that MRT research is prohibited because all genetic material is located in the DNA and more especially the X and Y chromosomes which will be found in all nuclei (Except gametes which will either be X or Y) . MRT should be permitted in RSA and legislative reform should therefore, take this direction.



Where children are born in terms of MRT then the same standards of disclosure of their donor and other parents applicable to other children should apply.

### **15. Inter – Country Medical Assisted Reproduction**

The CGE does not support inter – country medically assisted reproduction because of the exploitation, human trafficking, social and legal complexities that are associated with such procedures. These complexities will impact negatively on the self – respect and development on children born in such circumstances. Furthermore, unethical practices such as using children born in such circumstances to harvest organs such as kidneys, corneas and pancreases will be encouraged.

### **16. Registration of Births and Disputed Paternity**

The CGE believes that the Births and Death Registration Act is not aligned to the Constitution. Therefore, this Act should be amended to allow for the unmarried fathers to include their information in the child’s birth certificate. Furthermore, current parents / children in such circumstances should be allowed to amend their particulars of birth.

Furthermore, children born out of wedlock have a right to not only inherit and be maintained by their biological parents. Their rights should be extended to the right to know of their biological /genetic origins.

### **17. Disputed Paternity and Medical Technology**

In a technologically advanced environment the use of legal presumptions in determining paternity is undesirable. Instead scientific tests must be applied which are more reliable.

Furthermore, the child in a disputed paternity is entitled to know the outcome of a paternity test.



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## **18. CONCLUSION**

The CGE thanks the SALRC for the opportunity to comment on Issue Paper 32.



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## 1<sup>st</sup> QUARTER REPORT – PARLIAMENTARY AND INTERNATIONAL LIASION

### OFFICE

#### 1. INTRODUCTION

The Parliamentary Unit has completed seven(7) submissions this term which is well above the target of five (5). The target in terms of SO 3 SS1 is also achieved.

Procurement is underway for new offices and this is envisaged to result in better working conditions for all staff in the WC and especially the PLU which is facing severe constraints regarding its operations.

#### 2. SUBMISSIONS

DATE	BILL	COMMENTS
19/04/17	Work based learning regulations.	<p>The primary purpose of the Workplace based learning programme regulations is to provide for the submission, registration and management of workplace based learning and skills programmes to be put into place formally. This will include the relevant programme agreements, administrative arrangements and dispute resolution mechanisms.</p> <p>The CGE supported the proposed regulations as it is aimed at establishing and promoting learning programmes in the workplace. These programmes will benefit all workers and more</p>



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especially women who have to balance their various duties with

work commitments.

19/04/17

Agricultural Land Holdings Bill (Draft)

The proposed Bill has numerous aims. The most significant are :

- To establish a Land Commission and provide for its powers.
- To provide for the establishment and maintenance of a register of public and private agricultural land holdings.
- To provide for a database regarding present ownership, acquisition and submission of information relating to agricultural land ownership.
- To prohibit foreign acquisition of agricultural land.

The CGE supported the proposed bill and recommended revisions aimed at ensuring that more indigent women are given agricultural land aimed at income generation and food security.

28/04/17	<p>Open Learning Policy Framework</p> 	<p>The Policy is aimed at expanding access to post school education programmes by all South Africans.</p> <p>The CGE supported the policy and proposed revisions aimed at ensuring that the time constraints, lack of funds and other obstacles such as traditional practices which prevent working women from improving their skills to be addressed.</p>
30/04/17	Home Loan and Mortgage Disclosure Amendment Bill 2016	<p>The proposed bill seeks to regulate further the information that Home loan Mortgagors keep, supply or disclose regarding their clients.</p> <p>The CGE supported the proposed bill but proposed revisions aimed at ensuring that gender related data is also generated and disclosed to organs of state. This must be able to assist entities to ascertain how many women buy homes, to what extent women are able to access home loans and the nature of the homes being purchased by women.</p>
15/05/17	Report of the Ministerial Task Team to Develop a Support and Funding Model for “Poor and Missing Middle ” Students.	<p>On 13 April 2016 the Minister of Higher Education established a task team to develop a funding and support model for poor and missing middle students.</p> <p>The purpose of the report was to ascertain whether RSA can afford to offer fully subsidised or “ fee - free” education to the poor and subsidised education to students who come from working class</p>

	 <p><b>Commission for Gender Equality</b> A society free from gender oppression and inequality</p>	<p>backgrounds.</p> <p>The task teams has found that it is possible to offer fee – free university education to the very poor with a combination of subsidies and</p> <p>The CGE supported this policy and provided guidelines on gender mainstreaming of the relevant policy.</p>
15/06/17	Submissions on the Questionnaire relating to the proposed “Single Human Rights Body”	<p>The legislature invited Chapter 9 Institutions to comment on specific issues relating to the recommendation made by the <i>Ad Hoc</i> Committee regarding the amalgamation of the SAHRC, CGE, CRL, NYDA and PanSalb.</p> <p>Taking cognisance of the fact that the Ad Hoc Report was completed in 2007 the recommendation regarding a Single Human Rights Body is no longer relevant given the statutory developments that have reshaped the nature and functions of C9s. Furthermore, considering the slow pace of socio – economic transformation within South Africa, gender related inequalities remain a major evil which must be tackled at an institutional level. Accordingly, the CGE responses were aimed to guide the Legislature on an appropriate approach regarding the proposed amalgamation of ISD’s.</p>
20/06/17	<b>Draft Regulations under the Property Valuations</b>	The regulations have been drafted to give effect to certain sections of

	<p><b>Act 17 of 2014</b></p>  <p><b>Commission for Gender Equality</b> A society free from gender oppression and inequality</p>	<p>the Property Valuation Act of 2014. The regulations seek to amongst others provide meanings to certain definitions such as “acquisition benefits”, “valuation certificate”, “subject property” and to also regulate the powers of the Valuer-General all of which are necessary for the implementation of the Act.</p> <p>The CGE supported the proposed Regulations and proposed the insertion of further regulations to ensure that the Regulations will promote gender equality.</p>
<b>Total</b>		<b>7 submissions</b>

### 3. PRESENTATIONS TO PARLIAMENT BY CGE

DATE	COMMITTEE
16 May 2017	<b>Portfolio Committee for Women in the Presidency on APP and Budget for 2017/18</b>
13 June 2017	<b>Portfolio Committee for Women in the Presidency on 4<sup>th</sup> Quarter Report 2016/17</b>

21 June 2017	<b>Presentation to the Portfolio Committee on Police and Portfolio Committee for Women in the Presidency on Assessing the work of SAPS Stations in combating Violence Against Women (VAW).</b>
28 June 2017	<b>Portfolio Committee for Women in the Presidency on the following Reports :  Struggling to meet the ends of Justice</b>

**Painting over old Cracks**

**Ship without a Captain.**



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#### **4. MEETINGS ATTENDED BY THE PLU**

<b>DATE</b>	<b>MEETING/WORKSHOP/ACTIVITY</b>
25 April 2017	<b>OR Tambo Centenary Lecture – University of Western Cape</b>
24 – 26 May 2017	<b>Attended Plenary</b>
6 June 2017	<b>Attended Dullah Omar Institute Conference on Access to Affordable Housing.</b>

#### **5. TRACKING REPORT**

The CGE submissions were submitted and are being considered by the relevant organs of State. The various policies and bills have not been finalised to date. Once the bills have finalised the CGE will be able to advise to what extent submissions were implemented.

#### **6. INTERNATIONAL INSTRUMENTS**

The Researcher has completed the Concept Document which will be used to guide the review of State Compliance with International Instruments. At this stage he is engaging with provinces in order to collate data which will be used to complete the annual audit set out in Strategic Objective 3 Substrategy 1.



**7. AD HOC DUTIES** Commission for Gender Equality  
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Numerous ad hoc duties were performed by the PLO which include the following-

- (i) Attendance of engagements in the province
- (ii) Attending to telephonic complaints
- (iii) Assisting with operations such as services by office automation company.
- (iv) Collaboration with internal stakeholders – Legal with certain complaints

**8. ATTENDANCE AT PARLIAMENT**

The PLO has attended on Parliament on approximately 15 occasions.

**9. CONCLUSION**

All performance targets for the first Quarter have been met.