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'Marriage Above All Else': The Push for Heterosexual, Nuclear Families in the Making of South Africa's *White Paper on Families*

Tanya Charles

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'MARRIAGE ABOVE ALL ELSE': THE PUSH FOR HETEROSEXUAL, NUCLEAR FAMILIES IN THE MAKING OF SOUTH AFRICA'S WHITE PAPER ON FAMILIES

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1   The shaping of gender and sexuality in policy – a brief discussion on South Africa

South Africa continues to be a nation that is celebrated for producing one of the most progressive constitutions in the world. In an effort to depart from its oppressive apartheid past, the Constitution of South Africa, as the supreme law of the land, '...lays the foundation for an open society based on democratic values, social justice and fundamental human rights...'.[1] While this legislation continues to guarantee the rights of its citizens, after two decades of democratic governance, it is evident that what is aspired to in the Constitution is not being fully realised in reality. There exists a disjuncture between the ethos of this – and other laws – and the realisation of the human rights they embody, especially for people who do not conform to hegemonic gender and sexuality norms.

One area where this gap manifests itself is in South Africa's high levels of gender-based violence. On an almost weekly basis, news headlines report heinous cases of abuse, particularly against women and young girls. To date, 2013 has most prominently seen the vicious murders of Anene Booysen, a 17-year-old girl who was gang-raped by men she knew from her community,[2] and that of Reeva Steenkamp, a South African model shot dead, apparently by her famous boyfriend, athlete Oscar Pistorius.[3] The systematic, weekly rapes of lesbians are a regular reminder of '...brutal homophobic attacks' that take place across South Africa and especially in poorer areas such as its overpopulated townships (Human Rights Watch 2011). Violence against women has become a dominant part of the narrative around South Africa – now popularly referred to as 'the world's rape capital' (Naidu-Hoffmeester and Kam 2013).

The severity of the situation does not go unnoticed in South Africa. Civil society organisations, particularly from the women's movement, work tirelessly to provide crucial services to survivors of gender-based violence and to ensure that such violence is prevented through a range of advocacy initiatives. At the policy level, there are many laws that can be used to prosecute perpetrators of gender-based violence, such as the Domestic Violence Act of 1998 and the 2007 Criminal Law (Sexual Offences and Related Matters) Act. Across the country, activist groups engage in street protests calling for government and its representatives to ensure that violence against women is stopped, as when Sonke Gender Justice Network (Sonke) took the then leader of the African National Congress (ANC) Youth League Julius Malema to court for hate speech, unfair discrimination and harassment of women (Keehn 2010). In spite of these legal safeguards, there is evidence of increasing political and social intolerance.

This report comments on the policymaking processes that led to the development of the *White Paper on Families* as it exists in its current iteration (November 2012). The report highlights the power dynamics that have led to the inclusion and exclusion of specific content and language, particularly around the notion of what constitutes a family in contemporary South Africa. It considers the diverse roles played in the drafting of this document by civil society representatives, government representatives and the general public. On the basis of interviews with these actors and a close reading of the white paper, this report points to two worrying trends in the making of policies and laws in South Africa: (1) public policy in South Africa is becoming increasingly conservative as a result of religious and cultural doctrines which do not recognise sexual diversity or support the engendering of human rights in society; (2) the South African government and its representatives are promoting a

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[1] 'Our Constitution' – see www.parliament.gov.za/live/content.php?Category_ID=11
[2] http://mg.co.za/article/2013-02-15-00-will-anene-booysens-brutal-rape-and-murder-shake-the-nation-into-action
[3] www.news24.com/SouthAfrica/Oscar_Pistorius

heteronormative value system in its policy and programming, despite resistance from civil society. Most significantly, this paper illustrates that the cabinet's approval of this policy could mean that access to resources will be determined by the extent to which one's family fits the narrow, heterosexist definition of a family being promoted in the white paper.

2 *White Paper on Families*: an overview

Since the turn of the century, the Department of Social Development (DSD) has endeavoured to develop a policy on families that will serve as a guideline for improved service provision and social stability in the country. The need for such a policy is present in both public and academic discourses that report a 'breakdown in families', which is being linked to a multitude of social problems such as teenage pregnancy and high rates of violence (Holborn 2012). The last attempt to tackle this was the 2005 National Policy Framework for Families cited in the white paper,[4] which sought to protect and support families through effective and efficient service delivery. However, in the past two years, the push to develop a new public policy on families in South Africa has been reinvigorated, out of a desire to target services at family units rather than at individuals as within the current, very costly social welfare system. During this time, DSD has been engaged in a number of 'consultative' processes with other government departments, civil society organisations and the South African public in order to develop a family policy that is more in line with current socioeconomic conditions and one which can facilitate targeted social services and interventions to reduce poverty. This has culminated in the *White Paper on Families*.[5]

In detailing its main objectives, it is stated that the '...*White Paper on Families* views the family as a key development imperative and seeks to mainstream family issues into government-wide policymaking initiatives in order to foster positive family wellbeing and overall socioeconomic development in the country' (DSD 2012: 8). Its more specific objectives are to:

> 1   Enhance the socialising, caring, nurturing and supporting capabilities of families so that their members are able to contribute effectively to the overall development of the country;
> 2   Empower families and their members by enabling them to identify, negotiate around, and maximise economic, labour market, and other opportunities available in the country; and
> 3   Improve the capacities of families and their members to establish social interactions which make a meaningful contribution towards a sense of community, social cohesion and national solidarity.
> (*ibid.: loc. cit.*)

Finally, the vision and mission of the white paper is to create a society with 'well-functioning families which are loving, peaceful, safe, stable, and economically self-sustaining, that also provides [sic] care and physical, emotional, psychological, financial, spiritual, and intellectual support for their members' (*ibid*.: 9). This will be achieved by undertaking '...activities, programmes, projects and plans to promote, support and nourish well-functioning families...' (*ibid*.: *loc. cit.*). Thus, the white paper attempts to set the policy context that will ensure families are socially stable and economically productive. As the rest of this report will demonstrate, these objectives will be achieved by promoting a conservative notion of 'the South African family'. In a society that is increasingly intolerant of people with gender identities and sexualities that do not fit the heterosexual 'norm', it is probable that such individuals will have difficulty accessing the resources and opportunities that will be made available through the white paper.

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[4] See the 2001 draft here: http://www.polity.org.za/polity/govdocs/discuss/fampo2l.html; 2005 version unavailable
[5] The latest version is from November 2012. Only the version from October 2012 is available to the public at www.dsd.gov.za/index.php?option=com_docman&task=cat_view&gid=33&Itemid=39

3 A brief note on the legislative process: what is a white paper?

In South Africa, a white paper is a type of policy document that often leads to the development of a national law, although this is not always the case. A white paper is preceded by a green paper – a draft policy document prepared by government for public consultation with interested parties and civil society organisations. Hence, white papers are supposed to be compiled on the basis of green papers, taking into account the inputs and recommendations provided by wider society. If all the steps are followed sequentially and in line with constitutional mandates, a white paper can become a draft bill, which is then approved by cabinet, parliament and, finally, the president. Once approved by the president, the bill becomes a national act, which is applicable at national level. Usually, this process takes a number of years, although the time frame is influenced by political will as well as public sentiment. The more controversial the proposed legislation, the longer it takes for it to become a public policy, let alone a national law. Essentially, one can conceive of white papers as precursors to national laws. If they are not developed into acts, they exist as guiding documents that can be referred to in the formation of other laws and policies as well as operational and implementation plans in relevant government departments. The main limitation is that white papers do not mandate government departments to deliver on any commitments contained therein.

4   Methodological approach: utilising insider access

At a planning meeting held at the Institute of Development Studies (IDS) between 27 and 29 November 2012, it was decided that Sonke would examine the *White Paper on Families*. The main motivation for focusing on this specific policy was the rare opportunity to observe directly and participate in its formation, given that Sonke had already been playing a significant role in the drafting process. Sonke participated as a civil society representative and had been invited to do so by DSD. Sonke formed part of DSD's 'task team', which was composed of government representatives from various departments and civil society organisations, mainly to assist with the white paper's development. This insider access made it possible to identify the actors who framed what is included and excluded in the policy, while observing the power dynamics undercutting this framing process. A number of Sonke staff had already been attending task team meetings and other forums related to the development of the white paper, making research of this nature plausible.

Given this insider's perspective, the main methodology that was employed to evaluate the progress of the white paper was participant observation – a methodological approach which centres on direct engagement with the studied group (in this case, the task team) and observing their practices as a fellow member of that group. It was planned to complement this with interviews with Sonke staff, government officials, civil society representatives and other relevant individuals within the task team, as well as those who attended any open meetings and other discussions on the paper. Content analysis of the *White Paper on Families* was employed as an additional research methodology to measure what information was included or excluded in the drafting process.

As often occurs during the research process, a few challenges were encountered. On return to South Africa, in mid-December 2012, it was established that the task team's meetings for the year 2012 had been concluded, that the final draft of the white paper had already been developed and was being reviewed by the Minister of Social Development, Bathabile Dlamini, before submission to the cabinet for final approval. This meant that participating in task team meetings would no longer be possible. Thus, the only option was to conduct one-to-one interviews and attend other meetings and workshops designed to develop content on the white paper.

Fortunately, on 29 January 2012 DSD hosted a meeting of the National Family Services Forum, which brought together a number of units within the department to give progress updates and deliberate on a host of ministry issues. One of the discussion points was the *White Paper on Families*. It was at this meeting that potential respondents were identified. Prior to this national meeting, task team members were contacted by email to request an interview. In total, 12 were contacted, most of whom were government representatives. Only two had responded, but the meeting made it possible to secure more interviewees. Without access to this meeting, finding suitable informants other than Sonke staff would have continued to be a challenge. This illustrates the importance of gaining access to government spaces in order to make contact with policymakers.

To summarise, interviews were carried out with government officials working for DSD as well as other departments (totalling four); with four Sonke staff members who were directly involved in drafting the white paper; and one other member of the task team, who represented a religious organisation. At the national meeting, it was possible to speak to a number of other government officials and a few civil society representatives, which also deepened analysis of the policymaking process and the power dynamics which shaped it.

However, attempts to interview more civil society groups were unsuccessful and this will be explored subsequently in this report.

4.1 Ethical considerations: finding allies and the promise of anonymity

In most cases, carrying out research with government representatives means navigating through a complicated approval system before being granted (or denied) permission to conduct research. However, this bureaucratic wall can be circumvented. Government is not a homogeneous entity. It is comprised of individuals who hold a range of political, social and economic views. This makes it possible to identify government representatives who are not only willing to provide their perspective, but who are also prepared to express opinions that may be contrary to government's official position. As a result, one is able to identify respondents who can support the research process by sharing their insights. Attendance at the national meeting on 29 January 2012 made it possible to identify such individuals.

The process of identifying allies is essential when conducting research on government, and especially so if the research being undertaken has the potential to be critical. In this context, it is important to clarify the extent to which a respondent is willing to speak 'on the record.' There are enormous risks to job security and livelihood should the identities of respondents be revealed, even more so if they speak against government policies and/or positions. For these reasons, informants were asked whether or not they wanted to maintain anonymity and all opted to do so. So, as an ethical obligation, the names of government officials and the departments they represent shall not be provided. Anonymity will also be accorded to other respondents interviewed for this study, excluding members of Sonke who have granted permission for their names to be supplied.

5   Drafting the paper: who speaks?

As the department spearheading the drive to develop a family policy in South Africa, DSD had the authority to determine who would inform discussions on its content and scope. The department has been selective in terms of inviting specific government departments and non-governmental bodies to provide inputs on both the green and white papers. On this basis, it is apparent that the space accorded for discussion and negotiation has primarily been an invited space – it is provided by government and access to the space is only granted to those deemed appropriate. However, there was an attempt to provide a more open space for the general public to give comment and feedback on the green and white papers. At the centre of these processes was a desire to be consultative – to engage with as many individuals and institutions as possible in drafting a policy on families. However, the extent to which this process was consultative and collaborative in nature became a source of much contention.

5.1   Consulting 'the public'

In 2011, DSD developed a first draft of a policy on families, that being the *Green Paper on Families: Promoting Family Life and Strengthening Families in South Africa*. As the precursor to the *White Paper on Families*, it stated: '... [g]overnment is putting forward proposals on how South African families should be supported, in order to flourish and function optimally. It calls for families to play a central role in the national development pursuits of the country and the building of a better South Africa. For this ideal to be realised, family life and the strengthening of the family should be promoted in the country' (DSD 2011). Therefore, the green paper represented the first attempt at drafting a social and economic policy in relation to families, which was approved for public comment in September 2011.

After the paper was drafted, DSD engaged in countrywide consultations to elicit comments on it from provincial government departments, civil society groups and the public so that their considerations could be incorporated into the white paper. In the view of one DSD official, 'There was thorough, thorough, thorough consultation on the green paper, even in rural areas. We spent R3.6 million. It was a lengthy consultative process. We even used the radio to capture missing voices' (interview with DSD member, 7 February 2013). However, opinions differ about the extent to which this consultation was 'thorough'. Others thought that the consultations were not extensive enough, particularly the public hearings, which were meant to garner inputs from ordinary citizens. The public was only afforded one month between May and June of 2012 to give their views, as reported by one government official. The same respondent felt that public participation was further limited by the lack of proper advertising of the green paper because DSD '...were rushed for time... If I [hadn't been] involved, I wouldn't have known that there was this green paper' (interview with government official, 31 January 2013). While DSD did make the green and white papers available on the DSD website,[6] it is not commonplace for most people to check for updates on the government portal, especially in a country where internet access is very expensive and available only to a minority. 'Yes, they were putting the drafts on their website,' explained the same official, 'but there really should have been a press release. But because it's government, it takes a long time for such things to get signed off' (interview with government official, 31 January 2013).

Feedback from respondents has illustrated that there were insufficient attempts to solicit public opinion on the *White Paper on Families*. Reasons for this include poor advertising of the paper's existence, which could have been mitigated through consistent media releases in print, on the radio and on screen. Doing so would have made citizens aware of their

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[6] The Department of Social Development's website, www.dsd.gov.za

opportunity to comment. Additionally, allowing only one month for a population of more than 40 million people to deliberate on a policy that would have far-reaching effects on their lives is a critical mis-step. It is not clear why the time for public comment was so limited. However, it could be argued that allowing longer would have impeded the development of the white paper, where time seemed to be a critical factor. It is difficult to determine how much public input was obtained and whether the views of the public have been incorporated into the current version of the white paper, as there is no evidence attesting to this.

5.2   Consultations with civil society

Most respondents described as inadequate the attempts to invite commentary on the green paper from a wide range of civil society organisations. Those interviewed suggested that the perspectives of particular groups were favoured over others, even if efforts were made to get a variety of non-governmental organisations to participate. Desmond Lesejane, deputy director of Sonke, explains this succinctly:

> Sometimes, you get the sense that there is genuine desire by some of those people [government] to get viewpoints from across the board. But this does not always translate into what you would call open and democratic participation for a number of reasons. One is internal processes within government around stakeholder relations – so people talk to those whom they know instead of opening up and getting broad consensus.
> (Interview, 1 February 2013)

Mr Lesejane's comments highlight that access to policymaking spaces is restricted and engagement is usually based on 'stakeholder relations' – a system of networks and connections that some organisations and individuals have been able to establish. For example, Sonke has a longstanding relationship with DSD (and other government agencies), having worked with them on several campaigns to address gender-based violence and other gender and human rights issues. This relationship gained Sonke an invitation to participate in the task team and contribute to the policy as it developed. Sonke is well known locally and globally for its work on gender justice and is often called upon by government to provide 'the' civil society perspective on a range of issues. As an organisation, Sonke is acutely aware of the perception that is it is 'the' formative voice on gender equality issues, and recognises that this is highly problematic. Nomonde Nyembe, a legal researcher at Sonke, made it known that the lack of diversity of perspectives from civil society was very problematic: 'We complained almost immediately that we were excluding other voices. Sure, we still bring critical issues to the table but it is from our perspective. I would much rather hear all voices and debate' (interview, 29 January 2013).

In seeking to answer the question as to why there was a lack of more diverse non-governmental organisations participating in drafting of the family policy, a member of DSD explained that a number of organisations had been invited but that these organisations did not respond to their calls and make themselves available for meetings and workshops related to the policy:

> We invited several NGOs that we identified as dealing with family issues and we struggled to get attendance. We cannot stop moving the process forward simply because certain organisations are not on board. If they don't show up, what are we supposed to do?
> (Interview with DSD member, 7 February 2013)

DSD's efforts to engage with a range of NGOs were commented on by Thami Nkosi, also a representative of Sonke, who was part of the task team. He remarked that DSD '...has been reaching out greatly, but I am not sure whether the response has been favourable' (interview, 1 February 2013). While it may be true that DSD attempted to reach broader civil society,

research reveals that they made special and concerted efforts to work with specific civil society groups.

Several respondents explained that of all the civil society groups present, conservative religious and faith-based organisations were the most numerous. Although Mr Lesejane conceded that many civil society groups did not show interest in drafting of the family policy, '...the DSD made specific efforts to lobby religious communities because they think they should play an important role in family structures. I don't think there has been an equivalent body or even an attempt to have an organised civil society body' (interview 31 January 2013). Religious groups seemed to be the most represented and included organisations such as the Family Policy Institute (FPI), which describes itself as a 'public policy think tank based upon the Judeo-Christian worldview [which] believes marriage and the family is the foundation of civilization, the seedbed of virtue, and the wellspring of society' (FPI 2007). DSD also enlisted representation from traditional leaders, an institution said to govern on the basis of African customary law and culture that is protected by the South African Constitution (see chapter 12 of the Constitution). Traditional leaders operate as a secondary form of authority in many parts of the African continent, including in South Africa, their rule over society pre-dating colonial times. As democracy has spread throughout Africa, the need for traditional leaders such as chiefs has been debated extensively, particularly because they tend to rule in a despotic manner that curtails the rights of women and gay people and threatens the engenderment of human rights under the guise of upholding African culture (Mubangizi 2012). Although the South African media have constantly highlighted the problem of traditional leaders in South Africa, DSD has drawn them into the drafting of the white paper because such religious and cultural groups are viewed '...as custodians of morality' warranting a close working relationship so as '...to advocate for healthy and functional family life as well as marital stability in the society' (DSD 2012: 54). By enlisting the participation of these constituents, it is unsurprising that discussions on what constitutes a South African family would be influenced by conservative religious and cultural doctrines.

These findings demonstrate that DSD made specific, perhaps strategic, efforts to elicit participation from religious groups. The voices and perspectives of other human rights, gender and – of particular relevance for this paper – LGBTI organisations were critically missing. Most respondents reported that there were some LGBTI groups present during initial phases of consultation but no one could recall the names of the groups involved. One DSD official said that an LGBTI organisation called OUT had participated and 'brought out the issue of same-sex families' (interview with DSD member, 31 January 2013), but when the organisation was contacted, no one there could verify the organisation's participation; there had been some changes in staff meaning that institutional memory had been lost. It was difficult to establish which other LGBTI groups were involved in the policymaking process because no one interviewed could clearly recall. This attests to their invisibility in the shaping of the white paper.

Common to discussions on the low representation from civil society groups was the view that in South Africa this sector is under severe financial and human resource strain, making it difficult for many organisations to allocate time and resources to policy advocacy work. Mr Lesejane elaborated that 'Policymaking in South Africa has become elitist, that's my view... It's organisations like Sonke who prioritise policy advocacy and have the resources to do it, including dedicating staff to attend meetings, analyse documents and write submissions. Many organisations don't have that capacity' (interview, 1 February 2013). From his statement, it becomes evident that policy advocacy is a costly endeavour. However, beyond severe resource strain, some respondents offered the opinion that even those civil society organisations in attendance were not being heard and that there was '...little incorporation of suggestions made by civil society organisations into the white paper' (interview with Thami Nkosi, 1 February 2013). Given these factors, critical and important civil society perspectives have been left out in the development of the *White Paper on Families*. Instead, a few civil

society organisations are said to be representative of the whole sector. Their participation is invited so as to 'legitimise' consultative processes, even if consultation has not properly taken place.

5.3   Consultation with government

In the production of a white paper, there is no imperative to develop public policy through a task team. The responsible department, in this case DSD, must simply provide evidence that they have consulted broadly in the development of legislation. Nonetheless, DSD elected to have a task team. One of the criticisms that has been levelled against this team is that it was mainly composed of government officials, with the majority of members coming from DSD. One of its officials explained that having mainly government representatives was deliberate because the family policy would have implications for a number of other government departments: 'We wanted them to look at their roles and their mandates in relation to the issue...' (interview with DSD official, 31 January 2013). Even if DSD recognised that the family policy would have an impact on the functions of other government departments, it appears that the *White Paper on Families* was not seen as a priority by other government departments.

Several government bodies did not participate in the meetings and workshops related to the development of the paper. One government official stated that this was because supporting policymaking processes in other departments is not compulsory. Those who attend policy discussion meetings and workshops are not contractually obliged to participate, and work on other department policies often adds to the workload. As she explained:

> The DSD sent correspondence informing us about this family policy and the director general of our department then nominated people to come and sit on the panel. Two of us were nominated but I am the one who ended up attending and going to meetings the most. Most of the time, the departments that attend are the ones that feel they will be most affected by the policy.
> (Interview, 31 January 2013)

DSD identified 13 government departments as being 'pivotal in the successful implementation of the Integrated white paper plan' namely, the Department of Social Development (DSD – the lead and coordinating department); Department of Justice and Constitutional Development; South African Police Service; Department of Correctional Services; Department of Defence and Military Veterans; Department of Arts and Culture; Department of Basic Education; Department of Health; Department of Home Affairs; Department of Human Settlements; Department of International Relations and Cooperation; Department of Rural Development and the Department of Cooperative Governance and Traditional Affairs (DSD 2012: 54–55). Research indicated that very few of these departments consistently took advantage of being invited to take part in the drafting of the white paper.

It appears that the participation of a wide array of government departments depends on whether or not their officials commit themselves to the policymaking process, which requires regular and consistent attendance at meetings and workshops and review of multiple versions of the draft itself. The trend appears to be that relevant departments only realise how a policy will affect their roles and functions once it has passed into law, at which point it is too late to attempt to reverse or reshape it.[7]

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[7] As one government representative explained, failure to pay attention to the kinds of policies being developed in other departments until they have been passed had serious consequences when the Department of Transport moved to implement an e-tolling system on South African roads. The respondent explained that there had been several invitations to review the policy,

6   Marriage as the vision, if not the reality: examining the policy narrative in the *White Paper on Families*

Despite some efforts to engage the public, multiple non-governmental organisations and a number of government departments in the development of the *White Paper on Families*, very few actors had the capacity to participate regularly and ultimately shape its content. As illustrated previously, the main actors were DSD members, religious groups and traditional leaders (with some contributions from Sonke and a few other civil society organisations). These actors provide a very narrow definition of family that is not immediately evident in the white paper. At the surface level, the definition of family appears to be inclusive of multiple family formations, whereas closer analysis of the policy document reveals that the notion of a South African family is one constituted in heterosexual marriage. The vigorous promotion of heterosexual marriage in policy and programming has been described as the 'politicisation of marriage', fuelled by narrow ideological viewpoints that arise from religious and traditionalist ideologies rather than current realities (Smith 2001: 303).

The definition of family as provided in the white paper is '...a societal group that is related by blood (kinship), adoption, foster care or the ties of marriage (civil, customary or religious), civil union or cohabitation, and go beyond particular residence [sic]' (DSD 2012: 11). This definition is said to be in keeping with broad consensus on the definition even though '...the concept of family is difficult to define' (*ibid.*: *loc. cit.*). While this definition can be read as inclusive of diverse family arrangements in South Africa, including same-sex unions and families that cohabit and may not necessarily be constituted in marriage, the rest of the policy document focuses on heterosexual married families. In a section entitled 'Promoting and strengthening marriages' the paper states that '*stable* [own emphasis] marital unions are essential for the stability of families and ultimately society's well-being. Where unions are flourishing, efforts will be made to promote them and where they are under threat there will be a focus on strengthening them' (*ibid.*: 9). A significant portion of the paper is dedicated to examining the state of marriage in South Africa, offering statistics on marriage and divorce rates, re-marriage rates and a section on non-marital childbearing which has been identified as problematic because it causes a reduction in fertility rates (*ibid.*: 11–16).

Analysis of the white paper and statements from informants for this research have shown that the notion of family is conservative and seeks to promote patriarchal heterosexual marriage, even in the face of evidence which shows that most South African families are not constituted in marriage and take a diverse range of formations. Whereas in most cases, research or 'scientific evidence' is used to push for a particular policy approach, in this instance there was a clear rejection of research reflecting the diversity of family structure in contemporary South Africa while utilising research (often not named)[8] as evidence to establish that families formed through heterosexual marriage are better than other family types in South Africa. The vigorous promotion of heterosexual marriage in policy and programming is evident through this policy, and many others being produced by DSD, such as the *Manual for Marriage Preparation and Marriage Enrichment* (2007), which encourages people to get married and stay married.

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but very few departments did so. Currently, various government departments are up in arms over its enactment into law, in addition to there being enormous outcry from civil society and the general public.
[8] For example, on page 5 of the *White Paper on Families*, the background sections reference 'an established body of research evidence from different parts of the world' without citing which research this is.

As far back as 1999, the rate of registered marriages was 355 per 100,000 (cited by Pierre de Vos (2012)). More recent statistics indicate that marriages have been steadily declining over the past few decades (Moloi 2012). The white paper in fact recognises that almost 50 per cent of South Africans do not marry as '...marital prevalence data from 2001 census showed that almost half the total population aged 15 years and older were never married' (DSD 2012: 14). DSD also cites research which has shown that the proportion of households that were made up of nuclear families decreased between 1996 and 2001 from 46 to 40 per cent, while the proportion of households made up of extended families increased from 32 per cent to 36 per cent over the same period (*ibid.*: 16). Beyond the so-called validity of statistics and research, anecdotal evidence presented during meetings and workshops which attested to the low number of married families was rejected, if not sidelined. A government official explained that during one of the consultative meetings, where participants were broken into smaller groups, marriage was vehemently expressed as ideal:

> There were people that felt strongly about this marriage thing and I did vocalise that it doesn't work like that. When you look around in the South African scenario, it doesn't exist. I don't know why they were insisting. It's not like it's there.
> (Interview with government official, 30 January 2013)

Mrs Thompson-de Boor, a Sonke research assistant and member of the task team, added the following:

> One of the contentious issues was if two people live together and they are not married, should they be considered a family? And we said 'Yes!' A lot of people disagreed with that basically because they felt that you shouldn't encourage people to live together and not be married. What about other situations? People who don't live together and don't have children? Ah, it's difficult. We were saying we should be open to this diversity because in South Africa, there are many situations people are living in.
> (Interview with Hayley Thompson-de Boor, 31 January 2013)

These statements reflect the view that while diversity exists in the make-up of South African families, this is not an ideal type of family and people should not be '*encouraged*' [own emphasis] by the policy document to cohabit outside of marriage. Such a view demonstrates a rejection of scientific research and anecdotal evidence attesting to the diverse family formations in South Africa, especially the decline in rates of marriage. The preference for heterosexual marriage stems from the belief that it provides numerous benefits to the wellbeing of family members (and from an inadequate recognition of the many forms of abuse that take place within family settings). While this was the more commonly articulated explanation for having marriage as an ideal, a more 'progressive' response was that marriage confers more legal rights and entitlements to women and children in the face of divorce. Citing particular research from other African countries, while simultaneously stating that no equivalent research exists in South Africa, one (married, female) government official explained that:

> Unfortunately, research has shown that it's better. In an African context, no one will ever recognise my children if I am not married. That certificate gives you privileges, otherwise it's your word against mine... We have to have a vision of something. We will promote marriage but support will be given to you if you don't get married.
> (Interview with government official, 31 January 2013)

In this sense, marriage is understood to facilitate legal access to a range of protections and benefits for women and children. Essentially, marriage provides them with 'stronger' rights. However, this simplistic view discounts the reality that the legal terrain is fraught with loopholes that often cut entitlements to women; that it tends to be male-centred and patriarchal and likely to serve the interests of men. The legal justice system requires financial

and material resources that most women do not have access to. Marriage does not often guarantee the rights and/or entitlements to women for these and a myriad of other reasons. Instead, marriage as an institution regulates and controls sexuality (for both men and women) and places heavy burdens on women and girls in terms of the gendered division of labour. Thus, most calls for families to be constituted in marriage are not articulated from a place of ensuring legal rights for women, but instead, from a need to police women's and men's sexuality and ensure social reproduction especially in regard to its links with capitalism and economic stability.

The economic motivation for instituting this family policy and foregrounding heterosexual marriage is evident throughout the white paper. There are several references to the need to foster family wellbeing because it links to 'overall socio-economic development in the country' (DSD 2012: 8) and that one of the 'important functions' of the family is that it 'contributes to the healthy development of members who contribute to society' (*ibid.*: 6). This speaks to the goal of creating economically functional families which will be achieved by facilitating '...family economic success, which involves focusing on helping individuals improve self-sufficiency through expanded opportunities to work, earn a living wage that provides for the basic needs of the family...' (*ibid.*: 38). Close reading of the paper indicates that a primary motivation for keeping families together, and especially binding them by the ties of marriage, is to ensure that they are economically independent and are thereby less likely to rely on state welfare because they will *'...need fewer public resources'* [own emphasis] (*ibid.*: 6). While same-sex couples can also marry and thereby have access to the same services as heterosexual married couples discussed in the policy, in a society that is increasingly intolerant of people with diverse gender and sexual identities, it is probable that such individuals will have difficulty accessing the resources and opportunities that will be made available through the white paper. Already, exclusions on this basis are taking place in the area of health care, with a 2004 study showing that 44 per cent of LGBTI people surveyed experienced heterosexism when trying to access health services in what can be referred to as institutionalised homophobia (Nel and Judge 2008). Discrimination on the basis of marital status is likely to affect millions of unmarried South Africans, and with same-sex married or unmarried couples facing even further exclusion on the basis of their gender/sexual non-conformity.

The need to develop economically independent families could be attributed to the government's incapacity to meet the claims for financial support being made by individuals through the Social Assistance Act of 2004. This act provides financial and material support to various vulnerable individuals, including child support grant; care-dependent grant, foster child grant, disability grant, older person's grant, war veterans grant and grant-in-aid for people who are '...in such a physical or mental condition that he or she requires regular attendance by another person' (Social Assistance Act 2004). As reported by Van Der Berg and Siebrits (2010), the government significantly increased its spending on social grants from R16,027 million (US$2.05 billion) in fiscal year 1998 to R71,161 million (US$9.81 billion) in fiscal year 2009 with just over a quarter of South Africa's population claiming benefits every month. In the context of a struggling local and global economy, and with inequality in South Africa on the rise, more and more individuals are qualifying for and readily claiming monetary assistance through the welfare system. The increasing demand for support puts a strain on the government's resources. Thus, a move from an individual-based to a family-centred welfare system would mean an enormous reduction in the national budget expenditure on social welfare. Cause for concern arises from the fact that access to resources will soon be dependent on whether or not one's family fits the narrow heterosexist definition being promoted in the white paper. Those who do not are likely to suffer economic exclusion.

6.1   Battling against homophobia in the policymaking process

When it comes to the inclusion of same-sex unions in the definition of families in the white paper, the heteronormative value system is evident. Fortunately, the South African Constitution prevents discrimination on the basis of one's gender identity and sexuality, and this has gone some way to protecting the legal rights and entitlements of same-sex couples in the making of the *White Paper on Families*. Therefore, at the legislative level, LGBTI people have far more legal protections and freedoms than their counterparts in the rest of Africa and in most countries in the world. Nonetheless, despite progressive legislation, social acceptance trails behind. Discussions of the need to include same-sex unions in the definition of family revealed people's prejudices – from general intolerance of homosexuality to blatant homophobia.

For the most part, participants felt that recognition of same-sex unions, whether or not they were legally married through the Civil Unions Act, was not acceptable. In attempting to ensure that same-sex couples were included in the definition of family, Sonke staff (among others) had to be quite vocal, and in so doing, were met with disdain by task team members who held opposing views. Narrating her experiences, Nomonde Nyembe of Sonke and a member of the task team, explained that during one of the discussions of the need to include same-sex unions in the definition of family, she felt obliged to call people to address their own homophobic attitudes. As a result of this, one member of the task team took her aside and told her that homosexual people do not deserve all the rights that heterosexuals enjoy, and that heterosexual marriage is the proper thing to do. Commenting on this experience, she noted that: 'There is an ethical problem here because they [government] don't really believe what they teach. They speak about wanting to protect gay rights and being a proponent for gender equality, but this doesn't come through in the documents. Heterosexual marriage is being held above all else' (interview, 29 January 2013).

While some individuals displayed blatant homophobia as noted in the example previously discussed, there were indications of more subtle homophobic attitudes. Many people interviewed stated that it was indeed against the law to discriminate against LGBTI people, but that homosexuality was nonetheless something to be frowned upon. This can be seen in the following remark as shared by a religious member of the task team:

> If I could help it, I would want a father who fathers children, and a mother. I would want that because even a gay person was born by someone. They didn't come from the clouds. Even for them, they have to acknowledge that 'I have a father and a mother.' But the fact that South Africa is a pluralistic society, we are saying to them, 'Okay, if you regard yourself as a same-sex family, we accommodate you'. I can't condemn them.
> (Interview with religious person, 29 January 2013)

The subtle levels of homophobia captured in the preceding comments are also present in the *White Paper on Families*. The paper goes some way to recognising the diversity of families in South Africa and thus provides a catalogue of the various family arrangements in the country, including skip-generation households, child-headed households, polygamous families and even migrant families (DSD 2012). Same-sex relationships and marriages are also acknowledged (in five lines) and the document simply states that these are legal in South Africa (*ibid.*: 21). This gives the impression that policymakers have been cognisant of same-sex unions, when in fact it is little more than an obligatory nod to sexual diversity rather than a thorough and concerted effort to understand and reflect on the socioeconomic needs and vulnerabilities of LGBTI families in the country.

By involving religious groups like the Family Policy Institute referred to earlier, it becomes apparent that there is an attempt to discourage the formation of same-sex families in South Africa. In what they term 'biblical advocacy' the Family Policy Institute states that they have

actively become engaged in policymaking processes in South Africa as a result of government pushing through legal recognition of same-sex marriage in 2007 (see www.familypolicyinstitute.com/fpi/). This Institute is '...committed to restoring and upholding marriage as a one-man, one-woman institution, defending the sanctity of human life, protecting religious liberty, fighting for family tax relief, and combating judicial activism that leads to court rulings that harm the family' (www.familypolicyinstitute.com/fpi/about-us/purpose). Similarly, traditional authorities in South Africa are of the view that same-sex relations are 'unAfrican', discounting literature that proves same-sex relations have been part of African culture since pre-colonial times (see, for example, Anderson (2007) and Blackwood and Wieringa (1999)) and the National House of Traditional Leaders is calling for constitutional protections concerning non-discrimination on the basis of sexual orientation to be removed (SAPA 2012). With such actors actively involved in the shaping of the white paper (and other legislation in South Africa), combined with DSD's view that these are 'custodians of morality' (DSD 2012: 54), it is difficult to establish how these sectors will deal with the reality of same-sex families and others that do not fit the narrow conception of family being promoted in the document. This is particularly concerning because one of its main objectives is to provide socioeconomic support to struggling families, yet there is little acknowledgement of the many levels of exclusion (by family members, from employment, even from health care) that LGBTI persons suffer on the basis of their sexuality and gender non-conformity. If government does not attempt to understand and address these, there is little chance that LGBTI people will be directly incorporated into programming designed to improve the lives of South African families.

6.2   Conclusion: what is a South African family?

The aim of the *White Paper on Families* is to ensure service provision that is targeted at families rather than individuals. The reluctance of policymakers to understand and explicitly articulate the vulnerabilities and needs of a host of vulnerable groups, including LGBTI families, means that any poverty reduction strategies that are implemented are unlikely to reach such families, not only because they do not conform to the construct of a family propagated in the paper but also as a result of homophobic attitudes from service providers themselves. The heteronormative ideals of marriage coupled with heterosexist attitudes displayed by a majority of policy and decision-makers within the task team and the DSD unit as a whole is cause for concern in regard to social development. It is evident that there are 'appropriate' genders or sexualities that are being promoted and that the closer or further one is to these norms, the more or less access one will have to material wellbeing. The heteronormative value system that has shaped the *White Paper on Families* carries profound implications for the social and economic health of people living in South Africa. As it exists, LGBTI people will most likely be excluded from the resources the paper strives to direct at families rather than individuals.

7   *White Paper on Families* – a glimpse into the future

This report has shown that the *White Paper on Families* foregrounds a narrow definition of the family – one that is constituted in marriage and that is heterosexual in nature, even while acknowledging that this is not the current composition of families in South Africa. This definition is borne out of the rise of religious and cultural fundamentalism which seeks to preserve what is believed to be the 'natural' gender and sexual order. To achieve this, policymakers rejected research evidence highlighting a significant decline in the rates of marriage and that living arrangements in South Africa are rarely nuclear in character. This exclusion was combined with an unquestioning acceptance of other research which demonstrates that heterosexual marital homes provide the most benefits to individuals. Although such a narrow definition serves conservative religious and cultural interests, it works very well for the economic needs of a government with a crippled welfare system. Beneath its stated intention to 'foster positive family well-being' (2012: 8), economic transformation can be seen as the main reason for the development of the *White Paper on Families*. DSD is of the view that heterosexual married families are more economically independent, self-sustaining and less likely to make use of the individualised social grants programme which government is straining to maintain. Of concern here is that if the white paper is enacted by parliament and becomes operational, it is likely that gender- and sexuality-diverse families and individuals will experience economic exclusion in addition to their day-to-day experiences of prejudice as a result of political and social intolerance. Rather than ensuring economic stability, the white paper could have the opposite effect: increasing the poverty and vulnerability of South African people, particularly of those within the LGBTI community who are already experiencing institutionalised homophobia in, for example, the health care system.

8   Key recommendations on how to conduct a policy audit

The policy audit undertaken by Sonke was shaped by its insider access to the policymaking space and therefore to all the different actors involved in shaping the policy's content. The following points are key recommendations on how to conduct a policy audit as an insider.

1. **Keep an eye on government websites and any announcements regarding the drafting of legislation:** In most cases, government are obliged to notify citizens of impending legislation and provide spaces for them to give feedback. Often, these announcements are made in government gazettes or announcements rather than through mainstream media. Monitoring government communication allows for the opportunity to get involved in policymaking processes and thereby gain insider access.
2. **Utilise the rapport you have established:** As an insider, you have already made connections and reached a level of familiarity with other policy- and decision-makers. Use this knowledge to identify suitable informants, especially allies, for interviews and discussions.
3. **Ensure anonymity:** Off the record interviews and discussions with informants are a crucial way to get to the heart of the issues that are informing the policymaking process. Anonymity also safeguards informants who may not wish to be identified because of the risks exposure poses to their livelihood and wellbeing.
4. **Be upfront:** Be clear about the aims of your research. This is an ethical imperative. Get consent in written or audio form.
5. **Consider silences and utterances equally:** Pay attention to what is not said as much as what is said. This requires that you do not rely solely on an analysis of the policy document being reviewed, but what informants have to say about the policy processes themselves that led to particular inclusions and exclusions.

About Sonke Gender Justice Network (www.genderjustice.org.za)

Founded in 2006, the Sonke Gender Justice Network is a South African-based NGO that works across Africa to strengthen government, civil society and citizen capacity to support men and boys in taking action to promote gender equality, prevent domestic and sexual violence, and reduce the spread and impact of HIV and AIDS. Sonke has an expanding presence on the African continent and a growing international profile, through its involvement with the United Nations and a range of other international networks and affiliates.

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Interviews – in the order in which they first appear in the text

Interview with Department of Social Development member, 7 February 2013

Interview with government official, 31 January 2013

Interview with Desmond Lesejane, deputy director of Sonke Gender Justice, 1 February 2013

Interview with Nomonde Nyembe, policy researcher, Sonke Gender Justice, 29 January 2013

Interview with Thami Nkosi, then with Sonke Gender Justice, 1 February 2013

Interview with Department of Social Development member, 31 January 2013

Interview with government official, 30 January 2013

Interview with Hayley Thompson-de Boor, research assistant, Sonke Gender Justice, 31 January 2013

Interview with religious person, 29 January 2013