

BUSINESS

# UPDATE

A publication for progressive business



#### GENDER EQUALITY

What is it going to take for the war on women to stop?

#### HEALTH REFORM

Why the NHI legislation is vital to mend the health sector

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#### WOMEN IN BUSINESS

To recover the economy empowering women must take centre stage



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# CELEBRATING SA'S PROGRESSIVE WOMEN



**“Y**ou're not obligated to win. You're obligated to keep trying to do the best you can every day” – Marian Wright Edelman

Every year during the month of August, South Africa celebrates the vital role of women in the community. This year we mark the 66th anniversary of the year thousands of women – from all backgrounds and cultures – staged a march to the Union Buildings in Pretoria to protest against the oppressive pass

laws at the time. Joining in this celebration of women in South Africa, the PBF's Progressive Women in Business programme will be hosting an event to honour the role of women and their contribution towards our country's economy. The objective of the Programme is to mobilise women from various sectors and industries to contribute to and shape the country's economic policy.

Furthermore, it ensures that women actively participate in the mainstream of the country's economy.

On an annual basis we host an event that focusses on the progress of women in business and continue to inspire young women and young entrepreneurs. We invite women who are industry leaders in their various roles to share their experience and impart knowledge to upcoming female entrepreneurs.

This special edition of *Business Update* is dedicated to Women's Month. We have called on various women across the board, in the private and public sector, to pay tribute to the women in South Africa.

The articles focus on a range of topics by industry players: Ministers and Deputy Ministers share their work and the contribution their departments have made towards women empowerment.

We look forward to the ongoing and enthusiastic participation of subscribers in the programmes on offer, designed to enhance communication and interaction between business and ANC representatives in government. With your ongoing active participation in the programmes of the PBF, we can be confident that together our engagements will be fruitful and positive. May the words of Juliana Rotich inspire us: “I am guided each day by these three questions: ‘What are you fixing?’, ‘What are you making?’ and ‘Who are you helping?’”

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# ANC CHAMPIONS WOMEN IN LEADERSHIP

In a bid to eradicate all forms of oppression and discrimination against women from our society, the ANC is calling women to the forefront of the organisation and the country, says ANC Treasurer General PAUL MASHATILE



History was made at the recent Gauteng provincial conference of the ANC when three women were elected into the top five leadership structure of the organisation. This was a first for Gauteng and probably the first for the country within the structures of the ANC. Reflecting on this, the newly elected Chairperson of the ANC in Gauteng, Panyaza Lesufi, said it is a major stride for women leadership not only in Gauteng but also in the country. "This communicates a clear message that the ANC has a place for women," Lesufi said. The issue of women in leadership has

always been topical within the ANC and in society in general. In the ANC, debates around the importance of women in leadership culminated in the decision that all leadership structures of the movement must have an equal representation of men and women. This has now become standard practice.

President OR Tambo was foremost among those who advocated the rights of women within the ANC and championed the building of a non-sexist society. It was also OR who made a solemn pledge to the women of South Africa that; as the ANC we will not consider our struggle complete, or at the end, and our mission will remain un-accomplished, until women are fully emancipated. Under his leadership, OR sought to cement the role of women as active, equal participants in the struggle for liberation, including in the armed struggle. In a speech to the Women's Section of the ANC, OR Tambo challenged both men and women in the ANC when he said: "Women in the ANC should stop behaving as if there was no place for them above the level of certain categories of involvement. They have a duty to liberate us men from antique concepts and attitudes about the place and role of women in society and the development and direction of our revolutionary struggle."

Women themselves have, through their actions, claimed their space in the ANC and in the broader liberation movement and struggle.

## Three ANC women were elected into the top five leadership structure

We will never forget that it was women such as Charlotte Maxeke who were at the forefront of organising the first defiance campaign against the pass system, mobilising women to burn their passes. History records that this first-of-its-kind, militant anti-pass campaign of 1913 – led by women – inspired many similar actions across the country. It also became a source of great admiration and general pride within the Congress leadership; at a time when membership of the ANC was open only to men.

Equally, images of those more than 20 000 brave women who descended on the Union Buildings to confront apartheid pass laws, will remain forever etched in our memories. They stand out as an enduring symbol of women power, their ability and willingness to take their destiny into their own hands. They give practical meaning to the rallying call that: Wathin'abafazi wathint'aimbokodo!

Today, women face different yet equally daunting challenges, including gender-based violence, femicide and the abuse of women





and children. We also know that in South Africa the face of inequality, poverty and unemployment is largely women. Women disproportionately bear the brunt of these social ills, which have been elevated due to the Covid-19 pandemic and, more recently, the rising cost of living.

While it must be all hands on deck in addressing these challenges, we also look up to women to take the lead in efforts towards their total emancipation. Women must occupy the foremost trenches as we rebuild our economy and society.

We also look up to the women of our country to help to ignite hope, by always assuring us, in word and in deed, that our tomorrow will be better than today and yesterday; that we should not despair and that we should never abandon our goal of building a better life for all.

We in the ANC have always maintained that the struggle for women's emancipation is an integral part of the National Democratic Revolution, whose strategic goal includes the resolution of the triple oppression of women: based on their race, their class and their gender.

Accordingly, and inspired by OR Tambo's passion for the rights of women, we will continue to do everything necessary to eradicate completely from our society all forms of oppression and discrimination against women. The election of the majority of women into the top leadership structure of the ANC in Gauteng is a major positive step toward this goal. We trust that other provinces and all ANC structures will follow Gauteng's example. Our rallying call at this juncture is: women to the front! Malibongwe igama lamakhosikazi! **BU**







# TIME FOR SA WOMEN TO RISE

For too long, South African women have come up against the glass ceiling, preventing them from excelling in business, proclaims Deputy Minister of Trade, Industry and Competition NOMALUNGELO GINA. The time has come to shatter that ceiling

**G**ender disparity remains exceedingly large in the South African economy. To contest the reality that women remain at the bottom of the economic pyramid is both naïve and ignorant. Worse still are the details of disaggregating the gender dimension according to the race ratio in the country. Black African women are stationed at the very poorest position when it comes to business ownership compared to their white and Indian counterparts. Whilst the B-BBEE policy has made some difference as a midwife, so to speak, to economic transformation and pathways for women to enter the economy, artificial stumbling blocks remain and the male-dominated environment continues to be a major inhibiting factor to speeding up the rate at which women ascend the corporate ladder.

In August 2020, I had the opportunity to attend the B-BBEE Commission Webinar, which accompanied the Employment Equity Commission and featured the theme “Management Control and the

Status of Women in Transformation”. According to the report on the National Status and Trends on B-BBEE presented at the webinar, the scorecard recording the progress of women in the economy with regards to management control and business ownership still shows figures that are far below acceptable levels in terms of companies’ commitment to inclusion and gender equality. The majority of women still don’t sit on company boards – where the big decisions are made – a statistic that is evident even where they have 50% shareholding or above. Key to our responsibility as government is to discourage women from accepting “silent control” in companies that deem them to be shareholders but withhold them from decision-making. We must fight against corporate patriarchy that bullies women into accepting inactive silent partner status. We must eradicate the culture within women that says they are only good enough for receiving dividends in the absence of board participation.

**On Women’s Day in 2020, President Ramaphosa announced that 40% of public procurement would be reserved for women-owned businesses**

To illustrate this, research shows that only 10% of women in South Africa are involved in the executive decision-making process within the financial sector. This continues to be a source of concern for many women in the corporate environment.

In this context, we applaud Nissan SA, which last year announced that it intends to change the narrative by committing to a 25% increase in female executives promoted to the leadership by 2025. This is an important step in the context of the automotive sector – a particularly male-dominated arena – and our Automotive Master Plan is very focused on transformation. ►

## The majority of women still don't sit on company boards – where the big decisions are made – a statistic that is evident even where they have 50% shareholding or above

We anticipate and hope that this change of direction will inspire the industry as a whole and place it on an even steeper upward trajectory.

Government remains committed to the empowerment of women. Indeed, it is very high on the agenda. On Women's Day in 2020, President Cyril Ramaphosa announced that 40% of public procurement would be reserved for women-owned businesses. This is a huge opportunity, considering the government's buying power. Of course, it has been difficult to make any assessment since last year, as Covid-19 limitations have stalled projects across the board. The critical question is: how do we use this opportunity to galvanise as many businesswomen as possible through government procurements?

In addition, how do we avoid men using women as cannon fodder in the process, thereby defeating the very intentions of government in breaking the glass ceiling of women's economic empowerment. The Gender Commission, the B-BBEE Commission and the Department of Women, Children, and Persons with Disabilities will have to play an active role in ensuring that women really take these opportunities without being frustrated at all levels of government.

Fortunately, it is not all doom and gloom. There are positive movements, albeit progressing at a slower pace than desired. The Department of Trade, Industry and Competition (the dtic) has been driving the implementation of the policy framework on Gender and Women's Economic Empowerment for a long time, with the core imperative to increase the number of enterprises that women control, have

ownership of, and manage. This includes access to finance in local and international markets. Admittedly, we have fallen short in this area as government, and we are working on raising the implementation tempo.

Women are largely stuck managing and owning small, micro and medium enterprises, since it is difficult for them to scale up their businesses and break into the larger corporate value chains as suppliers. Sadly, this is the state of affairs across all sectors of the economy.

The dtic, in partnership with the National Empowerment Fund (NEF), has established a Women Empowerment Fund aimed at enhancing the participation of black women-owned businesses in the South African economy. Funding is provided in the form of concessionary loans or equity with a maximum interest rate of 2%, to support projects that assist in creating jobs and increasing productive capacity. Implementation of this fund commenced in March 2021.

Over the past 10 years, the NEF has given funding to more than 40% of black women entrepreneurs. As part of its determination to grow its funded portfolio of businesses that are owned and managed by black women, the NEF will continue to work with organisations that represent women in order to mobilise deal flow.

According to a recent March 2022 study, the *Mastercard Index of Women Entrepreneurs* (MIWE), South Africa is one of only 12 economies in which women's entrepreneurial activity rates increased, with 11.1% of working-age women engaged in early-stage entrepreneurial activities. South Africa moved up one place from 2020 to rank 37th in 2021, with a score of 54.9. According to MIWE, women's advancement still remains hampered by less supportive entrepreneurial conditions compared with other global economies such as the US, which ranked first, with a score of 69.9; New Zealand, ranked second, with a score of 69.8; and Canada in third place, with a score of 68.6.

The 2021 MIWE reflects the challenges

of a persistently uncertain global entrepreneurial landscape, as well as a marked rise in both female and male necessity-driven entrepreneurship, as many had lost their jobs due to lockdown and restriction measures. According to Gabriel Swanepoel, the Mastercard Manager for Southern Africa, "The fact that women entrepreneurial activity rates in South Africa grew in a year when many other economies did not, together with the fact that female necessity-driven entrepreneurship surpassed that of males, indicates their strong will, resilience and determination to survive."

From an investment standpoint, research shows that SA's women-owned businesses present a lower statistical risk for business financiers. According to Business Partners, women-owned businesses account for a lower percentage of non-performing loans and the growth of entrepreneurship among women in the country has been encouraging.

It goes without saying that the growth of women in trade and investment will herald a sustained upward trajectory for business confidence in our country. We urge women in business to take up the cudgels and push back against all efforts to stunt their multiplication in all industries. Women must live up to what world renowned late American poet and feminist Maya Angelou once said: "Each time a woman stands up for herself, she stands for all women." **BU**



**NOMALUNGELO GINA**  
DEPUTY MINISTER OF TRADE,  
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# WOMEN IN BUSINESS: LEVELLING THE PLAYING FIELD

STELLA NDABENI-ABRAHAMS, Minister of Small Business Development, says empowering women in business is not just a nice-to-have but is central to economic recovery and sustainable growth in SA

**W**omen in business face many challenges. From unequal pay to harassment in the workplace, the playing field is decidedly uneven. Of those women, black women face the biggest challenges, especially if they reside in townships or marginalised rural economies. For South Africa to build on its commitment to foster a developmental state, it is crucial for the country to better understand the barriers to work that women face. Only then can we work out collective strategies to address these barriers, with the ultimate goal to level the playing field.

## THE GLOBAL PLAYING FIELD

The current state of women empowerment globally makes for depressing reading. According to the United Nations Entity for Gender Equality and the Empowerment of Women, also known as UN Women, women make up 70% of the world's poor. Women bear the brunt of climate disasters and are 14 times more likely than men to die from a disaster. Covid-19, which destroyed hundreds of millions of livelihoods worldwide, affected women worse than it did men, with those most affected more highly represented in informal micro enterprises.

Yet, it is in the labour market where women remain more vulnerable. 75% of unpaid work – mostly family and care work – is done by women. And while women only make up 13% of the world's agricultural landowners, one third of the world's women are employed in the agricultural sector. Women in rural areas still carry the burden of energy and water poverty.

Gender-based violence and femicide remains a global and national scourge. In fact, it is something we know all too well, as women in South Africa are subjected to violence at the hands of men on a daily basis. And the harm done is not only emotional and physical. The global economic cost of violence against women is estimated to be a staggering US\$12-trillion annually.

## THE CHALLENGES WOMEN FACE

To move forward as a society and as a country, we need to better understand the challenges faced by women in the economy. We need to ask ourselves why men still control a higher share of resources and power. Resources that include easier access to education than what is available to women, together with unfair advantages in the arenas of productive assets, finance, markets and technology. ►





Additionally, there is the issue of limited legal protection for women from discriminatory practices entrenched in society.

Collectively, these factors keep women entrepreneurs trapped in poverty cycles where they remain stuck, unable to transition from survivalist informal enterprises to more productive and formalised businesses.

Even the real contribution of women to national economies is not fully captured in national accounting systems and statistical databases. The result is that the real work and value of women remains invisible.

It is true that South Africa has made some headway in reducing gender bias for women, especially against those who participate in early-stage entrepreneurial activities.

The country enjoys a moderately healthy overall ranking of 22nd globally for its efforts on these fronts. But women still only comprise 18.8% of all business owners in South Africa, a statistic that ranks it 42nd in

this area. Compared to countries such as Ghana, in which 46.4% of business owners are women, and Uganda, at 33.8%, 18.8% is a relatively poor performance. Indeed, it's nothing to be proud of.

A recent International Trade Centre (ITC) survey of 20 developing countries revealed striking disparities between men's and women's participation in trade. Only one in five businesses that trade internationally are owned or managed by a woman. Such gender differences are generally attributed to the tendency of female-owned businesses to be smaller than male-owned ones, lacking the resources needed to expand into global markets. They are also concentrated in service sectors, which are less trade intensive.

The numbers speak volumes. It is clear that these outcomes are not simply a reflection of choice, but rather are the result of the unique constraints and

challenges that women entrepreneurs face. We have much work to do if we are to turn things around.

### THE LOCAL PLAYING FIELD

In South Africa, empowering women must be at the centre of our efforts towards economic recovery. This is not just a nice-to-have but is essential for economic recovery and sustainable growth.

It is estimated that empowering women to participate equally in the global economy will add US\$28-trillion to GDP growth by 2025. Women's economic empowerment will add US\$60-billion annually to the African economy.

Locally, we are busy with the task of putting our economy on the road to recovery after the decimation of the Covid-19 pandemic. During the pandemic, the country lost more than two million jobs and estimates are that one quarter

of micro enterprises closed up shop. To address this crisis, the government is implementing the Economic Reconstruction and Recovery Plan (ERRP) to build back better. Linked to the ERRP, a number of structural reforms under Operation Vulindlela are being actioned, together with a host of industry-level masterplans.

The Department of Small Business Development (DSBD) plays the lead role in this work. Our role is to ensure that SMMEs are at the centre of the country's economic recovery, and that each masterplan is specific about opportunities for small enterprise and for women-owned small enterprise. In this, we seek to fundamentally alter inherited apartheid spatial patterns, and redress the exploitation and marginalisation of women.

In addition, as the DSBD, we have our own masterplan, which we call the National Integrated Small Enterprise Masterplan. The masterplan defines our priorities and enables the partnerships needed to co-create within the SMME development ecosystem.

Our focus as the DSBD over the short term is on cutting red-tape and amending legislation that constrains small business. Here, we are working closely with the Presidency and will extend this work to provincial and local government levels.

We are also upscaling our products and services to SMMEs, especially those operating in the township and rural economy. This includes financial products such as grants for equipment, blended finance packages, and credit guarantee schemes, which we implement together with commercial banks and non-bank financial institutions. We need to up-scale our efforts to address financial exclusion.

We are accelerating support to incubators and accelerators. We have supported the establishment of 110 incubators and have an overall target of 250 incubators over the medium term, which we intend to implement together with the private sector

and other stakeholders. But this support is meaningless if we do not address market access for SMMEs. As we curb excessive market power and increase competitiveness in key sectors through the work of the Competition Commission, we must at the same time work with the private sector to co-create more competitive and inclusive markets within which women-owned SMMEs can thrive.

In all these initiatives, we are prioritising black-owned, youth-owned and especially women-owned enterprises. Currently, our core programmes – like the Township and Rural Enterprises Programme and the Youth Challenge Fund – ensure that at least 40% goes to women-owned SMMEs. We are intentional that this should shift to 50% as we develop capacity and competitiveness among women-owned enterprises in targeted sectors.

We have recently launched the SheTradesZA platform, which is a partnership of the Department of Small Business Development and the International Trade Centre (ITC), and implemented in partnership with our agency the Small Enterprise Development Agency (Seda). This initiative forms part of our arsenal to support women entrepreneurs access domestic, continental and international markets. We call upon our women entrepreneurs, and especially young women, to make use of this platform to make sure that their businesses not only thrive but continue to expand and multiply.

### DISRUPTING THE DIGITAL DIVIDE

We must also make sure women benefit from the transition to the digital economy. To do this, we must recognise and address the gender digital divide. This gender divide has exacerbated inequities in education and opportunity, especially now in the times of Covid-19. At 37%, Sub-Saharan Africa has the world's second-widest gender digital gap (after South Asia), preventing women from accessing education, health,

## Empowering women to participate equally in the global economy will add US\$28-trillion to GDP growth by 2025

and financial inclusion in a world that has become digital overnight.

South Africa has a very youthful population, which will be its growth driver and give the country its competitive edge going forward. But only if we deal with digital infrastructure, digital skills, and the costs of data will this growth driver thrive. Without digital development, South Africa's future as a leader of global innovation will be still-born.

We must ensure that we enable the full participation of women in all areas of the economy as we agreed at the Women's Economic Assembly last year. Women in business must organise and become a force that cannot be ignored.

Working together we will change the development path of our country. **BU**



**STELLA NDABENI-ABRAHAMS**  
MINISTER OF SMALL BUSINESS  
DEVELOPMENT



# DISRUPTING APARTHEID SPATIAL DEVELOPMENT THROUGH SOCIAL HOUSING: A NEW TRAJECTORY NECESSARY

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The Department of Human Settlements is in the process of expropriating land, in line with the Expropriation Act, to provide access to sustainable communities closer to economic opportunities, explains MINISTER MMAMOLOKO KUBAYI



One of the most urgent priorities that we need to address is access to urban land for purposes of human settlement for the majority of South Africans. With the rapidly growing rural to urban migration, the provision of sustainable human settlements closer to economic opportunities has become one of the most pressing challenges our country is facing today.

In recognition of the slowdown in RDP housebuilding, the inadequate quality and location of the housing, limited impact of housing on poverty and inequality, the changing nature of housing demand and the limited contribution from the financial sector, the social housing policy was introduced as a response. Social housing which includes a rental or cooperative housing option for low-income persons, the gap market, at a level of scale was conceptualised with the aim of fostering social integration and bringing the gap market closer to economic opportunities. In this way, social housing is one of the important tools through which we can transform our cities, thereby disrupting the apartheid spatial configuration which persists to this day.

#### THE GOVERNMENT'S APPROACH

As outlined in the *Ready to Govern* document, the ANC's approach to land and human settlement is that of "... the homeless and landless will have access to land, shelter and necessary services for family security". Yet such an approach has to be cognisant of the fact that, spawned by a long history of colonisation and apartheid, South Africa has some of the most unequal and segregated cities in the world.

In the early stages of its implementation, the social housing programme had potential and was promising to bring the low-to-middle income households into the urban centres. However, the trend has since changed. In a report titled

### It is estimated that the number of urban dwellers will rise to 71% by 2030

*Social Housing and Spatial Inequality in South African Cities*, the Human Sciences Research Council (HSRC) found that "In the 1990s and 2000s, more than 80% of all social housing investments were focused on the core city and inner suburbs. By 2011–2015, this percentage dropped to 21% in the core cities, and 16% in the inner suburbs".

#### WHY IS THE ISSUE OF URBAN LAND FOR HUMAN SETTLEMENT IMPORTANT?

For social housing projects to be located closer to urban centres and closer to economic opportunities, a number of factors have to be considered, including the price and availability of land, private and public funding, and regulatory processes. Among these, price and availability of land has been the primary determinant factor, followed by access to finance in the displacement of social housing projects from the urban centres to the periphery.

It is estimated that 63% of South Africans are already living in urban areas and the number of urban dwellers will rise to 71% by 2030. It is further estimated that eight in 10 people will be living in urban areas by 2050. This rate of increase of the urban population will also have been accompanied by an increase in demand for urban housing and other basic infrastructure requirements. If this demand is not met, our cities will become a breeding ground for all kinds of social ills and will soon be rendered unsustainable and unstable. Furthermore, the number of informal settlements will continue to rise at a rate that we will not be able to adequately provide basic services and social amenities. ►





## WHERE TO FROM HERE?

In accordance with the presidential pronouncement on the release of state-owned land for purposes of human settlements, the Department of Human Settlements – through the Housing Development Agency – has already received 36 land parcels measuring 2 493 hectares from the Department of Public Works and Infrastructure. The remainder of the land to be transferred will be done in phases. The released land parcels will promptly be planned and developed to address, among others, the rural housing programme including farm worker housing, affordable housing, land tenure upgrading as well as informal settlements upgrading.

An additional 1 762 hectares owned by state-owned enterprises has been identified for release for human settlements development through the Inter-Ministerial Committee (IMC) on land. In terms of the IMC, all public-owned land is reserved for land reform programmes including human settlements.

With the increasing urbanisation, the demand for land will soon outstrip the state-owned land, which means that other measures would be required to make more land available. It is for this reason that the Housing Development Agency (HDA) and the Department participated in the Bill preparation process and ensured that the definition in the Expropriation Bill was aligned to the Housing Development Agency Act and the Housing Act.

We are currently in the process of expropriating pieces of land, in line with the Expropriation Act, which we believe are underutilised and suitable for human settlement.

## HOUSING PROGRAMMES ON THE TABLE

The demand for social housing and student housing is overwhelming. Our Social Housing Programme has about R140-billion worth of assets. In his fourth State of

the Nation Address, President Cyril Ramaphosa announced that R64-billion of the R700-billion from the Infrastructure Fund will be spent on social housing and student accommodation. The Social Housing Regulatory Authority (SHRA) has partnered with the Infrastructure Fund to develop six new social housing projects from transformed delivery agents, with an allocation of R305-million over the next two years.

The National Housing Finance Corporation (NHFC) is driving the recently renamed Finance Linked Individual Subsidy Programme (FLISP) by contracting with banks and other stakeholders in the sector to improve the delivery of this product. With the policy changes allowing non-mortgage home acquirers to access the project, we expect to see this being used more widely and particularly by people in rural areas who cannot access mortgage finance.

In an effort to facilitate access to ownership among government employees by utilising FLIPS or this Help Me Buy a Home Subsidy as an instrument, the National Housing Finance Corporation has signed a memorandum of understanding (MoU) with the Government Employees Housing Scheme (GEHS). The MoU will enable qualifying government employees to access FLISP subsidies. Currently, the total number of employees eligible to receive the monthly housing allowance is almost a million.

## THE FUNDING QUESTION

To address the lack of access to funding, the Department is converting the NHFC into the Human Settlements Bank, which will serve as a mobilising tool of funds from both public and private funding institutions. The Department has finalised the drafting of the Bill on the establishment of the Bank. The business case (BC) has been enhanced and aligned. The Department is currently in consultation with the relevant stakeholders

including, but not limited to, the National Treasury and the South African Reserve Bank on the issue of the capitalisation of the Bank.

The social housing policy envisaged that the NHFC would be a key lender in the short to medium term, and commercial lenders would then become the major lender in the long term. This was based on the assumption that the SHRA and government would regulate the sector effectively and provide capacity building and support to increase the number and quality of Social Housing Institutions (SHIs). Given the fiscal position that our country finds itself in, it will become increasingly difficult for government alone to continue to be the dominant funder of the social housing sector. It means therefore that any new trajectory that social housing takes will only be sustainable if the private sector investment increases significantly to crowd out government funding.

We believe that we have embarked on a path that will significantly alter the current trajectory of the social housing programme. Collectively, these actions will foster social integration and enable upward social mobility, thus disrupting the apartheid spatial development. **BU**



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# 28 YEARS OF HEALTH REFORMS IN SA AND THE NHI LAW

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The NHI Bill doesn't provide all the solutions for the South African health care system. However, without the NHI legislation the health care system will remain fragmented between inefficient and inequitable public and private sectors, writes DR GWEN RAMOKGOPA





**T**he National Health Insurance (NHI) Bill is a draft legislation before the Parliament of South Africa. The Bill aims to address financial obstacles to the access of comprehensive quality health care – free at the point of care for all citizens regardless of socio-economic status – and to mitigate financial hardships suffered due to illness.

After extensive public consultations, stakeholder engagement and consideration, the NHI Policy was adopted by Government and gazetted in 2017 and forms part of The National Development Plan 2030's priority for the health sector, which includes the introduction of Universal Health Coverage. The NHI Bill is a draft legislation to enact the NHI policy.

Focusing on one of the building blocks of a health system, which is Health Financing, the NHI is a pre-payment system where health finances are pooled together and made available to everyone in need according to the health condition affecting them.

The NHI policy's new funding model for health care will protect citizens from having to worry about finances when they are sick or injured and allow them to instead focus on the medical care they need. To this end, the NHI will provide financial cover for dread diseases and associated financial hardships affecting many citizens, such as cancer and major surgical procedures.

The overall impact of the NHI is that comprehensive quality health care services will be provided to citizens through the pooling of health care funds, prepaid according to ability and the need of each citizen. The NHI therefore is a firm foundation towards Universal Health Coverage in South Africa and enacting the mandate of the Constitution for health as a basic right for every citizen.

Global health care systems have evolved over many epochs of history to encompass the practice of evidence-based interventions as well as innovations.

## South Africa spends more than 8.4% of the GDP on health

Where the Sumerians and Egyptians from ancient times used the bark of a willow tree for pain relief, for instance, today in modern times we use a medication called aspirin.

Regardless of the day and age when it takes place, the best attributes of humanity are on display when people care for one another in those most vulnerable moments associated with sickness or injury. It may sound strange, but while the World Wars resulted in great harm to humans during mass tortures and killings, the extra-ordinary effort to save the lives of the injured contributed to three areas of advancement in paramedics, nursing and medicine, namely the advent of ambulances, antiseptic and anesthesia. In addition, evidence-based nursing practices emerged out of the work of Florence Nightingale, whose aim was to reduce morbidities and mortalities while caring for wounded soldiers. Other medical advances during the wars included blood transfusions, maxillofacial surgeries and cancer treatment.

Subsequent to the World Wars, top medical advances include vaccines (1796); anesthesia (1846), medical imaging (1895); Penicillin (1928); organ transplants (1954) and artificial intelligence (21st Century). It is envisaged that the 21st century will see digitally integrated solutions and medical technologies. As the field of medicine advances, the medical industry also establishes itself by providing innovations and commodities in the health sector based on market-driven indicators.

In 1946, the United Nations World Health Organisation's (WHO) Constitution envisaged "the highest attainable standard of health as a fundamental human right of every human being". ►





As such, the right of every citizen to quality health care has been made central to global health reforms calling for Universal Health Coverage (UHC) as one of the United Nations' Sustainable Development Goals for 2030. Furthermore, the United Nations, the World Bank and the World Trade Organisation recognise that the inefficiencies of the free-market economy are supplying health goods and services to citizens as consumers, including in the introduction of the TRIPS agreement.

The introduction of Universal Health Coverage by countries, including Britain, in the post-World War era of dire socio-economic hardships, demonstrates that the question should not be whether South Africa can afford UHC, but whether it can afford not to. Despite their socio-economic challenges, countries like Cuba have achieved a universal coverage of health services focusing on preventive medicine and have achieved a sustained low burden of disease and high standard of health for its citizens. Various studies have demonstrated the direct correlation between the health of the population, productivity and economic growth.

There has been significant transformation of the health care system in South Africa since the democratic breakthrough of 1994 in areas of deradicalisation, which expanded access of the population (including townships and rural areas) to universal free primary health care and free mother and child services.

The health care system, however, remains fragmented between inefficient and inequitable public and private sectors. In 2013, the National Health Act was promulgated to establish a national health system and establish a legal framework to affirm the constitutional principle of health as a basic right to every citizen.

South Africa reasonably spends more than 8.4% of the gross domestic product (GDP) on health expenditure. However, due to fragmentation, inefficiencies and inequitable distribution of these resources, the health benefit to citizens is not optimally realised. The Competition Commission of Inquiry into the health sector uncovered some of the factors bedeviling the private health sector that result in unaffordable and unreliable security of supply of services. Many citizens currently in need of the private health care sector face financial hardships and are using the public health sector during resources constraints, meaning they don't have medical aid or are out of pocket.

The main challenge in the public sector is gross underfunding, given the high and growing demand resulting in overcrowding and shortages of health care professionals, including the inability to employ available newly qualified nurses and doctors despite the critical need.

Already there are signs that the gains of democracy in broadening access for the public health system are under threat. The high and increasing demand of health

care services in the context of the continued fragmentation of the health system and weaknesses in the private health care system were indeed identified by the Competitions Commission Enquiry. On the positive side, the management of Covid-19 health care provisions across both public and private health services has given hope and offers valuable lessons for the NHI dispensation.

The NHI Bill does not provide all the solutions for the health care system. However, without the NHI legislation the public health system will continue to compromise health workers by placing them in an under-resourced environment and prevent access of the general population to the unaffordable private health care environment. **BU**



**DR GWEN RAMOKGOPA**  
COORDINATOR IN THE OFFICE OF THE  
SECRETARY GENERAL OF THE ANC



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# THE CRITICAL ROLE OF WOMEN IN OUR SOCIETY

Deputy Minister in The Presidency, PINKY KEKANA, asks what it will take for the war on women to stop, and the “war” on economic recovery to begin

**A**s I pondered “the critical role of women in our society”, my immediate thought was: “But, we ARE society!” And this is exactly the problem. Women have always had to remember to include themselves, yet they are the bearers of society. Without women, there is no society, or nation, or future world for that matter.

On 9 August 1956, approximately 20 000 women of all races, backgrounds, ages, in all forms of dress – but mostly adorned in ANC regalia – stood resolute in front of the very same Union Buildings where I currently sit writing this article, from my office in the Presidency. They had marched to protest the proposed amendments to the Urban Areas Act,

shouting, “Strijdom, you have tampered with the women, you have struck a rock.”

Today, it is a travesty that women continue to be “tampered” with, to be struck over and over again, both literally and figuratively. Even though democracy was gained in 1994, women will not be free in our country until we no longer live with the patriarchal dominance that has led to contemptibly high levels of fear and discrimination. This unacceptable level of fear is not only impacting our economy, our nation’s prosperity, but it is also preventing investment in a country that was once known as the “darling of Africa”, the “rainbow nation” – investors want to invest in a shining example of democracy, peace and prosperity, not in a war zone.

**According to the global 2022 Women’s Danger Index, of the most dangerous countries for women to travel to, we hold the top position**

Weaponising women's bodies through abuse, sexual violence and femicide is a characteristic of war, whether in the traditional sense or the changing context of warfare – according to our latest crime research, South Africa is statistically a war zone. At the Munich Security Conference, a few days before Russia invaded Ukraine, Kenya's Minister of Foreign Affairs, H.E Raychelle Omamo, said, "War has changed. War is moving into cities. You're just as likely to be gang-raped in an informal settlement in an African city as you are out on the warfront."

This statement references South Africa *the most*, statistically so. According to the global 2022 *Women's Danger Index*, of the most dangerous countries for women to travel to, we hold the top position!

The hardest part for me to read was, "Only 25% of South African women said they felt safe walking alone at night, the lowest of any country. South Africa is notorious for sexual violence. It is estimated that over 40% of South African women will be raped in their lifetime. Additionally, South Africa ranked the worst for the intentional homicide of women. South Africa was the only country to receive an 'F' on the index."

That should be the hardest part for any South African to read, because the "F" is not just an indicator on a report – it basically says that 50% of the global target market of tourists (females) are *being warned not to travel to South Africa*, directly impacting our tourism, our jobs, and our economy.

In the economics of warfare, the twist of fate should not be lost on any of us. The levels of abuse *by men* are impacting the very jobs being lost *by men* as much as by women, because that's simply how an economy works. In the struggle for democracy, blood was spilled, but we continue to shed the blood of our women and children as though they are the enemies, instead of focusing on fighting for the economic freedom that still eludes our society.

I have often wondered what the women

of the 1956 march would think of the war on women today, and how they would deal with it, considering that the current enemy of change is the entrenched patriarchy across the racial divide – and not only perpetuated by men, but also by many women, impacting our economy and our potential for a prosperous society.

The 2022 *Women's Danger Index* indicates that South Africa's estimated female population is 30 535 253. At 50.5%, women exceed the population of men by 1%, and with all the policies, laws and regulations that have been implemented by the ANC government since democracy 28 years ago, we should be able to report on an economy that is growing exponentially. We have the most amazing policies for women and youth inclusion, laws on gender-based violence (GBV), etc., and yet they are not translating into improvements in reality.

Pre-Covid, even before gender-based violence and femicide (GBVF) became referenced as a shadow pandemic in South Africa, in a report by KPMG, titled *Too costly to ignore – the economic impact of gender-based violence in South Africa*, GBV costs in the country were calculated to be between R28.4-billion and R42.4-billion per year – or between 0.9% and 1.3% of GDP annually, using a *conservative* estimate.

To reiterate, this was *before* Covid-19 and the Russia-Ukraine War, which has resulted in the potential for starvation in Africa in the short term becoming more of a reality than ever before, because Russia is one of the largest suppliers of wheat and grain in the world. This has been referred to by the Secretary General of the United Nations as the "Hunger Hurricane", another blow to our economic recovery plan. The escalating price of bread, for example, in South Africa and Africa, is a direct result of the economics of warfare.

The economics of warfare in respect to GBVF has dire consequences for South Africa – to our society and to

## South Africa is notorious for sexual violence. It is estimated that over 40% of South African women will be raped in their lifetime

our fragile economy. We should be declaring war on what is preventing economic recovery, growth, and the prosperity of South Africans.

President Ramaphosa launched the Economic Reconstruction and Recovery Plan in 2020 and declared the 2020-2030 African Women's Decade on Economic and Financial Inclusion at the AU Heads of State and Government Summit. We have so many opportunities for prosperity as a nation, from the AfCFTA to optimise intra-African trade, to having enough land and skilled farmers to feed the entire world as the global food shortage rises, creating global trade markets for South Africa, and many other opportunities. The question is: What is it going to take for the war on women to stop, and the "war" on economic recovery to begin? **BU**



**PINKY KEKANA**  
DEPUTY MINISTER IN THE PRESIDENCY





# INTERVIEW WITH LEGAL EXPERT, BAITSENG RANGATA

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News reporter for *De Rebus*, KGOMOTSO RAMOTSHO, speaks to legal practitioner and the founder of BR Rangata Attorneys, who said her law firm intends to be a training home for young legal practitioners

**B**aitseng Rangata is a 48-year-old legal practitioner and legal practise owner in Gauteng. She is the fifth of eight children born in Limpopo, Ga-Mphahlele, to parents Hlabirwa and Morweshadi Mello. And is blessed with a loving husband and three children, aged 26, 21 and 17. Rangata said she grew up in a family which was grounded in Christianity, with her father being the founder and pastor of the Church of Christ, and who taught her that "sharing is caring".

"I grew up not only with my seven other siblings, but with many other children that my parents adopted. At any given time, we had more than ten children in my family home that lived with us. I learned that your brothers or sisters are not only those you are born with. What stood out for me was the nature and extent that love and support from parents can push you to achieve the unthinkable," Ms Rangata said.

### **What influenced your decision to become a legal practitioner?**

Growing up, I had a keen interest in justice and fairness. A family friend who was very close to my parents, advocate Theledi, made a habit of having monthly sessions with me, and our talks were dominated by what I wanted to do for a living. We spoke about whether a career should be guided by financial interest or passion. I had a view – as early as during my grade 11 year – that my career will be passion driven. I knew that when I completed matric, I would be a lawyer in the future. Choosing a career for myself was not an issue; the issue for me was how far I would go and what impact I would make in the legal fraternity. I wanted to make a mark in my career, to do something meaningful for the poor.

**You were a co-chairperson at one of South Africa's leading law firms, a trailblazer. How did you achieve that and how long have you been practising law?**

I joined Maponya Inc in April 2000 as a

professional assistant, making my years of practice now almost 22 years. I progressed through the ranks to becoming a director a few years down the line. Later, I served as a managing director of the firm for a five-year period and then progressed to being appointed Co-Chairperson.

This recognition meant so much to me and afforded me the opportunity to pave a direction for the firm, being able to lead and support the business in building a more sustainable practice. At the heart of my responsibility was the duty to impart knowledge, to support young legal practitioners in their journey of acquiring experience and training in the field of law. I also used this position to fine-tune social development, where I formed a bursary scheme that offered financial support to students from previously disadvantaged backgrounds. Maponya Inc partnered with the North-West University and offered full study bursaries to five students each year, which covered all financial needs, including board and lodging.

I recently resigned from Maponya Inc and started my own law firm, under the name BR Rangata Attorneys, in Pretoria. I intend to grow the firm to be a home for the training of young legal practitioners and to continue providing opportunities to legal practitioners to serve articles and offer mentorship to university students. The firm is more focused on making contributions to social development in the nearer communities and to empowering as many as possible. The key focus of our mission is to bring justice to the people. BR Rangata Attorneys is centred on delivering professional, diligent, solution-orientated services to the people. We are driven by passion.

**Not only are you a leader in your law firm, but we have seen you become the Chairperson of the Gauteng Branch of the Black Lawyers Association (BLA), the Secretary General, and later a Deputy President of that organisation. How important**

**Professionals should occupy positions because they have proven themselves, not because of gender or race**

**was it or how did it make you feel that there were people in that organisation who chose you to be in the forefront and lead, especially as a woman?**

I am a member of the BLA and in good standing. The BLA is an organisation at the forefront of promoting the rights of black practitioners. I was privileged to be elected the Chairperson of this organisation. I also served as the General Secretary of the organisation, as well as the Deputy President under the leadership of the late BLA President Lutendo Benedict Sigogo (may his soul rest in peace). It is an honour to be elected to serve in these positions in the organisation. The BLA is the most recognised organisation representing the previously disadvantaged, advocating for empowerment and impacting positively towards social transformation. It is an honour to be at the forefront of advocating the rights of the less privileged, serving the members of the profession.

**It is obviously important that one needs to work hard to achieve one's goals – what would you say to women who feel entitled, because they were historically disadvantaged, that automatically they should be handed a space at the big table?**

I am a firm believer that professionals should occupy positions because they have proven themselves to be worthy of the recognition, and not because of gender or race. Women are no exception to this belief. ►



## South Africa has always been ready for a female Chief Justice. There have always been capable women

Women are quite capable of performing on par with their male counterparts. The stereotype of considering people for certain positions or expectation to be treated differently because of gender or race is seriously discouraged. Women should be respected and afforded opportunities because of their capability and strengths. Women are in no way handicapped and do not require any special treatment. Equally, women should take themselves seriously, go out there and grab what they are entitled to, because they deserve it and are very capable.

Listening to Justice Maya during her interview for the position of Chief Justice on 2 February 2022, responding to the question as to whether South Africa is ready for a woman Chief Justice, Ms Rangata assured me that we are standing on the shoulders of very strong women. She was justifiably annoyed.

That question annoys a lot of women. Why are we asking about women as if we are this homogenous, this special group that needs to be done a favour. It's not a proper question to ask. South Africa has always been ready for a female Chief Justice. There have always been capable women.

### How do you stay grounded even when you are such a powerhouse?

I am an ordinary black woman, with a lot of energy and zest to serve.

I do not believe that I am a powerhouse. I believe that I am favoured by God's grace to be able to reach people and make a difference in the small way that I can. Every assignment I put my hands on, I take seriously, and I give my full attention to the assignment. I believe that clients are directed to us because they have trust in us. So, when rendering a professional service, we should do so with respect and dedication.

### Who is your female inspiration in the legal profession and why?

I am inspired by Justice Yvonne Mokgoro – looking at her background, her humble beginnings, how she has progressed through the ranks. She never stopped learning. She has dedicated her time to serving and is very passionate about transferring skills. Her love for children is obvious and admirable. Obviously, thinking back about *S v Makwanyane and Another 1995 (6) BCLR 665 (CC)*, wherein the court forbade the death sentence for any prisoner, Justice Mokgoro played a critical role in the jurisprudence. She continues to inspire a lot of women in the legal profession. Of course, Justice Maya inspires me for her frankness; her work speaks volumes.

### Besides running your law firm, which other positions are you currently in, including sitting on boards, etc?

I served as the Chairperson of the Finance Committee of the Legal Practice Fidelity Fund, and I served on the Board of SAFLI. I am currently not sitting on any board. I am looking forward to being involved in various structures and making a positive contribution.

### Any aspiration of perhaps becoming a judge one day and in which court and why?

I have expressed my interest in availing myself to becoming a judge. Being a judge is a calling and requires dedication and respect for the rule of law.

I am confident that I have what it takes to be a member of the judiciary. I have been afforded opportunities by the Judge President of the Gauteng Division to act, for which I am truly grateful, and I have acted on a number of occasions. When the time is right, I will not hesitate to avail myself and apply for a permanent position.

### What can we expect from you, in your quest to deliver access to justice in the coming years?

I am on a journey to making justice accessible to the public, to entrench access to socio-economic rights as a founding feature of our democracy. Through my firm, BR Rangata Attorneys, I will be serving communities, and I intend to work closely with organisations like Probono.Org and others to deliver such services. BR Rangata Attorneys is imbued with the values of talent development and systematic transfer of skills, thereto making it possible for young lawyers to unleash their potential. **BU**

*This article was first published in De Rebus in 2022 (March) DR 1.*



**KGOMOTSO RAMOTSHO**  
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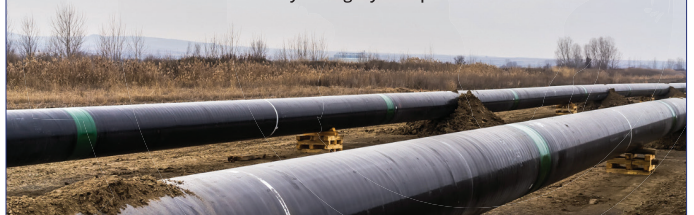
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# ADVANCING ACCESS TO MAINTENANCE FOR WOMEN IN PERMANENT LIFE PARTNERSHIPS

CHARLENE MAY and MANDI MUDARIKWA unpack the Bwanya Judgement, which points to women in our patriarchal society often lacking the bargaining power in relationships to negotiate a marriage and highlights how we can change that in a court of law

“[S]hould a person who shared her home and life with her deceased partner, born and raised children with him, cared for him in health and sickness, and dedicated her life to support the family they created together, be treated as a legal stranger to his estate, with no claim for subsistence because they were never married.” – Sachs J

## ADDRESSING THE ERRORS OF THE PAST

Sachs J wrote the quote above in his dissent in the Constitutional Court decision of *Volks NO v Robinson*, which was the first case in which the Constitutional Court had to grapple with the recognition of domestic partnerships in respect of the Maintenance of Surviving Spouses Act (MSSA). The majority of judges of the Constitutional Court upheld that the law provided that only a spouse, defined as a person married in terms of South African marriage law, could lay claim to maintenance following the death of the other spouse.

In 2016, Statistics South Africa (Stats SA) recorded an estimated 3.2 million South Africans in cohabitating relationships outside of marriage. By all indications, this number was set to increase, as has been the trend not only here, but also internationally. Our society has never been stagnant, on the contrary, it is continuously evolving

and progressing. Under apartheid, our family law legislation was designed and implemented to advance the interests of a very particular group of people, and through targeted legislation, some South Africans who fell outside of the “preferred” families and race experienced devastating exclusion and marginalisation. Through legislation and regulation, the state effectively tried to entrench a normative acceptable family, and anyone outside of this normative acceptable family found themselves ostracised, without rights and often on the wrong side of the law.

The Constitutional Court has now corrected this position in a judgement penned by Madlanga J and handed down on 31 December 2021 in the *Bwanya v The Master of the High Court* matter. The judgement draws from intersectional analysis presented to the Court by the Women’s Legal Centre (WLC).

## UNPACKING THE BWANYA JUDGEMENT

In the Bwanya judgement, the Constitutional Court recognised that family structures and related social practices change over time. The Court cautioned against seeking to define or entrench only one form of family at the expense of the many diverse forms

that families can and do take. The Court emphasised that in recognising the diversity of families, it is not seeking to diminish the important role that marriage plays in our society, because, as Madlanga J notes, “marriage is not that fickle”.

Accordingly, any recognition or protection given to domestic life partnerships does not detract from the position of marriage in our society. What it does, however, is affirm our diversity as a people, and the rights of all people to enjoy the protection of the Constitution.

The Court accepted that in our patriarchal society women often lack the bargaining power in relationships to negotiate a marriage. The Court referenced the evidence that was placed before it by the WLC, which provided many varying reasons why the choice to marry is not always available to women and affirmed that not everyone has the option or choice to enter a marriage.

As the WLC, our evidence highlighted that women and their children are often dependent on their partner in life partnerships, and will agree to live their lives around the desires of the individual who provides for them financially. As the Court says, it is not whether absolutely there is a choice, but instead whether realistically, the choice may be exercised given all the factors that surround and impact on the individual’s life. ►



This is a powerful acknowledgement of the impact of intersecting forms of discrimination on the lives of women, and how intersectionality needs to be considered when laws and policies are developed and implemented. The Court noted that in respect of domestic partnerships, often the choice is also not exercised because of the mistaken belief that where couples live in a life partnership, this relationship amounts to a legally recognised Common Law marriage.

The Maintenance of Surviving Spouses Act 27 of 1990 (MSSA) was enacted with the objective to provide for the reasonable maintenance needs of parties to a marriage that is terminated through the death of one of them. The consequences of their marriage – the duty of support that was provided during life extends beyond death.

Not everyone makes a will before they die with clear instructions on how their assets should be divided, or how their loved ones should be cared for. In other instances, there may be a will, but adequate provision is not made for various reasons. The law fills this void through the MSSA for couples who are married.

The Court found that there is no reasonable justification why those living in permanent life partnerships, where they have shown a reciprocal duty of support, should not enjoy the benefits of the MSSA. As the Court affirms, the MSSA's objective is to ensure that the surviving partner/spouse is not left destitute. If those living in a permanent life partnership give expression of their love and lived realistically in the same manner as those in a marriage, there can be no reason to deny them the same rights and same protection.

Concerns have been expressed that the judgement will be abused. The Court anticipated these concerns and suggested factors to be considered to determine whether a relationship amounted to a permanent life partnership. These factors were drawn from the case of *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs*.

These factors include, but are not limited to:

- The age of the partners
- The duration of the partnership
- Whether the partners took part in a ceremony manifesting their intention to enter into a permanent partnership.

In our view, these factors need to be considered through an intersectional lens or the substantive equality which the judgement seeks, will be lost.

The Court did not limit its finding only to opposite-sex partners. The Court explained that there should be no reason why it should not simply address the issue of same-sex couples' rights to benefit equally under the MSSA.

The order of invalidity of the MSSA has been suspended for a period of 18 months to allow Parliament to grapple with how it wants to give recognition and protection to those in permanent life partnerships. The Court has provided language to replace that which is contained in the MSSA to remedy the discrimination:

Section 1 of the MSSA after the words "dissolved by death", adds "and includes the surviving partner of a permanent life partnership terminated by the death of one partner in which the partners undertook reciprocal duties of support and in circumstances where the surviving partner has not received an equitable

share in the deceased partner's estate".

Section 1 of the MSSA to be read as if it includes the following at the end of the existing definition:

"(a) 'Spouse' for the purposes of this Act shall include a person in a permanent life partnership in which the partners undertook reciprocal duties of support  
(b) 'Marriage' for the purposes of this Act shall include a permanent life partnership in which the partners undertook reciprocal duties of support."

Should Parliament fail to enact the necessary amendments to the MSSA, the above language will automatically become part of the legislation.

### SUBSTANTIVE EQUALITY FOR WOMEN IN SOUTH AFRICA

The judgement is an example of how intersectional feminism can be used to advance the rights of women before our Courts. It also highlights the importance of our Courts taking into account the lived reality and experiences of the very people that our constitutional right is intended to bring about substantive equality for. **BU**

*The Women's Legal Centre (WLC) is an African feminist legal centre that advances women's rights and equality using tools such as litigation, advocacy, education, advice, research and training.*



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# THINKING OF SELLING YOUR BUSINESS?

Understanding the various options available and their implications will ensure that the sale of your business will be strategically and legally sound, advises SARAH MARX

**B**usinesses are often sold without an understanding of the legal consequences of such a transaction. There are a number of ways to sell your business in South Africa, each of which will have different implications for the directors, members and shareholders. Let's look at three examples: sale of shares, sale as a going concern, and a sale of assets.

## **SALE OF SHARES IN A PRIVATE COMPANY**

A sale of shares in a private company is the sale of a proprietary interest in the business. It is a transfer of ownership rather than the acquisition of an asset.

When purchasing shares from a company, it is important to have read through the company's memorandum of incorporation (MOI), as the MOI may have a pre-emptive

right in favour of the other shareholders or a provision that the shareholder who would like to sell the shares, must have it approved by the other shareholders. It is also advisable to consider any shareholders' agreements prior to the selling or purchasing of shares. Other considerations that are important are whether the shares have been ceded the shares as security (the written consent of the cessionary



may be required before the shares can be transferred) and whether any exchange control regulations apply to the transaction. Selling shares may attract Securities Transfer Tax (STT). STT is levied on the transfer of shares at a rate of 0,25% on the value of the shares transferred. There are a few exceptions listed under section 8 of the STT Act 25 of 2007, most notably that where the amount of STT payable is less than R100, there will be no STT payable. STT must be paid within two months from the end of the month in which the transfer took place.

### SALE OF A BUSINESS AS A GOING CONCERN

A business is sold as a going concern if the business is sold, including all its assets, contracts and the goodwill of the business. In order to sell a business as a going concern, it must comply with certain requirements listed in the VAT Act 89 of 1991. These are:

1. The enterprise must be capable of separate operation.
2. The seller and the purchaser must both be registered as VAT vendors.
3. The seller and the purchaser must have agreed in writing that it is a sale as a going concern and that it will be zero rated.
4. The assets which are necessary for the carrying on of the business must be disposed of.
5. The business will be an income earning activity on the date of transfer.

Selling a business as a going concern does not mean that the entire business must be sold. A part of a business can be sold as long as it is capable of separate operation. The tax benefits of selling a business as a going concern are that the transaction is considered "zero rated", as both the seller and the purchaser are VAT vendors. This means that the purchaser will not have to pay VAT on the purchase, easing the purchaser's cash flow.

The seller should be aware of Section 34 of the Insolvency Act 24 of 1936, which provides that a trader must publish notice of the intended transfer in the Government Gazette and in two issues of an English and Afrikaans newspaper prior to transfer. If the transfer is not advertised in this manner, the sale will inter alia be voidable by the creditors of the seller for a period of six months after transfer.

### SALE OF ASSETS

The selling of the assets of a business is simply selling assets, for example machinery, intellectual property, or stock that belongs to the business. Usually, a price for the asset is negotiated between the seller and the purchaser and once the parties have agreed, payment is made by the seller, and the purchaser obtains the asset. Selling assets which the business no longer requires may assist the seller in raising capital for the business.

When a business is contemplating selling assets, it is important to determine

## Businesses are often sold without an understanding of the legal consequences of such a transaction

whether Section 112 of the Companies Act 71 of 2008 will apply. Section 112 provides that a company may not dispose of all, or the greater part of its assets or undertaking, unless such disposal has been approved by a special resolution of its shareholders. The word 'disposal' means a permanent transfer of the ownership of the assets of the company and 'a greater part of its assets or undertaking' means more than 50% of the gross assets, fairly valued. It is clear from the above that the different ways to sell your business follow different procedures and have different consequences for directors and shareholders. Understanding the various options available and their implications will ensure that the sale of your business will be strategically and legally sound. **BU**



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# EMPLOYMENT PRACTICE LIABILITY INSURANCE – A 2022 PERSPECTIVE

BEVERLY SUBBAN warns that despite job security being the new currency post-pandemic, employers are facing an increasing number of employment practice claims

Employees will always be considered the lifeblood of every business.

The lingering recent black swan event – the pandemic – has had employers responding with agility, by infusing employee benefits with a blend of healthcare, wealthcare and self-care. Employers continue to strive to make their workforce feel valued, while successfully managing their businesses in a very active and challenging labour environment.

Unfortunately, even with the best practices in human resources, employment practice liability – which covers employers from claims of wrongful acts arising out of the employment process, with unfair dismissal being the most prevalent in South Africa – risks remain pervasive. The defense and resolution of employment practice liability claims have left many companies with huge financial losses.

## WHAT IS EMPLOYMENT PRACTICE LIABILITY INSURANCE (EPLI)?

Employment practice liability insurance is a relatively new form of liability insurance. When an employee is injured on duty, it is covered by Workers' Compensation, but what if something less tangible occurs, like an employee claiming unfair dismissal? EPL insurance pays for settlements of claims against a business concerning violations of employee rights – including discrimination (based on sex, race, age or disability), harassment and retaliation, among others. The policy also covers the legal defense costs. Startups and small businesses will remain more vulnerable to employment practice liability claims as they lack the robust human resources practices of their larger counterparts. EPL insurance is fast becoming an important part of any business insurance portfolio.

## EPL INSURANCE: A NECESSITY IN 2022 AND BEYOND

The Covid-19 pandemic has forced businesses to make workplace changes to include remote/hybrid work, office layout changes, untimely termination of employment, to name a few. As a result, these changes – or the failure to make these changes – have increased employment practice liability claims. They are the same types of claims in the workplace mentioned above (sexual harassment, discrimination, etc.), but have just taken place in a different setting – virtually, through chat or email groups and online meetings.

The pandemic also threw out enormous challenges for companies trying to navigate the changing legislation, covering everything from lockdowns to mask wearing and mandatory Covid-19 vaccines. A publicised example is when workers of

Apple Inc refused to give up working from home. This led to non-exempt workers taking action against Apple Inc for claims of discrimination.

Several social movements have led to increasing employment practice liability claims, particularly the #MeToo movement (an anti-sexual harassment campaign in the USA) continued to empower employees globally to challenge inappropriate conduct. Employment practice related claims are among the most potentially damaging risks any business can face. They not only have the potential to result in financial disaster, but can also lead to irreparable damage to a company's brand image and reputation. Even if a claim is unfounded and with no merit, legal costs are still exorbitant and have to be met. Employment practice liability claims lower employee morale, destroy reputations and cost companies financially even before going to court. South African employers continue to be subject to a widening net of labour legislation, leaving them vulnerable, from the pre-employment process through to the exit interview. According to the Labour Relations Act, employers can be summoned to the Council for Conciliation, Mediation and Arbitration (CCMA), Labour Court or Bargaining Council for claims of various unfair labour practices.

On the other end of the employment spectrum, the use of social networking websites during work hours and non-work hours has opened the flood gates to employment practice liabilities. Claims of discrimination, unfair dismissal and invasion of privacy brought against employers are among the most common in this field of exposure.

As we move forward, more businesses are incorporating environmental, social and governance (ESG) strategies to bolster against a new era of employment practice liability claims, particularly among millennials.

With a business environment brimming with legislation and change, legal exposures remain inherent in the employment of staff. Employment practice liability insurance together with a dynamic human resource management programme becomes an invaluable tool in a comprehensive risk management arsenal of any company.

### THE EPI INSURANCE POLICY IN BRIEF

An employment practice liability insurance policy indemnifies businesses against claims from employees alleging that their rights as employees have been violated. The policy covers the company, its directors and officers for claims made in the following most common areas:

- Sexual harassment
- Unfair dismissal or demotion
- Discrimination – all forms (age, race, sex, disability)
- Failure to employ
- Breach of employment contract
- Negligent evaluation
- Inappropriate workplace conduct – defamation, failure to promote and other violations
- Employee benefits mismanagement
- Retaliation.

This policy is generally available as a stand-alone policy, or it can be included as an endorsement to the company's general business insurance policy or directors' and officers' insurance policy (the latter two options may be more restrictive). It is written on a claims made basis (claims must be reported to the insurer while the policy is effective).

An EPL insurance policy offers cover for the following:

- The cost incurred while defending a lawsuit
- The judgement and settlement for such a lawsuit.

Irrespective of whether the company wins or loses the case, all legal costs are covered.

The premiums for an EPL insurance policy are based on the type, size, risk profile, and claims history of the company. The type and quality of human resource policies (hiring and termination practices, employees' rules and practices) in place are also taken into consideration.

During the risk analysis process, companies are guided and directed toward taking prudent steps to reduce their employment liability risks as their first line of defense. The most vital being, instituting a comprehensive human resource management programme accompanied by training of managers and employees on proper workplace conduct.

### EPL INSURANCE POLICY EXCLUSIONS

The following exposures are not covered by most South African insurers:

- Workers' Compensation – Compensation for Occupational and Diseases Act (COIDA) precludes employees that have sustained injuries on duty from filing a lawsuit against their employers
- Strikes and lockouts
- Collective disputes or industrial action
- Criminal acts
- Fraudulent acts
- Professional negligence.

### CONCLUSION


With the CCMA investigating employment practice liability claims more aggressively and offering more than liberal amounts of compensation to employees, employers are finding out the hard way just how complex the employment relationship has become. Although the financial impact of an employment practice liability claim can be harrowing, the reputation risks cannot be overstated.

According to the famous Danish physicist Niels Bohr, "prediction is very difficult, especially if it's about the future". Even as job security becomes the new currency post-pandemic, employment practice liability insurance is essential in assisting employers to defend against and resolve the increasing number of employment practice claims they face. **BU**



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# TERMINATION OF CONTRACT: SOLE DISCRETION MEANS SOLE DISCRETION

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Legal Practitioner at Cliffe Dekker Hofmeyr, MONGEZI MPAHLWA, who was involved in a legal matter between two giants in the business world, describes how MultiChoice's victory played out in a court of law



On 8 October 2021, the Supreme Court of Appeal (SCA) handed down judgement in the matter of *MultiChoice Support Services (Pty) Ltd v Calvin Electronics t/a Batavia Trading and Another (SCA)* (unreported case no 296/2020; 226/2021, 8-10-2021) (Schipper JA and Potterill AJA (Mbha JA and Phatshoane and Molefe AJJA concurring)).

The judgement was in respect of a consolidated appeal hearing of two interrelated appeals from the Limpopo Division of the High Court in Polokwane (LP). Both matters arose from MultiChoice's termination of its agency and accredited installer agreements concluded with Calvin Electronics. The former agreement allowed Calvin Electronics to solicit subscriptions, collect subscription fees and activate customer accounts on behalf of MultiChoice; the latter permitted it to install MultiChoice's equipment, for which it obtained access to its information technology (IT) systems.

### OCTOBER 2019 TERMINATIONS

MultiChoice brought the contractual relationship to an end by using a widely framed discretionary termination clause in its agreements. However, this was met by a 'flurry' of litigation on the part of Calvin Electronics.

First, an urgent application was brought in the Limpopo Local Division of the High Court in Thohoyando, which was struck from the roll. Shortly thereafter, Calvin Electronics brought a review application in the LP, ostensibly under r 53, against the decision that MultiChoice had taken to terminate the agreements, as if the decisions were the exercise of public power. A few days after that 'review' application had been brought, Calvin Electronics brought another extremely urgent application to the court seeking interim interdictory relief, pending the resolution of the 'review' application. On 26 November 2019, the court, per

Makgoba JP, handed down an order, directing MultiChoice to reconnect the access of Calvin Electronics to the IT systems of MultiChoice and interdicting it from preventing Calvin Electronics from performing its obligations as a service provider under both agreements.

### DECEMBER 2019 TERMINATIONS

Having complied with the interim interdict, MultiChoice discovered that there had been malfeasance on the part of Calvin Electronics and its employees, after the reconnection, causing MultiChoice to suffer substantial financial loss. The malfeasance included a fraudulent scheme by employees of Calvin Electronics who would connect end users to MultiChoice's services, and then cash in directly from the end user, without MultiChoice ever receiving payment. MultiChoice terminated afresh on those new grounds of termination.

Shortly after the December terminations, MultiChoice brought an application in the Gauteng Local Division of the High Court in Johannesburg for a declaratory order that the agreements had been properly terminated based on the new grounds that had arisen after the granting of the interim interdict.

The latter application was heard in Johannesburg shortly after Calvin Electronics had, in the wake of the fresh terminations and disconnection, in February 2020, approached the LP on an urgent basis for an order holding MultiChoice in contempt of the interim interdict of 26 November 2019. Phatudi J found that MultiChoice was in contempt of court without giving reasons, which order was appealed on the same day.

Considering the existence of the contempt order, the Gauteng Local Division of the High Court, per Campbell AJ, had been unwilling to grant the declaratory relief confirming the fresh terminations. However, the court did not dismiss it but postponed it until the appeal against the

contempt order had been resolved.

When MultiChoice appealed the contempt order of Phatudi J, Calvin Electronics brought yet another urgent application in the LP under s 18 of the Superior Courts Act 10 of 2013 for the contempt order to be enforced immediately pending the appeal. The s 18 application was granted, per Tshidada AJ. MultiChoice then approached the SCA in terms of its automatic right of appeal in s 18(3) of that Act, the SCA in its view being the next highest court.

### THE SCA

The SCA found that MultiChoice had exercised its contractual right to unilaterally terminate the contracts in terms of a procedure to which the parties had specifically agreed. It was entitled to do so on any ground of cancellation specified in the agreements, including fraud on the part of Calvin Electronics. It stated further that the conclusion by the High Court that this 'constituted contempt or that the imputations of fraud were premature, [was] incorrect'. Furthermore, the SCA found that Calvin Electronics throughout had abused the process of court in that it used the procedures permitted by the rules of court for a purpose other than the pursuit of the truth, namely, to ensure access to MultiChoice's systems without any legal basis. The SCA reasoned that the order of Makgoba JP, 'the foundation of everything that followed' was 'erroneous in a number of respects'. It followed that neither the contempt order, nor that of the s 18 could stand.

The SCA allowed the appeals, overturning both orders of the LP and replacing them with two costs orders in favour of MultiChoice, both on the attorney-and-client scale – a huge victory for MultiChoice. **BU**

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# WOMEN'S WELLNESS IN THE WORKPLACE

Yes, it's possible to feel grounded at the office. Here are some top tips from TRISH TAYLOR for a more centred workday

The office is not synonymous with spiritual and mental well-being. There are deadlines to meet, people to see and profit margins to make. In addition, the playing field is not always even. In fact, it can easily be said that the modern workplace demands far more from women than it does men. From the pay gap to the ever-present glass ceiling, women face a truly uphill battle to climb the corporate ladder.

For those reasons, it's more important than ever to find ways to step out of the rat race for a moment to find your inner mojo towards improved productivity and in-office relationships.

This Women's Day, the biggest gift you can give yourself is to take time out for yourself, whether that's at your desk, by the water cooler or in the boardroom. It's time to prioritise well-being at the workplace. Whether you are a business owner or an employee your first goal today should be to take care of yourself mentally, emotionally, spiritually from 9 to 5.

Below are 44 motivating steps to turn your life around one step at a time in the workplace.

They can easily be incorporated into your workday without losing work time, ensuring you leave the office feeling as grounded as you did when you arrived.

## 44 TOP TIPS

- 1) Be proactive and begin to make positive changes now.
- 2) Hold walking meetings and remember to always use the stairs instead of the elevator.
- 3) A couple of times a day, do a good 15 mins of stretching or chair yoga.
- 4) Hold a coffee break support group – encourage open, honest conversations based on trust.
- 5) Change your office culture from “S” scandal to “S” support, with no judgement of colleagues.
- 6) Bring the outside in and ensure you have a plant on your desk for fresh air. A good idea is to have a “bring a plant to work” day and put all the plants together, and then everyone picks their favourite to display.
- 7) Have your loved ones at work with you by proudly displaying a photo on your desk. ►



- 8) Stay hydrated and hang around the water station rather than the coffee station during breaks.
  - 9) Bring a flask to work with fresh ginger sliced into boiling water and sip on this all day.
  - 10) Make a lunch box with sliced fresh fruit to snack on all morning.
  - 11) Pack a healthy lunch, or even better, do a healthy lunch roster. This way, everyone has a turn to bring lunch to work to share, and it saves everyone making daily lunch.
  - 12) Share healthy recipes.
  - 13) Chip in for a manicurist to come to your offices for a weekly neck and shoulder massage.
  - 14) Keep your desk neat, and always ensure there is no clutter lying on it.
  - 15) For birthdays and celebrations, ditch the cake and give the gift of health.
  - 16) Share health tips and knowledge with each other.
  - 17) Getting to work and back – rather walk, cycle or carpool, if possible.
  - 18) Flexible work hours are ideal as we are so much more productive. Begin and leave work earlier or vice versa.
  - 19) Be kind, courteous, respectable and compassionate. We are all equals and deserve to be treated as such.
  - 20) Sit comfortably at your workstation, and if you are short, bring a cushion to sit on.
  - 21) Have a microwave bean bag at work to use for headaches, neck tension, period pain, etc.
  - 22) Women are hormonal, and our moods are affected, so tiptoe lightly around others at this time of the month and expect the same in return.
  - 23) Make a plan to share the workload to give new moms time for post-maternity work from home.
  - 24) Daily check-in, preferably for a few minutes before work begins, as it helps to know where our colleagues are emotionally for the day.
  - 25) Acknowledge inspirational wellness stars and leaders once a week during the daily check-in.
  - 26) Dress up and feel suitable for work, so that you always feel your best.
  - 27) Have a simple bookshelf and bring books to share with others. These can be business, health or motivational.
  - 28) Stretch your brain and read or study daily.
  - 29) Share your knowledge and skills as gifts to each other.
  - 30) Begin a challenge: weight loss, walking steps, drinking water, achieving work goals.
  - 31) Once a month, have a day to sell your arts and crafts, baking, sewing, knitting, etc.
  - 32) Swop your skills and talents and save money.
  - 33) Live your life with honesty and integrity.
  - 34) Smile, laugh and have fun.
  - 35) Respect all colleagues as we are all equal.
  - 36) Take time to meet new colleagues.
  - 37) Put together an “about us” company letter and ask each team member to add a paragraph.
  - 38) At the end of each season, hold a clothing swop shop, and whatever is left over, donate to charity.
  - 39) Add a herbal tea station to your coffee station, and each bring a box of your favourite tea to share.
  - 40) Share personal goals on a whiteboard.
  - 41) Have an office safe-word that you can use if you are not in a good space or need a time out.
  - 42) Hold a monthly Silent Day.
  - 43) Begin a vision board as it is incredibly inspiring each day to see what you visualise working towards.
  - 44) Start an acknowledgement jar, where everyone can drop a piece of paper with the name on it of someone that they acknowledge for doing something and read them out weekly.
- Have a healthy, happy Women's Day! **BU**

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# NON-PAYMENT OF MAINTENANCE ORDERS AND REMEDIES

S'NEGUGU DLAMINI, Candidate Attorney at Schindlers Attorneys, warns that a person who fails to pay a maintenance order may face being blacklisted, criminal charges or, even, jail time

**M**aintenance is the legal obligation to provide another person, for example, a minor child, with housing, food, clothing, education, and medical care, or with the means that are necessary for providing the person with these essentials. This legal duty is called "the duty to maintain" or "the duty to support". The Maintenance Amendment Act 9 of 2015 (the Act) established remedies to deal with individuals who fail to comply with such duties. These remedies are explained more fully below.

## HOW CAN A MAINTENANCE ORDER BE ENFORCED?

If a parent or guardian against whom a maintenance order is sought (the Respondent) fails to comply with the terms of the maintenance order, the Act provides that it is now lawful to hand over the Respondent's personal details to a credit bureau, which will result in the Respondent being blacklisted.

An order for the warrant of execution, the attachment of emoluments (Garnishee Order), the attachment of debt and/or criminal charges may be brought against the Respondent, as stipulated by the Act, and they may be sentenced to imprisonment for a period not exceeding three years and/or they may receive a fine.

### *Section 27 – Warrant of Execution*

The Maintenance Court may, on application, authorise the issuing of a warrant of execution. A warrant of execution is a method of enforcing judgements and

empowers a court sheriff to attend at a judgement debtor's address, i.e., to attach and sell movables. If the movable property is insufficient, only then will it be issued against their immovable property.

## CAN A WARRANT OF EXECUTION BE SET ASIDE ONCE GRANTED?

The Respondent may apply to the Maintenance Court to have the warrant of execution set aside or suspended. The Respondent must give notice of their intention to apply to the complainant at least 14 days prior to the application being heard. The Court may, at the hearing of the application, request either or both parties to give evidence orally or in writing. When suspending a warrant of execution, the Court may grant an order for the attachment of emoluments or the attachment of debt.

### *Section 29 – Garnishee Order issued against the Respondent's salary*

A Garnishee Order can be issued where an order made by the maintenance court remains unsatisfied for a period of 10 days or when the Court suspends a warrant of execution. When the Court issues a Garnishee Order, within seven days of the order, the maintenance officer must give notice and a copy of the order to the Respondent's employer. The order authorises the employer to deduct the amount mentioned in the order in monthly instalments from the Respondent's salary and to pay this money to the Complainant, until such time that the full amount has

## The Maintenance Amendment Act 9 of 2015 established remedies to deal with individuals who fail to comply

been paid. If the Respondent becomes unemployed, the employer must give notice to the maintenance officer within seven days. If the employer fails to pay as stated in the order, the order may be enforced against the employer.

## CAN AN ATTACHMENT OF EMOLUMENTS BE SUSPENDED OR AMENDED?

If the aggrieved party can show good cause, an order for the attachment of emoluments may be suspended, amended, or set aside by the Maintenance Court. The Respondent must give notice of their intention to apply for suspension or amendment to the Complainant at least 14 days prior to the application being heard. After hearing such an application, the Maintenance Court may call either or both parties to give written or oral evidence.

### *Section 30 – Attachment of a debt owed to the Respondent*

An application for the attachment of debt can be granted where an order made by the maintenance court remains unsatisfied for a period of 10 days or when the court suspends a warrant of execution.



The Maintenance Court may on application by the person in whose favour a maintenance order was made, or when it suspends a warrant of execution, make an order for the attachment of any debt at present or in future owing or accruing to the person against whom the maintenance order was made, for the amount necessary to cover that which the creditor (Respondent) failed to pay, together with interest thereon as well as the costs of the attachment. This order will direct the person who has incurred the obligation to make the payment specified in the order.

#### CAN A PARENT'S ESTATE BE SEQUESTERED DUE TO NON-PAYMENT OF MAINTENANCE?

Case law confirms that it is perfectly legitimate for a creditor to utilise sequestration proceedings as a debt collection tool. Furthermore, arrear

maintenance which has accrued before sequestration in terms of an agreement or court order may be proved as a claim against the insolvent estate. However, although it is legitimate to use the sequestration process to collect debt, the creditor is still required in terms of the Insolvency Act 24 of 1936 (the Insolvency Act) to prove that *prima facie* there is reason to believe that it would be to the advantage of the Respondent's creditors if his estate were to be sequestrated. Only in extreme cases, and only once the requirements for sequestration have been met, can a parent apply for the other's estate to be sequestrated based on the non-payment of arrear maintenance.

#### CONCLUSION

If a Respondent fails to pay maintenance, the Complainant can approach the Court

#### Criminal charges may be brought against a person who fails to pay the maintenance

to enforce the order. The law does not provide for a set amount of maintenance that a child is entitled to. The amount of maintenance that should be paid for a child is dependent on the needs of a child and the financial means of the parents of the child.

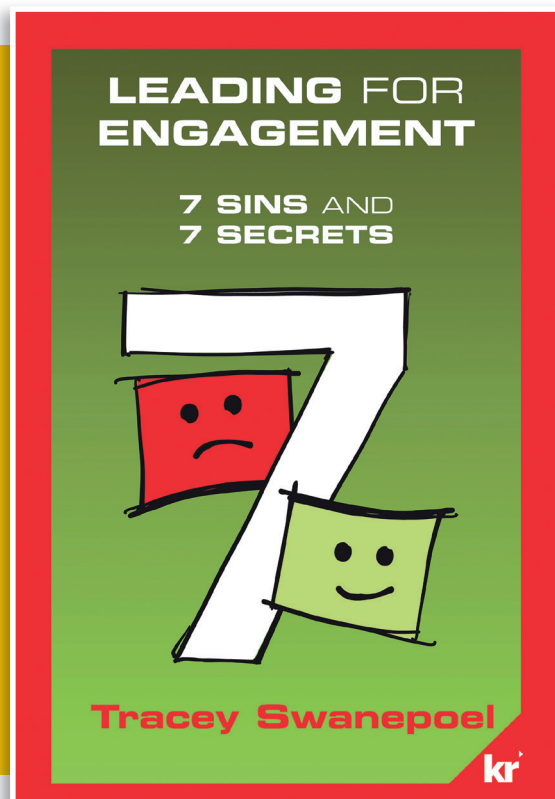
#### Value

If the Respondent fails to pay maintenance, the Respondent may have a warrant of execution or emolument order issued against them or attachment of debt. Criminal charges may be brought against a person who fails to pay the maintenance. **BU**



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Tracey Swanepoel completed her BA Communication (Hons) at RAU (cum laude) and her MBA at Henley Business School. She has a deep understanding of strategy, leadership, culture and change management and has pioneered a unique methodology that equips leaders with practical tools to engage employees and enhance businesses' performance.

She started her career in advertising, working as a strategic planner for FCB, Ogilvy and Grey Worldwide. After completing her MBA dissertation, she spent five years at the Harmony gold mining company as internal strategy

executive before starting her own consulting business, THINKspiration, in 2008. Tracey speaks and writes extensively on strategy, culture and leadership issues facing business and is passionate about developing practical solutions. Tracey's first book, *The Leadership Riptide – And How to Escape*, was published in 2016, and was selected by the SABPP (South African Board of People Practices) in 2017 as one of their top five leadership books. **BU**

## ORDER INFORMATION

*Leading for Engagement: 7 Sins and 7 Secrets* can be ordered from Knowledge Resources Ground Floor, Yellowwood House, Ballywoods Office Park, 33 Ballyclare Drive, Bryanston

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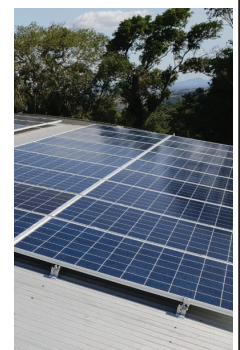
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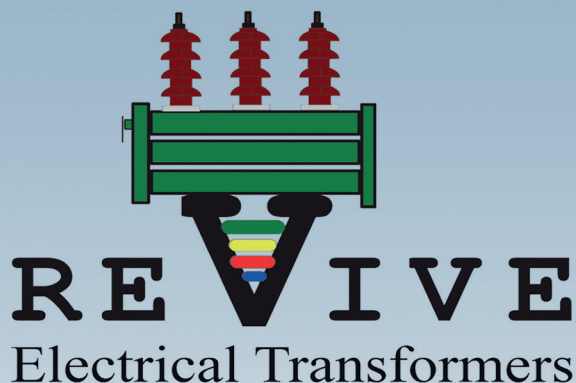
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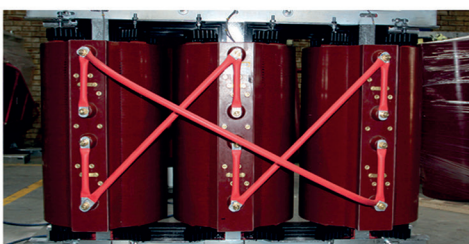
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