

CAMP 061/0006/1

Women's Rights: A Discussion Document

"If we are to engage our full potential in pursuit of revolutionary goals then, as revolutionaries we should stop pretending that women in our movement have the same opportunities as men."

Oliver Tambo – President Of the African National Congress, 1981.

Brigitte Mabandla — Dr. Manto Tshabalala
— Elinor Sisulu — Christina Murray

The Publisher

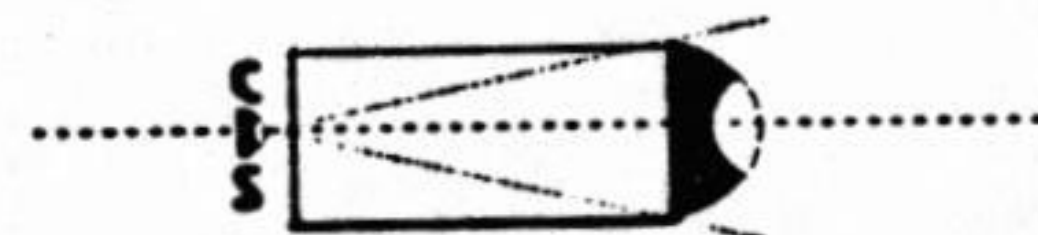
Centre for Development Studies (CDS)

Private Bag X17, UWC

Bellville

7535

South Africa



**WOMEN'S RIGHTS —
A DISCUSSION DOCUMENT**

**CAPE TOWN
DECEMBER 1990**

© Copyright December 1990

Copyright exists on this book. This book or any part thereof may only be reproduced for non-profit, educational and community purposes, providing the source is acknowledged. Others who wish to reproduce any part of this publication must first obtain permission from the publisher.

ISBN 1-86808-058-7

1

Contents

Contents

Acknowledgements	1
Preface & Introduction	3

PART I

Opening Address	6
Keynote Address	9
The Economy & Women	12
Women & Education	15
Women & Health & AIDS	17
Patriarchy, Gender, Custom, Religion & Legal Status	20
Women & Education (Workshop Proceeding)	23
Women & Health (Workshop Proceeding)	25
Women as Workers (Workshop Proceeding)	28
Women & Environment (Workshop Proceeding)	30
Political Representation of Women (Workshop Proceeding)	32

PART II

International Protection of Women's Rights	35
Canadian Experience	38
African Experience	41
Constitutional Protection of Women's Rights	43
Women's Rights in a Democratic South Africa	45
Assessment	50
Conclusion	52
United Nations Convention	54
Press Statement	60
Protest to Supreme Court re. Jenny Schreiner	62
Comments on the ANC's proposed Bill of Rights	64

2

Acknowledgements

ACKNOWLEDGEMENTS

*T*he workshop was directed by a steering committee which consisted of comrades Prof Kader Asmal, Nozipho Diseko Brigitte Mabandla, Mavivi Nanzini and Dr Manto Tshabala.

*W*e would like to thank the facilitators, chairpersons and rapporteurs of the workshop who executed their tasks efficiently. The timely production of the report was made possible by a number of participants who volunteered their time. Special mention should be made of, Dr Dorothy Driver and Ms Raylene Keightley, who assisted the editorial committee. We would also like to thank Randi Erentzen, the National Co-ordinator of The Centre for Development Studies (CDS), Rushdy Siers and Theresa Booysen, who in various capacities from beginning to end helped to make the workshop a success. A very special mention should also be made of the people responsible for the production of this document, Johan Mettler, Tony Laubsher, Yasmine Jacobs, Ansaaf Mohamed, Raphaél Brink and Judy Drew.

3

Preface & Introduction

Women in the ANC have over the past years addressed the issue of women's emancipation in South Africa. Ideas and recommendations made at various ANC fora were formulated at the in-house seminar on 'Gender and the Constitution' held in Lusaka in 1989 and organised by the Constitutional Committee of the ANC's women's section and the South African Studies Project. The workshop on 'Gender Today and Tomorrow' is a continuation of the process of consultation on gender and constitution-making.

INTRODUCTION

A National Consultative workshop on gender and the constitution, entitled 'Gender Today and Tomorrow - Towards a Charter of Women's Rights', was organised at the University of the Western Cape, from 29 November to 2 December 1990. The workshop was organised by the Constitutional Committee of the ANC in conjunction with the Centre for Development Studies (CDS) and the Community Law Centre. This was the first organised forum at which the ANC's working document on A Bill of Rights was tabled for discussion and the first occasion at which the draft Bill of Rights was tested against the demands of women. While the report covers the entire proceedings of the workshop it seeks to highlight only the major issues and recommendations. The report that follows is to be circulated widely for discussion. It is expected that recommendations flowing from the discussions of the report will have a significant impact on the process of constitution-making as well as on the constitution itself.

Objectives of the workshop were twofold: to begin to inform the process of formulating a Charter of Women's Rights and to devise strategies for ensuring that the new constitution is gender sensitive, entrenches equality between men and women and also includes a programme of affirmative action.

The Deputy President of the ANC Dr Nelson Rohlhlhla Mandela opened the workshop, which was attended by representatives of various organisations namely; COSATU, NECC, NADEL, BLA, LHR, SACP, the ANC Women's League Task Force as well as regional representatives of the ANC Women's League and academics. Experts on gender and women's rights from Canada and Zimbabwe also participated. We were saddened by the absence of ANC member Jenny Schreiner, who is restricted under South Africa's security laws. Her application to attend the workshop was turned down by the court. A press statement protesting against this decision, was issued by the workshop and forms part of this report.

The workshop was structured in such a way as to encourage broad participation whilst addressing a wide range of subjects; as a result a significant amount of time was allocated to discussions in commissions.

CDS - ANC - CLC

PART I

4

Opening Address

*Dr. Nelson Mandela, Deputy President —
African National Congress*

Comrade chair, distinguished guests, delegates and friends. For me it is a privilege to be accorded this opportunity of opening the workshop on gender issues. I am humbled and honoured by this gesture on the part of the ANC's Women's League and the Constitutional Committee. Many a time we have stated that the balance of forces have changed in favour of the progressive forces. The regime has finally realised that it can no longer continue to impose its rule on the majority of our people without their consent. This realisation has been brought about by the heroic struggle that has been waged by our people over many decades. Therefore, as we begin to devise a new constitution for our country, it is fitting and proper for us to pay tribute to all those patriots whose contribution has made this possible. Throughout the history of our struggle, women have played a prominent role. To mention but a few — our stalwarts such as Charlotte Maxeke, Dora Tamana, Ruth First, Annie Silinga, Mary Moodley, Lilian Ngoyi,

Kate Molale and Florence Mposho. Their fighting spirit lives on in the contribution of such eminent women Mrs M Zihlangu, Francis Baard, Helen Joseph, Ray Simons, Dorothy Nyembe, Gertrude Shope and many others. I salute the mothers of the cadres of Umkhonto we Sizwe, whose children have fallen in battle both inside and outside South Africa. We pay tribute to the mothers of all those who died in the course of the struggle for freedom and against the apartheid system. We commend also those white mothers who stood by their sons for refusing to be conscripted into the apartheid army. We salute the wives and mothers whose husbands and sons still remain in prison despite the solemn undertakings of the apartheid regime, are languishing in the dungeons of the apartheid regime. We salute those brave daughters of this country who are presently in prison for their commitment to a just non-racial and democratic South Africa. Special mention should be made of those on death row. To them we vow: *we shall not rest until all political prisoners have been released.* We call upon the government to release all these people unconditionally — today and not tomorrow!

South African society is profoundly patriarchal. While ultimate responsibility falls squarely on the shoulders of the ruling circles of this country, we men, both black and white including many in the ANC, should accept our share of responsibility for the sexist stereotyping of women in our society and in our homes.

This degradation of women is reflected in every sphere of life. Women in South Africa constitute the majority population, yet, in general, their status is one of powerlessness. They are under-represented in all sectors of our society, except its lower reaches. This unfortunately also applies to the leadership of the ANC and all democratic organisations of this country. Can we seriously claim to be democrats when

in our practices we continue to treat women as underlings? Is it not time that we began seriously to address the inequalities that exist between men and women?

I am pleased to say that, though we still need to do a great deal, the African National Congress is in the process of addressing this issue. The timing of this workshop is a conscious effort on the part of the ANC to give prominence to the Gender question. The past and present constitutions of South Africa have been based on discrimination, thereby denying the majority of our people their fundamental rights, which should be basic in modern democracies.

For decades institutionalized racism has been applied by the apartheid state to effect the most brutal forms of social engineering known to humanity. Need I remind anyone at this workshop that millions of black women remain illiterate in the age of advanced education and technology? That black women, in thousands, occupy the lowest ranks in employment? That black women are underpaid and are most brutally exploited as farm labourers and domestic workers? For generations black women have been the most oppressed group in our society. The majority of the African people are to be found in settlements of the homeless. I have found that the majority of the households in these settlements are made up of families headed by females. As single parents, these women have the added burden of raising children in conditions of extreme deprivation and squalor. This workshop is charged with the tasks of addressing gender inequalities in the context of the actual situation of women under apartheid and developing the best possible mechanism for redressing the problems women presently experience. We must begin to discuss these issues in greater detail. I am aware that these debates commenced two years ago, after the ANC issued its constitutional guidelines. The working document on a bill of rights released for discussion recently by the ANC's

Constitutional committee, should be tested against the actual demands the women of this country are making. This workshop is the first that has been organised since its publication. The ANC, as well as other progressive organisations, should ensure that the women's movement in our country is not only strong but also united so that it can play a central role in the affairs of the organisation and the country. From our experiences in the ANC, and lessons learnt from other parts of the world, we have come to realise that it is not just the provisions contained in the constitution that bring about true equality between men and women in a society. It is rather a preparedness to struggle on the part of the women's movement and all democrats. The constitution should guarantee equality between men and women and should seek to create conditions which entrench and establish these rights. We must explore whether the principles we wish to see enshrined in the constitution would not be enriched by a charter of women's rights, focussing on all the concrete areas where the law and public policy can play a role in effecting women's lives. We in the ANC, as democrats, should not be found

wanting in promoting true equality in our lives, daily practices and in the home. I am informed that women from the various regions are

Represented at this workshop. I have been advised that progressive scholars are to participate at this workshop and that representatives of the workers are also present. I am therefore convinced that the deliberations and findings of this workshop are bound to impact profoundly on the process of constitution making.

Without prejudicing the discussions that will take place in this workshop, I would like to put forward for your consideration the following proposals:

1. that a constitution for a new South Africa should unequivocally state that South Africa should not only be unitary, non-racial and democratic, but should also be a non-sexist state;

2. that all laws which place women in a disadvantageous position should be abolished and declared unconstitutional;
3. that constitutionally entrenched criteria and mechanisms be established to break through the layers of prejudice and historical inequalities experienced by women;
4. that laws and the constitution of a democratic South Africa should enable women to articulate their demands, their priorities and expectations;
5. that the constitution should ensure a strong female presence in all decision-making processes of the new south africa;

I place these before you not to dictate your agenda, but as issues that deserve urgent attention as we make our transition to democracy I wish you well in your deliberations. With these words I declare this workshop open. *Amandla!*

5

Keynote Address

Gertrude Shope

COMRADE CHAIR

LEADERS, REPRESENTATIVES OF THE ANC IN VARIOUS FIELDS, SPECIAL INVITEES TO THIS HISTORIC WORKSHOP.

LADIES AND GENTLEMEN

Last night, our Deputy President General, Comrade Nelson Mandela welcomed all participants to this very important workshop convened to address issues relating to the question of gender, today and tomorrow.

Meeting as we do during the period when great changes are taking place in South Africa, we need to make use of this opportunity to introduce changes in gender relations so that we enter a new South Africa where men and women are equals in the fullest sense of the word.

PATRIARCHY, CUSTOMS AND GENDER

Our starting point on this issue is to ensure that women participate fully in all political processes. At committee level, shop floor level and Government level including the negotiation process. We need women's participation at the highest level of our organisation - the NEC of the ANC. The truth of the matter is - we are not there. Who is to blame for this glaring absence of women? Is it our men who are to blame for not pushing us or taking us along while we sit comfortably with our arms folded? It is us women who would rather rely on men to formulate policy on our behalf even on matters that affect women directly and therefore are better articulated by women? What is the role of the society we live in on this aspect and what are some of the traditions we came from and have to contend with?

As we open up to each other as sister, comrades and colleagues on matters that affect women of our country, we will find that there are a number of reasons that have contributed to our coming together to this workshop representing a broad collective. These will be expressed in the various discussions we shall have in the coming days. These discussions however, should consist not of complaints or moans nor should they reflect a competitive spirit. They should be directed at answering questions about the new structures, new institutions, the types of gender relations we are striving for and above all a new constitution that ensures that fullest participation of women in a new South Africa.

THE LEGAL STATUS OF SOUTH AFRICA WOMEN

Among the issues to consider is - what kind of law and judicial system are we to have in a future South Africa? Today there exists a great deal of confusion on the status and rights of black women, especially Africans. Many laws apply differently, and are interpreted in different ways. Cultural practices differ and some are detrimental to women's health and women's dignity. In such an environment the women who have the lowest level of education, the least skills and no resources whatsoever, are the most adversely. Our task at this workshop is to and must find a way to bring clarity to the status of women in a Democratic South Africa. This will not only help to clear the position of women, on the contrary, it will lead to a balanced society whose men and women are on the same footing and both have confidence in themselves as a people.

The dominant total male presence, and language used by the judiciary place women at a disadvantage. How do we expect to see this kind of system providing justice? The task of this workshop therefore, is to think carefully about a new judicial system. A system which speaks to the people in clear language which is easily accessible to the most disadvantaged. It will not be enough to put black faces on the bench. It is not enough to put women on the bench just for the sake of it. We have a duty to reshape the whole judiciary system.

CUSTOMS

As we are all aware, very often the subjugation of women is underpinned by cultural practice, justified on the basis of tradition. It should be noted first and foremost that culture and tradition are dynamic. They develop and change according to socio-economic conditions. In South Africa for instance, under colonial domination, many versions of a number of our cultural practices were distorted and interpreted into law and remained fossilised and are therefore totally inappropriate to conditions of today. In our present approach, we need to distinguish between cultural practices which provide social cohesion to communities and cultural practices which are detrimental to some members of that community or those outside. Here we have in mind the practice of ukuthwalwa which is abduction of young women. Shall we have a place for such customs in a new South Africa? At a brain storming seminar held in Lusaka in December 1989, there was great debate on the right of women to decide and have control of their bodies. Though this was related to the question of whether or when to have a child or terminate pregnancy. The question of abduction may sound different but it is similar in some aspects. There are many such

customs practiced to women of other racial groups who are part of the South African society. We are all called upon to address these practices and discuss them as a collective.

males using their authority to make sexual demands in exchange for employment and other needs is also causing concern.

VIOLENCE, RAPE AND SEXUAL HARRASSMENT

As it will be noted, domestic violence is common among South African women of all races. It express itself in woman and child bashing. Sometimes this practice is distorted and misinterpreted as part of tradition. Unfortunately some women who regard bashing as a sign of love from the husband. In the ANC community that lived in Zambia, the ANC women's section put pressure on the leadership to have the bashing husbands punished and suspended from their organisational tasks for a certain period. This had an effect on the husbands as they felt isolated. Our task in the next few days is to work out how this can be made into a policy.

Violence is also manifested in various ways and at all levels of society. The ugly practice of raping school girls and young women is becoming very common in our country. We have schools where parents accompany their children to and from schools for fear of sexual harrassment. The question of

WOMEN AND RELIGION

Religion, as we all know, has played a very important role in South Africa. It was a valuable platform from which political concern could be expressed when political organisations were banned. But should be taken as a case of great concern that some religious practices keep women in perpetual subjugation. We shall ask our comrades with practical knowledge of this field to give us details to enrich our discussion.

The Freedom Charter protects a people's right to their culture and religion. This however should not be interpreted as sanctioning the oppression of women, who are half of the population. There is need for education to help our women from this yoke of oppression.

It is in this respect that a Charter of Women's Rights should be introduced to all our regions and taken to all women without exception so that all sexist practices imposed on South African women can be discussed and highlighted.

6

The Economy & Women

Frene Ginwala

GENDER AND ECONOMIC POLICY IN A DEMOCRATIC SOUTH AFRICA

Summary

In its introduction, the paper set out one of its aims: to help women participate in the debate on future economic policy in South Africa and in the process of policy making itself.

- A) For democracy to have any meaning, it is crucial that women be fully involved in both the formulation and the implementation of economic policy.
- B) Women are oppressed through the social structure itself and through social institutions such as the economy. Furthermore, the introduction stressed that the issues underlying gender oppression be addressed.

The paper then set out the three principles of its argument:

- (1) Given that discrimination against women is a symptom of a particular set of social relations, the structure of gender relations themselves need to be transformed, for they inhibit women's full economic participation.
- (2) There is a need for policies that will improve the position of women as it is presently constituted and that will at the same time challenge the fact that women do certain kinds of work and men do others.
- (3) Real democracy includes access not only to resources but also to the structures of decision-making and power which determine the availability of those resources.

Referring to women's participation in the economy, the paper noted the failure of policy-makers to take account of women's work, for they assume, incorrectly, that the problem faced by women is economic non-integration. This paper argues that women are economically integrated: the problem faced by them is the form of this integration. Women's contribution to the economy has disappeared into three "black holes": unpaid labour, the value of women's paid labour, and the family or household.

Unpaid labour

"Domestic" labour, unpaid and performed by women, accounts for a very large proportion of the total work done in most societies, in industrialised societies more or less equal to paid work, and in less industrialised societies likely to account for a greater proportion. Not only is this type of labour time-consuming and hard work, but it is also absolutely necessary as in the case of child-care. Furthermore, the paid and unpaid aspects of the economy are interdependent: a change in the former has an impact on the latter, an impact borne primarily by women who perform the bulk of unpaid work.

The paper pointed out that economic policies generally fail to take account of this interdependence and thus ignore the effect economic changes have on women. When an economy is under stress, women are placed under stress, forced to carry out excessive domestic duties when social services are reduced, for example. This in turn has a broader social and economic impact.

Bearing in mind that our economy is about to undergo major change, the paper identified four practical steps to deal with the issue of unpaid labour:

- (1) The contribution of unpaid labour within the economy must be calculated statistically in order to remove the male bias from economic statistics.
- (2) These statistics must be utilised in social and economic planning.
- (3) Positive policies should be adopted which are aimed at improving conditions and productivity in the unpaid economy; for example, policies aimed at improving rural water and fuel supplies would result in major savings of labour, making it possible for women to engage in other productive labour.
- (4) Deeper questions must be addressed, such as why certain work is performed without pay and why payment should not be made for it. Furthermore, the norm that it is women who are expected to perform unpaid work must be challenged.

Paid labour

Women engaged in paid labour are largely confined to certain types of work; this work attracts the lowest pay. Compared to 63.6% of men only 36.4% of women are classified as "economically active". These patterns are set by inaccurate and artificial notions of female and male characteristics. In another sense, too, men reap the benefits of paid

labour: working conditions, career opportunities, promotion etc. are all based on the assumption that a woman is performing unpaid labour at home. Given the assumption that a woman's role is essentially domestic, women in paid labour field have limited access to training and skills, have different access to fringe benefits such as pensions and medical aid, and are subjected to sexual harassment at work.

In order to improve the position of women in paid labour, new policies must be adopted:

- ☐ equal pay for equal work, coupled with laws prohibiting discrimination against women;
- ☐ equal pay for work of equal value, where work performed mostly by women cannot be measured against the same work done by men;
- ☐ equal opportunities for women including reorganisation of the work environment and working hours;
- ☐ affirmative action programmes, including training programmes;
- ☐ the improvement of working conditions including parental leave.

The "household" and the "family"

Economic policies assume that the family is headed by a male and includes a dependent female partner, that the family unit has a common economic interest, and that its resources are used for the greatest benefit of all members. Studies show that these assumptions are not true: not all households are nuclear, many households are headed by women and the resources of the household are not shared equally between women and men, for example. These assumptions must go if women's subordination is not to be continually reinforced and reproduced through government policy. However, government policy will have to address itself to the actual position of women while at the same time helping women change that position. The paper illustrated this point in terms of social services and agriculture.

In conclusion, the paper identified four broad guidelines for future economic policy:

- (1) All economic policies should be examined for gender bias, and policies which worsen the relative position of women should be rejected.
- (2) Any economic package should include positive policies to improve the position of the poorest women.
- (3) Campaigning to change popular assumptions about gender relations is an essential part of economic policy.
- (4) Women's active organisation towards the control of economic resources is essential if gender is to be taken seriously in a democratic South Africa.

7

Women & Education

Phumzile Ngcuka

A SUMMARY

Phumzile Ngcuka captured the attention of the audience as she ably examined the subject of women and education in South Africa. She explained that the crisis in education was a manifestation of racist policies in the country. Describing the crisis, she said that there was a high level of illiteracy particularly among adult female persons, because poverty forces many pupils to drop out of school. Some, especially in the rural areas, cannot even go to school as they have no access to schooling facilities. She argued that contrary to the belief that education boycotts have resulted in illiteracy, the prevailing system of education forced students to campaign against the poor quality of education.

She stated that the majority of illiterate persons are women. She advocated a massive national campaign on literacy and adult education and noted that NECC has prioritised the following in its national programme of action:

- a) Adult Education,
- b) Pre-school Education, and
- c) Teacher upgrading.

Addressing these issues, Phumzile explained that these programmes would benefit women particularly.

As regards adult education, and its benefit to women, she said that the majority of illiterate women are in the category of employable persons between the ages of 20 and 35 years.

With regard to pre-school education she said that the programme would not only serve to guide children in their formative years but would also relieve women from the tedious task of rearing and caring for children, thus enabling women to take up tasks outside the confines of the family.

She further said that the teacher upgrading programme would benefit women in particular as they dominate the profession whilst being under-qualified.

She advocated State-intervention in the educational system of a democratic State and stressed that any such intervention should be gender sensitive. There should be affirmative action with a bias in favour of women at all levels of education.

Women should be encouraged to take up professions and acquire skills in areas traditionally reserved for men. She also said curricula should move away from gender stereotypes.

She urged the meeting to find the best possible ways of addressing the crisis and proposed that the commissions should explore the possibility of encouraging the involvement of community adult education and literacy training programmes.

She stressed that the state should assist community initiatives and warned against the possibility of such initiatives being ignored by the state as is the case with squatter schools.

She then looked at gender stereotyping in the media and urged that the issue should be addressed.

8

Women & Health & AIDS

Dr. Manto Tshabalala

The paper used HIV infection/AIDS as an example to identify the determinants of health and some of the issues around which women can mobilise in the area of health. It was noted that, health policies are generally gender insensitive and that at best the conceptualised models that inform policy, limit women's health to reproductive health. Yet policies on women and health could not be comprehensive and integrated until they addressed the fundamental issues of democratic and progressive decision-making processes, the socio-economic power relations and cultural and traditional practices and attitudes in society. In formulating policy the needs of the majority and most vulnerable should not be ignored. In South Africa women constitute more than half of the total population. In designating women as the special focus for the World AIDS

DAY activities on December 1, 1990 it was noted by the World Health Organisation that "Women are the key to achieving health for all". The World Health Organisation estimates that more than 8 million people are infected with the HIV. Of these 3 million are women. It is estimated that 500 000 people will develop AIDS in 1990-1991 and of these 200 000 will be women. HIV/AIDS affects women as much as it affects men. The impact of the disease on women is related to the under-privileged position of women in the family, economic, social and political life. Recent statistics on women and AIDS in South Africa confirm that there are more HIV positive women than men. More blacks than whites are either HIV positive or have been diagnosed as AIDS sufferers. Women are infected at very young ages and many are ignorant of sexually transmitted diseases and HIV infection, including prevention of pregnancies. The spread of HIV infection is predominantly by heterosexual contact.

Natal/Kwazulu has become the epicentre of the disease. During the first half of 1990, 549 infected persons were detected and by the end of June 1990 a total of 1128 adult blacks found to be positive. There is an increase in the number of infected children. In August 1990 there were 24 paediatric AIDS cases reported, 30 in September and 73 by the end of October 1990. The highest number of cases are reported in Durban and Johannesburg. 99 AIDS cases were reported by the end of September 1990 and by the end of November these increased to 554. The HIV/AIDS epidemic is not immediately seen as a great threat because people are either involved in the reality of war and violence or struggle for survival in issues such as employment, food, security, lack of schooling opportunities, lack of housing including the overall political and social insecurity. HIV/AIDS poses a real threat and will undermine all developmental plans and programmes.

The response of the government has been inadequate and inappropriate. The AIDS budget has been cut by one third. This is a clear indication that the State is not seriously committed to combatting the spread of AIDS/HIV which affects black women the most. Black women will thus be deprived of the recent technological advances in the fight against AIDS.

The hysterical manner in which the health profession has been responding to the epidemic recently and the sensational reporting by the media all go to demonstrate the insufficient knowledge about the nature of the disease. Not many awareness programmes have been designed. The paper then went on to outline the severe limitations placed on women in their combat of the HIV/aids epidemic and access to essential and quality health care in general. Women are excluded from decision-making processes. Because their experiences and ideas are ignored, the technological advances are not easily made available to ease their work. They have no control over their fertility, and are also denied access to information that would enable them to make informed choices on contraception. In our society sexual behaviour is not openly and easily discussed. The extent to which a polygamous relationship in HIV transmission is a factor is controversial and needs to be researched. To insist on the use of condoms might be misconstrued as encouragement for infidelity to husbands. The system of apartheid, its migratory labour system, and the single-sex hostels system places additional limitations on women in their fight against AIDS. These women have less access to financial resources, information, educational opportunities, health care and sexual rights. In a situation of mass illiteracy preventive and promotive health education programmes are easily undermined. Poor access to health care facilities means late diagnosis, poor treatment, and no follow-up treatment.

Malnourished women are more susceptible to infections and pregnancy complications and once they have been diagnosed as AIDS sufferers, they seem to die faster than men. This has serious consequences in the HIV transmission in pregnancy for the family, the children and in particular the orphans. The old women must then bear the burden of additional home-based care and support by taking care of the sick, the orphans, the disabled - in most cases on a voluntary basis. Their contribution and that of women in general is undervalued. They receive very little care in return. Their meagre pensions are not enough for the family needs. HIV transmission is associated with rape, sexual abuse and harassment. Even children have been affected through sexual abuse. Violence and war both in South Africa and the neighbouring state of Mozambique has been the cause of the recently reported slave trade between the two countries in which women are the victims of sexual abuse. Natal has become the epicentre of HIV/AIDS. The struggle by women against AIDS must therefore be organically linked to the struggle for national liberation, social emancipation and women's rights. The fight against AIDS is not a particular responsibility

simply because women are the is advantaged sector of our society. Women, however, have an important role to play in the development of a National AIDS PROGRAMME is part of a National AIDS TASK FORCE and also in the launch of a campaign on NATIONAL HIV/AIDS awareness and prevention. The paper emphasized the fact that the campaign must be community-based. Women can accept the challenges presented by the HIV/AIDS epidemic and use the space thus created to assert themselves in society particularly with

regard to sexual relationships, abortions, use of free and safe contraception and in a whole range of other issues that relate to the control their fertility. Women's organisations and support groups are the crucial stepping stones to serious attempts to combat HIV/AIDS. We should demand state intervention in the provision of health care and ensure that these demands are incorporated in the Constitution and a Bill of Rights and they are enforceable by law.

9

Patriarchy & Gender
Custom & Religion
Legal Status

WORKSHOP PROCEEDING

Introducing the issues

The first two days of the workshop addressed issues of concern to women in South Africa with a view to identifying women's rights. The keynote address presented by the Deputy President of the ANC Dr Nelson Mandela, identified factors which have led to women's oppression in South Africa and referred particularly to patriarchy. This input coupled with the paper "Women in Apartheid South Africa" and presented by comrade Gertrude Shope, NEC member and head of the Women's League, laid the basis for the discussion that followed. Five Commissions were set up to deal with issues arising from the two papers. These were: * Patriarchy, custom and gender; * Women and religion; * Violence, rape and sexual harassment against women; * The legal status of women in South Africa; * Women in the public and civil service.

At the afternoon session three papers were presented: "A Critical Review of Gender and the Economy in South Africa", "Women and Education" and "Women and Health". The following five commissions were set up to deal with matters arising from these papers:

- Women as workers;
- Women and the land;
- Women's health rights;
- Women and the environment;
- Education and training of women.

Discussion of Issues

The workshop began by defining the key concepts
Definition of concepts:

Gender and sex Sex was described as a biological category, whilst gender was described as an ideological construct based on the way society understands or reads biological differences between men and women; in other words social differences are created from the varying biological attributes of men and women. For instance, ours is a society which proclaims that women, because they physically bear babies, are also responsible for the rearing and caring of children. Patriarchy was defined as an ideology of male supremacy which is the result of the social construction of gender. Patriarchy is inherent in the customs, practices and religions of South African society in general. It justifies a variety of social, economic and political distinctions between men and women: for instance, better employment opportunities for men whilst placing the burden of child care and maintenance of the household on women.

Patriarchy, custom and gender Discussion centred around African customary practices. It was noted that a distinction should be drawn between customs by means of which people identify themselves as African and which thus promote social cohesion and those which may seem to promote social cohesion but which are in fact oppressive to women. Customs of Ukungena (1) were identified as oppressive; however, there was disagreement as to whether the practice of labolo is harmful to women. Some speakers felt that labolo inevitably assigned value to women only in terms of their status as possessions or objects, while others felt that labolo gave women a material protection unavailable to them under some African law consequently, it was suggested that legal provision might be made in women to take the place of whatever security labolo may be felt to offer. The institution of chieftainship was also discussed and recognised as patriarchal. However, it was recognised that the institution of chieftainship cannot be wished away for the majority of the people, at least in the rural areas, probably respect the office. It was therefore recommended that we begin to find the best possible means of democratising the institute of chieftainship. Women and religion: The commission on religion was made up exclusively of Christians. It therefore focussed on the Christian religion although it was recognised that discussion on Islam was badly needed as well. Christianity was identified as a patriarchal institution which has contributed to the oppression of women. Recognising that "human rights" refers to the rights of women as well as men, the church was identified as a site for human rights violations. The following examples were given: - the refusal of the Christian church to ordain women; - discrimination against unmarried mothers in some churches; - discrimination against children born out of wedlock and the state's concept of legitimacy; - domination of the media by churchmen.

On religion, it was recommended that the ANC constitutional committee refer to the report of "Ecumenical Decade for Churches on Women" so that women, and in particular rural women, might feel that their voices were being heard, and also to provide educational guidance for women on their rights.

Legal status of women: Marriage laws were identified as the main source of legal discrimination against women. It was noted that South Africa operates under a dual legal system, namely, the systems of civil and customary law. African women may marry by either customary law or civil law. Most rural women marry by customary law. Marriage under customary law which prohibits polygamy (2) was noted as particularly disadvantageous, since married women are regarded as perpetual minors in the marriage who cannot contract in their own right and often cannot inherit property. Women's minority status has been aggravated by unascertainment of the law and interpretation by courts which tends to base itself on patriarchal attitudes to women and also tends to entrench patriarchal aspects of customary law. There was debate as to whether polygamy should be abolished. Some participants

felt that polygamy is in conflict with democratic rights; others, feeling it to be part of many people's way of life, said that it could not simply be eliminated by law. It was agreed that there should be wide-ranging discussion and consultation with women involved in customary unions. There was discussion concerning the legal disabilities suffered by women, in particular black women, in civil law marriages, where it is difficult to acquire property in one's own right because the marital power (3) remains in most marriages.

Finally, the commission on the legal status of women emphasised that, while there are objectionable laws which expressly discriminate against women, much of the oppression women suffer is a result of indirect - that, extra-legal - discrimination, which is itself a result of prevailing cultural attitudes to women. For instance, although the legal system has set up means whereby women can enforce maintenance orders, as far as the law is concerned in practice the system is a failure in that very few women actually receive the support they are owed. Similarly, black women often encounter difficulties in securing the custody of their children upon divorce. Moreover, the oppression of women was put in a wider socio-economic context: property rights mean very little for women who are part of a generally impoverished group. Specific and substantial recommendations

A number of recommendations were made during the course of discussion in the workshops. These are the major ones: * Consultative programmes should be created to discuss traditional practices such as lobolo and polygamy. Outreach programmes were recommended. The purpose of the consultations should be both to obtain a bottom-up input, so that women, and in particular rural women, might feel that their views were being heard, and also to provide educational guidance for women on their rights. Educational programmes should consequently be designed to this end.

- ☐ There should be continuation of the debate on whether a new South Africa should provide for a single system of law or continue with the dual legal system. This should be informed by comparative studies of African legal systems (many African countries inherited the dual legal system) and of the application of customary law in the homelands (currently there is not enough information on the issue for informed debate). The debate should take in the

issues concerning women in customary marriages, especially their inheritance and property rights, and their perpetual minority.

- ☐ Marital power should be abolished.
- ☐ The constitution should enable the enactment of legislation which establishes and protects women's rights, whether outside marriage or whether in marriage and upon its dissolution.
- ☐ The rights of women should be established and protected by law in both customary and civil marriages.
- ☐ Laws relating to wills should be changed with the specific intent of restricting the disposal of family property: it was noted that married women contribute both directly and indirectly to the acquisition of family property.
- ☐ Civil law should be reformed with the specific intent of revising the many aspects that infringe on women's rights.

Notes

1. Ukungena is the custom of the levirate which generally places a duty on a widow to cohabit with one of her deceased husband's relatives, usually a brother or a half-brother. The custom is to the widow's reproductive role. An elder woman or one who has had many children is less likely to be subjected to ukungena.
2. While this term was used at the conference, it should be noted that while polygamy refers to the practice of marrying more than one husband or wife, while polygyny refers to the practice of marrying more than one wife. What is being referred to here, then, is polygyny.
3. The marital power confers on a husband, control over his wife's property and deprives his wife of the right to contract freely or to litigate without his consent and assistance. A woman married under the marital power, for instance, could not enter into an agreement to purchase a house without her husband's assistance. The marital power puts women into a legal position inferior to that of a child.

10

WOMEN & EDUCATION


WORKSHOP PROCEEDING

The following is a summary of issues and recommendations relating to formal education.

ISSUES ARISING:

It was observed that there is a crisis of education in South Africa which has been caused primarily by the apartheid system. Apartheid has led to uneven distribution of resources, African schools under the Department of Education have far less resources compared to white schools under the same department.

There is a shortage of teachers for black students and most of the teachers available are underqualified and in the main women. More black children are dropping out of school because of inadequate facilities, lack of qualified teachers, repression and poverty. Illiteracy is on the increase, nine to ten thousand young persons are illiterate. That young women between the age of twenty and thirty five form the bulk of these people.



It was said that the department of education refuses to recognise community initiated schools, particular in squatter areas, thus burdening poor people to provide what they themselves do not have. Concern was raised at the rate at which private schools were proliferating.

Specific Recommendations:

That the present education system should be completely overhauled. That the democratic government has a duty to intervene and correct imbalances created by apartheid. That education should be one of the priorities of the new government. That the state should provide free and compulsory primary school education or education up to the age of sixteen years, with a bias in favour of girls who are often late beginners at school. Schools must be open and accessible to all. Tertiary education must be made accessible and that taxation maybe used as a devise to subsidise tertiary education, thereby increasing the possibility of access.

11

Women & Health

WORKSHOP PROCEEDING

WOMEN'S HEALTH RIGHTS

The point was emphasized that **HEALTH IS A BASIC HUMAN RIGHT**. The workshop also endorsed the argument that health and ill-health are, in the main, determined by power relations, socioeconomic conditions, cultural and traditional practices and attitudes. It was also noted that health policies are gender-insensitive and fail to address the plight of African women in particular.

The main factors affecting women's health were identified as:

- their exclusion from decision
- making processes, including the right to control their fertility;
- low levels of education;
- lack of employment opportunities enabling them to lead decent lives;
- unsafe environmental and working conditions;
- inaccessibility of facilities to ease their strenuous workload, especially in the light of the additional home-based tasks they have to perform in the home;
- poor health-care facilities, especially in the rural areas, as a result of which women do not get essential and adequate health care.

The poor nutritional status of women and children predisposes them to ill health. Malnutrition was attributed also to the fact that women have limited access to the land, to credit facilities and to control crops. The fact that women in particular have less access to preventive health care, resulted in high infant mortality and maternal mortality rates. The high rate of illegal abortions was of great concern to the commission and this led to extensive debates on contraceptives and abortions especially in view of the controversy surrounding these issues. On the issue of free health care, there was agreement that privatization of health care should be discouraged, and that within this context the State should identify resources and mechanisms that would ensure that no one was excluded from essential health care services on the grounds that one was not able to pay. Within the health profession women are mainly confined to nursing which emphasizes caring rather than curing duties. As a result they do jobs of a low status, which brings them lower wages than males. Such jobs are usually stressful. The commission also discussed the importance of community-based training within the context of primary health care. This would allow for relevance in training. HIV infection and AIDS was discussed and special emphasis placed on the fact that this is both a medical and social disease. It was also recognised that there is an insignificant awareness on the nature of the disease, its complications and consequences. The struggle to combat

HIV/AIDS created space for the struggle for women's rights. A Health Charter can go a long way in complementing the Women's Charter.

Recommendations

The Commission discussed **HEALTH CARE SERVICES, AIDS and FERTILITY** and recommended that women should have the right to:

- ☐ control their own fertility;
- ☐ safe, easily available contraception based on informed choices;
- ☐ safety and support during pregnancy;
- ☐ Free Maternal Child Health Care;
- ☐ Six months paid maternity and paternity leave with job security;
- ☐ Sex and Family Life Education to be part of the overall education;
- ☐ be protected against rape, sexual harassment and violence- a communitybased National AIDS CAMPAIGN with the, State Funded participation of the youth, women, progressive community and health organisations, workers and the church.

The State must provide the financial resources for the campaign.- Free supply of condoms with adequate information on how to use them. On the formulation of the "Right to Health" in the Bill of Rights, the Commission noted that a comprehensive national health service did not guarantee its integratedness. If the services were not integrated this might once more disadvantage women who have to travel to different facilities for health care. They may even have to pay different rates at different institutions thus wasting time and meagre resources. The commission recommended a comprehensive and integrated National Health Service.

Hygiene education was limited in its approach. The commission recommended that the use of health education be part of the primary health care components, encompassed in a comprehensive and integrated essential health care that includes cure, prevention, promotion, rehabilitation and health education.

With regard to the special services to be provided for women and children as indicated in "What is a Constitution" the Commission reiterated its recommendation for such services to be FREE. The importance of easy availability and accessibility of PAP SMEARS was stressed as Carcinoma of the Cervix was reported to be very common amongst black

women. Because women who do not proceed to secondary education are likely to lapse into illiteracy therefore do not benefit from health education programmes, the Commission

recommended that compulsory and free education be gender sensitive, and specify the number of schooling years that would ensure that girls remain literate.

12

Women as workers

WORKSHOP PROCEEDING

The definition of workers as it relates to women was broadened to include the unpaid labour of women at home, the unemployed and self-employed, domestic workers and agricultural workers. This type of work, which is usually very stressful, is invariably undervalued and is not incorporated in the national wealth creation statistics. The interrelationship of gender, class and race was also discussed.

Concepts of equal pay for equal work and equal pay for work of equal value were examined. To discard the concept of equal pay for equal work give loopholes for the exploitation of women. On its own this concept is not sufficient. It needs to be buttressed by the equal pay for work of equal value concept.

The feasibility of implementing the concept of equal pay for work of equal value was also explored. There is a danger that this could have the negative effects of underdeveloping women as they might remain entrenched in the kitchen, if they knew they would earn equal pay for work of equal value. It was agreed, however, that this concept does address the issue of devalued work. Experiences of other countries in this area could be useful.

Note was made of women who do additional work other than what is contained in the job description, and are not paid commensurate salaries. There are no safeguards to ensure that employers are under a duty to discourage this form of exploitation and oppression. Some job descriptions are not precise in content.

Mechanisms to enable women to move into categories of employment previously closed to them were explored. Central to this will be the creation of employment opportunities to accommodate the fact that women start from positions of disadvantaged. Conditions of work sometimes make it difficult for women to take certain types of employment.

More critical to the process of entering other job categories is the type of education, training and socialisation of women. The commission felt that there should be laws that prohibit discrimination against women in terms of conditions of work and also in terms of opportunities to work.

Special note was made of women in the civil service. It is critical that women have a major voice in the civil service, as this is where most decisions are made. This however does not mean that women should not strive for representation in the highest decision making bodies.

Recommendations:

1. The value of women's labour, especially unpaid labour should be constitutionally recognised and should be incorporated in the compilation of national wealth creation.
2. Equal pay for equal work to be combined with legal provisions prohibiting discrimination against women.
3. Health provision should be the responsibility of the state and employers should be legally bound to provide a safe and healthy work environment.
4. Privatization of health care should be discouraged.
5. Legislation should broaden the definition of what is compensable for injuries and employers should be legally bound to pay out compensation.
6. Creation of equal opportunities council to monitor training, employment and other relevant areas.
7. Gender sensitive training to ensure motility for women.
8. Access to welfare benefits should be available to all irrespective of marital status, employment. Women do qualify for benefits as women and not as dependents.
9. Children must have a right to care and welfare.
10. Women should play an active and prominent role in the formulation of the National Policy and Land redistribution.

13

Women & Environment

WORKSHOP PROCEEDING

It was pointed out that the whole system of apartheid is based on violence. Violence permeates every aspect of one's life in South Africa. The state has legitimized violence through its apartheid laws. Covert and overt forms of violence were identified: The oppressive nature of our society, wherein one is not able to exercise one's rights, was seen as covert violence, whereas the teargassing and shootings by the police were identified as overt violence, as were hit squads. It was also recalled that South Africa society has a long history of peaceful campaigns that have been met with violence; for example, peaceful demonstrations by women against passes. Of course violence reproduces itself violently too and this is why only our society has become violent. Wife bashing should not be seen as part of the African tradition: this point was stressed.

The rapid increase in the rape was seen as yet another manifestation of violence in our society. Of concern were the humiliation and psychological trauma women experience in that trying to establish their innocence in a case of rape.

Violence towards women in the workplace manifests itself in the form of sexual harassment. Sometimes in the effort to get jobs, women are subjected to sexual harassment.

RECOMMENDATIONS

- ☐ The definition of rape should be broadened in order to emphasize that this is not only a sexual assault but also an act of violence.
- ☐ Laws of evidence in respect of the prosecutions of rape should be changed in marriage and in-marriage, rape should be a criminal offence.
- ☐ The victim should have the right to legal representation of her choice and this representation should be paid for by the state.
- ☐ Rape culprits should undergo intensive therapy as part of rehabilitation.
- ☐ Sexual harassment must be made a criminal offence.
- ☐ Women and children should be protected by the State against family violence.
- ☐ Men should have the right to a fair trial.

14

Political Representation of Women

WORKSHOP PROCEEDING

REPRESENTATION OF WOMEN IN DECISION-MAKING BODIES

It was noted that in South Africa women are absent from the decision making processes of political parties and organisations, as well as from the policy-making organs of the State.

The following factors were identified as the major causes of the problem: gender stereotyping, lack of training and education of women, as well as bureaucratic approaches to decision-making. Commenting on gender stereotyping, it was said that decision-making is regarded as the preserve of men in patriarchal societies such as ours.

With regard to the training and education of women all commissions noted that, while women may be less skilled for posts in decision-making bodies, because of the lack of training, experience and confidence, gender stereotyping means that even where women exist for posts in such bodies they are never considered. It was also observed that decision-making bodies are invariably undemocratic and are unaccountable to the people: policy decisions are taken by a few powerful men.

RECOMMENDATIONS

- ☐ Both private and public institutions should set up affirmative actions programmes which should incorporate the following conditions:
- ☐ criteria for employment should not be set in such a way as to exclude women;
- ☐ quotas for women should be reserved in all political organisations as well as in all organs of the democratic state;
- ☐ women should make up 50% of the membership on bodies such as the Constitutional Committee of the ANC, which should thus be restructured to include women;
- ☐ organisations should begin to identify women for vigorous training which should begin now in preparation for women's participation in the formulation of policy;
- ☐ employers should undertake upgrading programmes for women, and tax concessions should be offered as an incentive for employers who seriously undertake these programmes; and
- ☐ women should be encouraged to venture into fields such as science, which are traditionally reserved for men.

PART II

15

**International Protection
Of Women's Rights**

Prof. Kader Asmal

In the twentieth century international human rights law has established standards for the treatment of all people through numerous conventions and resolutions. A concern for the equal treatment of men and women is reflected in one of the earlier documents dealing with human rights: the United Nations Charter which refers to the equal rights of men and women.

Gradually, conventions dealing specifically with the oppression of women have been adopted and the most important of these is the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (The Convention is appended to this work on page XXX). By 1990, 102 states had become parties to this Convention and were thus bound by it.

The 1979 Convention is important for its attempt to deal with the issue of patriarchy, the domination of women by men, and the rationalization of inequality and the inferior status of women. In doing this, it moves beyond the equality principle relied on in earlier human rights conventions which readily accepts the notion of women as homekeepers and the rearers of children and which insulates 'private' family relationships from the reach of the law.

Thus Article 3 of the Convention recognises that not only must the law change but patriarchy also must be eliminated, and it requires States to take:

All appropriate measures ... to educate public opinion and to direct national aspirations towards the eradication of prejudices and the abolition of customary and all other practices, which are based on the idea of the inferiority of women.

In challenging patriarchy, the Convention does not ignore the role of the family and the relationship of women to their families. Instead it demands full recognition of women's contribution to society and a change in the roles of men and women in the family.

If South Africa were to ratify the Convention, and as a democratic state it should, a range of discriminatory practices would be prohibited and obligations would be placed on the State to address the patriarchal nature of South African society.

For instance, in Article 2 the Convention specifies measures that a state should take to end discrimination; Article 3 requires States to pass laws which will enhance the status of women; Article 4 allows States to take affirmative action to remove inequality between men and women. In this connection a South African Bill of Rights should contain a provision dealing with the right of the State to take ameliorative action to undo the legacy of discrimination and exploitation.

Article 5 of the Convention attempts to ensure that stereotyped attitudes towards women and the role of maternity are tackled by requiring States to take measures to eliminate 'practices based on the inferiority of women'. Again, a South African Constitution should reflect similar sentiments. This is important not only for its legal value but also for the educative role that a Constitution can play.

Article 6 of the Convention deals with slavery and prostitution, Articles 7 and 8 with the political rights of women and Article 9 with nationality. Article 10 specifically requires that women should not be discriminated against in education. It refers also to the revision of text books and teaching methods and to education to ensure the 'health and well-being of families'. The object of Article 9 is to remove discrimination in the labour market and to ensure that women's childbearing function is protected. The article specifically requires States to provide protection for women during pregnancy but does not recommend any other 'protective' legislation. Health care for women is taken up in Article 12. It provides for non-discrimination in this area but singles out pregnancy as a ground for special treatment.

Article 13 ensures equality in the granting of financial credit; Article 14 recognises the special disabilities rural women may face and Articles 15 and 16 require equality before the law and in marriage and family relations. Article 16 is particularly important in South Africa. For instance, it specifically refers to the need for freedom to enter into marriage, the right to choose a spouse and the identity of rights during marriage and at its dissolution. It recognises that parents should have identical rights to children.

The Convention does not impose immediate and direct obligations. It merely obliges states to take all appropriate measures. It does not have a strong mechanism to ensure that complaints about its violation are investigated.

Nevertheless, a free South Africa must ratify the Convention and, with other international Conventions, it should become part of the law of the land.

When there is more time available to the legislature, the standards and general principles it lays down must be supplemented by a comprehensive and major piece of national legislation, entitled the Equal Status Act, which would systematically cover the area of gender discrimination, including employment, goods, facilities, services, education, personal status and family law. In addition, the powers of enforcement must be spelt out and an Equal Status Commission, charged with supervision of the legislation and the drawing up and supervision of affirmative action programmes, must be established.

The removal of discrimination based on race and sex is part of the struggle against apartheid and is an urgent task. As the Women's League of the ANC has said: women's concerns and women's needs are the concerns of all true democrats.

The rapid development of international rules is an aspect of international solidarity with the cause of the liberation of women. It represents a recognition of the fact that this struggle is a fight for a universal human right.

COMMENTS ON THE ANC CONSTITUTIONAL COMMITTEE'S BILL OF RIGHTS

1. The relationship between sex and gender needs to be clarified as the terms seem to be used interchangeably. Sex is a biological characteristic, gender is a social construction. Rights should be attributed to sex and perhaps not gender because gender is a social myth.
2. The terms non-racial and non-sexist should be reconsidered. They are used as parallel terms. However, the equivalent of non-racial is probably 'non-gendered' signifying a society in which gender is irrelevant just as non-racial signifies a society in which race is irrelevant. Non-racist may be the equivalent of non-sexist. But women need to consider whether we want a non-gendered society.
3. The clause guaranteeing a right to life is ambiguous and should be reconsidered.
4. Article 3 guarantees political rights and a right to representation but assures nothing. Do women want 50 percent representation in the political process and on the bench?
5. In the context of the freedom of speech the question of access to wealth which presently determines one's access to the media should be considered.
6. Workers' rights are protected in article 6 but no mention is made of sexual harassment or of maternity leave.
7. In article 7 which deals with gender rights the word discrimination is used. But this notion limits the scope of the clause as it does not enable one to examine the systematic *structures* of oppression which have produced inequality.

16

Canadian Experience

Ass. Prof. Elizabeth Sheehy

THE IMPLEMENTATION OF WOMEN'S RIGHTS IN CANADA

Elizabeth Sheehy discussed human rights codes, the process of getting a bill of rights (which the Canadians call a Charter) and issues around using the rights enshrined in the Charter. Finally she described the recent and progressive Canadian pay equity legislation.

Human Rights Codes

First, the concepts and language used in a human rights code or bill of rights may create real difficulties. For instance, the concept of discrimination is problematic. In Canada one has to prove a specific basis of discrimination - that a job was not offered on account of one's race or that a place was not given on a training programme on the basis of sex and that one would have got the position if it were not for one's race or sex to challenge discrimination successfully. Courts are unable to understand that a combination of factors might operate and are unsympathetic to the inability of a black woman, for instance, to identify with precision the specific basis of the discrimination she suffers.

Then, in addition, courts require some evidence of bad intentions and the mere use of abusive language may not provide such evidence. For instance, discrimination was not proved to the satisfaction of a court in a case where, on expelling some people from a hotel, the manager shouted 'Get out, you dirty Indians'. Finally, the notions of discrimination and equality do not reach the causes of women's subordination.

The concept of equal pay for work of equal value is similarly problematic. As long as the structures remain the same the jobs that men do are more highly valued than those that women do.

A second problem with human rights codes in Canada is that they require a complaint from an individual before wrongs are redressed. This means that an individual takes on a huge struggle and unions often fail to support women members. The process may take many years and the personal cost to the individual concerned is enormous. If the matter is settled, no publicity is given to it and no precedent set. One advantage is that women can be mobilized around court cases.

The Constitutional Process

Chavira Hosek has written of Canada: 'This is a story of the progressive exclusion of women from the process of constitutional change, and of the elaborate strategies required for them to break into the process. Women must be centrally involved in any future constitutional change.'

In Canada women were required to negotiate on a pre-set agenda and their demands were addressed within a framework which had already been established. The result was a Charter of Rights which inadequately addressed women's needs. Women did not get a clear statement of how their rights ranked against others; wording in the Charter remained inconsistent, requiring judicial interpretation on virtually every issue such as abortion, male parenting rights etc; the complex issue of the combined effect of race and sex was left unaddressed (leaving the position of aboriginal women who lose citizenship of their band when they marry some one who is not a member uncertain); no guaranteed rights of representation in political bodies were granted to women; and no federal funding of services for women was guaranteed.

Women would have drafted the constitution entirely different.

Using the Constitution

The major lesson to be learnt from the process is that legal rights are not enough. Political action remains the most important tool in the struggle against oppression.

Judge Fudge has said: 'Rights are not inherently progressive, but rather depend upon the politics informing them.' And that a Charter can 'come to dominate the political discourse and thus define the universe within which political struggle occurs'.

Using the courts is costly and it is exhausting. Because the Charter is not pro-active - it does not place a duty on the state to ensure the rights it guarantees - only the most privileged women can use it and in Canada the right to equality has been used mostly by men.

The Charter has not transformed the judiciary. It is staffed by the same people with the same ideas and women's issues are inadequately understood.

The Pay Equity Act

Recognizing the failure of human rights codes Canadian women worked for over ten years to achieve the Pay Equity Act which is the most progressive Canadian legislation. Pay differences and the inadequacies of existing legislation were documented.

The legislation requires all jobs, including those in the private sector, to be evaluated, gender-neutral value schemes to be established and pay differences to be made up. It is pro-active, requiring unions and employers to act.

The legislation still excludes those who are most disadvantaged as it covers only businesses employing more than 10 people. This means that it does not reach the oppressive structures which result in women's employment in small concerns or singly in underpaid jobs. More importantly, it does not recognise women's unpaid labour. It also excludes domestic workers and farm labourers. It also merely requires women's wages to be raised to the lowest level of men's wages in comparable jobs.

Perhaps the most difficult problem is that although it calls for 'gender neutral' evaluation of jobs where we cannot think beyond gender. This is particularly so where there are no male comparisons as in the garment industry. However, it is clear that women must develop these schemes. For instance, a male definition of a stressful job may not recognise the stress

involved in caring for the elderly, the ill or the handicapped and may exclude the stress involved in handling complaints, and in focussing on decision making.

Conclusion

- ☐ Women must be central to the process of constitution making. We must be represented in acceptable numbers and must be capable of drafting legislation.
- ☐ Secondly, the language and concepts used in the constitution are crucial and must be carefully considered.
- ☐ Thirdly, women must struggle for cultural change to avoid a constitution benefitting the elite alone.
- ☐ Finally, an ongoing political struggle is essential.

17

African Experience
Elinor Sisulu

Mrs Elinor Sisulu gave a short presentation on the experience in Zimbabwe since independence. Prior to independence, the Rhodesian judicial system was characterised by the co-existence of two bodies of law - civil law which was based on Roman Dutch Law and British legal principles and concepts on the one hand and customary law based on the traditions and customary practices of the indigenous people on the other.

After independence, in keeping with liberation movements' historical commitment to the emancipation of women, emphasis was placed on legislation which would abolish customary practices which discriminated against women and remove all legal impediments to women's advancements. The most important measure in this regard was the passing of the Legal Age of Majority Act in 1982. This Act had far reaching consequences because for the first time in the history of the country, black women over the age of 18 attained legal majority. This meant that they could enter into contracts on their own, buy or sell property in their own name and marry without their parents' permission. This also meant that they could become guardians to their children irrespective of whether these children were born in or out of wedlock and could sue and be sued as individuals.

While the enactment of these laws marked a great change in women's legal status there is one major area in which women continue to be discriminated against. According to the Zimbabwean Constitution women cannot confer citizenship. A child born in Zimbabwe of a Zimbabwean mother is considered to be a non-citizen if the father is foreign. Even in the case of adoption, an adopted child who is not a Zimbabwean can only acquire citizenship if the male adoptive parent is Zimbabwean. Clearly women are not regarded as equal to men. The same unfair situation applies in Botswana and some other African countries but in the case of Zimbabwe it is particularly deplorable because of the history of women's participation in the struggle and the governments stated commitment to the removal of oppression against women.

In the light of the Zimbabwean experience South African women would be advised to pay special attention to the whole question of citizenship and nationality in order to ensure that their rights as equal citizens are enshrined in the Bill of Rights.

18

**Constitutional Protection
of Women's Rights in a
Democratic South Africa**

*Brigitte Sylvia Mabandla —
ANC Constitutional Committee*

Brigitte Mabandla introduced the ANC's working document on the Bill of Rights as a mechanism for the protection, amongst other things, of women's rights.

Speaking broadly on the document, she explained that the draft Bill of Rights is formulated on the basis of recommendations made at various workshops and seminars organised to discuss the constitutional guidelines, and further that various constitutions are scrutinized and the provisions of such constitutions are discussed in the context of provisions of international human rights instruments.

She pointed out that the ANC is proposing a justiciable Bill of Rights. (1) She explained that the Bill of Rights contains the liberal, universally acknowledged rights e.g. political rights (also known as first-generation rights), economic, social and cultural rights (known as second generation rights) and environmental and development rights (known as third-generation rights). She argued that the inclusion of second- and third-generation rights in the Bill of Rights affirms the importance of such rights as national priorities.

She said that the principle of non-discrimination and non-sexism permeates the draft Bill of Rights. She went on to examine clauses which deal with the protection of women's rights and identified Article 1 as a standard formulation which, when read with Article 7, unequivocally asserts equality between men and women. She identified Article 7 as the principal clause on gender equality as it focusses specifically on equality between men and women and explicitly outlaws discrimination in all its forms.

She described Article 1 and Article 7 as creative formulations meant to incorporate the demands of women made at the ANC inhouse seminar guidelines in 1989. Referring to Article 2 sub-article 26 (2) she said that the formulation is intended to provide for legislation to be enacted against domestic violence and abuse of women and also to provide for equality of men and women in marriage and at its dissolution.

Article 7 sub-article 5 (3), on the other hand also takes account of stereotyping of women in our society and argues against stereotyping in the media and institutions of learning.

She also said that some of the provisions of the draft may not explicitly mention women but they are intended to affirm women's rights. She illustrated this by referring to Article 4

sub-article 3 (4) read with Article 5 sub-articles 5 - 9, which identify various languages and interpreted these provisions to mean that everyone has a right to information, and that therefore, information must be made accessible: one way of ensuring this is by translating material required by the people into the languages they understand best. She argued that women would benefit most as they are the ones seriously affected by lack of vital information and knowledge which would enable them to contribute effectively in matters of national importance and to make informed choices about their own lives.

Commenting on Articles 13 and 14 she stated that the Articles were a denunciation of racism and sexism.

In addition, she argued that a duty be imposed on the State to identify inequalities and to actually implement positive action. She said that the formal imposition of a duty on the State to take action would help to establish the process whereby the public could ensure that the State fulfills its duties.

In conclusion, she invited the workshop participants to scrutinize the Bill of Rights and in particular the section on enforcement mechanisms.

FOOTNOTES

1. Justiciable -
 2. Article 2 sub-article 26 - The privacy of the home shall be respected, save that reasonable steps shall be permitted to prevent domestic violence or abuse.
 3. Article 7 sub-article 5 - Educational institutions, the media, advertising and other social institutions shall be under a duty to discourage sexual and other types of stereotyping.
 4. Article 4 sub-article 3 - All men and women shall be entitled to all the information necessary to enable them to make effective use of their rights as citizens or consumers.
-

19

Women's Rights in a Democratic South Africa

What rights do women want?

The workshop focussed on rights for women, and the starting point was a claim for equality. Women, it was asserted repeatedly, should not be discriminated against because they are women. They should have the same access to education as men, the same access to jobs, the same legal status and the same rights within the family. This broad claim is reflected in Article 1 of the ANC Constitutional Committee's Bill of Rights which asserts the equality of all South Africans. Article 7, the Gender clause, states in its opening paragraph: 'Men and women shall enjoy equal rights in all areas of public and private life, including employment, education and the family'.

In Canada however, a simple clause protecting 'equality before the law' proved inadequate. It assured procedural rights but not substantive equality. To remedy this the new Canadian Charter states in Article 15:

"Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, mental or physical disability."

Ensuring equal benefit of the law is particularly important. It is focussed on result and recognises that women do not necessarily always want equal treatment as they may have differing needs. They do however, want equal benefits. Maternity provisions provide an example. In this situation equal treatment of the law is of no use to women. An equal benefit provision means that laws must be recast to ensure that women can have children and raise them and still benefit from the law in respect of pay and employment, for instance, or health care.

The importance of the language of the Constitution was also repeatedly emphasised. So, for instance, the use of the word 'persons' instead of 'men and women' in Article 16 Sub-article 4 was challenged.

In addition, to a right to be treated on an equal basis with men, the workshop emphasised the history of oppression of women and, in particular, the social and economic disadvantages that this entails. Because of this, women take the idea of a special Women's Charter very seriously.

A WOMEN'S CHARTER

One of the objectives of the workshop was to discuss the idea of a Women's Charter and ways in which it might be drafted and implemented.

What would a Women's Charter do?

The Constitution and its Bill of Rights would be the highest law in South Africa. A Women's Charter might supplement it in the following ways:

it would contain aspirations, not strictly enforceable in the way that the rights in the Bill of Rights would be;

it could contain extra rights for women, which might not be protected in the Constitution;

it could expand on and interpret constitutional rights and provide a guide for subsidiary legislation.

There was general agreement that the last option was better. A Charter containing aspirations might be useful as a political document around which women could organise but, it would allow the Bill of Rights to be interpreted and implemented in a patriarchal way. A Bill of Rights leaves women's powerlessness in society unchanged is unlikely on its own to relieve women's oppression.

As an interpretative document a Women's Charter would ensure that the implementation of the Bill of Rights is sensitive to the wide-ranging demands of the so-called 'second sex'.

Thus, although women should strive to ensure that the Constitution itself is as comprehensive as possible, a Constitution could clearly not spell out the implications of various rights in detail and a Charter could be used to do this. For instance, while the Constitution might assert and compulsory education for all, a Women's Charter could specify that women should be entitled to free and compulsory education for a specific number of years.

A range of questions remained unanswered, such as how long should the Charter be and how much detail should it contain?

But the most difficult question concerned the nature of the relationship between the Charter and a Bill of Rights.

What would be the status of a Women's Charter?

Some of the questions asked were whether or not the Charter should be part of the Constitution, what its relationship to the constitution should be and what process would be appropriate for its amendment.

The commission on the Women's Charter recommended that the Charter should form a schedule to the Constitution but this proposal still does not answer the question of its legal status.

The question of what would happen if there was a clash between the Bill of Rights and the Charter was not answered. Lawyers in the commission on the Charter suggested that if the Charter was used as guide to the interpretation of the Bill, in the event of a clash the Bill would clearly take precedence.

Women were generally concerned that if men were given a say in the amending of the Charter (or its initial adoption) women's claims would be subverted. At the same time there was an awareness that women's rights are not isolated and may impinge on other classes in society. For this reason some participants felt that the Charter could not be drafted and amended by women alone.

One suggestion was that amendments should be carried out via a referendum of women. An advantage of such a system would be its broad reach which would enable women to organise around issues and mobilize support which would have an educative function. However, the prospect of setting up a system of sex-based population classification much like the existing racial one, moved the workshop to discard the idea. An alternative suggestion was that no amendment should be permissible until the composition of Parliament reflected the proportion of women in South African society.

The final recommendation on this issue was that any amendment to the Charter should be referred to a standing committee on women's rights which should be a permanent institution in Parliament. Two thirds of the members of this body should be women and it should have the right to veto amendments to the Charter. This would mean that women would have to lobby across party lines on issues put before the committee.

AFFIRMATIVE ACTION

The ANC Constitutional Committee's Bill of Rights contains two articles which deal generally with ways of redressing oppression and ensuring a non-racist and non-sexist society. Article 13 permits affirmative action and Article 14 places various obligations on the State which are aimed at remedying past discrimination and oppression.

What should affirmative action seek to achieve?

Frene Ginwala defined affirmative action as 'a form of positive discrimination in favour of those previously disadvantaged, which can be used as a transitional, and therefore temporary, measure to redress the imbalance. In the sphere of employment, she said, 'it must go beyond simply giving preference to women among equally qualified candidates. It must extend to advancement and promotion and recruitment including an obligation to search for suitable women candidates. Many gifted and skilled women have been excluded through being rendered invisible by existing hiring practices. In addition there needs to be affirmative action in the provision of education, training and support, and the conscious elimination of stereotyping in the education and training, and support, and the conscious elimination of stereotyping in the education and careers advisory systems' ('Gender and Economic Policy in a Democratic South Africa' Frene Ginwala, Maureen Mackintosh and Doreen Massey - paper presented by Frene Ginwala at the workshop).

Although this definition was accepted, the Commission on affirmative action viewed the role of affirmative action as oppression of women. It should also promote an awareness of gender issues and train men to perceive women in new ways. It could provide the opportunity for the reassessment of the type of skills useful in different jobs. For instance, determination and aggression may presently be considered important and necessary characteristics for a lawyer. Women may value other attributes more highly - and they may be overlooked. Our stereotyping of certain jobs as men's work and other as women's work is probably over-simplistic. An affirmative action programme, which ensures that women gain entry to fields colonized by men, would enable women to challenged. Thus, affirmative action could be one aspect of the process of redefining jobs in women's terms. This would not mean lower standards but different standards.

The Commission asserted that affirmative action should not be used to put people into jobs that they do not deserve.

Where should affirmative action be targeted?

The Commission assumed that participation in the political process at all levels, including workshops such as this one, is crucial for women and emphasised that all classes of women should be involved. Rural women and disabled, for instance, are often ignored. Affirmative action should therefore require and enable the participation of women at all levels. But the question of meaningful participation concerned the Commission: language barriers were indicated as the most serious obstacle to fruitful participation. A range of views were expressed on this problem. Some people suggested that everyone in South Africa should be entitled to speak her or his home tongue and that interpreters should be supplied. A minority felt that a crucial aspect of a programme of affirmative action was to educate people in a common language.

The Commission emphasised that in dealing with the oppression of women one could not ignore the effects of racial oppression in South Africa. The quest for a non-sexist society should go together with the quest for a non-racist society.

Affirmative action should be used to benefit the most oppressed women first. It was accepted that middle-class white women do not have as urgent claims to programmes of affirmative action as, for example, African women in the 'homelands'. However, the experience in other countries, for instance the United States, has been that middle-class women tend to benefit more from affirmative action than other more seriously disadvantaged women. One reason for this is that middle-class women, benefitting from better education, are better informed of their rights. Steps need to be taken to ensure that affirmative action programmes reach the most important targets. They should not merely benefit the elite.

Effective political participation of all classes of women at all levels is one way of ensuring this. In addition, the discussion of affirmative action programmes in rural areas should be facilitated and women should not be seen merely as the dependents of the male members of their families but should be consulted directly, with benefits extended directly to them.

The Commission emphasised that affirmative action should be directed to housing and welfare benefits and should not be restricted to employment. It should also involve the adoption of policies that undo the pattern of discrimination as is provided for in Articles 10, 11 and 14 of the Bill of Rights, for instance. The following specific tasks for affirmative action were identified:

- economic empowerment of all women, especially rural women; which should include establishing state subsidies to enable self-employment for

women and subsidies for nursing mothers who have been self-employed and receive no maternity benefits;

- in education, the development of bursary schemes for women and remedying the classroom shortage;
- training of women to equip them for jobs;
- supply of water and electricity to rural areas and squatter camps;
- primary health care;
- housing;
- representation of women in decision-making bodies with a special 'affirmative action' quota.

In all this priority should be given to farm labourers, domestic workers and rural women.

How should affirmative action programmes be implemented?

The workshop affirmed the idea reflected in the Bill of Rights that there should be an obligation on the state to address the effects of oppression. The attention of the Constitutional Committee was drawn to various places in the draft Bill which merely allowed but did not require affirmative action.

The implementation of this obligation should be monitored at every level - and particularly at local levels. It was suggested that Article 14 Subarticle 5, which requires the state to pursue policies aimed at 'redressing the consequences of the past discriminatory laws and practices, and at the creation of a genuine non-racial democracy', is inadequate to deal with these demands.

It was agreed that affirmative action should not be subject to a time limit and that it should continue until all oppression and discrimination was eradicated. In this connection it was suggested that there should be 5-year programmes of affirmative action which would ensure that progress was effectively monitored. An Equal Opportunities Commission could be required to evaluate programmes regularly. However, while an affirmative action programme might not achieve its goals quickly, it should be implemented as soon and as vigorously as possible.

Implementation

The Commission on the implementation or enforcement of human rights started with a discussion of the three enforcement mechanisms included in the ANC draft bill of rights: the constitutional court, the human rights commission and the ombud.

The major issue raised in connection with the constitutional court was its composition. There was agreement that it should consist of people who were representative of the community. Some felt that it was not necessary for all its members to be lawyers.

In particular, it was suggested that we should put more than a majority of women on the court. Another member felt that this was an unrealistic goal. The general feeling was that there should be equal representation of men and women and that training programmes should be introduced to enable sufficient women to be appointed to the court. However, further discussion is needed to clarify the qualifications necessary for the bench. A participant at the workshop pointed out that in dealing with the problem of representation one should be sensitive to the issue of race as well as gender. To replace white men with white women would not address the problem.

A major problems with relying on a constitutional court to protect rights is the inaccessibility of the court. Accordingly, the Human Rights Commission was conceived of as being an institution which would allow women to challenge instances of discrimination at less cost. In addition, the commission would be able to deal with issues in a broader context than that of a court. Where appropriate, it could refer matters to the Constitutional Court.

Whether or not the Human Rights Commission should initiate legal proceedings on behalf of individuals or be allowed to take test cases only was disputed. Most members of this commission felt that the Human Rights Commission's brief should extend beyond prosecuting test cases and that it should be established in such a way that it could challenge 'patterns of violation of any of the terms of the Bill of Rights' as the draft Bill proposes in Article 16.

A further function of the Human Rights Commission should be to initiate and conduct research, particularly on the issue of the oppression of women.

Should there be a separate women's desk within the Human Rights Commission? The group was divided on this. A women's desk would ensure that matters involving gender equality would be taken seriously and dealt with by people with specialized expertise. On the other hand, a fear of marginalizing women's issues was expressed. This dispute, which reflects the debate throughout the women's movement, was unresolved.

The role of the ombud was understood to be separate from that of either the Constitutional court or the Human Rights Commission. The function of the ombud would be limited to the investigation of administrative malfunctioning. It was assumed that matters could be referred from the ombud to either the Constitutional court or the Human Rights Commission.

- ☐ *The term ombudsman was rejected. While it might not refer to a man in Sweden, it clearly has a male connotation here and should not be used. One alternative suggested was the title 'Commissioner of Justice' another was the title 'ombud'.*

20

Assessment

ASSESSMENT

BY SUSAN BAZILLI

Susan emphasized the fact that lawyers have to make progressive and feminist choices with regard to the type of cases they take on because law can never be neutral. Law is in fact concealed politics. Law always reflects political demands. Therefore women must demand that laws should be gender sensitive. During the course of the workshop this demand had been identified with regard to issues such as the judiciary, the constitutional court, the policeforce, affirmative action, women's charter amendment procedures, rape, unpaid labour and many others.

It is necessary to ensure that the debates and recommendations of the workshop are widely discussed. These debates, consultations and contributions will have an impact on the processes of constitution-making.

The process of consultation will also encourage and develop the emerging leadership, as had been demonstrated by the active participation and contributions of women at the workshop. This exercise will allow women to articulate their experiences and ideas. Constitution-making cannot be the exclusive preserve of men.

It is also possible to bring women from all walks of life both rural and urban together, to deliberate on these issues. It is possible to find a common language and communicate. Women demand that issues on women and gender are placed on the agenda as topics for debate. A non-sexist constitution as envisaged by the ANC needs to be reflected from the start by the composition of the Constitutional Committee.

21

Conclusion

South Africans are looking forward to their first democratic Constitution. This Constitution will set out the legal framework for government. It will describe how the government is elected, the nature of the institutions of government, and the manner in which they operate. It will be the highest law in the land and no-one will be permitted to act contrary to its terms.

The ANC is committed to a Constitution that does more than just describe powers and procedures. In the words of the ANC Constitutional Committee, "Our new South African Constitution should acknowledge and guarantee the rights of all South Africans, regardless of race, religion, sex or political opinion. It should establish the unity of the South African nation and the equality of all South African citizens.

This means that the Constitution should contain a Bill of Rights which would set out the basic human rights to which all South Africans are entitled. It also means that nobody will be able to deny these rights. No government would be able to pass laws which remove them and no institutions would be able to ignore them. The Bill of Rights would be justiciable and if any of the rights it contains are

threatened or violated the courts would have the power to intervene. So, for example, if the Bill of Rights protects the principle of equal pay for work of equal value and a woman teacher finds herself earning less than her male counterpart she would be able to challenge this discriminatory practice in the courts and claim that the equality be corrected.

The majority of our people who have never had the opportunity of determining their future are now poised for the great change in their lives. Intense struggles lie ahead, as we shape the new Constitution. Women should be part of this process. The campaign surrounding a Women's Charter should therefore be stepped up.

Women should be part of the debates surrounding a new constitution. Issues raised by this workshop should be discussed by all democrats and women should take leading roles in such discussions.

Recommendations made by this workshop should receive earnest and immediate attention. If the process of shaping the new Constitution will benefit by an enriched and informed input.

22

United Nations Convention

UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN.

PART I

Article 1

For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions their effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

Affirming that the strengthening of the international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economics systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefits in relations among countries and the realisation of the rights of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.

Bearing in mind the great contribution of women to welfare of the family and to the development of society, so far not fully recognised, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all forms and manifestations,

Have agreed on the following:

- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic, and cultural fields, and all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by State Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment has been achieved.
2. Adoption by State Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with the view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on the stereotyped roles for men and women:
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children; it being understood that the interests of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organisations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organisations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be insured in pre-school, general, technical, professional and higher technical education as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of text books and school programmes and the adaption of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
 - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
 - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocation training and retraining, including apprenticeships, advanced vocational training and recurrent training;
 - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
 - (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
 - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction;
2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure the effective right to work, States Parties shall take appropriate measures:
- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
 - (b) To introduce maternity leave with pay of comparable social benefits without loss of former employment, seniority or social allowances;
 - (c) To encourage provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network child-care facilities;

- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
- 3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality between men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetised sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women,

that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;
- (d) To obtain all type of training, formal and non-formal, that relating to functional literacy, as well as, *inter alia*, the benefit of all community extension services, in order to increase their technical proficiency;
- (e) To organise self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment of self-employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credits and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, of similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession, and an occupation;

- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and a marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

23

Press Statement

PRESS STATEMENT - GENDER WORKSHOP 29th NOVEMBER - 2nd DECEMBER 1990

A National Workshop on "Gender Today and Tomorrow" was held at the University of the Western Cape from 29th November to 2nd December 1990. The workshop was organised by the Constitutional Committee of the African National Congress, the Community Law Centre of the University of the Western Cape and the Centre for Development Studies.

The conference was opened by the Deputy President of the ANC, Dr Nelson Mandela, who set the tone for the workshop by reaffirming the ANC's commitment to a non-sexist constitution for South Africa and to the implementation of affirmative and positive action of empowering women. He emphasised the fact that national liberation does not necessarily lead to the emancipation of women. Men and women must strive to eradicate the consequences of the long history of women's oppression.

Participants at the conference included the following organisations: The National Association of Democratic Lawyers (NADEL), The Black Lawyers Association (BLA), Lawyers for Human Rights (LHR), COSATU, ANC Women's League, Regional ANC structures, YWCA, SACC, NECC and others. There were also international observers who enriched the conference with their input, particularly in sharing experiences and perspectives of other countries in respect of issues discussed at the workshop.

A number of issues were deliberated and agreed upon, including:

- ☐ The endorsement of the demand that the principle of non-sexism must run through the whole constitution of South Africa;

- ☐ Women's rights must be spelt out in the Bill of Rights and the Women's Charter must be accorded legal status, with proper mechanisms instituted for enforcement;
- ☐ That unpaid labour done by women be recognised in the constitution and further that this should be included in the determination of the gross national product;
- ☐ The state must play a proactive role to provide facilities for women to take advantage of their rights;
- ☐ The legal status of women must be uplifted to ensure that women have equality in the law with regard to marital and individual rights;
- ☐ Education must be free and compulsory and be biased in favour of women;
- ☐ Training must begin immediately to create a pool of women who could meet the women's demand for job parity in the civil and public services;
- ☐ That mechanisms be created to enable women to continue playing a prominent role in the evolution of law in a post-apartheid South Africa;
- ☐ The judiciary be restructured to be truly representative in respect to gender.
- ☐ The workshop resolved that the rights of disabled people should be highlighted and condemned discrimination against the disabled people in South Africa.

The issue of AIDS received special attention. The workshop addressed and discussed the need for increased awareness in our society and specifically the role of every member of our society in increasing this awareness in our communities. The concern of the ANC on the spread of AIDS was specifically highlighted and the importance of an enlightened approach to the problem was emphasised and in this regard the workshop called for a National AIDS Campaign.

**Protesting refusal by the
Supreme Court of Jenny
Schreiner's ban
on attendance.**

**STATEMENT BY NATIONAL GENDER WORKSHOP OF THE ANC
CONSTITUTIONAL COMMITTEE - ON THE SUPREME'S COURT REJECTION OF JENNY
SCHREINER'S APPLICATION TO ATTEND THIS WORKSHOP**

We, the participants of the National Gender Workshop of the ANC Constitutional Committee, strongly condemn and abhor the refusal by the Supreme Court to grant permission to Jenny Schreiner to attend our workshop - "Gender Today and Tomorrow".

We note the state's deliberate obstruction of the ANC's Gender Sub-committee in its attempt to consult on constitutional issues with as broad a spectrum of freedom-loving South Africans as possible.

It is particularly significant that this occurs at a time when the government claims to be fostering a climate conducive to free political activity.

This refusal is a clear manifestation of the government's position to anti-sexist deliberations for the future.

**COMMENTS ON THE
ANC CONSTITUTIONAL COMMITTEE'S
BILL OF RIGHTS**

1. The relationship between sex and gender needs to be clarified as the terms seem to be used interchangeably. Sex is a biological characteristic, gender is a social construction. Rights should be attributed to sex and perhaps not gender because gender is social mythology.
2. The terms non-racial and non-sexist should be reconsidered. They are used as parallel terms. However, the equivalent of non-racial is probably 'non-gendered' signifying a society in which gender is irrelevant just as non-racial signifies a society in which race is irrelevant. Non-racist may be the equivalent of non-sexist. But women need to consider whether we want a non-gendered society.
3. The clause guaranteeing a right to life is ambiguous and should be reconsidered.
4. Article 3 guarantees political rights and a right to representation but assures nothing. Do women want 50 percent representation in the political process and on the bench?
5. In the context of the freedom of speech the question of access to wealth which presently determines one's access to the media should be considered.
6. Workers' rights are protected in Article 6 but no mention is made of sexual harassment or of maternity leave.
7. In Article 7 which deals with gender rights the word discrimination is used. But this notion limits the scope of the clause as it does not enable one to examine the systematic *structures* of oppression which have produced inequality.