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# Introduction

Susan Bazilli

Keep in mind always the present you are constructing. It should be the future that you want.<sup>1</sup>

It is important that the history of the *Putting Women on the Agenda* conference be chronicled. It is situated within the context of an ongoing discussion in South Africa on gender, women's oppression, and women and the constitution. Hence, reference will be made to some of the many conferences and meetings that have taken place both inside and outside South Africa over the past couple of years.

By drawing together various threads of feminist thought in such a way, the cloth that is woven will be uneven and rough in texture, but it is necessary in order to locate the very specific task of the struggle for the emancipation of women within the particular, and peculiar, South African context.

I will attempt to characterise some of the discussion that has taken place within Southern Africa. Wherever possible, I will refer to Southern African sources and reference material to acknowledge the depth of the work that has taken place, and to make the discussion pertinent and accessible to South Africans. However, this should not be seen as an attempt to provide any definitive review of the literature. That would comprise a volume in itself. Ideas, concepts, bodies of thought, and conceptual frameworks will be referenced which can then be pursued by



readers on their own. I will refer to specific papers in this text, but make no attempt to summarise the work: the authors' words speak for themselves. Some concepts such as feminism, gender oppression, patriarchy and so on, will be given 'working definitions'.

Women's issues *are* on the agenda: of trade unions; political organisations; aspects of civil society; at universities; within grassroots structures – but wherever women are on the agenda, they are only there because women have put themselves there. And this was accomplished only through struggle. The work of the authors in this book is a contribution to that struggle.

## History

The events and circumstances that led up to the Lawyers for Human Rights (LHR) conference need to be set out in chronological form. They illustrate that the process of 'putting women on the agenda' has particular antecedents within the South African context. We acknowledge our collective past in order to define our vision of the future.

In 1988, the African National Conference (ANC) released the first draft of its constitutional guidelines. These guidelines were circulated within the country, an activity that was, at the time, illegal. Various organisations and individuals began to comment on and write about the guidelines. Early in 1989, the South African Law Commission released its draft bill of rights. Again, academics and legal practitioners began to comment on this document. In April 1989 there was a women's conference in Harare, hosted by the Institute for a Democratic Alternative for South Africa (Idasa), where Zimbabwean women urged the women of South Africa to organise *now* to ensure that they attain full and equal rights, given the experience of women in the region. This is the same message that Mary Maboreke exhorts in her paper in this collection. This Harare meeting, part of the development of 'safaris' by various groups and individuals to meet with the ANC in countries to the north of the Limpopo, provided the first major access for this exchange to occur between South African women from inside the country and those in exile.

In August 1989 Idasa organised a conference on *Women and the Constitution* in Cape Town. In December 1989 there was an ANC in-house seminar held in Lusaka with the ANC legal/constitutional committee and the ANC women's section. All aspects of ANC policy with regard to women and gender were discussed, and an attempt made to formulate national policy for the emancipation of women. One of the primary issues dealt with was 'family policy' for a future South Africa. Nolulamo Gwagwa's paper in this volume had its genesis at that meeting. In January 1990 approximately 350 women from South Africa and

women in exile met in Amsterdam at the Malibongwe conference. Papers were presented from all the regions of South Africa, with a particular focus on organising women rather than academic research.

In that same month, an article appeared in *Cosmopolitan* magazine reviewing these various drafts of the constitutional guidelines and the bill of rights. After many years of struggle by women on the ground, within organisations, and academic work, both within the country and by women in exile, the *Cosmo* article signalled that these issues had made the 'mainstream': hitting the newsstands in CNA and Checkers.<sup>2</sup>

Dorothy Driver's paper on language and the constitution, which was referred to in this article and discussed by the ANC constitutional committee, is published here in a revised and updated form.

And then there was February 1990. With the release of Mandela and the unbanning of political organisations, nothing in South Africa would ever be the same again.

The ANC's national executive committee issued a statement on 2 May 1990, regarding the emancipation of women<sup>3</sup> which enshrined the rights of women as a fundamental policy. This was the first comprehensive statement on women's emancipation released by any political party or organisation in South Africa, and to date it still is.

In October 1990, the South African Council of Churches hosted a *Women and Constitution* conference in Durban. They published various proposals and recommendations that were then circulated and discussed at the LHR conference. The importance of this initiative becomes clear when noting that over 70 per cent of South African women belong to some form of church organisation.

Subsequently, in November 1990, the Lawyers for Human Rights conference, *Putting Women on the Agenda*, was held. The week following that conference, the ANC's constitutional committee held a commission on gender in Cape Town, entitled *Gender Today and Tomorrow*.<sup>4</sup> In February 1991, there was a conference held at the University of Natal in Durban entitled *Women and Gender in Southern Africa*. In this introduction, many of the references will refer to papers presented at that conference.

Such an on-going process of meetings, involving some of the same individuals and work, but more importantly canvassing other opinions and ideas, allows for the dynamic evolution of discussion around women and gender and the constitution, a bill of rights, and the proposed Women's Charter. The importance of this on-going process cannot be stressed enough. This collection of papers, while clearly not representative of the process as a whole, at least provides access to the debates for those who did not attend these conferences.



those of class, race, geographical location, political ideologies, ethnicity, age, sexual orientation, ability, and so on. Recognition and accountability for these differences is seen as vital to the effort to build general theories which genuinely account for women's oppression. Analyses of sex/gender systems and sexism have all too often assumed that the experiences and perspectives of white, middle class, Western European and North American women can be generalised for all women. This criticism is just as true in America as it is in Africa.<sup>14</sup> The critique in South African terms has been that much of this perspective was 'imported' into earlier analyses by white academic feminists. Essential to the central task of feminism is the validation of the differences; our task is to empower all women so that they can speak for themselves.

The major fundamental characteristic of South African apartheid society is its deep divisions based on race and class. And while these divisions are deeply entrenched within a patriarchal structure, they manifest themselves differently for women located in the different spheres.<sup>15</sup> South African feminism needs to develop a historical-contextual approach with emphasis on the different kinds of gender oppression in the country.<sup>16</sup> In short, while all women are oppressed, they are not oppressed equally. There is inequality within inequality. However, while stating this, we also need to realise that the notions of 'double' and 'triple' oppression, or 'hierarchy' of oppressions, should be reconsidered. All women are oppressed, but 'not in the same way'.

How a South African feminism develops will also, as with everything, depend on political priorities. Manifestations of feminist thinking have probably been as fragmented as the history of all other political debates within the country. This problem will not be solved in the near future; nor can it or should it be 'solved'. But it has begun to be addressed by an integrated analysis. Generally, theorists speak about things or people as if everything can be put in a box and labelled as a category of social life. All too often, feminism speaks of the 'oppression of women', the need for the 'liberation of women', as if 'women' was a single category. Another 'category' that is often used too glibly is that of 'black women' or 'African women'. It smacks of 'us' and 'them'. It is trite for the reasons with which we are familiar, that most of the academic research that has been done in South Africa 'on' 'black women' has been carried out, documented, and theorised, by 'white women' academics. This issue of the objectification of black women was raised at the LHR and other conferences.<sup>17</sup> We must take cognisance of this fact. It must be 'put on the agenda'.

Some African feminists say: 'The feminist movement itself should be seen in context. It is a reformist rather than revolutionary movement in the West, initiated and sustained by middle-class women of [European]

white origin.'<sup>18</sup> And there is no doubt that this is at least partly true.<sup>19</sup> Further:

African womanhood has been an increasingly topical subject for writers in recent years. Unfortunately, however, the majority of them have not themselves belonged to the community of African women. This is in itself problematic, since the non-African who studies this rather complex issue is inevitably an observer rather than a participant. The limitation is further complicated by the fact that European authors tend to employ theoretical assumptions and a methodology which hampers or in some cases precludes a realistic assessment of the subject matter.<sup>20</sup>

But also too:

Black women should not reject the term 'feminist' because of its association with white women... [R]ather we should re-claim the term and re-work it so that it speaks directly to our lives... [P]roblems arise not when white women choose to write about the experiences of non-white people, but when such material is presented as authoritative.<sup>21</sup>

And, 'If we get over the stage where our perception of the women's question is always blurred by the spectre of "western feminism" then we should get on with the business of addressing the crucial question as expected and demanded of us by history.'<sup>22</sup> This is, indeed, the 'historic charge and task' that Linda Zama urges upon us in her paper, exhorting us to work together.

Feminist struggle in South Africa must relate to the specific conditions in this country. Our actions and analysis must therefore include a recognition of the right of *all* women to speak in their own voices. 'African women must speak for themselves. They should also decide for themselves who they are, where they are going, what obstacles face them and how to remove these.'<sup>23</sup>

The challenge is more than acknowledging and incorporating into our theorising the complex connections between racial and gender oppression in the lives of black women. We need to build a feminist solidarity by confronting the divisions of race and class that divide women from one another and weaken our collective power. If the experiences of women are to be understood, addressed, and incorporated, then *all* women must participate in the building of theory. In a South African context, then, that means that those of us who are privileged need to facilitate, empower, and respect, this process for and with other women.

This book evolved out of a historical process, of which the conference was only one manifestation. If we do not address this



fundamental issue in the development of our theories and analyses, then the policies that stem from such a process will not speak for the majority of women in South Africa.

## Gender

There has been a leap between 'the women question' and 'gender analysis' which has only recently occurred in South African parlance. The word 'sex' denotes an individual as male or female, and derives from the individual's biological attributes. The word 'gender' extends these physical attributes to create an ideological construct which is based on the way that society understands those biological differences between men and women. What we recognise and experience as 'masculine' and 'feminine' is socially and culturally constructed as our 'gender', which involves a whole constellation of roles, expectations, social and sexual behaviours.

What we are looking at is the interrelationship between 'women's rights' and 'gender relations', as Frene Ginwala outlines in her paper. When we speak about 'gender relations' we raise relations of power. And gender is an integral part of all forms of power. In Ginwala's paper she examines the differential impact on men and women in terms of economic policies, and economic power. Both men and women need to be seen as *gendered beings*. The ways in which men and women operate in society is not natural and given, but is historically and culturally constructed and socially located.<sup>24</sup>

We must regard gender as an essential component of the national liberation struggle. 'We are engaged in a national democratic struggle against the apartheid regime, and the national question in South Africa needs to be reformulated to ensure that the struggle becomes a gender conscious struggle for a new transformed South Africa.'<sup>25</sup>

In putting women on the agenda, we are really addressing the need to put gender on the agenda: but in so doing, we recognise that we have a dilemma. We talk about gender oppression, and we mean human rights and social justice for all people, and we mean equality and recognition of the rights of women. We have to talk about women's rights, and not gender rights, because we do not want 'rights' to accrue to our socially constructed roles.<sup>26</sup> We do not use the term 'gender' simply to be polite and not offend men, we use it because it is the only way that we can try to explain why the social relations between men and women are so fraught with dissonance.

We must take 'gender' seriously, but we need to be cautious about its use. 'Gender' has been conceived as synonymous with 'women', retaining 'women' as the central focus of analysis of oppression under

patriarchy.<sup>27</sup> This has had a two-pronged effect. The use of the term 'gender' without any kind of broad-based education has attempted to make men and women responsible for addressing issues that are still considered to be 'women's work'.<sup>28</sup> The reduction of the meaning of 'gender' as being synonymous with women has continued to focus gender analysis on areas of social life traditionally regarded as female domains such as the domestic sphere, the family, and so on.<sup>29</sup>

## Patriarchy

'It is a sad fact that one of the few profoundly non-racial institutions [in South Africa] is patriarchy.'<sup>30</sup> I would say it is the *only* one!

This is another term that is used as if it means the same thing to all people. Obviously the experience of patriarchal power relations impacts differently on different women, depending on their social location – as does apartheid. Some of the fundamental ways in which men exercise social, political, sexual and economic control over women's lives across lines of culture, class and race can be outlined in broad terms as including:

... men's ability to deny women their sexuality or force it upon them; to command or exploit their labour or control their produce; to control or rob them of their children; to confine them physically and prevent their movement; to use them as objects in male transactions; to cramp their creativeness; or to withhold from them large areas of the society's knowledge or cultural attainments.<sup>31</sup>

Patriarchy, then, is the ideology of male supremacy that results from the social construction of gender which in turn justifies the social, economic and political distinctions between men and women. While feminist theorists have debated the various historical and material conditions that have created, or resulted from, these distinctions, the term 'patriarchy' remains the most useful description and is the one that is most often used.

Men and women are different, ie, they are not the same. Male supremacy – or patriarchy – has defined these differences as if what is male is better, and hence benefits are rewarded to the 'better half'. Male supremacy then created concepts like neutrality and objectivity and enshrined them in law. This had the effect of rendering invisible, or hiding, this 'gendering' of social constructs which are the foundation of social thought. The concept of 'equality' was introduced into the modern culture of rights, which were defined as individual. But the problem is that 'equality' is seen as 'equal', that is 'sameness' and is not able to translate difference and value. Patriarchy is upheld by means of a web of laws,

Patriarchy as ideology

on agenda  
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public and private structures, including the family, religion, traditional practices, and ideological apparatus such as schools, the media, and so on.<sup>32</sup> We need to understand how patriarchal structures operate in order to construct policies and laws that do not further entrench gender oppression in the new society that we are forging.

### *The family and women*

It is often said in feminist literature that the family is the central site of the oppression of women. This is so regardless of whether it is African or western families being discussed. And the family is by nature contradictory. For as it is a site of oppression, so too it is a site of resistance in a struggle against colonial domination and apartheid.

Our beginning point, in any discussion of 'the family', should be the actual lives people lead.<sup>33</sup> The 'family' is, at best, an enigmatic term. But we should not begin with some abstract and idealised model of the perfect family.<sup>34</sup> What do we mean by the 'family' when it is referred to in a constitution that argues for the 'protection of the family'? Our perspective seeks to locate the family within society and to understand its social construction as opposed to its operation: 'What is required is a total reconstruction of social relations.'<sup>35</sup>

This is addressed in several of the papers in this text. In our African context, we have to look closely at customary law regarding the practices which provide social cohesion and those which are harmful to people, especially women. As Frene Ginwala and Thandabantu Nhlapo note, we have to protect what is positive and reject what is negative. Nhlapo's paper on customary law provides such an analysis in very cogent terms. He cautions us, too, that the process of constitution-building in a new South Africa will be above all an exercise in negotiation and consensus-seeking. Therefore, it is extremely important to try to avoid cultural shocks to the majority of the population, when we talk about customary law.

Mary Maboreke provides us with some lessons from Zimbabwe about the difficulties that we will face. 'What about lobolo?' was a question often asked at many of the conferences referred to. It is a crucial issue, and one that Brigitte Mabandla attempts to answer when referring to ANC policies regarding customary practices which are, without doubt, fundamental to people's understanding of their culture.

There is no institution in South Africa that has been more violently affected by apartheid than the family. But all too often family policies have been discussed as if they are based on the nuclear family. In fact, a significant number of families are single-parent women-headed families. This fact must have a major impact on any policies that are created

regarding the family, whether they be social welfare, maintenance laws or housing planning. Sandra Burman's socio-economic examination of the policies that have affected, and will affect, the family, provides an important analysis of the ways in which we are going to have to re-allocate limited resources.

The ideological underpinnings of our varied and complex notions of what constitutes the 'family' must be exposed. Nolulamo Gwagwa's paper compares the ANC's position on the family with that of the present South African state. Such an analysis is crucial if we are to understand what we want to put in place for the future. All social and economic policies will impact on the family. For example, all social security, maintenance laws, and family law, are based on a specific conception of the 'family'. And conceptualisations of the family are an intrinsic part of the various forms of nationalism in South Africa. Responsibility for the family is placed fundamentally on women: whether it is in the policy of 'separate development' or in the ANC's historical claim that motherhood is the ultimate symbol of women's political heroism.<sup>36</sup> Any political philosophy that continues to locate women primarily within the private realm of the family is fundamentally disempowering for them.

This continual relegation to the family and to the roles that women assume as, above all, the revered mother, is an issue that has been addressed in South Africa. But it needs a much stronger analysis. If we are seen to be attacking motherhood, we are viewed as the most heinous of villains, or perhaps at best, western bourgeois feminists. The slogan 'A Woman's Place is in the Struggle', aside from yet again telling women where their place should be, usually is followed by a second slogan, 'Mothers of the Nation'. Women can be in the struggle, but as wives and mothers. As Mamphela Ramphele has said:

Look at how women define themselves and their issues. They always speak up in their capacities as mothers or as wives, acting for the sake of their husbands and children. They never articulate their issues, as citizens, who happen to be women, and are therefore entitled to equality. By limiting their self-definition to their roles as child-raisers and home-makers they are clinging to some of the very stereotypes that perpetuate their oppression.<sup>37</sup>

Often this was the only way women could make political space for themselves,<sup>38</sup> but those days are over now. In illustrating the parallels between the ANC and the state's deification of the family, and women's place therein, Nolulamo Gwagwa cautions us about the effect this will have on our future policies and laws regarding the family.



## The state and women

It is pertinent to look at the state from a feminist vantage point. But in South Africa we are talking about a state where the majority of the people have not had *any* democratic rights. This must be understood when we examine any 'feminist critiques of the state' that have stemmed from western writings.

Frene Ginwala discusses the obligation on the state to end sexism, in a similar way that a new constitution may place an obligation on the state to end racism. 'The responsibility for ensuring equality, racial as well as sexual, should be placed upon the State, and entrenched in the constitution.'<sup>39</sup> This is of fundamental importance, for to do otherwise places the onus on the oppressed to 'claim' their 'rights', a procedure fraught with inequities. This is a very difficult onus for any state to bear.

A new constitution which includes gender would have to take into account both the dimensions of the universal issues affecting women and men, and the specific forms that apartheid has given to gender domination.<sup>40</sup>

Feminist theorists have pointed out that the state, in its relation to society as a whole, and in its specific relation to institutionalised masculine dominance, urgently requires our sustained analysis. While the origin of this analysis is grounded in critiques of western democracies by white western feminists, it has begun to be applied to the South African context.<sup>41</sup> Although apparently gender neutral in its formulation, state policy has profound and far-reaching implications for women. 'Policy is designed to concretise specific conceptions of a desired social and economic reality, but it is articulated and implemented in an arena of already existing social relations.'<sup>42</sup>

Our concern with the state is linked to the twofold nature of feminism's political project: first, to understand the nature of the social, political and economic relations through which women's subordination is constructed and maintained; and second, to dismantle these structures in the process of creating a society which is free from relations of dominance and subordination that stem from gender, class or race differences.<sup>43</sup> The lessons that we can benefit from stem from struggles that the women's movement has waged in other countries around the world. We have two important examples of this: from Canada, by Elizabeth Sheehy, and from Zimbabwe, by Mary Maboreke.

The question that we have to pose is how to incorporate these lessons into the very transformation process that we are engaged in here. We must query the extent to which our new state will be autonomous from, or will itself reinforce, male dominance. We know that any political strategy that regards the state as a lever for progressive social change

necessarily emerges from a position that is essentially 'reformist'. And in South Africa we are not talking about reform, we are talking about transformation and reconstruction.

A large part of the state's support of gender oppression or sexual inequality exists at the level of ideology. But ideology has a material base and the ideology of male supremacy has had a tangible impact on shaping the everyday practices and circumstances of women's lives – and the form of this impact is clearly dependent on their race or class. If we are to expect state power to be used as one of the strategies to achieve the goals of women's emancipation, we are expecting the power of the state to be responsive and responsible to the demands of women.

## What are 'women's rights'?

When we talk about the liberation of women, or address the oppression or subordination of women, we often characterise the struggle as one of fighting for 'women's rights'. But the concept of 'rights' is also an ideological one. As Frene Ginwala, Catherine O'Regan and Christina Murray have pointed out in their papers, we are not simply talking about addressing 'discrimination' against women; we are not simply talking about 'equality' as an abstract notion.

In fact, we want to distinguish between what has been called 'women's rights feminism', which addresses the notion of equality, and 'women's emancipation feminism', which takes us beyond mere equality to a vision of the transformation of society as a whole rather than focusing only on the improvement of the relative status of women.<sup>44</sup> It is a particular perspective on the whole of our society that we are seeking to transform. And that is precisely why these authors have sought to address the notions of gender oppression and equality.

We have often used the terms 'rights' and 'human rights' to characterise what we have been fighting for. From the 1948 Universal Declaration of Human Rights, the attainment of fundamental human rights has come to symbolise the essence of our struggle, most eloquently framed in the Freedom Charter. But what do we mean by women's rights? When 'rights' intersect with 'law' the real issue is 'power'. Who has the power to demand and who has the power to cede these rights? How do we attain our rights in the face of structural and systemic inequality? And in South Africa, the legacy of the legislated and instituted inequality of apartheid is legion. The history of 'rights' has developed from the liberal notion of equality under the law in an individual capacity, and not from the structural inequalities of race, class and gender. But the extension of 'rights' is associated with the foundations of democracy and freedom: the protection of the weak against the strong,



the individual against the state. 'To couch a claim in terms of rights is a major step towards a recognition of a social wrong.'<sup>45</sup> Such a 'right' gives legitimacy to a claim. Where we must be vigilant is to recognise that *if* the gender power relations remain the same, legal individual rights do not resolve problems but rather transpose the problem into one that is defined as having a legal solution.<sup>46</sup>

In seeking legal redress, or having recourse to legal remedies in the traditional legal system, the individual must prove that her rights have been violated. Women then take the hazardous risk of having the law work against them by resorting to law that is structured on patriarchal precedents, as Elizabeth Sheehy so clearly illustrates. This is not to say that we should ignore earlier struggles for law reform (in other countries) but we should be mindful of the fact that history has shown us that women's oppression is not simply a matter of equal rights or discrimination under the law.

The same caution holds true for issues of race and class, and can often be illustrated in ways that appear more concrete than talking about the more nebulous notion of gender. For example, if the law, as it is presently constituted, retains its inherent bias in favour of white middle class men then the recourse to justice through the judicial process for black people, for marginalised poor people, for rural illiterate people, for working class people, will be just as impossible as it is now.

In Britain, the Sex Discrimination Act 1975 and the Race Relations Act 1976 have been largely unsuccessful in changing discrimination against women or people of colour. In Canada, women have lost much more under the Equality Section of the Charter of Rights and Freedoms than they have gained, as it is white middle class men who have used the section to protect *their* rights. In America today the analysis of feminists, of progressive legal practitioners, and of the black community in general suggests that the notion of enshrining 'civil rights' in law has ignored the fact that the majority of the 'poor' (as a category) are condemned to the black underclass, and that the access to law for the majority of women remains a 'right' on paper only.<sup>47</sup> The failure of the Equal Rights Amendment (ERA) also attests to this.

For example, the law may concede a 'right' to decent health care, or the 'right' to safe abortions, or the 'right' to legal representation, or the 'right' to a clean environment, or the 'right' to a living wage: but if the coffers of the state and capital refuse to fund the administration of these policies as 'rights', then the right becomes no more than the 'plight' it once was.

Finally, there is one point that cannot be emphasised enough! The experiences of women throughout the world have shown us that there is often no relationship between the attainment of national liberation,

through struggle, and the attainment of women's rights. Unless women's rights are taken seriously during a society's transition, they will not miraculously appear afterwards.<sup>48</sup> As Mamphela Ramphele says, '[Women] fought side by side with their men for liberation, and afterwards they were sent back to the cooking pots and told to get on with the business of child-rearing. Their exploitation has not ended.'<sup>49</sup>

## *The law and women*

What is law? Law typically incorporates a community's customs and values, whether domestic, economic, religious or moral; and law acts primarily as a means of social control which entrenches these values in the interest of the society's dominant class. Because the law reflects the interests of the dominant, or ruling, class in both practice and theory, it therefore reflects the interests of patriarchal control over women's lives. In fact, all notions of what 'law' is can be reduced to one: power.<sup>50</sup>

In the present South African climate, we are faced with the task of determining the future of law and its relationship to women. To do so, we must always be cognisant of narrowing the gap between law and justice. We know all too well that there has been little, if any, relationship between law and justice in South African history. In terms of gender oppression, as in other areas, this is not just a semantic distinction.

The word of law, whether statutory or judicial, is a 'sub-category of the underlying social motives and beliefs from which it was born'.<sup>51</sup> Law as we usually understand it refers to written laws, codes and systems of control, retribution and remedies. But justice is the inclusion – in law – of the more ethical, abstract dimension that contemplates the purpose behind the rules and the effective implementation in a justiciable – and justifiable – way. The first priority for a feminist analysis of law is to look to both the letter and the spirit of the law. The Rule of Law provides, in theory, that no one is above the law or exempt from it, and all citizens are equal before and under the law. The law must be applied equally and impartially to all citizens. We know that the Rule of Law is fiction in South Africa – for the majority of men *and* women. Legal ideology conceives of law as exempt from politics. We do not.

## *Practical implications*

Research into the problems women face has many components which must be undertaken before we can change, redress and transform the legal situation of women. We first need to find out what the law is – the official law, the law on the statute books – and whether and how it discriminates against women. Many laws appear to be neutral, but adversely affect women because of the economic and social conditions



of their oppression. Some of the most far-reaching implications affect women in the workplace. Catherine O'Regan and Christina Murray have examined the history of protective employment legislation and its effect on women. In so doing, they examine the debates around equality: for women to be equal to men does not mean being the same as men. This sameness/difference argument has a long history in feminist legal theory<sup>52</sup> and is the basis for the necessity for redress through affirmative action policies.

Some laws may be ambiguous, and leave their remedies up to judges or administrators who are male. Some laws may be extremely inappropriate to the local conditions, such as those that undermine the positive aspects of tradition or, for example, communal property ownership in rural areas.<sup>53</sup>

Some laws are obviously *prima facie* – on the face of it – discriminatory against women. For instance, we can clearly see the discrimination against women applied by the reduction of women to minors through the application of Roman-Dutch law, and especially by the colonisation of customary law by Roman-Dutch law. The history of matrimonial and family law in South Africa attests to this.

Other laws may adversely affect women because of what is left out, rather than prescribed, by them. The application and the administering of the law(s) also impact adversely on women. Some laws may appear to be fair and to treat women and men equally, but are not enforced or adhered to in practice by either the judiciary or the legislators. The laws themselves, or the remedies decreed by the laws, may not be administered effectively, or even at all. This is glaringly obvious when we look at maintenance laws. Not only do they constantly deny meagre financial resources to women and children, but women are better off widowed than abandoned. Mary Maboreke illustrates this problem in Zimbabwe.<sup>54</sup> But if women do not have access to the information or the economic resources to use the law, even in cases where the laws may exist and remedies may be given, the law is ineffective.

Perhaps most importantly, we have to determine the real needs of women, and whether and how the law can be used to meet those needs. Whatever the law or statute or regulation is in any given jurisdiction, such legislative instruments will affect people. And at least half, if not more, of the people, are women. So the laws must be sensitive to the specific needs of women, in other words, they must be gender sensitive, so that they do not discriminate against either women or men in their application.<sup>55</sup> We do so, cognisant of the contradiction Frene Ginwala points out, that while we seek to change the law, and to use the law to seek redress, law itself is what has been used to oppress us.

In tackling these problems, we must re-emphasise that the starting point must be the perspective of women ourselves. We need to focus on narrow laws that affect women specifically, such as the administration of welfare benefits or the private law of maintenance. This is, in essence, what has been termed 'women's law'.<sup>56</sup> We need to focus on laws that appear gender neutral but have a disproportionate impact on women. We need to focus on the language that goes into the constitution and the bill of rights, in practice and in process.

We have much to learn from the experiences of women throughout the world. Most importantly, we can learn from the women in the Southern African region: here we present the work of Mary Maboreke, Unity Dow, Bience Gawanas, Dianne Hubbard, and the Women and Law in Southern Africa Research Project.<sup>57</sup>

### Acute gender questions

In the early days of feminism, the slogan 'the Personal is Political' was coined. This saying derived from the dichotomy between the public and private spheres. Productive activity was seen to take place in public, in the market, and by men. Women bear the labour of reproduction – reproducing the labour force and taking care of the workers at home, in the private sphere. Women's place, then, is in the home, whether it is in the bantustans, the townships, or the suburbs. This is a very simplistic reduction, but it serves to illustrate that by relegating women to the private realm, women's problems become private. It is a basic tenet that whatever is privatised is harmful to women – whether it is the privatisation of health care or violence in the home.

Economic activity is seen to be a productive, public and male activity. Frene Ginwala peels away the layers of this assumption when she talks about paid and unpaid labour. This is a crucial distinction that must be understood when we look at making economic policies accountable for women's labour. According to United Nations statistics,<sup>58</sup> women *worldwide* make up slightly more than one-half of the population, perform two-thirds of the world's work, receive one-tenth of the world's income, and own one-hundredth (one per cent!) of the world's property.

Perhaps nowhere has the argument for the struggle for substantive equality been made more persuasively than with respect to the issue of reproductive freedom, which is an 'essential precondition to full and equal participation in society'.<sup>59</sup> While Jacklyn Cock cautions us that such issues have to be seen in different cultural contexts, there can be no argument that control over one's body is the *most* basic human right. In Helen Rees' paper, she defines reproductive rights as the right of women to decide when and how to have their children. That simple statement



underlies one of the most contentious battles that women have fought throughout the world – legally, socially and politically. The right to safe contraception, the right to safe delivery and pre and postnatal care, and the right to terminate a pregnancy are preconditions to women's basic human rights. An estimated 300 000 illegal abortions per year in South Africa is not only horrific, it is an indication of what can only really be called women's domestic enslavement.

It should be a constitutional right that a woman herself is able to make the decision about if and when she becomes pregnant or if and when she chooses to terminate a pregnancy.<sup>60</sup> But there must be the political will, the economic resources, and equal access to facilities and technologies before such a right is translated into reality.

Violence against women through rape, domestic violence, sexual harassment and sexual assault is seen to be a 'private' matter. There are two papers on rape in this collection, by Desirée Hansson and Dianne Hubbard. The estimates are that one rape takes place every minute in South Africa. Count the minutes that it has taken you to read this far: now imagine those battered, bruised and violated women. Dianne Hubbard's paper on rape in Namibia culls from much of the international and regional literature on rape. It serves as a very useful example of the kind of research that needs to be documented in order to lobby and advocate change in a newly independent country. Desirée Hansson's paper exemplifies the ways in which academics and activists in South Africa can work together to draft concrete proposals for legislative change.

Sexual harassment is an all-too-common violation experienced by women. It occurs to domestic workers in the home; to workers in the factories, offices and corporate headquarters; to workers and students in universities; and it happens all too frequently in our own political organisations: in fact, it happens so frequently that even defining it and speaking about it publicly is a recent development. Carla Sutherland's insightful analysis of the first and only reported judgement on sexual harassment indicates the long way we have to go in overcoming, not only the problem, but the attitudes towards women that it represents.

The state perpetrates and perpetuates violence against women in a multiplicity of ways: through action, omission, practice, endorsement, neglect. One aspect is the 'second assault', described in the papers on rape as what happens to rape survivors when they have to deal with the legal system – the police, the lawyers, the court, the judges. The 'private' now intersects with 'public' violence.

In South Africa, we have further heinous examples of state violence against women: forced removals; denial of land, shelter, clean water, enough food to eat; lack of literacy and education; the violence and brutality carried out by the security forces and their agents.

Another area where we need to ask acute gender questions is that of women and work, women and the economy. Issues of maternity benefits, protective legislation, equal pay, recognition of unpaid labour, agricultural and domestic sectors, health and safety regulations, working conditions, the informal sector, the participation of women in trade unions and definitions of economic activity: all these and more need to be critically examined and discussed. Since it is assumed that the key to women's liberation is through organising, we can take cognisance of the lessons that can be learned from the women in the trade union movement in South Africa.

### *Women's participation in forging the future*

In our struggle to achieve liberation for all South African people, we have to pay special attention to all the changes that we will demand: in making new laws, creating law reform and transformation, drafting and instituting the new constitution and the bill of rights, and so on. In order to do so, we need to analyse the fundamental underpinnings of many of the concepts that appear to be taken for granted in the basic rhetoric of a democratic society.

A constitution is a written document that sets out the legal framework of the government.<sup>61</sup> It is the most important law of a country – the supreme law. A constitution describes how the government will be elected and how the courts will work, what rights the citizens have, and what powers the government can and cannot have. And this law sets out the rules as to how all other laws will be made. A constitution sets out the way the government is to be elected and defines the institutions through which the governing will be done; the legislature which makes the laws, the executive which does the actual governing in terms of the law, and the judiciary which ensures that the laws are obeyed by the citizens and the government itself.

But as Frene Ginwala has discussed, it is no good saying we want this or that in a constitution if we elect an all-male constituent assembly or we have only a few women in positions of power. It is only through the participation of greater numbers of women, throughout the entire process, that we will come anywhere near *really* putting women on the agenda.

The fundamental rights and freedoms of the people are enshrined in a constitution through a bill of rights.<sup>62</sup> Our bill of rights will no doubt include several levels – or 'generations'<sup>63</sup> – of rights: the right to speech, privacy, association, opinion; economic and cultural rights such as the right to education, health and social security; and collective rights such as the right to a clean environment. A bill of rights also establishes



specific mechanisms for ensuring that those rights and freedoms are respected. But these mechanisms are only as good as the means of enforcement, which traditionally have been the courts. An independent, non-racial, *non-sexist*<sup>64</sup> and representative judiciary would go some way to ensure that the principles in a bill of rights are respected. However, as Elizabeth Sheehy indicates in the Canadian experience, women will lose far more than they will gain when it is the judiciary that is empowered to make decisions. The Canadian experience is very instructive here when we look at the power of the judiciary versus parliament in interpreting sections of the charter of rights and the constitution.

Other instruments that could be put in place to ensure that people have recourse to enforcing their rights exist at a multiplicity of levels: criminal law, administrative laws, human rights commissions, an office of a commissioner of justice or ombudsperson, community courts, industrial courts, family courts, pay equity commissions, constitutional courts, sexual harassment commissions of inquiry, labour relations boards, workers' compensation tribunals, social assistance or welfare review tribunals, maintenance courts, and so on. These would provide a forum for complaints, a mechanism for enforcing the rights of an individual, and application of remedies for redressing wrongful or discriminatory treatment.

Affirmative action mechanisms will provide one essential mechanism for achieving some of the redress that is demanded, both in terms of race and gender. Political power was the sub-text of the Lawyers for Human Rights conference. Formal equality is worth little if it is not supplemented by affirmative action that will help to destroy the structures and behaviour patterns created by centuries of gender oppression, of discrimination against women.<sup>65</sup> This is a crucial indication of what we want to do: 'put flesh on the constitutional skeleton', as Bience Gawanas puts it in the Namibian context.

At the LHR conference, there were several calls to hold a separate workshop or conference on affirmative action. But the point, precisely, is that affirmative action needs to be examined in each and every issue. It cannot be compartmentalised or ghettoised. This was clearly recognised by the resolution that was passed during the last session: 'This conference proposes that all delegations engaged in negotiations on the future constitution of South Africa should be composed of equal numbers of men and women.'<sup>66</sup>

## Conclusion

All proposals for change need to be combined with a radical and aggressive re-education process; to give women confidence, to empower

women to demand their rights and to re-educate the men – from the legislators to the judges to our companions, co-workers and comrades. We have to be constantly vigilant to ensure that our past will not set limits on what is possible for our future.

Our primary goal will be to develop policies and mechanisms to eradicate systemic discrimination and gender oppression *before* we build the new South Africa. We need to ensure that we build strong, independent, autonomous organisations to represent the needs and demands of women. This must be integral to the democratic process: the negotiations for the terms of the transfer of power, the election procedure itself, and participation in all levels of government and state organs.<sup>67</sup>

'The ultimate test of feminist politics is the extent to which it can provide women with the skills to challenge a male vision of the world, and provide an alternative to that vision.'<sup>68</sup> Part of the challenge that we face in South Africa is that this vision will not be the same for all women: we have to find commonalities in both our language and our vision, so that we can work together to transform the nature of South African society.

Finally, there are two essential aspects to working in a feminist context that must be stated here, and I cannot stress them enough. These are, quite simply, affirmative action and networking. Affirmative action should be the basis of how we work as feminists in South Africa. This means that we have to re-define what we consider academia to be. Those of us who are privileged enough to have the skills to do research, to write, to speak at conferences, have to share those skills, and provide opportunities and the sharing of resources, with others. Privatisation of resources appears to go hand in hand with academia. We need to overcome this by networking, which allows us not only to learn from women throughout the world, and the Southern African region, but also, and more importantly, from each other. Part of redefining what we need to try to overcome through affirmative action translates into very practical realities like access, language, financial resources, priorities of research, skill sharing, and so on. There never will be such a creature as 'unified feminism',<sup>69</sup> nor is that the goal. But what feminism should mean, in theory and in practice, is that we share our resources and our skills, and we learn from each other.

While this should hold true for all aspects of academic endeavours in the future South Africa, here quite clearly I am focusing on feminism as a methodology.

Bience Gawanas made a very valuable point at the conference when she referred to Namibia's policy of 'national reconciliation'. She said that 'we are going to have to beat each other up first before we can have reconciliation.' My plea is that we address our conflicts, we



54. Elizabeth Gwaunza of the Women and Law in Southern Africa Research Project delivered a paper at the conference on the research into maintenance laws in Zimbabwe. Unfortunately there was not enough space to reproduce her paper in this volume.
55. Armstrong, *Women and Law in Southern Africa*.
56. T Stang-Dahl, 'Taking Women as a Starting Point: Building Women's Law', *International Journal of Sociology of Law*, 14, 1986.
57. See Armstrong (ed), *Women and Law in Southern Africa*, for an explanation of this approach in the Women and Law in Southern Africa Research Project. Also see Mary Maboreke in this volume.
58. United Nations statistics cited in B Roberts, 'Trends in the Production and Enforcement of Female "Dependence"', *Canadian Journal of Women and Law*, 4(1), 1990, pp217-34.
59. S Gavigan, 'Women and Abortion in Canada: What's Law Got to Do With It?' in Luxton and Maroney (eds), *Feminism and Political Economy*. See also Helen Rees in this volume. For a comprehensive history of abortion in South Africa, see H Bradford, 'Herbs, Knives and Plastic: 150 Years of Abortions in South Africa, c. 1840- 1990', paper presented at the *Women and Gender in Southern Africa* conference, 1991.
60. See Mabandla, 'Womens' Rights'.
61. This definition and discussion of a constitution is taken from 'What is a Constitution?', ANC constitutional committee, 1990.
62. *A Bill of Rights for a New South Africa: A Working Document by the ANC Constitutional Committee*, University of the Western Cape: Centre for Development Studies, 1990.
63. These are referred to, in sequence, as first, second and third 'generation' rights.
64. My emphasis.
65. Sachs, 'Judges and Gender'.
66. For a full report of the discussions at the LHR conference, see the report in *Rights: A Lawyers for Human Rights Publication*, 1, February 1991, Lawyers for Human Rights, National Directorate. The same was true of the *Gender Today and Tomorrow* workshop held by the ANC constitutional committee, see 'Women's Rights: A Discussion Document'. At the ANC conference there was a very specific call for the ANC constitutional committee to practice affirmative action by appointing more women to the committee. At present there is only one woman, Brigitte Mabandla, on a committee of 20 people.
67. S Westcott, 'Legitimizing Constitutions: Albie Sachs Conveys the ANC Vision', *Sash*, September 1990, p16.
68. Hassim, 'Where Have All the Women Gone?'.
69. See Desirée Hansson, 'A Patchwork Quilt of Power Relations: A Challenge to South African Feminism', paper delivered at the International Feminist conference on *Women Law and Social Control*, Montreal, Canada, 1991.
70. I want to acknowledge the support, constructive criticism, ideas, discussions and sustenance that I received while writing this introduction from Elizabeth Sheehy, Brigitte Mabandla, Jacklyn Cock, Desirée Hansson, Gcina Mhlope, Colleen Brady, Ann Oosthuizen and Anne Mullins.

# Putting Women on the Agenda

Jacklyn Cock

Neither 'women' nor 'the agenda' are self-evident categories. I think it is important that we talk about 'women' not in isolation but within a system of gender relationships; relationships which privilege men and subordinate women. These relations are differently inscribed in different cultural traditions. Similarly the priorities on the overcrowded agenda of struggle in South Africa are differently ordered by people of differing ideological commitments. I think all of us in debating the place of women in the future can agree on one broad principle to provide a kind of fulcrum around which much of our debates can turn.

That principle is social justice. In simple terms this means that all South Africans should enjoy equality of opportunity. But this should be measured not in terms of access but by outcome. It means that the social composition of our decision-making bodies must reflect the social composition of our population. In other words the race and gender characteristics of our leaders must reflect those of the population at large. This understanding of social justice also implies that the race and gender characteristics of our most prestigious professions, and the graduates of our universities should also reflect those of the population at large. If not, there has been injustice.

I think we can all agree on the importance of this goal though we probably disagree quite sharply on how to define and achieve it. Clearly



24. S Hassim, 'Where Have All the Women Gone? Gender and Politics in South African Debates', paper no 36, *Women and Gender in Southern Africa* conference, 1991.
25. Horn, 'Towards the Emancipation of Women'.
26. This point was made by Elizabeth Sheehy at the ANC constitutional committee meeting 'Gender Today and Tomorrow' and can be found in the recommendations in Mabandla, 'Women's Rights'.
27. L Manicom, 'Ruling Relations: Rethinking State and Gender in South African History', paper no 5, *Women and Gender in Southern Africa* conference, 1991.
28. T Shefer, 'The Gender Agenda: Women's Struggles in the Trade Union Movement', paper no 19, *Women and Gender in Southern Africa* conference, 1991.
29. Manicom, 'Ruling Relations'.
30. A Sachs, 'Judges and Gender: The Constitutional Rights of Women in a Post-Apartheid South Africa', *Agenda*, 7, 1990, p1.
31. K Gough, 'The Origin of the Family', in R Reiter (ed), *Towards an Anthropology of Women*, New York: Monthly Review Press, 1975.
32. Horn, 'Towards the Emancipation of Women'.
33. A Sachs, 'The Constitutional Position of the Family in a Democratic South Africa', *Agenda*, 8, 1990, p40.
34. Sachs, 'The Constitutional Position of the Family'.
35. A Charman, 'A Response to Albie Sachs: What is the Family?', *Agenda*, 8, 1990, pp55-60.
36. J Wells, 'The Rise and Fall of Motherism as a Force in Black Women's Resistance Movements', paper no 39, *Women and Gender in Southern Africa* conference, 1991; Hassim, 'Where Have All the Women Gone?'.
37. H Zille, 'Life in Transition: An interview with Mamphela Ramphele', *Leadership*, 6(5), 1987, pp65-7.
38. Wells, 'The Rise and Fall of Motherism' and J Wells, 'The History of Black Women's Struggle Against Pass Laws in South Africa', unpublished PhD Dissertation, Columbia University, 1982.
39. F Ginwala, in this volume. See also F Ginwala, 'Formulating National Policy Regarding the Emancipation of Women and the Promotion of Women's Development in our Country', paper presented at the Lusaka ANC Workshop on Gender, December 1989.
40. Sachs, 'Judges and Gender', p1.
41. M Barrett, *Women's Oppression Today*, London: Verso, 1983; Z Eisenstein, *Feminism and Sexual Equality*, New York: Monthly Review Press, 1984; S Findlay and M Randall (eds), 'Feminist Perspectives on the Canadian State', *Resources for Feminist Research*, 17(3), Toronto: Ontario Institute for Studies in Education, September 1988; M McIntosh, 'The State and the Oppression of Women', in A Kuhn and A Wolpe (eds), *Feminism and Materialism*, London: Routledge & Kegan Paul, 1978; C MacKinnon, 'Feminism, Marxism, Method and the State: An Agenda for Theory', *Signs*, 7(3), 1982. For South Africa, see Manicom, 'Ruling Relations'; Gender Policy Group, 'State, Gender and Restructuring in South Africa in the 1980s', *Women and Gender in Southern Africa* conference.

42. Gender Policy Group, 'State, Gender and Restructuring'.
43. M Randall, 'Feminism and the State: Questions for Theory and Practice', in Findlay and Randall (eds), 'Feminist Perspectives on the Canadian State'.
44. A Miles, 'Feminism, Equality and Liberation', *Canadian Journal of Women and the Law*, 1(1), 1985.
45. Smart, *Feminism*; Sachs, 'Judges and Gender'.
46. Smart, *Feminism*.
47. P Williams, 'Spirit-Murdering the Messenger: The Discourse of Fingerprinting as the Law's Response to Racism', *University of Miami Law Review*, 42, 1987; also P Williams, 'The Obliging Shell: An Informal Essay on Formal Equality', *Michigan Law Review*, 87, 1989.
48. For various references on this question see: Horn, 'Towards the Emancipation of Women'; A Armstrong (ed), *Women and Law in Southern Africa*, Harare: Zimbabwe Publishing House, 1987; L Mukurasi, *Post Abolished: One Woman's Struggle for Employment Rights in Tanzania*, London: Women's Press, 1990; 'Women and Law', *The Tribune*, New York: International Women's Tribune Centre, United Nations, July 1990; S Urdang, *And Still They Dance: Women, War and the Struggle for Change in Mozambique*, New York: Monthly Review Press, 1989. (Unfortunately the women from Mozambique who were invited to attend the conference were unable to get their visas in time.)
49. Ramphele, quoted in Zille, 'Life in Transition'.
50. Smart, *Feminism*.
51. Williams, 'Spirit-Murdering the Messenger'.
52. Basically, the two main opposing views are that women's differences, for example regarding maternity and reproductive roles and employment opportunities, should allow women to be treated equally, but differently, versus the view that such demands by women to recognise the differences and provide differential treatment will serve to further disadvantage them.
53. Armstrong (ed), *Women and Law in Southern Africa*. See her Introduction for a detailed elaboration of these points in 'Identifying the Problems'. The Women and Law in Southern Africa (WLSA) Research Project is a long term research project into laws that affect women in six countries in Southern Africa. Each country has a national co-ordinator, and the whole project is co-ordinated in Harare by the regional co-ordinator. For articles that have looked at some of the legal issues affecting women in South Africa, see: B Mabandla, 'Women and Law in South Africa', paper presented at the Malibongwe conference; P Andrews, 'The Legal Underpinnings of Gender Oppression in Apartheid South Africa', unpublished paper; J Segar and C White, 'Constructing Gender: Discrimination and the Law in South Africa', *Agenda*, 4, 1989; S Meintjes, 'Ideologies of Female Subjectivity and the Gendered Nature of Legal Practice in South Africa', paper presented at the *Women and Gender in Southern Africa* conference, 1991. See also F Ginwala, M Mackintosh, and D Massey, 'Gender and Economic Policy in a Democratic South Africa' paper presented at *Gender Today and Tomorrow* workshop, forthcoming publication by the Open University, London, 1991.



acknowledge them, and we deal with them openly, honestly and publicly. Liberation, as well as feminism, will mean very different things to different people. In order for us to really understand that, we must make it a priority for all the voices of women not just to be heard, but acknowledged. This is not just our challenge, it is our obligation. It cannot be stated often enough: national liberation struggles do not result automatically in the 'emancipation' of women. We, all of us, must work hand in hand to ensure that the present we are constructing will be the future that we want.<sup>70</sup>

## Notes

1. Alice Walker, *The Temple of My Familiar*, London: The Women's Press, 1989. As a point of interest, Walker coined the term 'womanist' as a way of avoiding identification with 'feminism'.
2. D Paice, 'The Great Men-Daba', *Cosmopolitan*, January 1990. CNA is the Central News Agency; Checkers is a supermarket chain in South Africa.
3. See Appendix 1.
4. Reported in B Mabandla, Dr M Tshabalala, E Sisulu and C Murray, 'Women's Rights: A Discussion Document', University of the Western Cape: Centre for Development Studies, December 1990. This is a full report of the discussion and suggestions for revision and amendment of the ANC proposals for the constitution and bill of rights.
5. For a thorough review of 'women's studies' in South Africa, see I Dubel, 'South African Women's Studies: An Overview and Future Research Priorities', paper presented at *Development Alternatives in Southern Africa*, Uppsala, May 1987. This paper was revised as 'South African Women's Studies Beyond the Legacy of Apartheid', presented at *Women and Gender in Southern Africa* conference, 1991, forthcoming in *Agenda*. For a critique of what is defined as 'academia' from a feminist perspective in South Africa, see S Bazilli, 'Feminist Conferencing', *Agenda*, 9, 1991, p44. See generally entire issue of *Agenda*, 9.
6. I am not going to refer to the various debates over the various ideological positions of feminism, but for a very useful overview, see M Friedman, J Metelerkamp and R Posel, 'What is Feminism?', *Agenda*, 1, 1981, p3.
7. M Luxton and HJ Maroney (eds), *Feminism and Political Economy: Women's Work, Women's Struggles*, Toronto: Methuen, 1987.
8. M O'Brien, *The Politics of Reproduction*, London: Routledge & Kegan Paul, 1981; D Smith, *The Everyday World as Problematic: A Feminist Sociology*, Boston: Northeastern University Press, 1987.
9. C MacKinnon, *Feminism Unmodified*, Harvard: Harvard University Press, 1987.
10. S Rowbotham, *Hidden from History*, London: Pluto Press, 1973 – the first feminist text on this subject, where the phrase comes from. For South African references, see H Bernstein, *For Their Triumphs and for Their*

- Tears*, London: IDAF, 1985; C Walker, *Women and Resistance in South Africa*, London: Onyx Press, 1982; C Walker (ed), *Women and Gender in Southern Africa to 1945*, Cape Town: David Phillip, 1990; papers from *Women and Gender in Southern Africa* conference, Gender Research Group, University of Natal, 1991.
11. C Smart, *Feminism and the Power of Law*, London: Routledge & Kegan Paul, 1989; and 'Law's Power, the Sexed Body, and Feminist Discourse', *Journal of Law and Society*, 17(2), 1990, p194.
  12. D Driver, 'Draft Essay on the Position of Women in the New ANC Constitutional Guidelines, 1990'. Author's unpublished draft.
  13. See E Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought*, London: The Women's Press, 1990, for a challenge of the assumption of homogeneity that underlies much of feminist thinking. See also C Ramazanoglu, *Feminism and the Contradictions of Oppression*, London: Routledge Chapman & Hall, 1989. I am indebted to Desirée Hansson for this reference. See also CT Mohanty (ed), *Third World Women and Feminist Politics*, Bloomington: Indiana University Press, 1991.
  14. E Thornhill, 'Focus on Black Women!', *Canadian Journal of Women and Law*, 1(1), 1985; M Kline, 'Race, Racism and Feminist Legal Theory', *Harvard Women's Law Journal*, 12, Spring 1989; B Ehrenreich, *Fear of Falling: The Inner Life of the Middle Class*, New York: Harper Row, 1990; T Amott and J Mattheai, *Race, Gender and Work: A Multicultural Economic History of Women in the United States*, Boston: South End Press, 1990; G Joseph and J Lewis, *Common Differences: Conflicts in Black and White Feminist Perspectives*, New York: Doubleday, 1981.
  15. A van Niekerk, 'Towards a South African Feminism', paper no 9, *Women and Gender in Southern Africa* conference, 1991. See also S Nene, 'Black Feminism: The Dilemma and the Dialectic', paper no 49, *Women and Gender in Southern Africa* conference.
  16. Van Niekerk, 'Towards a South African Feminism'.
  17. For a review of the debates that arose, specifically at the *Women and Gender in Southern Africa* conference in Durban, see Bazilli, 'Feminist Conferencing'.
  18. C Qunta (ed), *Women in Southern Africa*, London: Allison & Busby Ltd, 1987. See Preface. See also C Obbo, *African Women: Their Struggle for Economic Independence*, London: Zed Press, 1980.
  19. See Ehrenreich, *Feminism and Class Consolidation*.
  20. Qunta, *Women in Southern Africa*.
  21. B Hooks, 'Talking B(l)ack', *Fuse*, 13(4), 1990, p22. See also B Hooks, *Ain't I a Woman: Black Women and Feminism*, Boston: South End Press, 1981; and B Hooks, *Talking Back: Thinking Feminist, Thinking Black*, Toronto: Between the Lines Press, 1989.
  22. B Kgositsile, 'The Woman Question: Are the Chains Breaking?', *African Communist*, First Quarter, 1990, cited in P Horn, 'Towards the Emancipation of Women in a Post-apartheid South Africa' paper no 34, *Women and Gender in Southern Africa* conference, 1991, p27.
  23. Qunta, *Women in Southern Africa*.