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Gender, citizenship and democracy in post-apartheid South Africa

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"Effective democracy implies and requires empowered citizens"[1]

Citizenship has become a fashionable topic for discussion amongst political theorists during the 1990s.[2] This is not surprising, since this is the decade when Europeans have been debating in a single European Parliament a Europe with a single citizenship and a Europe with fluid boundaries. The fragmentation of the Soviet Union has created a plethora of new nation-states, as well as particularist identities which have created a desire for independent citizenship and sovereignty. In this changing context, the certainties about what 'citizenship' entails in terms of rights and obligations, both political and civil, have disappeared.

In South Africa's first democratic election in April 1990, the electorate included all adults over eighteen years of age. Although the rights and obligations of citizens were not specifically debated during the negotiations, the reincorporation of former independent homelands and the extension of the vote to all adults over the age of eighteen implicitly suggested the acceptance of the notion of a universal citizenship. What debate there has been, has focused on 'effective democracy' as a means of creating citizenship.[3] In the immediate period of transition, negotiations were concerned with creating institutional mechanisms, including the Transitional Authority to 'level playing fields' to enable all adults to vote in the first elections.

The broader question of 'effective democracy' has been raised in terms of how to enable greater participation in decision-making processes, and in particular in encouraging citizens to join in the debates about a new Constitution. This raises questions about what is understood by 'effective democracy' and 'empowered citizens'. The concern of this paper is to focus particularly on the relationship between gender, democracy and citizenship. Will the emergence of a new nation state, based on ideas of a unitary citizenship, democratic ideals and the notion of equality, alter women's civil status in any fundamental way?[4]

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[1]African National Congress The Reconstruction and Development Programme Johannesburg, Umanyano Publications, 1994,121.

[2]W.Kymlicka & W.Norman, 'Return of the Citizen: a survey of recent work on citizenship theory' Ethics, 194, 1994, 352-381; D.Heater, Citizenship: the civic ideal in world history, politics and education. London, Longman, 1990

[3]See for instance the issues raised by Johan Degenaar 'Nation-building an example of outdated thinking?' Democracy in Action June/July 1990, 8

[4]In this paper, the relationship between citizenship and nationality is not explored, but it is important to establish at

During the forty years of its rule in South Africa, the National Party Government built a state system comprised of a constellation of economically dependent but constitutionally sovereign sub-nations (the TBVC states). The state also included six semi-autonomous internal 'homeland' territories. All of these authorities were based on 'invented' notions of organic communities with culture, language and race in common. Each was possessed of its own citizenship. 'Apartheid' was based upon a self-definition of competitive ethno-nationalisms presided over by a hegemonic Afrikaner volk. Whilst these are obvious points, less emphasised have been the gender dimensions of these identities.

Even within the differentiated citizenship created by Apartheid, the operation of customary law precluded black women from enjoying equal rights with black men. Black women were defined as secondary citizens, denied certain rights, such as inheritance, and subjected to the authority of the father, the husband or the son. For other women, whether 'coloured', Indian or white, their position, role and power was severely circumscribed and defined in terms of a strong domestic ideology.[5]

The unfolding of a potentially transformative epoch for South Africa gave the traditional foes of ethno-nationalism, forces reflected in two separate strands in the understanding of 'nationhood', a new legitimacy. The African National Congress, the United Democratic Front extra-parliamentary forces and the liberal parliamentary opposition in the past posited universalist principles of freedom and equality in their definitions of democracy and, by implication, in their definition of citizenship. This democratic discourse has, since 1990, ironically been adopted by the National Party. The Pan Africanist Congress and its allies were more concerned to define the nation in terms the 'oppressed races' and to posit a more exclusive and bounded view of who citizens of a new South African state would be. It is not clear how whites would be included as citizens in a dispensation dominated by this perspective.

These differences reflect, in part at least, competing views of nationhood. Afrikaner and Zulu ethno-nationalisms cling tenaciously to a desire for some form of self-determination within a state where regional autonomy and even sovereignty would

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the outset that this relationship is not unproblematic. There is a growing debate on the issue of immigration, which will not be entered into here. A recent paper deals with this question - Maxine Rietzes, 'Insiders and outsiders: a reconstruction of citizenship in South Africa' Policy: Issues and Actors, Vol 8 no 1, 1995. (Social Policy Series, Centre for Policy Studies).

[5]For a useful account of the effects of a 'polarized ideology of gender roles' see Jacklyn Cock, Colonels and Cadres: was and gender in South Africa. Oxford, Oxford University Press, 1991, Chapter 2.

be assured. The other view of a more inclusive membership of a politically unified and reconstituted South African nation and state resting on universal principles of equality and justice prevails amongst apparently stronger forces of the ANC and the so-called 'New National Party'. It is this convergence which makes possible the existence of the Government of National Unity (GNU).

The diversity of perspectives about who comprises 'the nation' reflects the complexity of the effects of South Africa's colonial, segregationist and apartheid past. Indeed, just how deeply apartheid creations of ethno-nationalism have affected identities is evidenced in the bitter conflict in Natal-Kwa-Zulu over regional government powers, and in the stridency of some Afrikaner demands for a volkstaat. In this context, the notion of citizenship will need to transcend the idea of the 'nation', since this has divisive and conflicting meanings in South Africa. Two assumptions are generally made in discussions involving citizenship and democracy. One is that procedural issues involve the criteria of political equality, effective participation, 'enlightened understanding' and contingent qualification of competence.[6] Whether these are adequate criteria depends on how they are conceived in substantive terms. This relates to the second assumption, that substantive issues include who decides, and what normative ideas motivate decisions. The implications for the nature of women's citizenship requires examining how these assumptions are affected by gender relations.

In western liberal democracies existing formal notions of equal citizenship, which include the vote and the enjoyment of basic human rights, have not always provided effective equality for women. Since the eighteenth century in Western Europe, women have pointed to the limits of formal equality. Subtle social and political disabilities have operated to privilege men over women.[7] In South Africa, colonialism, segregation and apartheid basically created a racially exclusive citizenship, with a second tier of citizenship reflecting the exclusions based on ethnicity and gender. Customary law in fact excluded women from any definition of citizenship by designating them as minors.

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[6]See Robert A Dahl 'Procedural Democracy', in Philosophy, Politics and Society Fifth Series, ed. by P.Laslett & J.Fishkin, Oxford, Blackwell, 1979, Chapter 6.

[7]see Diana Coole Women in Political Theory: from ancient misogyny to contemporary feminism Brighton, Harvester Wheatsheaf, 1988; Anne Phillips (ed), Feminism and Equality Oxford, Blackwell, 1989; Anne Phillips Engendering Democracy Cambridge, Polity, 1991; Anne Phillips Democracy and Difference Pennsylvania, Pennsylvania State University Press, 1993; Mary Wollstonecraft Vindication of the Rights of Women Harmondsworth, Penguin, 1975 (first published in 1792); Iris Marion Young, 'Polity and Group Difference: a critique of the ideal of universal citizenship' Ethics 99, 1989, 250-274;

But black women have not been mere victims of a system of oppression and subordination, and have continually acted to draw attention to their disabilities. Women have been involved in the popular struggles and popular movements which created conditions of ungovernability in South Africa in the late 1980s. The process of negotiations during the period 1992 through 1993 was punctuated by political competition, brinkmanship, mass action and popular struggles in townships, factories and rural areas. Some of these struggles are pertinent to this discussion, in that the demands that were being expressed through protest action related to how people themselves conceived of their rights as citizens. Particularly interesting was the manner in which women participated in the politics of popular struggle at different moments. They are interesting not only for the form they took, but also because the concerns which were foregrounded were those of every-day life and basic needs.

During 1990, and in the years that followed before the negotiated settlement and the 1994 election, women engaged in a series of collective actions which asserted a range of social and human rights claims. Land invasions and squatter demands for housing related to a belief in the social right to shelter and security of tenure. Women have also engaged in community boycotts of rents and service payments, declaring a belief in the right to fair exchange of tax and rent for service. During the 1980s, women were active in asserting the rights of detained family members and in opposing military conscription. Marches against sexual violence in September 1993 and a national campaign on violence against women organised in early 1994 by People Opposing Woman Abuse and other organisation across the country, proclaimed women's fundamental belief in freedom from sexual abuse.

Temma Kaplan[8] has suggested the notion of 'cultural citizenship' to identify these kinds of claims - claims which 'sometimes proclaim their differences from the dominant society, but also demand justice'. She suggests that what these activists are after is more than 'equal access to goods and services a state can provide', but also 'means a reordering and restructuring of politics iself, one in line with their own life experiences'. Collective action around particular issues established a claim for recognition of what was perceived as a social right, a right of citizens. A fascinating example of this kind of collective action is the Dobsonville Women's Squatter protest which took place in the early weeks of freezing July 1990.[9]

Drawing attention to their homelessness, a group of sixty

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[8]Temma Kaplan 'Gendered citizenship among grass-roots women activists' History Workshop : Democracy, Popular Precedents, Practice, Culture. July 1994, 2

[9]see my paper 'The Women's Naked Protest, Dobsonville 1990: Gender Consciousness and the Body Politic' History Workshop: Democracy, Popular Precedents, Practice Culture. July 1994

squatters, many of them women heads of households, set up their shacks between Dobsonville Extension One and Two, a neat middle class area. This was part of a strategy designed to force the urban council and Transvaal Provincial Administration to provide them with permanent housing sites. When the municipal and South African Police were sent in, with due warning, to bulldoze their shacks, the women had prepared a strategy which was calculated to focus on their plight as women in an oppressive patriarchal society. The events which unfolded were performed before the world press, including television and print media. When the police arrived, many of the women stripped off their clothes.

This demonstration provided a stark symbol of how women's status was defined: through their sexuality. It signalled their civic exclusion on the basis of their sexual identity, it confirmed what has been called the 'sexual contract'[10] which defines women's citizenship as secondary, based particularly on their reproductive role. Nakedness is also symbolic of madness, as women constantly remarked in their interviews. Thus their action was an expression of rage at the pollution and destruction of their lives by the state. Their outrage was expressed in the most angry, powerful and humiliating means at their disposal, given that violence was not an option. What drove the women into this extreme form of action was the absolute necessity for a secure place to live in order for their and their children's survivial.

When the police came, the women sang, ululated and insulted them. The presence of the press was particularly important, giving the deeply serious protest an air of theatre and spectacle.[11] The nakedness of the women revealed their vulnerability as the bulldozers, waved on by armed police, forced its way through the women to destroy their shacks. The women's action revealed too the moral illegitimacy of the state. The women were claiming a stake in the defining of citizenship, and in pointing to its gendered nature. It is significant that the women were granted land in a new site and service settlement created for the purpose the following year. This did not lead to the integration of a new citizenry, but it did forecast that future citizenship claims of women would be based upon their every-day experience and needs.

Critics have pointed to the limits of formal rights for the enjoyment of equality,[12] and have shown that large categories of people are excluded from material and political benefits even in

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[10]This term comes from Carole Pateman The Sexual Contract Cambridge, Polity, 1988

[11]See uku Hamba Ze - To Walk Naked A Documentary by Jacqueline Maingard, Sheila Meintjes and Heather Thompson, Johannesburg, 1995.

[12]I am here simply distinguishing the idea of 'formal' equality, which may not necessarily reflect social equality between people subject to the law, and substantive equality, which pre-supposes a consideration of such social disadvantages

western democracies. In these societies, the legal subject and the citizen are construed in abstract, universal terms, divorced from any historical or social context. The fact that women, or gays or blacks, may be excluded from job opportunities or from education may limit their potential to engage in public affairs, for instance. At least two democratic procedural issues, effective participation and 'enlightened understanding', are contingent on access to education and job opportunities. In this context, progressive legal theorists have sought to widen the interpretation of justice and equality, particularly in relation to race and class. Feminist legal theorists have argued that this still does not challenge the fundamental problem of androcentrism. In their view, it is only by adopting a theory which recognizes gender difference and challenges legal equality theory with its accompanying paradigms, such as sameness of treatment, that any progress will be made in altering the status quo.[13]

Critical conceptions of the role women can play in the democratic processes have in many respects been dominated by the view that women have a particular contribution to bring to the process with their feminine nature, servicing the nation as nurturers, whether as lovers, wives or mothers. This view neither questions the conventional notions of women's essentialism, nor offers a real alternative to the roles that women have been socially constructed to play in society. It does not take us beyond the vision supplied by Wollestonecraft in the late eighteenth century, and J.S.Mill in the nineteenth, that society would be qualitatively enriched for educating its women and offering them a role in the public sphere as educators of their children and as intelligent wives. It perpetuates the myth that the public realm is a hard, nasty and brutish reality, to paraphrase Hobbes, which constructs men into specific roles, as warriors, protectors, providers and decision-makers. Separate from the public realm of politics, discourse and action, is the private realm of reproduction and nurture, which needs to be protected from the depredations of the public realm.

This essentialist perspective has been criticised by feminists across the ideological spectrum. To construct women as possessing quite distinctive and essential natures has led to women being treated differently from men in civil society. Feminists have pointed out that inequality has been one of the effects. Thus for some feminists, the ideal is a universal but gender neutral form of citizenship, which drains definitions in the public sphere of their androcentrism.[14] Others take the opposite view, and argue the facts of sex, class, colour, age and religion need to be acknowledged for a real equality of citizenship to develop.

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[13]Martha L. Fineman 'Challenging law, establishing differences: the future of feminist legal scholarship' Florida Law Review vol 42,1, 1990, 25-43

[14]Susan Okin Justice, Gender, and the Family New York, Basic Books, 1989.

Subjecting Hobbes, Locke, Rousseau, and other social contract and liberal theorists to a gendered analysis, feminists have shown that the abstract individual is in fact a male subject. The public domain is a male one. The norm, then, is not neutral as liberalism would have it, but male.[15] It is in this context that feminist writers from the eighteenth to the twentieth centuries have argued that liberal democracy cannot fully protect the human rights of women or provide them with effective equality of citizenship.

Formal rights to equality such as the vote, widening occupational opportunities for women, and the removal of bars to women holding property have neither produced effective equality nor led to the emancipation of women from oppression and subordination in those parts of the world where these changes have occurred.[16] Discrimination, sexual harassment and sexual violence have limited women's human freedom. If the new democratic dispensation simply adopts procedural and conventional liberal constitutional, legal and political forms which underpin western systems of government, an effective democracy which includes the participation on an equal basis of all its citizens will elude South Africa. The citizens of a merely formal democracy would be considered equal before the law, and would enjoy the vote. But unless these rights are accompanied by access to property, educational institutions, and employment opportunities empowered citizenship will remain a dream of the ANCs RDP.

The danger of establishing a universal abstract citizenship is that if it does not address the issues of social convention, it will continue to centre the male subject. In developing a citizenship for South Africa which redresses past race, gender and class discrimination, we need to understand two constructions of gender difference. The first derives from the western tradition which effectively created a 'secondary' citizenship for women based on their private role. The second derives from the codification of African customary law, which actually defined women as minors, subject to the authority of fathers and husbands or senior fraternal males or even sons. At its simplest, these conceptualisations made it possible to justify the differential

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[15]Diana Coole Women in Political Theory 1988; Jean Bethke Elshtain Public Man, Private Woman: women in social and political thought, Princeton, Princeton University Press, 1981; Carole Pateman The Disorder of Women: democracy, feminism and political theory Cambridge, Polity, 1989; Carole Pateman The Sexual Contract Cambridge, Polity, 1988;

[16]Anne Phillips in Feminism and Equality (1987, 1) provides useful definitions of oppression and subordination. Oppression is "a sense of the weight pressing down on women...a complex of ideological political and economic forces that combine to keep women in their place". Subordination suggests "identifying the agents in the process. Women don't just happen to have less than men; they are actively subordinated by the holders of power".

treatment and civil status on the basis of race, gender and other characteristics.

Two possible ways of accommodating women as equal citizens present themselves. The one, is to provide mechanisms for women to be fairly represented in public life. The ANC adopted an informal gender quota system in drawing up its list of Parliamentary candidates. This dramatically increased the proportion of women in Parliament. At present, 101 out of 400 members, 25%, of the National Assembly are women, compared to 2.8% in 1985. The second is to rethink the public/private dichotomy and relationships which form the basis of our legal system. The reordering of roles and responsibilities in private and every-day life are particularly pertinent, since these determine how women can participate in civil life. The authority granted to men over women in customary law would have to be formally changed. At present, the chapter on 'Fundamental Rights' in the interim Constitution deals with relationships between citizens and the state, but does not provide for cases between individuals in civil society - horizontal relationships. The recasting of the public/private dichotomy would at least clear the way for developing a theory and practice which takes gender difference and women's heterogeneity into account.

The ideal situation would be one in which parenting, household and employment would not be bound by gender convention, but by individual preference in an environment that operated in such a way as to alter conventional roles and responsibilities. Although this expresses a somewhat utopian vision of social change, progress in achieving full equality and greater political participation would be made if legal and political norms were reconceptualised. The key objective is to redress the diverse inequalities and disadvantages of women from different class, race and cultural backgrounds. The starting point for addressing these inequalities and disadvantages has to be in terms of women's own experiences. These will be as diverse as their class, racial linguistic, cultural and spatial differences. In practice such an approach yields multiple versions of women's experience and needs. For equality to be effective, it will need to account for all these realities. How can this be done in terms of general principles, which is how the law and constitution-making present themselves?

Most writers have commented on the need to address two questions in theorising a South African theory of equality - first, should women be treated the same as men, and second should the law recognise and accommodate the differences between men and women?[17] A third question, often neglected in the focus on the gender questions, is that of the differences between women themselves, particularly differences of race. The need to recognise these differences is highlighted by American black academic, Kimberle Crenshaw. She points to the complexity of the issues once black women become the centre of analysis. Race and

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[17] Albertyn, Cathy, 1992, 10-11

gender cannot be treated as mutually exclusive categories, they intersect in particular ways to disadvantage, and even render invisible, black women.[18] However, a fourth factor tends to be neglected with this new emphasis on differnec, and that is class. This particularly pertinent in addressing disadvantage in race terms, and is likely to be ignored as a new black middle class becomes the only beneficiaries of affirmative action policies.

Feminist theorists, as we have shown, are not agreed on how to establish effective equality. Susan Okin suggests that to emphasise sexual difference might have detrimental consequences for women. Instead, liberal theory needs to be properly universalised. Thus, to reflect on the first question, the 'male-centred' individual needs to be reconceptualised in gender-neutral terms related to standards of justice. This view suggests that this would enable difference to be encompassed, and allow for amelioration of social disability and disadvantage, particularly with respect to relations in the family. This unitary model of citizenship is contested by some who argue that the notion of equality leads to a denial of the varied nature of class, race and gender differences in society and a denial of disadvantage in general.

Although these four questions pose fundamental problems for existing jurisprudence and political theory, the first question could possibly be accommodated within existing norms which presuppose some neutral or universal standard of judgement. Thus, if women do experience some disabilities which prevent them from achieving equality in terms of this individual, abstract norm, enabling provisions could be provided. Thus equality of opportunity could be matched by affirmative action, for example. And already the issue of providing enabling legislation is being hotly debated in South Africa. There have been reports that the Labour Department is in the process of drafting affirmative action legislation.

However, this approach cannot adequately deal with the second problem, which is that men and women are in fact biologically different. There is no denying that men and women experience social life differently as a result of the social and cultural elaboration of sexual differences. Can the universal norm of equality accommodate this somewhat more complex set of sex and gender differences? The key issue is the interpretation of the the public/private dichotomy in political and legal theory. The problem in this area lies in what liberalism conceives its role to be in the 'private' sphere, particularly in marriage. Principles of justice and equity have to apply to family relationships if effective equality is to be achieved. This poses a fundamental challenge to existing norms, and will no doubt be an arena of bitter political conflict because it challenges cultural and traditional patriarchal controls. During the constitutional negotiations at the World Trade Centre the first salvos in this battle were heard as attempts by

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[18] Crenshawe, Kimberle, 1989, 57

'traditional' leaders to thwart the operation of the Chapter on Fundamental Rights in relation to Customary Law was narrowly defeated by pressure from women's organisations in civil society. Recent reforms in South African legislation have addressed the issue of rape in marriage and women's guardianship rights over children and have established formal equality. From experiences in other countries, however, we know that formal equality does not necessarily lead to the end of discrimination or equal access to resources such as salaries, land, and credit.

The third and fourth questions introduce even greater complexity. In the South African context, where we face the problem of multiple legal and cultural systems, we have to begin with an acknowledgement of diversity. Women are not a heterogeneous group, and their lives are conditioned by different class, race and gender experiences. This is the context in which equality and rights need to be conceived. Political and sociological analysis have always recognised the cross-cutting nature of class and race in South Africa, but have had little to say about gender relations. Apartheid has clearly advantaged whites of all classes, but it has also not precluded class formation amongst the dominated groups. What is missing from these analyses is an understanding of the gendered nature of these processes.

From the legal and constitutional point of view, how does one make the diversity of South African women's claims, and, indeed, claims of the disadvantaged in general, central to the rights and obligations of citizenship? Citizenship emphasises shared rights and obligations. Citizenship as an idea transcends the very differences we have been speaking about. Difference is indeed the 'joker in the citizenship pack' as Stuart Hall and David Held have been quoted as saying.[19] It is here that the relationship between these citizenship rights and effective democracy becomes pertinent. 'Effective' democracy can only exist when individuals, as citizens meet in political activity as equals. In this sense, a citizen should enjoy the same human rights as every other citizen. The issue, then, is do men and women share human rights equally? Feminists argue that they do not, precisely because of the way in which gender has structured the lives of men and women. Even if we all agree that there are no such things as 'women's rights', but only human rights, the fact is, that women are very often deprived of their human rights because of the way in which they are subordinated in marriage, or in religion, or in cultural practices. This prevents women from enjoying their rights as equal citizens.

Human rights are fundamental rights which include the right to life, equality, integrity, security and privacy. Because of the diverse life circumstances of women from different backgrounds, access to these rights are not uniform. For 'human rights' to have meaning for the diversity of women, their different needs have to be acknowledged. We need to identify what prevents different categories of women from sharing equally with men their

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[19]Quoted in Anne Phillips Democracy & Difference (1993, 80)

human rights. Even having done so, solutions will not rest in providing a suitable legal framework. Rights claims exist within and are dependent upon a web of power relationships in the public and private realms.

So when we come to give a gendered content to human rights claims, the issue of difference and diversity of experience will be central, but we need too to be fully cognisant of how these are elaborated in terms of power relationships as well. Simply creating women as equal subjects before the law, although a step forward, will not resolve the problem of transformation. A dynamic and transformative approach, which moves away from the dualism which separates public and private responsibilities may be the way forward. This will be highly contested, as we have already seen in the multi-party negotiations over the status of customary law. Furthermore, an approach which takes as its starting point not abstract rights, but the real conditions of women's lives is needed.

There are no easy answers to the questions posed - instead, I think that we need to acknowledge that we face a number of choices in the route that will take women's problems, in all their diversity, forward. A strategic approach is needed, where women themselves work out what choices they need to make and where some struggles are won whilst others may be lost. A start was made during the negotiations period, when a very broad-based coalition was formed specifically to address these issues. The Women's National Coalition (WNC) comprised a great diversity of national women's organisations, women from political parties, the Churches, professional, trade union and other organisations.

The opportunity for women to participate in the process of Constitution-making was put on the agenda by this Coalition when it was first launched in 1992. The WNCs project was to consult women from all sectors of society, from all regions, to establish what their needs were, how they would like their lives changed and what they could do about it. Because many women found it difficult to understand how their personal lives could possibly have any bearing on so remote a process as writing a Constitution for the governing of the country, the campaign of the WNC approached Constitutional needs from the perspective of the need for effective equality in relation to women's own experiences.

The research undertaken by the WNC identified a wide range of women's problems and aspirations. The participatory method of researach enabled women to decide for themselves what issues relevant to their lives to put on the agenda of change. The results of the research emanating from the participatory and consultative campaign provided an alarming picture of women's subordination and oppression in South African society. A Draft Charter for Women's Effective Equality was released in February 1994, circulated for comment, and finally adopted in June 1994. The Charter spells out, in twelve articles, those areas of experience which prevent women from claiming their human

rights.[20] The Women's Charter provides a gendered content to what is meant by 'rights'.

The Charter uses the term 'equality' to define its objectives. There are of course a number of problems in using this concept. The one is that if the term is narrowly conceived of as equality of opportunity, then the fact that there are socio-economic differentials which prevent individuals from taking advantage of opportunities can easily be overlooked and ignored. Thus, for example, disadvantaged communities, which often include a majority of women, might remain disadvantaged. However, if equality is interpreted in a broader sense of equality of outcome, then socio-economic differentials could be addressed. The question is, though, how can this practically be translated into reality?

The Constitution will not be able to deal with the whole gamut of discriminatory practices that exist - these are embedded in social norms as much as in the law and in policy. The Constitution can only enunciate principles which make discrimination and sexual inequality unconstitutional. To get there, the Constitution will be supported by the Bill of Rights and the Constitutional court and would allow discriminatory laws and practices to be challenged in court. This is where the Charter could serve an important function as a guide to the legislature and the courts. The Charter has already been handed to the President and the Premiers in the regions, but apart from these symbolic acts, it has received no formal legal recognition. The document which has been signed, but not yet adopted, by the new government, though, is the United Nations Convention on the Elimination of Discrimination against Women. This provides the Constitutional Court with international guidelines about the conditions which prevent women from enjoying their human rights.

Apart from the Constitutional Court, there will be a body to act as an ombud to make sure that the rightless can in fact begin to enjoy their rights. This is the Human Rights Commission. The poor and the subordinated have access to the HRC, but it is unclear how far they will be able find resources to enable them begin to challenge their lack of rights. The composition of the HRC gives some cause for concern, for individual appointments have been made so as to reflect different political interests, but it is not clear how far these people will have the expertise and the will to consider the vital issues of human rights in this society in all their complexity.

The Interim Constitution makes provision for the establishment of a Gender Commission. A year after the elections, legislation setting up this body has still to be drafted. The problem with this structure, however, is that all issues pertaining to women may find their way to the Gender Commission, when they could

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[20]The Women's Charter for Effective Equality was adopted by the WNC in June 1994, and subsequently handed to the President, Mr Nelson Mandela and Regional Premiers on 9th August 1994.

equally easily be dealt with in the Human Rights Commission, for example. There is a need to ensure that women's issues do not simply become marginalised. In a new government of national unity, it will be important for a variety of structures be put in place to ensure that gender issues are equitably addressed. There have been suggestions that a Women's Ministry be set up. This faces the same problems as a Gender Commission. More creative may the establishment of 'gender desks' within each ministry at national and regional levels to assess the implications of legislation and policy on women. Ideas about appropriate institutions, and their potential benefits and limitations, need to be put into the national debate on the Constitution.

The public/private dichotomy, which is at the basis of much of women's disadvantage and oppression, has ruled many issues at the heart of women's problems to be outside the public domain and so outside of most, if not all, Constitutions. However, unless the experiences of women are dealt with politically, legally and in theory, there is every danger that the process of building a democratic society and an empowered citizenship will be incomplete and probably founder.