

The Human Rights Commission
The Ecumenical Centre
20 St Andrews Street
Durban
4001

The Chairman
Technical Committee
on the Bill of Fundamental
Rights.
World Trade Centre
P /Bag 878
Pretoria

To whom it may concern,
re: the retention of customary law in the new Bill of
Rights

It is with deep concern that the Human Rights Commission (Natal office) notes the inclusion of customary law into the new Bill of Rights. How can a new South Africa, a South Africa which should be embracing modernity seek to retain these elements of the past? How can a new South Africa which promises democracy at the same time exclude women from a full participation in this process?

It is crucial that the Bill of Rights should have the power to transcend customary law, in order that the fundamental rights of all human beings be respected. The Universal Declaration on Human Rights is the best available guide as yet for the protection of human rights. It is a feeble excuse to say that human rights are western inventions that deny the values and norms of other cultures. In our opinion this is a guise used to prevent the implementation of a culture of human rights- and is often used by males to keep women trapped in outdated and oppressive situations. There can be no liberation if women are treated as minors and not accorded equal status.

What is sought then is a balance: let us have a Bill of Rights based on the Universal Declaration which accords both genders the fullest human rights; but let us not at the same time ignore the relevance of customary law for certain people. We cannot impose an iron decree getting rid of customary law all together. But the Bill of Rights should transcend it in order that women may have the choice whether to opt for the old law or the new.

Yours sincerely,

Sarah Kay Kearney
Linda McLean