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14 September 1992

Dene Smuts MP
House of Assembly
Parliament Street
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Dear Dene

Sorry to have taken so long to respond, but all the issues are still with us! I have jotted down a few random comments (I find the paper has a whole positive and well-presented).

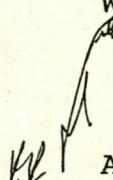
1. There is nothing on stereotyping in the media.
2. You duck the issue of pornography. Shouldn't you raise it and present the two conflicting viewpoints, namely freedom of expression vs the right not to be subjected to degradation.
3. You say nothing about patriarchy and sexism inside the DP. My casual observations are that the situation is rather worse than in the ANC, where it is lamentable enough.
4. When I was in Norway not too long ago, I discovered that they had gone over to using the word "ombud". Since Norway is the country that invented the term I think we can follow their example (rather than ombudsperson).
5. Sooner or later the question of abortion will have to be dealt with. My own view is that there must be extensive democratic debate outside of the current constitutional debate i.e. that the abortion question should not be used to divide people on the question of political rights. One hopes that the DP will, consistent with its general philosophy of libertarianism, support the right to choice while acknowledging the pluralism of views on the subject and the rights of conscience of those who oppose abortion.

6. You say nothing about flexi-hours, either as a practice or as a right. In the U.K. many qualified women with skills that the country needs have been attracted back into teaching, medicine, business, etc by the introduction of flexi-hours that enable them to give the attention that they wish to their homes as well as to their paid work.
7. Do you have any views on "women's work" being calculated as part of the national income and the implications that flow from that?

Finally, you envisage the ombud as the key figure in relation to enforcement. Our view was that the ombud should really be a watch-dog on government and that a human rights commission be established to provide remedies for persons who are discriminated against on grounds of race, gender or disability. This commission could then have a section specifically designed to deal with various forms of gender oppression. It would not only receive cases on discrimination in employment, housing and so on, but also do research, make representations to government and educate the public.

Final, final point. We are trying to find ways and means of strengthening the constitutional position of civil society. This could be of special interest to the women's movement which would wish to retain its autonomy and right to criticise while working with the government and institutions of state. We envisage a right to be heard in relation to all matters affecting the interests of different sectors of the community. This could be tied in with a statutory need to do gender-impact enquiries in relation to any legislation or government action.

With best wishes.

 ALBIE SACHS

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PARLEMENT VAN DIE REPUBLIEK
VAN SUID-AFRIKA

Dear Albie

As promised. I am
circulating this for comment
and would be delighted
to receive yours.

Kind regards
Done

DISCUSSION DOCUMENT ON WOMEN'S STATUS
PREPARED BY MS DENE SMUTS MP AND
MRS. CAROLE CHARLEWOOD MP

INTRODUCTION

The Democratic Party believes that inequalities in the status of women in South African society must be addressed during transition, in the Constitution and in the structures of a new government. This paper contains a summary of proposals followed by discussion in greater depth.

SUMMARY OF PROPOSALS

A. DURING TRANSITION

A Transitional Commission on Women's Status, consisting of women, and advising the Council of Leaders and the Cabinet Committees envisaged in the DP's transitional policy; as well as the All Party / Multi Party Conference, where women will be under-represented.

B. THE CONSTITUTION

1. A Women's Charter to be contained in the Statement of Socio-economic and cultural obligations of Government to the extent that matters dealt with therein are not covered by the Bill of Civil Rights itself; and serving to guide the courts, the executive and legislature, particularly in the fields of:-
 - 1.1 family law, where the equal legal rights and equal protection under the law of husbands and wives must be enshrined;
 - 1.2 special protection relating to the reproductive role and physical safety of women, including rights related to employment.
2. An Affirmative Clause permitting temporary measures designed to accelerate the correction of the unequal status of men and women, but expressly stating that such measures shall cease when the objective is attained. Affirmative Action legislation based on reporting and monitoring mechanisms is recommended to encourage employers to institute female advancement programmes.

C. IN GOVERNMENT

Because the enshrinement of constitutional principles does not ensure either adherence to non-discrimination in society nor the implementation of ameliorative programmes permitted by non-mandatory affirmative clauses, the DP proposes:-

1. An ombudperson's office empowered and mandated to investigate and act upon all equal opportunities complaints including gender discrimination, and to analyse annual reports required under affirmative action legislation.
2. Women's desks in government departments, responsible for:-
 - 2.1 Policy proposals, statements attached to all Bills analysing their impact on women, and audits of female employment and advancement practices in the department.
3. Signatory status for South Africa, as opposed to ratification only of the UN Convention on the Elimination of all forms of Discrimination against Women (refer DP Congress resolution, 1990). States parties undertake to give effect in law to the obligations to condemn and eliminate discrimination. The Convention allows for progressive implementation.

A. TRANSITION

The Problem of Political Representation

Black and white South Africans will soon sit down in an All Party / Multi-Party conference (APC/MPC) to negotiate the future for black and white.

But males will create the new order for both males and females because women are poorly represented in the senior echelons from which political organisations will draw their negotiators.

The under-representation of women at leadership level in both Parliamentary and extra-Parliamentary parties is the result of historic systemic, structural and social discrimination. It is a reflection of the unequal status of women in society at large. This should be redressed during negotiations.

The question of quotas arises in this context. The DP believes that problems attendant on charges of tokenism could result, and do the cause of women more harm than good. Quotas or goals are often inevitable in implementing affirmative action, but work most beneficially where they serve as

long-term guides in instituting advancement programmes. However, it may be argued that this historic opportunity should be used to correct female under-representation. The APC/MPC, in laying down rules of procedure, could consider enlarging the representation of all participating parties to include females.

The minimum mechanism to ensure female participation in negotiations is a transitional commission on women's status, consisting of women only, and advising the APC/MPC on women's status in society. The Commission could similarly advise transitional government structures.

The purpose of a Commission on women's status is to address and eliminate all forms of discrimination in law and practice which impede the exercise by women of their political, civil and economic rights as citizens. What are often called "women's rights" should not be construed to mean rights peculiar to women. What is at issue is access for women to their rights as citizens. The only rights which are peculiar to women relate to their reproductive role and physical vulnerability to violence. These should be addressed by the Commission along with the question of civil rights and the removal of discrimination.

The question of female representation during negotiations has also arisen in the form of a lobby of women's organisations demanding a place at the negotiating table. If negotiations are conducted between political organisations only, the DP believes the transitional commission provides the mechanism the lobby seeks. Should other sectors of society such as the churches and business be given representation, however, the matter must be reconsidered because the women's organisations could convincingly argue that they, too, represent organised interests, as opposed to specific political philosophies and programmes.

B. CONSTITUTIONAL MEASURES

BACKGROUND

The status of women in South African society remains unequal to that of men, despite recent improvements in the fields of civil law and economic activity.

Disparities in status exist within the ranks of women themselves. Rural African women have suffered as a result of the system of migrant labour which has left them in abject poverty and with the sole responsibility for their homes and families. These responsibilities stand in stark contrast to their lack of rights. The system of customary union reduces them to the status of perpetual minors, denying them any rights to legal capacity. At the other end of the continuum,

women married under civil law have achieved near-equal status in marriage and have made dramatic advances in the economy, but continue to suffer discriminatory treatment in practice. The cause across the continuum is the subordination of women, a cultural phenomenon that occurs across racial, religious and economic divisions.

The Democratic Party acknowledges that economic exploitation is partly responsible for the inferior position of women in society. The plight of migrant labourers' wives is a clear and extreme case of systemic economic exploitation. Another example is the disparity in remuneration and benefits found in both the private and public sectors.

A Public Servant's Association report recently calculated that the State "saves" R35000,00 per female employee per year through discrimination.

But the DP believes the materialist analysis loses sight of the fact that gender discrimination is primarily cultural and social, part of a patriarchal pattern of behaviour which has not kept pace with changing roles and conditions. Nor does the DP disagree that black working class women are materially worst off. But discrimination remains discrimination at whatever economic level it is encountered; and injustice is indivisible.

The remedy must lie in addressing the problem at its root, which is a traditional view of the role of women which is incompatible with the doctrine of human rights.

EQUAL RIGHTS AND AFFIRMATIVE ACTION

"Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity," Article 1 of the United Nations Declaration on the Elimination of Discrimination against Women states. It is also incompatible with "...the welfare of the family and society, prevents their participation on equal terms with men in the political, social, economic and cultural life of their countries and is an obstacle to the full development of the potentialities of women in the service of their countries and of humanity".

As South Africa embarks on the transition to a new rights-based political and legal order, the position of women in society should be addressed directly, and in constitutional terms.

The parallels between the subordination of women and blacks are clear. The issue of gender discrimination has until now suffered consistent neglect and even trivialisation in South Africa because it was overshadowed by the evils and effects of racial discrimination. To neglect the one while rectifying

the other would be to deny democracy. This is also an appropriate time - and a unique opportunity - to address gender discrimination because our society now understands how a system of denial of rights and opportunities has preordained the status and position of one physiologically defined sector of our society, blacks, and this same insight can illuminate its perception of another group, women.

Our society has also understood and accepted that historic racial disadvantage cannot be addressed merely by proclaiming equal rights and opportunities.

In the case of women's status a similar realisation has led to gender-specific measures world-wide. The UN Declaration on the Elimination of Discrimination against Women was drafted because the existing charters, Declarations and Covenants on Human Rights did not eradicate discrimination against women. The UN Commission on the Status of Women had to shift its focus over the years from the recognition and acceptance of women's rights to opportunities available to women to exercise those rights, and to the "elimination of the discrepancies between their legal status and the roles they play in practice". The Convention on the Elimination of Discrimination against Women (the acceptance of which is DP policy in terms of a 1990 Congress resolution) instituted reporting and monitoring mechanisms to force States Parties to re-evaluate and rectify disadvantages suffered by women in fields ranging from civil and political rights to education and health.

The Convention embraces the concept of affirmative action as a temporary measure to correct discrimination against women.

Article 4(i) states:

"Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved."

EQUAL RIGHTS AND SPECIAL PROTECTION

1. The Women's Charter

A Women's Charter, to be contained in the Statement of Socio-economic and Cultural Obligations of Government to the extent that matters dealt therein are not covered by the Bill of Civil Rights would serve to guide the courts, the executive and legislature, particularly in the fields of:

- 1.1 family law, where the equal legal rights and protection under the law of husbands and wives must be enshrined; and
- 1.2 special protection relating to the reproductive role and physical safety of women, including rights related to employment.

1.1 FAMILY LAW

The subordinate status of women in society finds its origin in the traditional position of wives within marriage and the family, which was long seen as their only role.

In the late Sixties, it was commonly observed by governments and non-governmental organisations replying to a UN questionnaire drafted by the UN Commission on the Status of Women and endorsed by the Economic and Social Council that "There was a need for women and men to adapt themselves to the characteristics of modern society, for example, to the changing role of the home as a consumer rather than a producer of goods; that there was a growing realisation that the upbringing of children should be a joint responsibility of both parents; that traditional attitudes hampered women from fully utilising their talents and skills".

The halting recognition of the changing role of women described above has been mirrored in South Africa by a piecemeal approach to the modernisation of family law. The marital power of husbands over the person and property of their wives was abolished in 1984 (and in 1988 in the case of black civil marriages). The domicile of dependence, which places married women on a par with insane persons and minor children, is only now the subject of draft legislation due before Parliament in 1992. Other anachronisms remain, however. The superior status of the husband as head of the family or household has little legal force but reinforces, within families and in society at large, the notion that women's rights and duties are inferior, leading to assumptions that their salaries, wages and benefits can be lower than those of the head of a household. This is unjust and also disregards the fact that a significant number of heads of household are female (as many as 42% in a township like Khayelitsha, according to one survey; and 23% overall, according to another).

The consequences of the domicile of dependence are juridical, but they reinforce traditional assumptions that prejudice the opportunities of women in the workplace: it is assumed women cannot relocate.

Fathers are still accorded superior parental status as

guardians, despite the fact that the equal status of spouses was the stated object of the Matrimonial Property Act of 1984, which abolished marital power.

Customary union, in which wives lack all legal status, remains the greatest anachronism of all, and will stand in clear conflict to the rights of individual women under a Bill of Rights. It is true that the law must reflect the changing practices and values of society. Due regard must be paid to the wishes of persons choosing to live under customary or religious marital regimes which inhibit their civil rights. But in establishing what these wishes are, the views of both men and women must be sought. The Law Commission, seeking greater uniformity in the field of family law, has engaged in a process of consultation with officials of TBVC countries and self-governing territories. It reported in 1990 that "the proposals that the customary union be recognised as marriage was welcomed. However, there were reservations concerning the proposal that women should obtain greater capacity with regard to matrimonial property", a conclusion which reflects a male perspective.

In England and all modern Continental systems the equality of spouses and equal parental authority are enshrined in laws, fundamental law, Bills of Rights and amendments to Civil Codes.

That principle should form the point of departure of the Women's Charter. From it will flow family law which recognises women as individuals, and criminal law and procedures relating to violence against women which cease to stint on protection of the individual victim in the interest of "the preservation of the family".

Much unintended injustice has flowed from this concept, and from the respect for the privacy of the family unit which the law has traditionally maintained. The DP believes that the institution of the family is best preserved precisely by recognising the rights of the individuals within it.

1.2 SPECIAL PROTECTIONS

1.2.1 Violence

Women should be entitled to special protection inasmuch as they are physically vulnerable to violence

Their vulnerability to domestic violence - an estimated 1 in 6 women is battered at least once - calls for special policies, procedures and programmes. Among those that have been suggested, and deserve serious consideration are: police powers of immediate arrest on reasonable

suspicion of assault; domestic violence protection orders which would be more accessible and more effective than interdicts or peace orders; a computerised national register of offenders; and local authority-funded shelters for battered women.

Rape within marriage was criminalised in South Africa in 1989, but as an aggravating circumstance in assault, and with the pre-requisite of the consent of the attorney-general for prosecution. The DP believes that the crime of rape in marriage, and in general, needs legal redefinition to recognise the fact that it is not what has been called "normal heterosexual intercourse minus the consent of one party" but a form of violence.

Women are particularly vulnerable to this and other forms of violence in public. South Africa's rape incidence is said to be the highest in the world. Women have a right to protection and should be able to sue the State for failure to provide it. Rape victims should, in view of the present evidential provisions and cautionary rules which result from the problem that this particular crime has to be judged on the word of one person against the word of another, be assured of swift and sympathetic examination and documentation by district surgeons and special interviewing rooms in police stations.

1.2.2 HEALTH

Women are also entitled to special protection in their reproductive capacity. The principle that paid maternity leave does not constitute reverse discrimination is internationally established in the economic sphere.

Women do not have a separate or special claim to socio-economic and developmental resources. The need for health, housing and education must be dealt with as universal needs, although the fact should be noted that illiteracy rates among women are higher than those for men and that improved housing and electrification will ameliorate the dismal quality of life of women who walk for hours each day to collect wood for fuel, quite literally keeping the home fires burning.

In the field of reproductive health, however, women may be argued to have a special claim on State resources, since the survival and well-being of future generations is influenced by their own health.

The World Health Organisation, in targeting the year 2000 as the date by which maternal deaths must have been reduced by half, has identified four requirements to ensure safe motherhood for allwomen:

can help to prevent the killer gastro-enteritis and other diseases. Encouragement of breast feeding must go hand in hand with support services at primary health care clinics and with adequate supplies of potable water for all South Africans.

1.2.3 THE WORKPLACE

The DP proposes a system of obligatory paid maternity leave for a period of three months, with job security in the form of a guarantee of the same position or a post of equal status.

The DP recommends that women who qualify for Unemployment Insurance Fund benefits (45% of salary) should receive between one quarter and one third of salary from their employer in addition to UIF benefits; and that higher-earning women who do not qualify for UIF should receive a minimum of 70% of their normal salary.

It is desirable that breastfeeding mothers be given additional paid breaks during the day where possible. The provisions of ILO Maternity Protection Convention no. 103 of 1919 may serve as a guideline.

2. THE AFFIRMATIVE CLAUSE

An affirmative clause enables Parliament to enact legislation or the executive to implement policies for the advancement of persons who have been disadvantaged by past discriminatory laws or practice, despite the enshrinement in the Bill of Rights of equal rights and opportunities for all. Affirmative action is usually considered acceptable on a temporary basis, and is discontinued once the objective of equality is achieved.

It is in the economic sphere that female advancement by affirmative action is indicated, both to break through hierarchical barriers and to accelerate the breaking down of occupational barriers. The barriers are discriminatory or the product of discriminatory practices and attitudes; and they prevent the economy from developing and drawing on the best available talent by predetermining career paths and levels.*

Recruitment and career guidance could contribute to the breaking of the pattern in the interests both of widening the choices and activities of women and of ameliorating the shortage of high level manpower in South Africa.

Affirmative action legislation can act as a catalyst to improve economic practices and change perceptions whereas suing under anti-discrimination acts and lodging complaints with the ombudsperson (both necessary) have slower effect.

- Social equity, primary health care and sufficient nutrition for girls from infancy to adolescence.
- Available family planning to avoid unwanted or life-risk pregnancies.
- Adequate prenatal care, including nutrition, and trained assistance at the time of delivery.
- Professional obstetrical care when necessary.

These requirements cannot be constitutionalised but should serve as priority government policy goals. This applies especially in the case of family planning, which must be freely available.

Family planning is known to favourably influence the healthy development and well-being of the family generally and to decrease death and disease among infants, young children and mothers by reducing teenage pregnancies, increasing spacing between births, and lowering the number of births in general. The DP suggests that through being able to control their fertility, greater opportunity for participation in social and economic development is available to women. The husband's authorisation should not be required for a woman to receive contraception.

Pregnancy for a girl under the age of 18 carries more risk for both mother and child than in the older woman. The rate of teenage pregnancy in south Africa is more than double the figure in Europe and it is proposed that sex education be included as part of the curriculum in South African schools. At present an estimated 250 000 illegal abortions are performed throughout the country annually. Contraception should be available without parental consent, but with counseling.

Cancer of the cervix is the commonest form of cancer among South African women and has significant mortality if not detected early enough. Early detection by means of cervical cytology (or Pap test) is inexpensive and cost-effective and should be undertaken through an organised selective screening programme concentrating on high-risk categories nationwide. Funding of personnel, laboratory services and computerised follow-up should be the responsibility of the State. Ideally, cervical cytology should be available at primary health care clinics and should be the subject of educational campaigns.

Breastfeeding is a valuable form of prevention of infant mortality (78 per 1000 live births in South Africa) and

The DP believes the Civil Service should be the subject of immediate affirmative action to make it more representative in terms of race and gender of the people it serves. For the rest, the DP proposes Affirmative Action legislation that requires listed companies, government departments and statutory bodies to report annually to the Ombudsperson's office on progress made in removing discriminatory recruitment and employment practices and in instituting training and career advancement programmes in respect of female, black and disabled employees, such reports to include statistical analysis of the numbers of blacks and females employed in all the categories and at all levels represented in the organisation.

The Ombudsperson should make the report and his/her analysis and comment public.

Should such legislation fail to achieve the desired results, legislation based on formal quota requirements and including punitive measures could be considered. The DP however prefers reporting and monitoring procedures on the basis that the key to successful advancement policies is the creation of awareness of future benefits and past inequities. Should stronger legislation be called for, a consultative and conciliatory approach such as that followed in Australia is recommended.

C. GOVERNMENT

Once a constitution is in place, women's status should become the subject of ongoing scrutiny. This may be achieved by a Women's Ministry, but a separate ministry could marginalise the subject of women's status. Women's Desks in every government department would ensure attention to the subject in every field. The Desks should be charged with generating policy and legislative proposals within each Ministry, based on scrutiny of the status of women in the field governed by the relevant department. All Bills from each department are to be accompanied by a female impact analysis. Finally, the Desks would be responsible for compiling annual Affirmative Action reports on the the Department itself for submission to the Ombudsperson's office; and four yearly progress reports for the purpose of reporting to the UN Committee on the Elimination of Discrimination against Women as required by the UN Convention of 1979.

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* FOOTNOTE:-

The percentage of women in the labour force increased from 23% in 1960 to 36,3% in 1985. Over half the female workforce remains in the traditional occupations: housing, teaching, clerical and sales. If 55% of women remain in traditional

fields, the rate of increase of females in certain fields has been dramatic. Between 1980 and 1985 the proportion of women in medicine, dentistry and veterinary science has risen from 8,8% to 14,5% and in law from 8,2% to 11,5%. Black women are fast advancing in college lecturing psychology, sociology, personnel, market research, public relations, library science, as medical auxiliaries and in management.

In South Africa, women hold only 17,4% of managerial, executive and administrative posts overall. The principle of black advancement is widely accepted, but researchers report less enthusiasm for supervisory training and career management programmes for women.

South Africa has only recently formally recognised the working woman: separate taxation was introduced in 1990 and sex discrimination became an unfair labour practice in 1988. (The Civil Service is excluded, however.) Research on female performance at especially the higher levels of the economy until now has accepted and compared women with the male norm, whereas international labour and rights instruments have long recognised not only the principle of equal opportunity and equal remuneration but the benefits of women's contribution and of special measures that acknowledge the situation of working women with family responsibilities, and encourage "public understanding and support for efforts made to meet the special needs of working parents in respect of child-care services and facilities" (Recommendation on Employment - Women with family responsibilities; International Labour Conference, 1965.)

Stereotyping

Porno.

Inside OP

Combud - EOC

Abortion.

Flexi hours

Calculate - domestic
farm

Point: E rts etc.
help women