

WLSC

WOMEN'S LEGAL STATUS COMMITTEE

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March 12 1992

Working Group II
CODESA
P O Box 307
Isando 1600

Dear Colleagues,

The Women's Legal Status Committee submits the enclosed recommendations for a Bill of Rights to be included in a new Constitution for South Africa.

Yours sincerely,

Babette Kabak

pp Babette Kabak,) *BK*
Roberta Johnston) Co conveners
and Executive Committee

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**SUBMISSION ON
A SOUTH AFRICAN BILL OF RIGHTS
OR
INTERIM BILL OF RIGHTS
WITH SPECIFIC REFERENCE TO THE
RIGHTS OF WOMEN
FOR INCLUSION IN THE S.A. CONSTITUTION**

**WOMEN'S LEGAL STATUS COMMITTEE
P O BOX 17051
HILLBROW
2038**

13 MARCH 1991

The Women's Legal Status Committee firmly believes that a Bill of Rights would benefit South Africa materially. The present Constitution does not entrench the Rule of Law nor does it protect the individual with regard to freedom of speech, freedom of movement and residence and freedom of association. Traditionally in South Africa there is no de facto recognition nor, in some cases, de jure recognition of the equality of men and women and a Bill of Rights must provide for the legal recognition and realisation of this principle. A Bill of Rights must eliminate the existing discrimination and give recourse to the courts for redress.

This Committee limits its submission to the specific rights of women, which we are firmly of the opinion should be included in a Bill of Rights.

A BILL OF RIGHTS MUST:

- * Embody the principle of the equality of men and women and by law and other appropriate measures ensure its realization.
- * Eliminate discrimination against women by any person, organisation or enterprise.
- * Protect women in pregnancy and maternity.
- * Establish all appropriate measures to ensure the equality of women with men in marriage and parenthood and in political, social, economic and cultural life, guaranteeing them the exercise of human rights and fundamental freedoms on a basis of equality with men.

MARRIAGE

- a. A woman shall enter into marriage only with her free and full consent and the legal age for marriage must be the same for both sexes.
- b. Within marriage, there must be equality in the legal consequences for men and women and equal parental rights and responsibilities with regard to their children.
- c. Woman married by customary law must have the same rights under the law as their husbands and as women married by civil law.
- d. A woman must have the right to retain her own nationality and to confer it upon her children.

d.(i) cont...

MARRIAGE (continued)

- (i) The Women's Legal Status Committee is aware that the practice in certain groups of arranged marriages even between very young people still exists and should be eliminated.
The statutory age of marriage should be at least eighteen years and be the same for both sexes, as it is generally accepted that anyone below this age is immature and unready for marriage or parenthood. The present marriage age of fifteen for girls is too low.
- (ii) Matrimonial property laws should ensure the equality of man and wife irrespective of the date of the marriage, the marriage regime and the different type of contribution men and women make to marriage.
Hundreds of thousands of women married before 1984 are still subject to the marital power and have neither legal status nor any control over their joint property.
Many other women married out of community of property have, sometimes by virtue of an ante-nuptial contract, no share in the fruits of the marriage.
Parents are equally responsible for the welfare of their children and should enjoy joint guardianship. Neither parent should be prejudiced in the matter of custody
- (iii) Woman married by customary law are subject to many specific legal disabilities. No woman or her children should suffer disadvantage as a result of the marriage regime such as legal minority, disinheritance or illegitimacy.
- (iv) Where parents are of different nationalities children should have the right to dual nationality until they reach majority when the choice should be exercised by the children.
No woman should be deprived of her nationality because of marriage. This is an especially important factor for woman who marry men from the national states.

EMPLOYMENT

- a. To ensure equality in the workplace, women must be considered for employment on the same basis as men and must receive equal pay for work of equal value.
- b. Women must have the same opportunities as men to benefit from pensions, medical benefits, training schemes, housing loans and other in-service benefits.
- c. Married women must have the same rights within employment as single women and men.

(i) The Women's Legal Status Committee finds that, in the work situation, women are often prejudiced in hiring, advancement and retirement.

At present, women governed by Wage Board and Industrial Conciliation Board determinations are entitled only to the same minimum wage as men. This does not ensure equality. Other women have no protection at all against inequality at any level.

(ii) Generally, women are not granted the same benefits as men and their claim to such benefits is often prejudiced by their marital status, particularly in the case of housing loans.

Women are often required to retire some years earlier than men for no good reason. Their life expectancy is greater than that of men and they may wish to continue for economic or other reasons.

(iii) Married women are not treated the same as men and single women. Their career prospects tend to be stultified although their marital status has no bearing whatsoever on their worth as employees.

Employers are mistakenly inclined to believe that a married woman does not warrant training and advancement because maternity and home responsibilities may interfere with her work. A married woman's advancement may thus be pre-empted by her employer's prejudice.

EDUCATION

Access to opportunities for education must be equal for both sexes.

Traditional concepts of the role of men and women as reflected in societal attitudes result in different emphases in education for boys and girls. Certain subjects in the curricula are considered more suitable for boys who are frequently given more opportunities for higher education, bursaries, etc. Girls tend to be channelled into stereotyped roles without regard to their natural talents, abilities and preferences.

ECONOMIC FACILITIES

Economic facilities such as bank accounts, credit cards, loans, mortgages and other financial credits must be extended to women on the same basis as men.

Too often women are refused these economic facilities simply because they are women. Marriage is a further impediment to the granting of these facilities. The status of a woman as to whether married or divorced is often queried and proof demanded, whereas the marital status of a man is not even considered.

GENERAL

1. Legal discussions on important social questions such as the termination of pregnancy must not be taken without the participation of women.

There have been commissions in the past relating specifically to issues of direct concern to women to which only men have been appointed.

2. Penalties for sexual offences must not be weighed in favour of men.

Prostitution is illegal and condemned by society but the male partner is not required to face either prosecution or the stigma of publicity.

NOTE

The Women's Legal Status Committee totally accepts the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

THE WOMEN'S LOBBY

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2 March 1992

The Chairman
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Dear Sir

In the Terms of Reference of Working Group II it is stated that a constitution-making body shall consider its "composition", "legal status", "authority", "method of functioning" and method of "electing the body".

Women form more than half the population of South Africa. The Women's Lobby questions whether the full participation of women in formulating the new Constitution is being seriously addressed. It believes that there are women fully competent to take part in this process.

It is essential that women in sufficient numbers be members of any Constituent Assembly or other constitution-making body - to have the vote is not enough. To have the vote is the last stage in a long process in which women must be involved. Only then can a truly democratic constitution be ensured.

Yours sincerely

PP
Babette Kabak - Chairman

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Doris Ravenhill - Vice Chairman

Hilred Hadassin - Treasurer

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E E Monro - Committee Member