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**SUBMISSION TO CODESA WORKING GROUP 2: WOMEN'S RIGHTS, GENDER EQUALITY AND A FUTURE CONSTITUTION FOR SOUTH AFRICA**

- By some members of the Gender Research Group, University of Natal, Durban (Dr Yvonne Muthien, Dept. of Sociology; Dr Jenny Robinson, Dept. of Geography, Mc Chorryl Walker, Dept. of Sociology). February 28 1992.

**Introduction**

Any future constitution for South Africa has to guarantee gender equality between men and women as a fundamental constitutional principle, as fundamental as the principle of non-racism. Without such a guarantee, the constitution cannot claim to be truly democratic. In accepting this principle, CODESA must also acknowledge the degree to which women in our society are structurally disadvantaged in terms of law, custom and economic power, and hence will find it difficult to realise the full benefits of broad constitutional principles of gender equality without a meaningful programme of affirmative action and popular education.

**'Equality' must acknowledge 'difference'**

In formulating constitutional principles that guarantee gender equality to men and women, CODESA needs to think carefully about what is meant by the 'equality' of men and women. 'Equality' for women should not mean being treated according to an essentially male norm but being accorded full respect, opportunities and value by society. Women and men are different in one crucial sphere, their reproductive capacity. Thus, in underscoring men and women's equality in terms of legal, political, economic and social rights and capacity, women's differences and specific needs must also be fully valued and protected where they exist, crucially with regard to maternity rights, women's control of their own fertility and sexuality, and health requirements. Women's differences must not be regarded as social disabilities and handicaps, requiring special treatment or justifying discriminatory exclusions from full citizenship, but as socially valuable attributes demanding acknowledgement and protection. Thus in a democratic South Africa there has to be state responsibility for ensuring adequate minimum maternity rights for all women.

**Affirmative action for women**

Furthermore, 'equality' involves equalising the socially sanctioned burdens that different groups of people bear. Given the legacy of subordination of women, a programme of affirmative action for women is required in terms of access to education, employment, housing, land etc. Given the way in which gender and race discrimination have combined to oppress black women most severely, such a programme must be directed in the first instance at black women and the most disadvantaged sectors of women within that broad category, but should not ignore the way in which all women have suffered from gender discrimination. (See for

instance Appendix A on gender discrimination in tertiary institutions.) Any affirmative action programme should be for a stipulated period at first, after which it can be reviewed to see to what extent it is still required, rather than laid down for all time.

At the same time, for the foreseeable future, women's current social disabilities and gendered responsibilities will need to be taken into account when formulating policy, and this necessary gender differentiation (in terms of ensuring women's rights) should not be construed as violating the principle of equality between men and women. For instance in the area of employment conditions there have to be provisions ensuring that women who work late shifts are given safe transport home: not because there are inherent biological reasons why women cannot travel alone safely at night and need to be favoured over men, but because of the very real dangers they are exposed to in a violent, highly sexist society.

**Giving women equal value in practice: Enshrining gender equality as a primary right in a bill of rights**

The principle of gender equality has to be a non-negotiable principle in a bill of rights. In a bill of rights 'Women' and 'Gender' must not be regarded as interchangeable terms, while women's rights must be specifically attributed to women not to ambiguous 'persons'.

It is essential that women's human rights are recognised very clearly by the bill of rights as inalienable and that the bill of rights is written in such a way as to make it clear that women's rights to full citizenship take precedence over other, lesser 'group' rights that it recognises.

The three areas where there is most likely to be conflict around the principle of women's rights are 1) the family, especially provisions relating to marriage, guardianship and the right to privacy 2) religion and 'custom' and 3) the 'right to life'. (If the latter is not carefully phrased, it may be used to give constitutional authority to the anti-abortion lobby. The question of abortion rights for women is a controversial one which needs ongoing debate and review, with a legislative capacity to respond to changing attitudes and needs (of women, first and foremost); it must not be put beyond legislative and judicial reach.) The recognition given in a future bill of rights to rights in these areas must not be constructed in such a way as to undermine or negate the rights of women and the principle of gender equality, or have the effect of entrenching present patriarchal values and power in marriage, the family, religion and culture. Here CODESA should take its lead from the UN Convention on the elimination of all forms of discrimination against women. Inter alia, article 2(f) binds signatories to 'take all appropriate measures, including legislation, to modify

or abolish existing laws, regulations, customs and practices which constitute discrimination against women'.

The primacy that has to be accorded to gender equality and women's rights does not mean that individual women cannot subscribe to family, religious or cultural practices that other women may consider oppressive; it does mean that women cannot be forced to subscribe to such practices against their will, and they must have constitutional protection in seeking to escape patriarchal power in the family, religious and cultural life.

Clearly the implementation of this will be difficult but if women's rights are to mean anything, it is an absolutely essential principle to establish. An analogy can be made with race - no future constitution can tolerate 'cultural' practices that are racist.

**Giving effect to gender equality in the bill of rights**  
Such a bill of rights has to have constitutional status and there needs to be an empowering clause to ensure that the broad rights set out in the bill of rights are implemented and existing laws that violate them are automatically invalid/overruled. At the same time, in order to start to give effect to broad constitutional principles, structures have to be put in place to make it possible for women to press complaints about gender discrimination and violations of the bill of rights. There has to be funding to make these structures available to all women - this could be through state and/or private bodies (eg legal aid, lawyers' for human rights, women's groups).

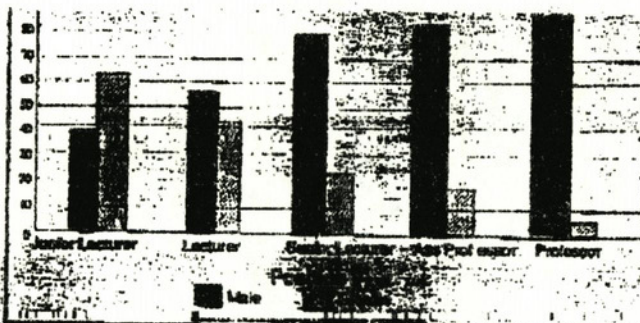
Furthermore, women's rights structures need to be fed into all levels of the constitutional structures that are developed, for instance a constitutional court, standing human rights commission and office of ombudsperson. Thus there should be a permanent women's rights section of a human rights commission, with power to make recommendations to the legislature and to take cases to court, both to establish precedents and to enforce rights already won. Women must staff these structures; women must also be included in general human rights bodies and gender issues not ghettoised to a women's section nor women's interests assumed to be simply synonymous with gender-specific rights; women have interests as workers, members of different religious and linguistic communities etc as well. One task of such a commission would be to review existing legislation to see what violates the principles of gender equality of the bill of rights.

There also must be a standing committee on women in the legislature - the precise composition of such a body is hard to define while the shape of the future legislature is still unclear, but provision needs to be made for some body that can draft and consider legislation that affects women.

CODESA also needs to recognise that given the way in which patriarchal attitudes and discrimination against women are entrenched, there needs to be an ongoing, active programme of education at many different levels around the issue of gender oppression and rights for women, both to inform women about their rights and to conscientise the public in general. This campaign needs to be taken into schools and the media. It must be an integral part of the process by which a constitution is drafted and ratified and elections held for the first democratic legislature.

**Adequate representation for women in the constitutional and political process**

This is an extremely important area where affirmative action is urgently required. The pitifully small numbers of women participating in CODESA are graphic testimony of the way in which women have been excluded from political power, the problems they face and will face in promoting and defending their legitimate gendered interests in society, and the need for mechanisms to guarantee at least a minimally acceptable level of active participation by women. The general principle that women must be adequately represented in the political process, including CODESA and all steps towards drawing up the new constitution and electing the first legislature, has to be actively adhered to by CODESA. This demands concrete, targetted action as a matter of urgency.



There are a variety of factors which lead to the...

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## Affirmative Action

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pre-eminence of men in the higher echelons of academe. The following factors have been identified by the research thus far:

### History and state regulations

There is little doubt that women entered academe later than men. It was only during the 1960s that women began to have a real presence in academe. For many years before that, state regulations restricted the employment of women in some universities. At the University of the South, for example, until 1964, the University was prohibited by DPT regulations from employing married women on a full-time basis.

### Conditions of service

Overt discrimination against women is common in the form of differential conditions of service for men and married women. Married women are denied a housing subsidy and have no access to the pension funds in the university system. In some cases, men are given preference to extend their contracts. In some cases, men are given preference that they are not given to women. These discriminatory practices are common in the private sector as well. In many cases, men are given preference and produce a better quality of work than women.

### Child-care facilities

The presence or absence of child-care facilities is a key factor in a woman's ability to manage a family. It is especially the case in families where the woman is the sole breadwinner or where they do not have a male breadwinner in the household and is the sole provider of the children. The facilities relatively few universities have do not include child-care facilities, and in many cases they are relatively new, helps explain why few women have managed to raise children and advance in their academic careers. Similarly, maternity leave was not available at most universities until the 1970s, and women academics who chose to have children had to do so during vacation.

### 4. Unequal loads of administration and teaching

Many women interviewed in our research reported that they believe that they bear greater loads of teaching and administration, and therefore have less time for research and to embark on studies for higher degrees, which are widely seen as a most important basis for pro-

motion.

### 5. Departmental culture and codes

The importance of a department's culture — the way different people see things and the expectations which exist below the surface, is often overlooked in understanding power relations amongst academics.

Many women interviewed referred to a 'male culture' in their departments. For some this takes overt forms such as sexual remarks by fellow academics or sexist comments in the tea-room and departmental gossip. "Men just don't have to be sensitive to the issue of equality. The fact that they are men is just not an issue. The fact that I'm a woman is a constant issue, and I always have to watch out for comment on which really test my administrative ability to build a reputation as a serious academic."

This also affects women's behaviour in group situations such as departmental meetings or seminars. "You have to be really sensitive to be heard and listened to" said a law lecturer at Wits. "Some women are like that but many are not. I'm not prepared to fight to be heard, and as a woman I also feel less confident than many men. So I just keep quiet, but then I'm not managing to build a reputation in the department, and that will affect my promotion chances."

### Breadwinners and families

Some women reported that they have not actively sought promotion because they are financially secure without it. This was expressed by a sociology lecturer who said: "Why push yourself to do a PhD or more publications if you don't have to? It would be nice to be a Professor, but I'd have to practically kill myself to achieve it. My husband is the major breadwinner, and my family doesn't need the higher salary. If I was the breadwinner it would be a different story."

It is important to move beyond a shallow perception of this as merely a reflection of a male dominated society. While it is most certainly a reflection of a male dominated society, we need to explore the exact mechanisms and processes which produce gender inequality in universities. For this reason, UJ has recently commissioned research designed to examine gender inequality in the University system.

The full report of the research project on Race and Gender Discrimination will be made available to the public later this year. — Editors.

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