

Monitor

Kristina Bentley examines the tension between women's declared equality and cultural rights

'All mouth and no trousers'



Most churches have practices that show respect for male-dominated hierarchies. Photo: Nadine Hutton

South Africa's decade-old democracy presents us with many confounding questions about the nature of our freedom, our rights, and our relationships with one another. Deep divisions of race, class, language, culture, ethnicity, religion, income and education persist and, in some cases, have even increased.

In the midst of this, gender sometimes gets lost despite being possibly the most important aspect of identity. (After all, what is the first question we ask about a child when it is born?)

What we should continue to ask with increasing urgency is: How does any given practice, policy, decision or law affect women differently? Possi-

bly the most important area of inquiry should be about how the claims of culture that discriminate against women are asserted.

The reality is that equal rights are enjoyed by relatively few women and poverty, violence and discrimination continue to form the backdrop to many women's lives.

It has been nearly a decade since South Africa signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women, which means that its articles became part of the law. Yet, according to the *Human Development Report* for 2004, the inequalities between South African men and women on average are large, and they are growing.

Of course, the phenomenon of the "feminisation" of poverty doesn't affect all women equally — black rural women remain the poorest and most marginalised sector of the population. Significantly, it is the equal rights of this group that are at stake when claims of culture and power are invoked.

The question is whether women's individual equality should prevail over entrenched cultural practices and traditions when they are in conflict.

The problem is relevant to this country in many respects. Firstly, South Africa, because of its diversity, presents a range of conflicts of rights within and between communities. Secondly, the Constitution recognises rights that stem from individual

equality as well as non-discrimination and the rights of cultural, religious and linguistic communities to have their ways of life respected.

But what are we to do when these are in conflict? The Constitution doesn't explicitly say that individual rights should prevail over group rights when they are in conflict. The Constitution lays down principles that are open to interpretation, and the principle of equal respect for all people means that we respect their choices as individuals, which may include illiberal choices about traditional ways of life.

For example, most churches have as part of their practices various hierarchies (usually male dominated) and rituals, which show respect for those hierarchies. No one would argue that I am being treated as a human of lesser value because I go to Mass — as long as it is my choice to do so. Similarly, the custom of women changing their surnames to those of their husbands on marriage is thought to be freely undertaken and not really undermining of women's equality.

What is so slippery about all of this is the extent to which these choices are really made freely.

Would it, for example, count as coercion if I am threatened with excommunication from my church because I refuse to change my name to that of my husband's? Or would I have a free choice between two options, based on my assessment of which is preferable? And what if exit from the site of oppression is impossible?

A distinction must be made between internally and externally directed claims of rights and culture. External claims are those the group makes against the world, either to be treated differently or to rectify an existing inequality. So, for example, an exemption in respect of an ecologically motivated ban on hunting in a certain area may be granted to indigenous inhabitants to recognise their right to have their way of life protected. Not to grant the exemption would be to treat them unequally in terms of the Constitution.

More problematic are internally directed claims of culture where members of a group claim a right to decide for other members on the grounds that their practices are cultural. These sorts of practices frequently discriminate, are sometimes harmful and are often to the advantage of existing holders of

power by reinforcing their authority.

But why are internally directed claims of cultural rights problematic for women in particular? Most practices that define culture focus on areas such as marriage, divorce, family arrangements and such — the traditionally "private" realm identified in feminist political thought.

This is also the realm in which the majority of women's activities are concentrated — child rearing in particular.

Consequently, if traditions that affect this realm of life — such as gender roles that consign women to doing unpaid domestic labour — disproportionately disadvantage women, it is seen as being part of the "way we do things", rather than an injustice, or an actionable form of discrimination.

Of course, if this happens to be to the advantage of those who purport to represent a culture — as imams, traditional leaders and male "heads of households" frequently do — then it is no great leap to argue that to tamper with such practices is to tamper with the very fabric of what makes a culture unique.

The difficulty in South Africa, as elsewhere, is precisely the power of those who make an appeal to culture to buttress their claims and thereby reinforce that power.

The recent legislation entrenching the position of traditional leaders is just one example. The Traditional Leadership and Governance Framework Act 2003 and the Communal Land Rights Act 2004 (which was rushed through Parliament on the eve of the election and then remained, unsigned, on the president's desk) make a nod in the direction of gender equality before going on to reinforce the powers of traditional leaders, who are mostly avowed patriarchal traditionalists.

Furthermore, when elected leaders capitulate to the demands of traditional leaders, it serves to reinforce the impression that when a conflict between women's equality and cultural rights occur, the latter will always win out.

Dr Kristina Bentley is a senior research specialist in the democracy and governance programme at the Human Sciences Research Council

Development Action Group (DAG)

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Course themes:

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- Housing Project Planning and Management, • Community participation

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- Community based organizations, • Non-government organizations
- Officials and Councilors, • Labour (Union) Leaders

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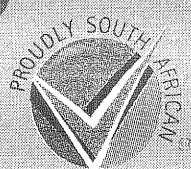
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