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WOMEN'S HUMAN RIGHTS AND THE FEMINISATION OF POVERTY IN SOUTH AFRICA

"[T]he effectiveness of the translation of the theory of equality and non-discrimination into the practice of empowerment and socio-economic upliftment of women and the poor will be one of the main criteria determining success or failure of South Africa's transformation process" (Kehler, 2001).¹

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INTRODUCTION

A decade down the road of democracy, economic inequality remains one of the greatest challenges to fulfilling South Africa's commitment to human rights. According to the most recent Human Rights Watch report on South Africa, commenting on 2002, "South Africa's vast internal economic disparities continued to generate human rights abuses. It was estimated that twenty-two million people lived in abject poverty and went hungry almost every day."²

Furthermore, while poverty, privation and economic inequality continue to reflect racial inequalities, more significantly for the purposes of this paper, they entrench gender inequalities. Poverty in South Africa has a gender dimension that challenges the equal status of women in law, and poses a threat to the realisation of their equal human rights in practice. The "feminisation" of poverty is significant because, according to the UN Economic Commission for Africa (UNECA), poverty is experienced differently by women than by men. The problem is therefore not only statistical - revealing the *quantity* of women who are affected by poverty, but rather that poverty for women tends to be more severe, and poses greater challenges for women who in addition bear the burden of caring for children under these circumstances,³ and so the issue is also one of the *quality* of that experience.

Patriarchy, as a feature of the apartheid era, present in all races and cultures in South Africa, has endured in the post-apartheid era, but as it has to exist alongside a regime of human rights and equality before the law, which it previously did not, it has taken on new guises. And one of the most effective of these is that gender inequality is a feature of "culture" and tradition, and therefore to challenge it is to tamper with the fabric of society in a way that violates the right of groups to self-determination. What these claims in fact do is perpetuate the unequal treatment of women - within the home, the family, and the mainstream economy.

The issue is often seen to be one of culture *versus* rights, and it is at the heart of that debate - multiculturalism and the "right" treatment of individuals - that this paper is situated. It is argued that the unequal status of women *culturally* is what underlies a national culture of discrimination against them, which is reflected in both their economic disenfranchisement, as well as staggering levels of violence against women. Women's *de facto* treatment as human beings of lesser value is not mitigated by their *de lege* equal status. As Frene Ginwala remarks:

Discrimination is more a symptom than a cause. It is the product of the whole way society works. To attack it, then, we have not only to legislate and act against it itself, but also to work for shifts in the deeper causes which underlie it ... What we must address therefore are the power relations in society. Given that gender oppression is socially constructed, we must examine and aim to change the social relations which construct it. Our main aim must be to reform gender relations so that they exist on a more equitable foundation and provide the basis for the full and free development of both men and women (Ginwala, 1991: 62-63).

HSRC RESEARCH OUTPUTS

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The paper outlines the range of extensive, comprehensive and robust measures in place in South Africa to protect the equal human rights of women. The Constitution, the National Action Plan for the Promotion and Protection of Human Rights, ratified international law (such as CEDAW) and evolving domestic law all aim, or at least claim to do so, to prioritise the "right" treatment of women in South Africa. On paper then, there is a human rights "culture" which is particularly nuanced to take account of gender difference and women's particular vulnerability to the effects of poverty, HIV/AIDS and violence, particularly sexual violence. In practice however, women comprise the majority of the very poorest and most marginalized of South Africa's citizens, and frequently their claims for equal treatment are muffled by louder claims that their place is elsewhere. The paper seeks to challenge claims made in the name of traditional patriarchal culture in South Africa which is hierarchical, disenfranchising, and often dismissive of the rights of women. It is argued that the retention of this "underblanket" of patriarchal power underlies the ongoing economic marginalisation of women.

As UNECA's *Report on the Status of Women in Africa* argues, the available data reveals that the issue of human rights of women is perhaps one of the more difficult ones to deal with because it is shrouded in deeply entrenched and rigid attitudes and practices that militate against positive change of legislation or practice in favour of women [sic]. They are experienced as emotive issues that could easily destroy the whole social fabric. Often the bottom line is power and having to share it with women or to even recognise them as having equal rights to resources or to a different perspective of life.⁴

WOMEN'S HUMAN RIGHTS IN SOUTH AFRICA: CONSTITUTIONAL, INTERNATIONAL AND DOMESTIC LAW

This section of the paper outlines the status of women's human rights in South Africa from the perspective of their legal declaration. It has been noted above that in terms of the legal provisions in the country – both in terms of the constitution, international law, and domestic law – on paper there is a robust commitment to the protection of the basic rights of women in particular as class of vulnerable persons. Furthermore, much of this law is intended to redress the marginalized and subordinate role to which women have traditionally been consigned.

It is therefore necessary to reflect upon these measures with a view to assessing what the official position is in law with regard to the rights of women, as while it is a cause for great concern that these laws exist on paper only, their existence is also a cause for optimism. They are a cause for optimism in the sense that the state's commitment to the rights of women is clear and unequivocal, and also in the sense that the state's duties correlative to those rights are clarified as a result. However the challenge is to carry out the laws which enforce the rights as robustly as they are specified, and to find ways to remove them from the intellectual space of the classroom and the law library, and make them a part of everyone's lives, not just women's.

This paper argues that these provisions are undermined, to the extent that they are often paralysed, by deeply entrenched cultural norms of patriarchy. On this account, the equal treatment and status of women can never be anything other than theory rather than practice, as to enforce such norms would be to shatter the very foundations upon which "African" culture and traditions are seen to rest. But according to *Human Rights Watch: Women's Human Rights*:

Arguments that sustain and excuse these human rights abuses – those of cultural norms, "appropriate" rights for women, or western imperialism – barely disguise their true meaning: that women's lives matter less than men's. Cultural relativism, which argues that there are no universal human rights and that rights are culture-specific and culturally determined, is still a formidable and corrosive challenge to women's rights to equality and dignity in all facets of their lives.⁵

Worth noting here is the position that women's rights are an inextricable component of their human rights. This is what Hodgson (2002: 3) refers to as "the 'women's rights as human rights' approach to female equality and empowerment" and it echoes Article 18 of the Vienna Declaration on Human Rights of 1993, which states that:

The human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on the basis of sex are priority objectives of the international community (cited in Hodgson, 2002: 3).

Women are therefore not a special interest group whose rights need to be weighed against other interest-generated rights,⁶ such as those of groups to cultural self-determination. At the heart of the "women's rights as human rights" approach is the assumption of the equal worth and value of the individual which is implicit in, and indeed integral to, the very notion of human rights itself.

The South African Constitution and the National Action Plan

South Africa's constitution, which has been hailed as one of the most progressive in the world, developed out of a process of negotiations in the aftermath of apartheid and the progression towards democracy. As a result, it contains many provisions that reflect the spirit of compromise of the negotiation process, as well as an extensive set of rights. It is worthwhile to reflect briefly on the specific clauses in the Constitution pertaining to the equal status and "right" treatment of women, as the Constitution is intended to inform all other law and policy in the country.

Chapter 2 of *The Constitution of the Republic of South Africa* (Act 108 of 1996) contains the Bill of Rights including a number of provisions relevant to the topic of this paper. Firstly, section 7(2) outlines the duty of the state to "respect, protect, promote and fulfil" the rights there enshrined, and section 8 deals with the application of the Bill of Rights in terms of its extent and who the subjects of rights are. It is significant that the Bill of Rights applies to all laws, as well as binding all the branches of government and organs of the state, because the intention is clearly to give human rights overriding importance as a matter of policy and law. This reinforces section 7(1), the introductory clause to the Bill of Rights which states that "This Bill of Rights is the cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom."

Section 9 of the Constitution contains the all-important equality clause, which establishes equality before the law in section 9(1) and full and equal enjoyment of rights and freedoms including mandating the promotion of equality by legislation in section 9(2). Section 9(3) prohibits unfair discrimination on the basis of, *inter alia*, but most importantly in the context of this discussion, gender, sex, pregnancy, marital status, ethnic or social origin, sexual orientation, and culture. This is followed by section 10 which establishes the right to be treated with equal dignity, and section 11 the right to life.

Section 12 deals with the freedom and security of the person, and in particular section 12(1)(c) establishes the right "to be free from all forms of violence from either public or private sources." This is significant as it would seem to indicate that the domain of the home and family, which are traditionally regarded as "private," and therefore beyond the reach of the law, are for the purposes of this right a matter for public enquiry and policy. However, it is interesting to note further that this particular section is *not* included in the table of non-derogable rights included in the constitution, and it is therefore implicit that this right is subject to limitations.

One such limitation would be the right to privacy, in particular within the home, which is enshrined in section 14; as well as possibly section 15 which establishes freedom of religion, and the potential legislative recognition of "systems of religious, personal or family law" although this would be subject to the limitations of section 9.

Other possible limitations in this regard could be the rights enshrined in sections 30 and 31 which recognise linguistic, cultural and religious communities. Again these are subject to the limitation that they do not violate any other provision of the Bill of Rights, but it could be argued that by omitting section 12(1)(c) from the list of non-derogable rights, a loophole has been left in the constitution itself forming the basis upon which to argue that the treatment of women within the home is not a matter for intervention, and that there is a cultural "right" to mete out unequal treatment free from outside scrutiny.

Most importantly from the perspective of women's economic status, sections 23 and 25 establish the right of equal treatment with regard to labour conditions and property. Again, the extent to which these may be challenged or limited by sections 14, 15, 30 and 31 is uncertain. In particular the right of women to inherit property has been challenged in the courts on the basis of the rights enshrined in sections 30 and 31.⁷

Chapter 9 of the constitution establishes the State Institutions Supporting Constitutional Democracy. Section 181(1)(b)-(d) establishes the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Linguistic and Religious Communities, and the Commission for Gender Equality. The Commissions are independent, and are charged with promoting respect for the relevant rights (outlined above), as well as having a monitoring role. In addition they have the power (if not always the capacity) to carry out research and make recommendations on such things as legislation and the establishment of other bodies they regard as useful to the task of protecting and promoting the rights in question. In terms of section 181(1)(5), "These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year."

The constitutional establishment of these Chapter 9 institutions is therefore intended to give the declared rights in Chapter 2 (see above) "teeth that can bite" to use Hoebel's phrase.⁸ By providing for mechanisms to monitor and evaluate, as well as make recommendations on the enforcement of these rights, the intention is clearly to carry them out actively, rather than merely declare them passively. However the Constitution contains other provisions that may be seen as a challenge to the enforcement of the declared rights, most importantly the equality clause.

One of the compromises agreed to in the negotiation process leading up to the drafting of the constitution was the recognition of Traditional Leaders. South Africa has a dual system of law, which recognises alongside the ordinary "western" law (a combination of Roman Dutch common law, with Anglo American law superimposed, all subject to the constitution) traditional African Customary Law. The origins and development of this parallel system of law is beyond the scope of this paper, but it applies only to Black South Africans and only in certain instances, and only applies in respect of civil matters, primarily those in the domain of family law.⁹

To a large degree, the sustenance of customary law was a product of the apartheid system, as it was maintained and shaped to fit the complex discriminatory laws intended to separate the races. As a result, there was an appeal to traditional authorities to assist in maintaining the parallel system of law, and it is these - unelected, usually male, senior members of cultural or linguistic groups - that today make the claim to retain their "traditional" powers and authority.¹⁰ And that claim is rooted in the right to cultural determination. It is no great leap from acknowledging this traditional patriarchal authority, to tolerating patriarchy as a national institution. It may be politically unpopular to argue that the retention of these hierarchical norms, formalising the role of Traditional Leaders, undermines

democracy and human rights, but it is this very entrenching of the authority of those who are existing holders of power that, it is argued, contributes to entrenching the unequal status of women in South Africa.¹¹

Chapter 12 of the Constitution deals with the recognition of Traditional Leaders and outlines their role, but most importantly it allocates to them the power to deal with matters pertaining to African Customary Law and the communities which observe this law. This may not sound terribly threatening and rather axiomatic, but the allocation of power to those whose authority does not derive from democratic processes underscores the unequal treatment of women, and serves to promote the idea that this inequality is tolerable, because it is "traditional." In particular this may serve to reinforce the limited proprietary capacity of women in traditional African culture, and so the retention of these hierarchical norms creates the backdrop to the continued economic subordination of, in particular, rural women.

The *National Action Plan for the Promotion and Protection of Human Rights* (NAP) of 1998 was drafted in response to the recommendations of the World Conference on Human Rights of 1993, which resulted in the Vienna Declaration and Programme of Action. Article 71 of Part 2 of the Vienna Declaration recommends such a national action plan in order to identify the steps the state ought to take in order to promote and protect human rights.

It is significant that while the NAP reinforces the constitutional grounds for equality and non-discrimination in the section on Civil and Political Rights, it does not focus specifically on either gender or the rights of women. Furthermore, while the historical factors it identifies as contributing to South Africa's past poor human rights record are colonial domination, racial discrimination, political oppression and economic exploitation; gender oppression does not make it onto the list. Furthermore, racial and socio-economic inequalities are cited (following the 1995 World Bank report) as the main causes for concern and action in terms of section 9 of the Constitution, but gender-based inequalities are again taken to be implicit.

In looking at the section on Economic, Social and Cultural Rights in the NAP, again it is interesting to note that the Freedom of Culture Religion and Language merits special attention (including a reiteration of the powers of Traditional Leaders), and the rights of children and young people are also singled out as requiring further attention. However the social and economic rights of women specifically are not identified, which again flies in the face of their patent inequality, less so in law, but largely in practice.

These two key documents therefore, it seems to me, while they acknowledge the gender inequalities that riddle South African society, do not go far enough in ameliorating this situation. The bias seems to be strongly in favour of the retention of traditional power hierarchies, and certainly this is borne out in fact. I do not mean to suggest that the South African constitutional dispensation *condones* this inequality and discrimination. I do want to argue that in leaving the basic human rights norms deliberately so ambiguous, they create room for the *tolerance* of inequality and discrimination on the basis of cultural norms and traditions, and it is this implicit tolerance that undermines the implementation of the specific international and domestic laws, outlined below, which are aimed at equalising the status of women.

International Law

In the post 1994 era since South Africa's first democratic elections, there has been a concerted move towards accession to the major human rights treaties and conventions in keeping with the avowed priorities of the government in promoting and protecting the human rights of all. The provisions of the *Universal Declaration of Human Rights* (UDHR), which are so widely accepted that

they are regarded as part of customary international law, are taken to be sufficiently well established that they do not need to be recounted here, except to comment that the UDHR has as its core the belief that human rights are informed by the norms of *equality* and *universality*. The former rests on the belief that human rights are normatively those of all people, and all people are normatively regarded as being of equal worth and dignity; and the latter rests on the assertion of a "common standard of achievement for all people's and all nations" as while the UDHR recognises cultural diversity, it does not conceive of this as being in conflict with basic human rights norms. South Africa is also a party to the two 1966 covenants on Civil and Political, and Economic Social and Cultural Rights.¹² Again these are regarded as sufficiently well-established that a discussion of their content need not detain us here.

As far as regional Human Rights instruments are concerned, South Africa is bound by the *African "Banjul" Charter on Human and People's Rights* of 1985. The Banjul Charter retains all the standard basic human rights clauses, but it also has a distinctly "liberationist" flavour in that it emphasises the struggle against colonialism and apartheid in its preamble. It is also mindful of the more collective conception of rights which is often associated with non-western cultural traditions in that it includes the rights of "peoples" (as collectives) as well as the rights of "humans" (as individuals).

Article 18 of the Banjul Charter also emphasises the family as "the natural unit and basis of society" as the family is regarded as "the custodian of morals and traditional values recognised by the community" (sections 1 and 2). However article 18(3) goes on to indicate that the state also has a duty to ensure that discrimination against women is eliminated, and to protect their rights. The Banjul charter also differs from other human rights instruments in that it contains a chapter on the duties of the individual, in particular duties towards the family, and in the case of children, a duty to respect their parents. There is thus implicit within the Banjul charter the idea of the retention of "traditional" norms, including hierarchical ones.

The *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) of 1979 was intended to overcome the ongoing "extensive discrimination that continue[d] to exist"¹³ in spite of the numerous human rights instruments that preceded it that held the equality of women to be an implicit facet of human rights. The following articles are particularly worth noting with reference to the present discussion: Article 5 places on state parties the responsibility of taking measures to "modify social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." Article 16 places a duty on the state to act against discrimination against women within marriage and the family, and to ensure that men and women have equal rights within marriage and the family.

Furthermore, CEDAW commits state parties to equalising the role and status of women in all areas of social and economic life (article 13), and in particular employment (article 11). Article 14 recognises the particular difficulties faced by rural women in terms of their economic position as supporters of dependents and their activities within the informal economy. It commits state parties to incorporating women into decision-making about rural development and economic planning, as well as to ensure their access to basic services and state benefits. This has resonance in the South African context as rural women bear the brunt of the burden of poverty and economic inequality, and usually have the least access to social services, and are most vulnerable to exploitation.

South Africa signed and ratified CEDAW without reservations in 1995, and since then efforts have been made to equalise the position of women in law. However, the role of the family, and the customary inequalities therein remain a complicated matter, and one that has not been entirely resolved. As Tomasevski notes:

[CEDAW], as much as any other human rights treaty, lays down human rights norms which are necessarily worded in abstract terms. Human rights treaties are negotiated during protracted and

sometimes conflictual intergovernmental meetings. In the case of the Women's Convention, 'the drafters had to face the difficult task of preparing a text applicable to societies of different cultural characteristics and traditions. The ways in which discrimination against women manifested itself varied from one culture another. The Convention therefore represents a constructive compromise' (Tomasevski, 2000: 234, citing U.N. Doc. RS/CEDAW/1992/WP.1 24 March 1992).

She goes on to comment that the reporting process of CEDAW is what creates a "yardstick to monitor the realisation of the human rights of women" (Tomasevski, 2000: 234). The reporting mechanism consists of country reports that are prepared by the governments of state parties and presented for comment and questions by representatives of the state. The Committee of CEDAW frequently questions issues not addressed in the report, as well as commenting on the consistency of specific laws and policies of that state with the articles of the Convention. The reporting mechanism therefore represents "constructive dialogue" rather than a decisive forum for declaring states to be in breach of their obligations (for which CEDAW has sometimes been criticised).

South Africa reported for the first time to CEDAW in 1998. The report noted the establishment of the Office on the Empowerment of Women in the Office of President, the Office on the Status of Women located in the Office of the Deputy President and the Commission for Gender Equality, all of which are aimed at gender mainstreaming in South Africa and giving effect to the equality of women. However, South Africa's representative also noted

that continuing deep entrenchment of patriarchy and customary, cultural and religious practices contributed to widespread discrimination against women in South Africa. She informed the Committee that violence against women and children was increasing, including domestic violence, sexual violence and sexual harassment.¹⁴

As far as women's economic situation is concerned, it was reported that only 6% of African women over the age of 20 held tertiary qualifications, and 20% of African women had no formal education. Unemployment was higher among women than men, and more women were self-employed "with little job security and lower incomes than those in the formal wage employment sector." The representative also noted the prevalence of HIV/AIDS among poor and marginalized African women.¹⁵

The Committee, in responding to the South African delegation's report, noted stereotypical attitudes towards women and emphasised that these attitudes that needed to be addressed. The Committee further noted that "the legacy of apartheid for women includes widespread discrimination and underdevelopment, and is visible in areas such as women's high levels of unemployment, illiteracy and poverty and in the violence against women."¹⁶ The Committee also reiterated its concern for the plight of rural women who are especially vulnerable to poverty as a result of low levels of education and literacy, unemployment, and lack of access to in particular health and fertility services. The Committee further emphasised that women needed to be included in land reform programmes.¹⁷

South Africa's international law obligations with regard to the equal rights of women, and in particular women's rights to economic equality are therefore extensive. Furthermore, in accordance with these obligations, the domestic law of the country is rapidly evolving to meet these obligations. The most relevant legislation is briefly presented here.

South African Domestic Law

The *Promotion of Equality and Prevention of Unfair Discrimination Act*, (4) 2000, and its amendment by Act 52 of 2002 includes, *inter alia*, the prohibition of discrimination on the grounds of gender. The act identifies "the system of preventing women from inheriting family property" as one such prohibited form of "discrimination" [section 8(c)] as well as "any practice, including traditional,

customary, or religious practice, which impairs the dignity of women and undermines equality between women and men, including undermining the dignity and well-being of the girl child" [section 8(d)]. Furthermore, the Act prohibits "any policy or conduct that unfairly limits access of women to land rights, finance and other resources" [8(e)]; "limiting women's access to social services or benefits, such as health, education and social security" [8(g)]; "the denial of access to opportunities" [8(h)]; and "systemic inequality of access to opportunities by women as a result of the sexual division of labour" [8(i)]. The framers of this law were clearly mindful of the obligations created in this regard by the Constitution and South Africa's international law obligations.

These provisions are supported by the *Domestic Violence Act* (116) 1998, section 1 of which recognises economic abuse as a form of such violence, which is usually perpetrated against women and children as vulnerable members of domestic or family units. This can take the form of withholding resources to which the complainant is entitled by law (such as maintenance or child support), or disposing unreasonably of property in which the complainant has an interest. Furthermore, the Act created the duty on the part of police attending an incident of domestic violence to assist complainants (for example by assisting in finding shelter, or obtaining medical treatment) and inform them of their rights.

Also worth noting is the *Recognition of Customary Marriages Act* (120) 1998 (amended by Act 42 of 2001). This act was designed to not only formalise the law with regard to marriages entered into in accordance with African Customary Law, but to "provide for the equal status and capacity of spouses in customary marriages" (see the preamble). The Act seeks to equalise women's proprietary status within customary marriages, but the Act suffers from the flaw that marriages entered into under Customary law before 2000 remain unaffected (and so women in such marriages remain legally minors) and customary marriages which are not registered also do not fall under the aegis of the Act. The protection it offers to women is therefore contingent upon the goodwill of their partners in cooperating in following the legal steps required to formalise the union, and they are therefore to a degree as vulnerable as before.

The struggle for women's equal recognition before the law is not enough. The recognition of women's rights in law must be mirrored by women's emancipation in fact, and it is this that remains the greatest challenge to the "right" treatment of women in South Africa today. The following statement was made by Susan Bazilli in 1990 prior to the drafting of the post-apartheid interim constitution, but as is argued in the section below, this continues to be the context in which women's entrenched poverty in South Africa today should be seen:

When "rights" intersect with "law" the real issue is "power." Who has the power to demand and who has the power to cede these rights? How do we attain our rights in the face of structural and systemic inequality? And in South Africa, the legacy of the legislated and instituted inequality of apartheid is legion. The history of "rights" has developed from the liberal notion of equality under the law in an individual capacity, and not from the structural inequalities of race, class and gender. But the extension of "rights" is associated with the foundations of democracy and freedom: the protection of the weak against the strong, the individual against the state ... Where we must be vigilant is to recognise that *if* the gender power relations remain the same, legal individual rights do not resolve problems, but rather transpose the problem into that which is defined as having a legal solution (Bazilli, 1990: 13-14).

Women's rights in South Africa continue to exist on paper only. While this is a significant improvement from the prior situation where they were actively legislated against, it is nevertheless a challenge to translate this law into practice. The greatest challenge to this lies in deeply embedded attitudes towards women in South Africa, and the following section attempts to outline the main outcomes for women in terms of their ongoing economic subordination.

INEQUALITY AND THE FEMINISATION OF POVERTY

As was noted in the introduction to this paper, poverty affects women differently than it does men. According to UNECA's *Report on the Status of Women in Africa*, which cites the UNDP Human Development Report of 1997 in this regard,

the problem with the feminisation of poverty is not so much the numbers of women who are poorer than men, but rather with the severity of poverty and the greater hardships women face in lifting themselves and their children out of poverty ... In addition they are likely to have fewer job opportunities. If they are the heads of households under these conditions, probably without access to land, or if they do, it is user rights that they have no control of, they are more likely to find themselves on the margins of society than men.¹⁸

The *Human Development Report 2003* reveals enormous disparities between men and women in South Africa at the level of their economic access and activity. This is worth reflecting upon in light of the declared equal rights of women in this regard set out in the previous section. South Africa is ranked 111 out of the 175 countries measured, and is in the middle of the Medium Human Development band with a Human Development Index (HDI) of 0.684. The estimated number of people in South Africa living on US\$2 a day or less is 14.5% of a total of just under 45 million people. However, the *disparities* between the wealthiest and poorest are revealing. South Africa's Gini index is a high 59.3, reflecting the fact that the poorest 20% of the population's share of income or consumption is just 2% compared with the wealthiest 20% who account for 66.5%. Material inequality in South Africa is therefore vast, and growing.

When the data are further broken down to consider gender disparities, these inequalities are even starker. According to the Gender-Related Development Index which is included in the overall report, there is no remarkable difference between women and men in South Africa in terms of life expectancy (slightly higher for women), literacy, and enrolment for primary, secondary and tertiary education (78% for both men and women). However, what is remarkable is that despite women and men being at similar levels of development of their skills in this regard, women's estimated average per capita income (US\$7 047 per annum) is *less than half* that of men (US\$15 712 per annum).

This would support the contention that women are marginalized in terms of their access to the mainstream economy and employment opportunities, which in turn is consistent with the position that there is an enduring patriarchal cultural bias in this regard. As the World Bank's *Report on Gender, Equality and the Millennium Development Goals* (2003) notes:

while achieving equal access to education is an important step towards gender equality, it is by no means sufficient. Even as gender disparities in education are reduced, other gender differences tend to persist – in labour market opportunities, legal rights and the ability to participate in public life and decision making (World Bank Gender and Development Group, 2003: 3).

The data on Gender Inequality in Economic Activity are further indicative of this bias. The rate of female economic activity (for women over the age of 15) is just 47%, which is 59% of the male rate. However, women work longer hours than men (122% of the male rate). Overall, South Africans spend 51% of their working hours in market related activities, and 49% on non-market related activities. However, for men the split is 70% market and 30% non-market related activities, while for women the split is 35% market and 65% non-market activities. What these figures reveal is that women do more work, for less pay, and are the primary actors outside of the formal economy, as well as in the domestic sphere. However it is important to note that these data do not reflect the massive disparities *between* women in South Africa, as inequality is as much an issue of *class* as it is of race or gender.

As far as women's political representation is concerned, South Africa's levels are relatively high. Women comprise 30% of parliamentary representatives, and 38% of posts at ministerial level are occupied by women. This is good news for the empowerment of women, as overall the HDI figures reveal that a higher human development ranking is in proportion to more equal political representation between men and women. This is supported by the World Bank Gender and Development Group's Report *Gender Equality and the Millennium Development Goals*, which argues that gender equality is a *sine qua non* for sustainable development. The report states that

[t]here is now a shared understanding within the development community that development policies and actions that fail to take gender inequality into account and fail to address disparities between males and females will have limited effectiveness and cost implications ... an approach to development that strives to increase gender equality has high payoffs for human well-being (2003: 4-5).

There are of course many reasons why this may be the case, but it is feasible that a larger proportion of women in power will go some way towards putting women's issues on the national agenda. However, as Shireen Hassim cautions, this is not a *necessary* outcome – rather formal equality and representation have to be matched by “turning presence into power” (Hassim, 1999: 14). It is only when women have the power to access resources as equal citizens that their formal equality will have any effect on their lives substantively (Hassim, 1999: 16). Therefore the presence of many empowered women in the higher echelons of the state and the economy should not serve to obscure the fact of the far larger proportion of women who live in abject poverty, as a matter of critical national concern.

Furthermore, women who are marginalized in this way are more vulnerable to the effects of HIV/AIDS, which is inextricably linked to poverty in South Africa. While a discussion of the impact of HIV is not possible here, this dimension of gender and poverty cannot be omitted from consideration. As Wayne Ellwood describes this relationship:

Poverty doesn't cause AIDS. But it is the ideal incubator. And gender and poverty are inextricably combined: 70 percent of the world's poor are women and poor women are most susceptible to HIV. Violence against women and sexual assault are cornerstones of the AIDS epidemic (Ellwood, 2002: 12).

This position is backed up by the findings of UNAIDS's *Gender Analysis: Fiscal 2004-2010 Strategic Plan*, which investigates the links between poverty, violence and AIDS, and links this to “the subordinate social status of women and girls, which makes it difficult or impossible for them to negotiate safe sex” (UNAIDS, 2003: 42). With particular reference to South Africa, the UNAIDS report cites Vetten and Bhana's 1991 study, *Violence, Vengeance and Gender: Investigation into the Links between Violence Against Women and HIV/AIDS in South Africa* in this regard, which argues that strategies to address HIV/AIDS and violence against women need to be “complementary” rather than “parallel.” (UNAIDS, 2003: 43). Such a strategy relies upon empowering women as economic agents, rather than dependents, as it is the power imbalance that results from their dependence that frequently forms the backdrop to their physical abuse.

In turn, women's vulnerability in this regard cannot be separated from the particular vulnerability to poverty and exploitation faced by rural women. The divisions between women of different races and economic classes in South Africa within the broader context of a culture of patriarchy is considered by Cora Burnett. Burnett argues that patriarchy in South Africa is a unique hybrid of indigenous and settler cultures. This has been influenced and exacerbated by other forms of inequality, particularly imbalances in power “organised around social, political and economic hierarchies of race and class” which has in turn produced “unique forms of gender oppression for women who have been divided along racial lines, being products of their circumstances and coerced by national loyalties to struggle for national freedom prior to freedom for women” (Burnett, 2002: 28).

These divisions between women can disguise the particular burdens faced by rural women. Of the overall population who live in poverty in South Africa, 72% live in rural areas. Of these, women comprise the majority, as poverty affects women more severely than men, not least because women are "lower on the social hierarchy" (Burnett, 2002: 29) – according to Kehler, citing the UN Human Development Report of 2000, African rural women comprise the 49% of poorest of the South African population as a whole, (Kehler, 2001). As many as 60% of female-headed rural households are below the poverty threshold, because, as has been argued, there is a gender element to poverty which "finds expression in the lack of facilities, energy and time-consuming domestic work, lack of time, transport and unequal access to market-related employment, education, mobility and security" (Burnett, 2002: 30).

Johanna Kehler is also concerned with plight of poor rural women in South Africa. She emphasises that women's inferior economic status is a reflection of "prevailing cultural and social norms which regard women as less 'valuable' members of society" and this not only affects the way they are treated, but also fuels the belief that women's contribution to sustaining the family is less valuable work than men's (Kehler, 2001). Kehler furthermore argues that the privatisation of social services, such as those that have occurred in South Africa, has a greater impact on poor women, as it is primarily women as caretakers who are the primary recipients of those services. This is an additional dimension of the "feminisation" of poverty, but one that has particular resonance for rural women. As Kehler describes it:

African¹⁹ rural women's lack of access to resources and basic services are combined with unequal rights in family structures, as well as unequal access to family resources, such as land and livestock. This explains further why African rural women are not only poorer in society as a whole but also in their own families, and defines why their level and kind of poverty is experienced differently and more intensely than that of men. This translates into reality where African rural women are not only burdened with multiple roles concerning productive and reproductive responsibilities, but also subjected to discrimination and subjugation both in and out of their homes (Kehler, 2001).

Kehler goes on to argue that both statistically, and in terms of their lack of access to resources, services and support, Black rural women in South Africa comprise the very poorest of the poor. She goes on to point out further that in their role as sole breadwinners and heads of households these women are further exposed to health and safety hazards, as the lack of basic services requires many hours a day to be spent walking long distances to fetch firewood and water, which is often not potable (Kehler, 2001). Kehler argues that basic social services for rural women need to be made not only accessible in the sense of being available, but also affordable, which requires a more gender-nuanced understanding of poverty and how it affects women and their basic rights.

The conclusion to Kehler's study, which focuses on women farm labourers in South Africa, is that while the laws in South Africa aimed at protecting women are adequate (she refers in particular to the laws on employment standards and equity), the problem is with their enforcement in the face of deep, culturally embedded, resistance to the "right" treatment of women. She concludes that:

For the majority of women in South Africa, existing socio-economic rights, as guaranteed in the constitution, remain inaccessible resulting in the perpetuation and increase, as well as the feminisation of poverty. Furthermore, especially for rural women and women on farms the constitutional guarantees of equality and non-discrimination remain merely theoretical rights that lack practical implementation. What remains is women's day-to-day realities marked by the struggle for pure survival that is additionally determined by deteriorating socio-economic conditions and lack of development (Kehler, 2001).

CONCLUSION

This paper has focused mainly on the problem of women's economic marginalisation as a reflection of a broader culture of gender inequality in South Africa. By way of conclusion, some possible ways forward are suggested in order that women's basic economic rights may be honoured in reality, and not just declared in law. The greatest problem as it conceived here, is inequality. However women's patent economic inequality, and endemic violence against them are symptoms of a deeper inequality. The idea of women as human beings of equal worth and dignity is one that has still not taken root in South Africa. The simple fact of the matter is that women's lives, agency and well-being are regarded as being of less value than men's.

One way of redressing this imbalance would be to create greater options and choices for women, by facilitating their access to resources. The possibility of a Basic Income Grant (BIG) in South Africa has been mooted,²⁰ and even a small allocation of such resources that was placed beyond the reach of traditional patriarchal power and authority would go some way towards at least allowing women to choose their circumstances, rather than keeping them as economic hostages of particular situations. An additional method of enforcing women's equal access to resources and property is to ensure that court judgments on matters that have traditionally disenfranchised women (such in the traditional African law of succession) are consistent and unequivocal in their insistence on the equal rights and claims of women and girl-children to such property and resources. Particular with regard to land claims in the case of rural women, there is a great deal of scope for intervention in this regard.

Another powerful source of change in this regard is women's participation in decision-making, especially decisions about development policy. While this is a complex subject and one which deserves treatment outside of the context of this discussion, it is worth noting that participatory approaches to poverty reduction and development are themselves now so widely accepted that they are the norm, but that very often vulnerable women's voices in these initiatives are nevertheless lost. The way forward, as Andrea Cornwall describes it is to move away from the "add women and stir" approach and to take into account the power inequalities that arise out of gender difference (Cornwall, 2003: 1338). Entrenched poverty and inequality in the context of gender in South Africa is a glaring example of this assertion, and provides an opportunity to devise strategies of participation designed to overcome the impasse.

Finally, as long as attitudes towards women in South Africa remain as they are, there will be a continued tolerance of cultural inequality and denigration and abuse of women. Changing people's attitudes is difficult, but change they must. Those who are in power bear the responsibility for leading the way in this regard, but another strategy would be to increase both the likelihood of a remedy in the event of abuse of women, as well as increase the sentences for such abuse. Here again the courts have a role to play in unequivocally striking down claims of culture and tradition that violate the equal rights of women and children.

The issue of women's substantive equality and access to economic resources is critical to sustaining democracy in South Africa. In as much as democracy rests on assumptions about equal entitlement to the running of the state, it is contingent upon the acknowledgment of the equal worth of all citizens. This is why democracy and human rights are often regarded as being inextricably linked. The basic ethos underlying a human rights dispensation is also that every person in the state counts for as much as everyone else. South Africa's declared policy priorities according to the constitution, international and domestic law make it an imperative demand of the democratic dispensation that the human rights of women are honoured in fact as well as law. And these cannot proceed from the assumption that women have lesser claims to a share of basic economic goods and services from which they have been traditionally excluded.

Endnotes

¹ <http://www.bridgcw.edu/depts/artscncc/jiws/fall01/kebler.pdf>

² See *Human Rights Watch World Report 2003: Africa: South Africa*, <http://www.hrw.org.wr2k3/africa11.html>

³ See *Report on the Status of Women in Africa*: United Nations Economic Commission for Africa (UNECA) http://www.uneca.org/eca_resourcecdroms/status_of_African_women/default0.htm

⁴ http://www.uneca.org/eca_resourcecdroms/status_of_African_women/default0.htm

⁵ See *Human Rights Watch: Women's Human Rights*, <http://www.hrw.org/women/index.php>

⁶ This argument is conceived in light of an interest, rather than a choice theory of rights. The terms of the debate between these two conceptions of rights exceed the scope of the topic of this chapter, but for a discussion of what is at issue between them, see Kramer, M.H., Simmonds, N.E., and Steiner, H. 1998. *A Debate Over Rights*. Oxford: Clarendon Press

⁷ The basis of this challenge is the cultural "right" of male primogeniture in African Customary Law, which stipulates that in the event of a husband's death, his wife (or wives) and children's entitlement to the estate can be overridden by the claim of a senior male relative, even if that person is a stranger to them. Furthermore, it is unclear what responsibility, if any, that senior male has towards them in terms of maintenance out of the estate. See the case reported by Khadija Magardie in the *Sunday Independent*, 8 December 2002: 4. This is clearly in breach of the common law of inheritance, according to which children have a primary claim on a deceased parent's estate, as well as the laws on maintenance and testation. The justification for the suspension of the equal treatment of women, and indeed children, in these cases, on the basis of "culture" is therefore in conflict with their basic human rights.

⁸ Cited in Riddall, 1999: 17

⁹ See Bennet, 1991

¹⁰ See Nhlapo, 1991: 112-113

¹¹ The powers of traditional leaders are currently being debated in South Africa – for the terms and context of the debate, as well as a brief historical overview of their origins, see *The Draft White Paper on Traditional Leadership and Governance* Notice 2103 of 2002, which has been approved by Cabinet. See also *The Council of Traditional Leaders Act* of 1997.

¹² In the case of the latter, signature has not yet been followed by ratification.

¹³ See the preamble to CEDAW

¹⁴ See the *Report of the Committee on the Elimination of Discrimination Against Women*, Nineteenth Session: 59

¹⁵ *Report of the Committee on the Elimination of Discrimination Against Women*, Nineteenth Session: 59

¹⁶ *Report of the Committee on the Elimination of Discrimination Against Women*, Nineteenth Session: 60

¹⁷ *Report of the Committee on the Elimination of Discrimination Against Women*, Nineteenth Session: 61

¹⁸ See *Report on the Status of Women in Africa*: United Nations Economic Commission for Africa (UNECA) http://www.uneca.org/eca_resourcecdroms/status_of_African_women/default0.htm

¹⁹ Kehler here is using "African" to denote Black South African women, as opposed to women of any of the other races.

²⁰ This suggestion is supported by Beth Goldblatt (2003) and Gail Smith (2002) who both consider the potentially enfranchising effect of the BIG for women, as well as the possibility that the BIG may in some sense serve as reparations for past inequalities.

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