

# The right to live free

SHEENA DUNCAN

*A precis of an address given to the National Conference of the World  
Affiliated YWCA at Thaba 'Nchu in December, 1974.*

---

In this country women, and especially Black women, share in the deprivation of rights with which all Black people in South Africa must live. It is a significant fact that in the United States of America the women's liberation movement grew out of the civil rights struggle and only really got going after recognition of the rights of Blacks had been achieved. Women who worked in the South came to a new understanding of human freedom as a total concept.

Since then much has been achieved in the States and in Europe and, although much remains to be done, it is a heady experience for a woman from South Africa to live free. To be recognised for what one is — a person — without preconceived ideas of femininity, to be taken seriously in discussions and consultations, to be free to move where one will without the restraints which arise from male-orientated social sanctions, this is wonderful. It is inspiring to know when looking at the realities of our situation here that the battle can and will be won and we, too, will one day take our place alongside women all over the world in accepting responsibility, sharing influence and enjoying freedoms we now only dream of and which some of us do not even recognise we are without.

Four years ago the Black Sash drew up a Charter for Women. The preamble says "The rights enumerated in this charter might appear to be so fundamental as not to need stating at all. All women should have them but in South Africa the majority of women do not. In fact, African women do not enjoy any of them, because of the whole policy of apartheid, which entrenches discrimination on the basis of colour, has caused the denial of these rights to be written into the law of the land."

## **Deprivations shared by all South African women**

There are certain disadvantages which we all share. A woman in this country cannot

share in joint guardianship with the father of her legitimate children. This means that the father can always over-rule the mother in disputes which arise regarding the upbringing and care of their children. Only in exceptional circumstances will a court of law uphold the mother's decisions against the father.

If a woman is married in community of property immovable property such as a house cannot be registered in her name even if she has paid for it. She cannot deal on the stock exchange or make hire purchase agreements without her husband's consent. If she wishes to open a bank account she must have her husband's written consent. If she is married out of community of property she has no statutory rights to receive a portion of her husband's estate. In other words he can make a will leaving her nothing and she has no legal redress.

Into this area in which we all share falls also the social discrimination against women which is not legislated for, which is often disguised as masculine protection of the "weaker sex." This discrimination is so deeply rooted and so very basic to our society, that we must not underestimate the difficulties which lie in our path as we seek to eliminate it. That it can be done is being proved in other places and everyone of us can do something, however small.

Do you ever say "I must ask my husband." If you do, change that word "ask" to "consult with." Do you ever say "My husband doesn't allow me to do this." Why?

## **Perpetual minors**

Then there is discrimination which applies only to Black women in South Africa. We have the scandal of the perpetual minority of African women in Natal, a scandal which was partially extended to women in the Transvaal in 1972 when it became compulsory for an African woman in that province to produce the written consent of her father or legal

guardian before her marriage could take place. This has long been the case in Natal and means that many young adult women have to suffer the indignity of asking a guardian who may be unknown to them, younger than them, have less education than them, for permission to marry. The only way in which a woman can get round this if she cannot find her guardian or if he refuses his consent is to ask the Minister of Bantu Administration or a judge of the Supreme Court.

It is a matter of concern that millions of women therefore have no right to choose their own marriage partners. It is a matter of urgency that both the Natal Code and the 1972 legislation be abolished and that all marriages be regulated by the Marriage Act of 1961 which rules that the consent of the father or guardian must only be obtained if the woman is under 21.

### **The Natal Code**

African women in Natal are governed not only by the laws which rule the rest of us but by the provisions of the Natal Code. Very briefly the Natal Code means that all African women in Natal are legal minors however old they may be and however respected by the community. These women always remain subordinate to a male guardian, to their fathers or other relatives when unmarried and to their husbands if they are married. A woman may not enter into any contract such as a hire purchase agreement, nor may she seek employment without the consent of her guardian. She cannot sue or be sued in a court of law if the action falls under customary law without the assistance of her guardian. She can own property but the law is unclear as to whether she can sell it without his consent. She cannot ever be regarded as the guardian of her children. If she is married whatever she earns belongs to her husband. If her Customary Union marriage is dissolved her guardianship reverts to her father or other male relative and she cannot start divorce proceedings without his consent. She may be given temporary custody of her young children but must have the father's consent to anything she may wish to do on their behalf.

If she is married, widowed or divorced she can apply for emancipation from this state of servitude but she must have her guardian's consent to do so. The Bantu Affairs Commissioner can over-rule him if he refuses consent but he must go with her to the Commis-

sioner to make the application and if he will not do so there is little she can do about it. She must also be 'thrifty' and 'of good character' and must own property. If an emancipated woman marries she becomes a minor again unless she and her husband have an ante-nuptial contract.

In all provinces of the Republic a woman who is married by Customary Union has very little protection if her husband contracts a civil marriage with another woman. Her union with him is, in effect, dissolved. He is not obliged to give her any of their joint property and retains guardianship and custody of their children unless the children are very young when the mother might be allowed to keep them for a while. She may only use such of their property as was allotted to her by her husband if she lives in the place he tells her to. She can only get maintenance from him for herself and the children if she can show that she is without means of support.

### **The Pass Laws**

These laws totally deprive all African women of the most basic human rights — to live with their husbands and children and to move with their husbands to live with them where work is offered. Women have to have a permit to do these things, a permit which is usually refused. They are also prevented by law from seeking employment where they wish to do so. A woman who lives in a small town may find herself compelled to work as a domestic worker or cleaner because there is absolutely no other openings in the only place where she is legally entitled to be. She will not be permitted to move to a place where the work of her choice is to be found. In the homelands women are in an even worse position. A woman may not move out of her home area to seek work and the work that is offered to her by the local labour officer is likely to be of a very badly paid, unsatisfactory kind. Job opportunities in the homelands and border industrial areas are extremely limited. She has a chance of employment carrying some job satisfaction if she is qualified in one of the professions where her skills may be required by her homeland government but this is hardly free choice of employment if there is only one possible employer offering openings suited to her abilities. If she has limited skills or no training at all she will most likely have to remain unemployed or, as she cannot afford to earn nothing, be forced

to accept very badly paid work as a seasonal farm labourer or domestic worker in a rural area — if even this kind of employment is available.

In those towns which do allow women in from outside to work on one year contracts unacceptable conditions are imposed. In Randburg, for example, women who come from BaphutaTswana to work on contract must sign an undertaking that they will not "introduce" their children into the area and if they do so the contract is rendered null and void.

The housing regulations which control urban African townships also severely prejudice women. Only a man may become the registered tenant of a house. Women who are the heads of families, such as widows, divorcees and single women with children are no longer allowed to rent a house. They can only live as lodgers in a room in someone else's house, irrespective of their age, income or permanent residence rights in the area concerned. A woman who has been living in a house with her husband may be evicted if he dies or deserts her.

## Employment

South Africa is so far behind the western world in her employment policies that it is difficult to select those areas of the greatest concern. There is legalised discrimination and discrimination which is not imposed by law but which arises out of the attitudes of White men to women and to Blacks.

If one looks at the display advertisements offering vacancies in any edition of a daily newspaper a trend is immediately apparent which is universal in this country. An employer with a vacancy rarely just advertises the position, the conditions of employment and the skills he requires. He has a preconceived idea of whom he wants. If it is a senior position he thinks in terms of men only and White at that. If it is a junior or clerical position he thinks of "young ladies". He also decides what colour he wants, and — a less obvious discrimination — what age he wants. It seems that if you are not between 18 and 25 you have a very limited choice of employment offered and if you happen to be Black, female and 40 you don't stand a chance. There are also clear indications that employers think that if they fill a vacancy with a woman they can pay her less.

These stereotypes affect us all and lay down a limited category of jobs in which we as women or Blacks can hope to earn a living. The boundaries of our ambition are defined for us at birth. The result of this kind of attitude being inculcated in childhood is that we fail to fight for our rightful place in society when we become adult. We accept our position too readily and come to doubt our own abilities.

## Discrimination in pay scales

Much has been written about the scandalous racial discrimination in pay scales when Whites are paid more than Blacks for doing the same jobs requiring exactly the same training and skills but we hear less about the sexual discrimination in pay which pervades our society. The wage determination for shop assistants is laid down as follows:

Sales assistants in their first year of work:

R20,77 per week for men

R19,62 per week for women.

Qualified shop assistants:

R41,54 per week for men

R28,15 per week for women.

This 20% difference between male and female pay runs through all wage determinations. In all sectors of the economy women are paid less than men for doing the same job.

All this leaves one with a feeling of despair. There is so much to be done and so many crucial deprivations that one does not know where to begin. Legalised discrimination is the hardest to tackle. The Pass Laws are the cornerstone of the whole edifice of apartheid and any attack on them is an attack on the very foundations of our so-called "traditional way of life". Discrimination which occurs as a result of custom and attitude may seem easier to change but in a society which is rooted and grounded in a false presumption that certain people are superior to others because of the colour of their skins this presumption is extended to an assumed superiority because of sex which becomes as deeply entrenched as if it were legislated for.

But women are moving all over the world and are throwing off one restraint after another. I do believe that we can find a way through all this, that women do have the power to change our society. Here in South Africa it is impossible to separate the liberation of women from the liberation of all people. One day perhaps historians will say of us that it was the women who won freedom for all South Africans.