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FEMINIST LAW BULLETIN

NEW ZEALAND AOTEAROA

PO Box 5071, Lambton Quay, Wellington

UNIVERSITY OF CANTERBURY

Issue 4 1999

ISSN No. 1172-7977

23 AUG 1999

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Why a Feminist Law Bulletin?

The Feminist Law Bulletin:

- Identifies when feminist issues arise in policy, legislative proposals, and the practice of law;
- Provides an opportunity for exploration and discussion of some of these issues;
- Enables a general readership to gain an introduction to feminist analysis of the law.

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Maori Women's Experiences Re-interpreted?

By Leah Whiu

The widely heralded Women's Access to Justice Project developed by the Law Commission ("the Project") over the past three-four years has been recently publicly released in the form of two reports: one which dealt with Maori women's experiences of the Justice sector; and the other which dealt with non-Maori women's experiences of access to legal services.

This article briefly critiques the Law Commission's analysis of the Maori women's experiences as articulated in its report entitled Justice - The Experiences of Maori Women - Te Tikanga o te Ture - Te Matauranga o nga Wahine Maori e pa ana ki tenei ("the Law Commission's report").

Firstly, to situate myself, I am of the Ngatihine and Ngapuhi peoples, and have a passionate commitment to te tino rangatiratanga o nga iwi Maori me nga wahine. I am currently employed as a legal academic and teacher at Waikato Law School, which coincidentally was where I

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met Makere Papuni when we were both studying for our law degrees in the early 1990's. Makere is the wahine toa who conducted all 48 of the Law Commission's hui with Maori women throughout Aotearoa for the Project, but was not directly involved in the writing up of this report. E mihi ana ki a koe e Makere, i roto i tou mahi whakahirahira.

At the Law Commission's consultation hui, Maori women throughout Aotearoa shared their pain, humiliation and anger at the justice system, its institutions and structures which consistently failed to understand, let alone adequately address these women's concerns and needs. Despite this, the Law Commission's report frames a selective, sanitised account of those women's experiences in officialdom speak of "users", "outputs" and "outcomes", for the primary purpose of assisting those same heavily criticised justice sector institutions in the performance of the Crown's Treaty of Waitangi obligations (see para 2).

What about the purpose of "telling these Maori women's stories"? What about the purpose of educating the justice sector about the continuing impact of its colonialist history and legacy? What about the purpose of educating the Crown and its justice sector to take responsibility for this impact on Maori women, and to begin to actually listen to what Maori women's experiences are and to address those concerns by working with Maori women? Such purposes are either not made explicitly in the Law Commission's report, or are simply omitted.

On the one hand, to many justice sector employees it may come as a great shock to hear that Maori women consider that their issues and concerns have not been appropriately or adequately addressed, a point which the Law Commission's report does make, albeit apologetically (see paras 13, 15-16 for reference to policy objective of securing public support or sympathy and

para 426 for re-framing Treaty guarantees positively).

On the other hand, however, as this report documented, it is Maori women who have been made invisible and their voices silenced by the colonialist's western-derived legal principles and institutions, which is the trap that the Law Commission itself falls into in this report.

A good example of the Law Commission's failure to centre Maori women and their experiences in its report is its analysis and discussion of the importance of the Treaty of Waitangi (see paras 4-25, 422-426). While recognising that the Treaty of Waitangi was central to Maori women's perceptions of justice, the Law Commission, in typical Crown-agency fashion, re-framed this discussion in terms of the principles of the Treaty (as developed by the Crown) because as the Law Commission stated:

[t]he Treaty of Waitangi is not specific enough to be used as a checklist to rate government performance or to systematically monitor service delivery by the state to Maori. (para 422)

However the Law Commission then went further by selecting three principles: partnership, participation, and options; into which it then neatly fitted the women's experiences, the Crown's obligations and future strategies. It is not entirely clear why the Law Commission considered that these three principles were any more specific than the Treaty of Waitangi itself, and nor is it explained.

This refusal to even consider the Treaty itself is endemic and illustrates one of the central critiques of the Law Commission's report. Alongside the Law Commission's contention that "[t]he future of New Zealand must lie in a single legal system" (para 424) which "is intended to bring all of us under the rule of law" (para 431), it is clear that

there is no attempt at all to really grapple with the underlying causes and effects of the impact of colonisation and the imposition of the coloniser's constitutional arrangements, institutions and law on Maori women.

What the Law Commission's report does do well is present a clear and comprehensive description of the various layers of and linkages between the different government agencies which directly or indirectly impact upon Maori women (chapter 5). However this chapter lacks specific and direct analysis of these agencies' impact on Maori women.

The report also presents a lot of statistical information about the demographic and socio-economic contexts and outcomes for Maori women (chapter 4). However once again the particular statistical information selected reflects the Law Commission's preoccupation with the Crown's viewpoint and does not reflect Maori women's indicators of success.

For example one of the sections presents statistics on one-parent families, and not surprisingly Maori women "are more than twice as likely as non-Maori women to be living in one-parent families" (para 196). However this statistic ignores a preference of many Maori women who may be sole parents living with extended family.

In conclusion, the Law Commission's report attempts to put a band-aid on the impact of 159 years of colonisation for Maori women. It re-frames Maori women's experiences in its colonialist and Euro-centric paradigm and attempts to generate solutions to address Maori women's concerns, pain and anger from that paradigm.

However as it is Maori women who will continue to be directly affected by the failures of the justice sector and the Crown, we will ultimately be the best judges of whether the Law Commission's report has changed anything for us and our whanau.

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Editor's Note: The Law Commission was invited to comment on this article, but was not able to in the time available. The Commission's comment will be published in the next issue of the Bulletin.

Where can I get a copy of the Law Commission Report?

Copies of the report are available from the Law Commission, P O Box 2590. Wellington and on the Commission's website at: www.lawcom.govt.nz

What other information is in the Report?

There are 5 appendices and a bibliography in the Report dealing with:

- ❑ Consultation hui
- ❑ Te Tiriti o Waitangi
- ❑ Treaty principles
- ❑ List of contributors and agencies consulted
- ❑ A selection of Maori women's comments

How is the Report Arranged?

Chapter 1 of the Report outlines the principles of the Treaty of Waitangi, policy objectives and barriers to justice (including cultural disregard, socio-economic disadvantage and access to services by Maori). Chapter 2 discusses the value and recognition of Maori women and chapter 3 outlines Maori women's experiences of the justice system. Chapter 4 discusses identifying needs to develop solutions for Maori women. Chapter 5 gives an overview of the justice sector including the role of different government agencies. Chapter 6 is headed "Towards community participation" and proposes three principles (partnership, options, and participation) which "should be viewed as a guide for justice sector agencies" (para 365).

From the Net

Women's Webs

A petition seeking support for the women in Afghanistan is currently circulating on the internet. A copy of it is reproduced here.

“PETITION

You might be interested in this petition to the UN being organised by Mary Robinson, the ex Irish prime minister.

The government of Afghanistan is waging a war upon women. The situation is getting so bad that one person in an editorial of the Times compared the treatment of women there to the treatment of Jews in pre-Holocaust Poland.

Since the Taliban took power in 1996, women have had to wear burqua and have been beaten and stoned in public for not having the proper attire, even if this means simply not having the mesh covering in front of their eyes. One woman was beaten to death by an angry mob of fundamentalists for accidentally exposing her arm while she was driving. Another was stoned to death for trying to leave the country with a man that was not a relative.

Women are not allowed to work or even go out in public without a male relative; professional women such as professors, translators, doctors, lawyers, artists and writers have been forced from their jobs and stuffed into their homes, so that depression is becoming so widespread that it has reached emergency levels.

There is no way in such an extreme Islamic society to know the suicide rate with certainty, but relief workers are estimating that the suicide rate among women, who cannot find proper medication and treatment for severe depression and would rather take

their lives than live in such conditions, has increased significantly.

Homes where a woman is present must have their windows painted so she can never be seen by outsiders. They must wear silent shoes so that they are never heard. Women live in fear of their lives for the slightest misbehaviour. Because they cannot work, those without male relatives or husbands are either starving to death or begging on the street, even if they hold Ph.D.'s. There are almost no medical facilities available for women, and relief workers, in protest, have mostly left the country, taking medicine and psychologists and other things necessary to treat the sky-rocketing level of depression among women. At one of the rare hospitals for women, a reporter found still, early lifeless bodies lying motionless on top of beds, wrapped in their Burqua, unwilling to speak, eat, or do anything, but slowly wasting away. Others have gone mad and were seen crouched in corners, perpetually rocking or crying, most of them in fear.

One doctor is considering, when what little medication that is left finally runs out, leaving these women in front of the president's residence as a form of peaceful protest. It is at the point where the term 'human rights violations' has become an understatement. Husbands have the power of life and death over their women relatives, especially their wives, but an angry mob has just as much right to stone or beat a woman, often to death, for exposing an inch of flesh or offending them in the slightest way.

David Cornwell has said that those in the West should not judge the Afghan people for such treatment because it is a 'cultural thing', but this is not even true. Women enjoyed relative freedom, to work, dress generally as they wanted, and drive and appear in public alone until only 1996 - the rapidity of this transition is the main reason for the depression and suicide; women who were once educators or doctors or simply used to basic human freedoms are now

severely restricted and treated as sub-human in the name of right-wing fundamentalist Islam.

It is not their tradition or 'culture', but is alien to them, and it is extreme even for those cultures where fundamentalism is the rule. Besides if we could excuse everything on cultural grounds, then we should not be appalled that the Carthaginians sacrificed their infant children, that little girls are circumcised in parts of Africa, that blacks in the US deep south in the 1930's were lynched, prohibited from voting, and forced to submit to unjust Jim Crow laws.

Everyone has a right to a tolerable human existence even if they are women in a Muslim country in a part of the world that Westerners may not understand. If life can threaten military force in Kosovo in the name of human rights for the sake of ethnic Albanians, then NATO and the West can certainly express peaceful outrage at the oppression, murder and injustice committed against women by the Taliban.

STATEMENT:

In signing this, we agree that the current treatment of women in Afghanistan is completely UNACCEPTABLE and deserves support and action by the people of the United Nations and that the current situation in Afghanistan will not be tolerated. Women's Rights is not a small issue anywhere and it is UNACCEPTABLE for women in 1999 to be treated as sub-human and so much as property. Equality and human decency is RIGHT not a freedom, whether one lives in Afghanistan or anywhere else.

Please sign to support, and include your town and country. Then copy and e-mail to as many people as possible. If you receive this list with more than 50 names on it, please e-mail a copy of it to: Mary Robinson, High Commissioner, UNHCHR, webadmin.hchr@unhcr.org

and to: Angela King, Special Advisor on Gender Issues and the Advancement of Women, UN, daw@undp.org ”

Women Leaders Online

A useful women's international activist site is available at women leaders online: <http://www.wlo.org>

The site includes an extensive links to other sites including:

- the Beijing web
- the Centre for Global Women's Leadership
- Virtual Sisterhood
- International Women's Health Coalition
- Women's International League for Peace and Freedom

A range of international women's resources are also available including:

- International Association for Feminist Economics
- International Directory of Women's Political Leadership
- International Gay and Lesbian Human Rights Commission
- African Women Global Network
- South Asian Women for Action

Legislation Update

Bail Reform Bill

A Bail reform Bill has been introduced to Parliament. The Bill proposes that someone who is charged with committing a serious offence while already on bail, will have to prove they deserve bail. At the moment it is up to the Police to prove that a person should be denied bail.

The Bill will also allow the court to have details of bail breaches permanently recorded against a defendant.

The Bill also provides that:

- Judges should make the safety of victims the priority when considering bail for

those who have previously offended while on bail; and

- Consolidates a range of existing bail provisions in a number of different Acts, into one piece of legislation.

Submissions, which should be made to the Justice and Law Reform Select Committee, close on 2 September 1999.

Courts Security Bill

Submissions on this Bill closed on 9 July 1999 and the Bill is due to be reported back from the Government Administration Select Committee on 16 August 1999.

This Bill implements a range of recommendations for improving Court security following assaults in court waiting areas and an incident where a woman was killed in court precincts last year.

The Government has budgeted \$3.8 million to make changes to existing court security. This includes putting security officers in 10 of the "high risk" courts in the country and providing these new security officers with powers to search and seize weapons and to detain people.

Justice Referendum

The Government recently announced that there will be a referendum on election day this year.

The referendum will ask whether there:

"Should be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offenders."

The referendum follows a petition promoted by Norm Withers under the Citizens Initiated Referenda Act 1993. The Clerk of the House has certified that at least 10% of eligible voters signed the petition, which means a referendum must be held. However, the results of the referendum are not binding on the Government.

Access to Abortion Information

The Family Planning Association is refusing to hand out Ministry of Health pamphlets because it says they are biased against abortion.

Over 1500 copies of what the Association has called an "overly emotive" booklet have been returned to the Ministry. Copies of the booklet were sent to general practitioners at the end of last year.

The Association actions have been attacked by the leader of the Christian Heritage Party, Rev Graham Caphill, who called the booklet "a useful tool."

The Association's objections to the booklet included that one of the listed "helping agencies" was an anti-abortion group, that it contained pictures of foetuses that were overly emotional" and used the terms "arms, legs, and toes" in relation to an unborn child at the 10-week point in pregnancy. The Association considered that type of material was not appropriate in a booklet that was intended to be read early in a woman's decision-making about abortion. The Association has produced its own pamphlet on unplanned pregnancy, *Considering an abortion? What are your options?*
