

FEMINIST LAW BULLETIN

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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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The World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerances

The United Nations will have a world conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerances in South Africa from 31 August to 7 September 2001. Work is already underway by feminists who want to see the integration of gender and race issues so that the lives of different groups of women affected by racism and sexism can be improved. Earlier this year at the first preparatory committee meeting ("PrepCom") of the World Conference more than 40 nongovernmental organizations representing the Americas, Africa, Asia, Europe, and indigenous peoples came together to form a Women's Human Rights Caucus to address and assert the interests of women and girls who are victims of racism and/or ethnic discrimination.

In the words of Robin Levi, one of the Caucus members, "We did so because the intersection of racial and gender

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discrimination often leaves women facing unique violations of their rights. In our view, the World Conference must include gender, as well as age, class, sexual orientation, and economic status in its analysis to be truly reflective of reality and for the remedies to be effective.”

The Women's Caucus organizers are the Women's Institute for Leadership Development for Human Rights (WILD), the Center for Women's Global Leadership and an Executive Committee comprised of women from several regions of the world. The Caucus prepared a statement and recommendations and conducted extensive lobbying at the PrepCom. The objectives of the Caucus include:

- Making gender and other multiple identities distinct items on the World Conference agenda
- Promoting the use of a human rights framework to conduct all World Conference deliberations
- Ensuring the implementation and monitoring of all outcomes of the World Conference at the local, national, regional and international levels
- Positioning women in leadership and decision-making roles

The Women's Caucus was successful in getting gender onto the Conference agenda, and an expert meeting on gender is being considered.

To ensure that the Women's Caucus is truly reflective of women's needs, it must represent the diversity of the world. Currently, members of the Women's Caucus core include women from every region of the world, but are seeking input and views from women in the Pacific. The need for diversity reflects the importance of including all multiple identities in the analysis of racial discrimination. The Women's Caucus has three subcommittees:

1) **Theory:** The first goal of this committee will be drafting a 3-5 page statement to submit to the UN from the Women's Caucus on the importance of integrating gender and other identities into the analysis of racial discrimination. A synopsis of this statement is given below.

2) **NGO Access & Information:** This committee will address the issues of accreditation, access and support for regional PrepCom, global PrepCom, and the Conference.

3) **Outreach:** This committee will be responsible for increasing the regional racial and ethnic diversity of the Women's Caucus, and possibly securing funding to support the participation of women from grassroots groups that would be unable to attend. This committee would have focal points for regional outreach.

Synopsis of Statement from the Women's Caucus

Discrimination against women, in its most severe form, results in violence, intimidation and degradation for women and girls in their own family dwellings and communities, and when they encounter abusive state and government actors. The inaction of government aggravates these conditions and is itself an example of racism and racial discrimination. These are violations of fundamental human rights.

A number of documents, UN resolutions, and statements have already called for the need to integrate gender and race into the World Conference Against Racism (such as the UN High Commissioner for Human Rights and the Foreign Minister for South Africa). However, there is a need for more analysis and concrete steps to realise that commitment. Without addressing gender, as well as age, class, caste and sexual orientation, the remedies to challenge and eliminate racial discrimination arising from

the World Conference Against Racism will not be effective. While men also experience discrimination based on the intersection of race and gender, women have all too often been relegated to an invisible state because the vast majority live under patriarchal social structures.

Racism and sexism are about the exercise of power. Racism and sexism are maintained by a multiplicity of actors, such as national governments, multinational corporations, international financial institutions, international government organisations, non-governmental organisations, and individuals. Moreover, the artificial distinction between public and private actors and the manner in which this distinction is realised shields private actors, including corporations, from accountability. In many cases, the intersection of racial and gender discrimination, leaves women and girls facing violations of their rights that are unique to them.

For example, singularly positioned at the bottom of South Asia's caste-system hierarchy, Dalit women face discrimination due to caste and patriarchal culture, such as sexual violence sponsored by government agents in order to repress political organising. In another example, indigenous women, among other communities, are often subjected to sterilisation as a method of population control and genocide.

The internalisation of racism results in men who are victims becoming agents of the various systems that seek to destroy them. The merging of patriarchal customs and practice that exist within most communities with systems of white patriarchy and racism serve to perpetuate both racist and patriarchal norms. These realities compound the violations of women's human rights. Although there have been significant efforts on the part of several sectors of the international human rights movement to raise the visibility of the human rights of women, much more needs to be done to

emphasise the intersection of race and gender, and other multiple identities, in the violation of women's human rights.

Another aspect of the intersection of race and gender is in the area of economic globalisation. The success of globalisation, as in colonialism and slavery, relies on the exploitation of labour, particularly the labour of women along the global assembly line. Consequently, women whose economic survival is endangered by racism are further disadvantaged because their labour has become the economic engine for globalisation. In light of the dramatic increase in globalisation and population movements over the last decade, we need standards that cross boundaries and hold governments accountable for the treatment of women.

Human rights speaks to the inherent right to human dignity requiring minimum standards in the civil, political, economic, social and cultural spheres. The human rights framework provides for government accountability for state and non-state actors, including corporations; and a central feature of this framework is the interdependence of rights. Rhetorical recognition of civil and political rights does not mean they have been accomplished. In fact, without fundamental enforcement of economic, social, and cultural rights, we cannot realise civil and political rights. Moreover, the right to human dignity depends on gender and racial justice. The human rights framework provides a basis for the eradication of racism. In addition to the UN Convention on the Elimination of All Forms of Racial Discrimination, other human rights treaties contain legally binding standards that demand government accountability for the protection of these rights. If you are interested in learning more about the Women's Caucus and/or joining the Women's Caucus listserv, please e-mail:

esther@wildforhumanrights.org

Battered Defendants

The Law Commission recently released a discussion paper, *Battered Defendants: Victims of Domestic Violence Who Offend*.

The paper outlines the history and use of the term "battered women's syndrome" and suggests that it is more helpful to look at expert evidence of the effects of battering and how that is relevant, rather than whether a particular "syndrome" exists. This approach is in line with the approach now being taken in the United States and other countries which consider "battered women's syndrome" inadequate because:

- It implies there is one syndrome that all women fit
- It has pathological connotations which suggest that battered women suffer from some sort of sickness
- Expert testimony on domestic violence refers to more than women's psychological reactions to violence
- Focuses attention on the battered woman rather than on the batterer's coercive and controlling behaviour
- Creates an image of battered women as suffering victims rather than as active survivors

Instead, researchers and activists overseas have proposed the use of expert testimony on the experiences of survivors of domestic violence to replace the use of "battered women's syndrome." The use of such evidence would allow information about the realities of women's lives to be seen and allow for the individual differences that may be found in particular cases.

This type of approach has been used in California for many years, once prosecutors realised that such evidence could help them. For example, it could explain why women might not want to testify against their abuser, why they did not leave despite the

violence, and to address other myths about domestic violence that affect whether juries think women are guilty of crimes. The Law Commission paper suggests using the general rules about evidence to allow expert testimony as well as a range of amendments to existing defences (such as self-defence and provocation). The most useful proposal is an extension to allow the defence of use of force where a person believes violence is inevitable, rather than imminent.

The paper has been released against a backdrop of almost ten years of domestic violence law reform, culminating in the Domestic Violence Act 1995. At the core of that Act is the simple concept that domestic violence is about the use of power by men to control their women partners. Unfortunately, the Law Commission discussion paper does not refer to that Act or to the clear policy framework that already exists for the domestic violence laws in New Zealand. There is also no definition of domestic violence nor the framework within which it is best analysed, namely, the power and control analysis, which was developed in Duluth, Minnesota. The analysis is most commonly depicted in the Power and Control Wheel, which illustrates the factors that characterise violent relationships and illustrates how an abuser seeks to maintain power and control through a variety of tactics, many of which can be identified as psychological violence. This analysis is used around the world by women's refuges services, the police, judiciary, legal academics and many others. For example, the power and control analysis is currently used by the Women's Refuge, the New Zealand Police and others.

The discussion paper also does not cite any of the research of the National Collective of Independent Women's Refuges.

Submissions on the paper are now being considered by the Law Commission, which will report its findings and recommendations to the Minister of Justice.

From the Net

www.youthlaw.co.nz – a site designed for young people up to the age of 25. Youth Law is based in Auckland and provides free and confidential legal advice and other services to young people. The website includes access to Youth Law's written resources, which cover a wide range of legal resources including criminal, traffic, education and school, domestic violence, family, police and alcohol and drugs.

Review of Child Guardianship, Custody and Access Laws

The long awaited review of guardianship laws has begun with the release of a discussion paper by the Ministry of Social Policy and the Ministry of Justice, *Responsibilities for Children: especially when parents break up*. The paper is the first step in the review and deals with the Guardianship Act 1968. The paper begins by outlining the Government's goals for family policy, which include:

- Enhancing the well-being of children and young people
- Supporting parents and others in carrying out their responsibilities to children
- Providing a policy and legal framework which allows for the diversity of family types, cultural beliefs and practices
- Providing a policy and legal framework which facilitates the range of ways that parents can carry out their responsibilities to children

The discussion paper asks a range of questions including:

- What should the basic goals of laws about guardianship be?

- How could the law better reflect a more consensual approach to custody and access?
- How can the rights of children and parents be better balanced?
- How can the values and aspirations of Maori be incorporated?
- How can Family Court procedures be improved?
- How can disputes be resolved more quickly and cheaply?
- Is supervised access the best option where a parent has been violent?

It is vital that as many women and women's organisations as possible make submissions on the proposals. The paper has been issued partly in response to some of the concerns raised by the Shared Parenting Bill (proposed by ACT's Dr Muriel Newman), which was defeated earlier this year. Father's rights groups have begun to rally for changes to the current law that could result in worse outcomes for women who separate from their partners. Many of these changes are based on overseas models (especially in Australia, England and some states in the United States of America) that have been shown to have bad outcomes for women and children.

In New Zealand, there are many issues for women in the current Family Court system and guardianship laws. The study of women's access to legal services in New Zealand¹ shows that women have significant concerns about their access to the civil justice system. A frequent concern reported in that study was that the current family law dispute resolution procedures are particularly damaging to the welfare of women and children when undue time and cost, and increased acrimony within the family, result from procedures being dragged out. There was a particular concern about the Family Court's limited ability to control or censure abusive tactics employed

¹ *Women's Access to Legal Services*, Joanne Morris, New Zealand, 1999

by parties, and its practice in failing to award costs or impose costs as a penalty for vexatious litigation.

Overall, women, family court lawyers and judges have strongly defended the structure of the Family Court and its procedures. However, there is an acknowledgement that there are difficulties in the Court that contribute to difficulties that women experience. These factors included: backlogs in the courts, overly adversarial tactics by some lawyers, greater volume of cases, lack of court powers to stay repeat applications and punish for contempt, and difficulties in determining the cause of unreasonable delays in order to penalise delaying tactics. Most want to find new ways of improving the current system.

In addition, a 1994 report indicated that there were ways in which the current counselling and mediation model could be improved to benefit disputes in custody and access cases.² The report indicates that custody disputes are not actually resolved at mediation conferences particularly often and that other non-judicial dispute resolution methods should be explored in suitable cases. Systems for potentially difficult cases were identified including giving priority to these and for services such as counsel for the child, specialist reports and so on.

On the issue of new supervised access laws in cases of domestic violence, these have been proved to increase the safety of children. In May 1999 the Ministry of Justice published a report on the results of research into the new provisions of the Guardianship Act relating to domestic violence. The report, *The Domestic Violence Legislation and Child Access in New Zealand* concluded that the provisions for access to children in domestic violence legislation have led to a growing use of

access arrangements which are safer for both children and custodial parents. However, the research found that some children continue to be exposed to violence during access.

The research also suggested improvements to enhance the protection of children's well-being, including supervised access services for Maori children; access to information for parents; the quality of professional services to parents, access to appropriate support services for Maori parents; the courts' access to information about child safety; the length of time taken to finalise court cases; guidance for informal supervisors of access; safety outside supervised access centres; and the funding of supervised access.

Submissions close on 30 November. Copies of the discussion paper are available from the Ministry of Justice, Private Bag 180, Wellington, or e-mail guardianship@justice.govt.nz

World Women Lawyers Conference

The first ever world women lawyer's conference will be held in London from 1-2 March 2001. The Conference is being organised by the International Bar Association's Women's Interest group, which was established in 1996 and has members from over 47 countries making it one of the largest networks of women lawyers in the world.

US Secretary of State Madeleine Albright will open the conference as keynote speaker and will chair the first day's plenary session on women's rights as human rights. The plenary on day two will consider issues of Islam, women, and the law and will be opened by Queen Noor of Jordan. Workshops on a range of other areas will also be offered. For more information about the conference e-mail: confs@int-bar.org

² Hall and Lee, *Family Court Custody and Access Research Report 8: Discussion Paper* Department of Justice, Wellington 1994.