

July 21, 2010

Update on African and Canadian Women's Human Rights Project

By: Sally Armstrong, award-winning journalist and human rights activist

With an introduction by May Cheng and Tracy Pratt, on behalf of Fasken Martineau's Women's Networking Initiative

On behalf of Fasken Martineau's Women's Networking Initiative, we want to thank those of you who were able to join us for a wonderful evening with our special guest, Sally Armstrong, an award-winning journalist, author, documentary filmmaker and human rights activist. Fasken Martineau sponsored Sally's participation in the Canadian Lawyers Abroad Project, Marital Rape in Africa. This worthwhile endeavour is led by the tremendous efforts of Fiona Sampson.

We were very pleased with the number of clients and colleagues that attended our event and appreciate the on-going enthusiasm and support for the Project that has been expressed. As part of the sponsorship, Sally promised to provide a report of what transpired at the meetings held in Nairobi. We attach Sally's newsletter which provides a glimpse of what we have strived to be a part. A report of Sally's trip also was published by *The Globe & Mail* on Friday, June 11, 2010 in an article entitled "Marital Rape in Africa: The right to say no" (also attached).

Sincerely,

May Cheng and Tracy Pratt, on behalf of Fasken Martineau's Women's Networking Initiative

Once in a very long while, maybe a lifetime, you get to be part of an event that alters the way an entire country or even a continent sees itself. The process is usually daring, certainly time consuming, invariably costly, occasionally heart breaking and eventually an exercise so rewarding, it is the stuff of legends. The African and Canadian Women's Human Rights Project (ACWHRP) that Fasken Martineau is funding is all of that and something more than its sum.

While social responsibility is the new panacea in the corporate world, this project brings new meaning to "if you build it they will come." The brainchild of Fiona Sampson, Director of Human Rights for Canadian Lawyers Abroad, it brings together women human rights lawyers from Canada and Africa to figure out how to alter the status of women in Africa. The plan to make change needed some corporate champions. Fasken Martineau's May Cheng stepped in and joined the Department of Justice as well as the Stephen Lewis Foundation, and the International Development Research Council (IDRC).

The project was initiated in April, 2008 in response to requests from equality advocates in Africa who were looking for support with the research and development of substantive equality analyses, and the implementation of strategic equality initiatives that would advance gender equality and empower women in Africa.

At the initial meeting in Canada, the African women wondered if the model used in Canada in the early eighties to reform the law around sexual assault – a method that relied on rewriting the law, educating the judiciary and raising awareness with the public – could work in Africa. Sampson felt there wasn't time to re-invent the wheel and as long as they learned from the mistakes made in the Canadian process they could develop a plan that would tackle the entrenched violence against women in Africa and the centuries old impunity bestowed on the men.

Two years later they gathered in Nairobi with the pick of the legal crop for the historic launch of Three to be Free, a program that will take on three countries – Kenya, Malawi and Ghana – and use three strategies – litigation, policy reform and legal education over three years to alter the status of women.

They'll begin by criminalizing marital rape. The issue is this: in most African countries a dowry is paid for a woman. So a man presumes that he bought his wife and therefore owns her. Consequently she has no say in how she will be treated. If a man wants sex, she has no right to refuse. And if she does refuse he will rape her and then beat her for insulting him.

Getting rid of the dowry and therefore the ownership a man has over a woman would seem a place to start but the lawyers say it's easier to change the jurisprudence than to tackle the ancient customs. What's more the criminalization of marital rape will have a trickle down effect

says Sampson. "Women will achieve increased equality under the law and will be recognized as persons rather than property. Furthermore, it will establish a culture of accountability for women's human rights and improve the physical safety and security of women."

Mary Eberts an internationally known litigator who has spent most of her career representing causes that promote equality in Canadian law and who brought her own considerable experience and talent to the team in Nairobi explains, "It is often quite a bit easier to change the jurisprudence, because you are dealing with elites, whom I think have less allegiance to "the way it was" in many areas than do the people who hold 'custom' dear. They are open to logical argument. They also know in their heart of hearts that changing the jurisprudence gives them the best of both worlds: they can look progressive without necessarily effecting real change, because changing the jurisprudence is not the whole story. There remain enforcement issues, i.e. maybe the law will be changed on the books, but won't be enforced with vigor. But for those to whom symbolism is important, it seems like a victory. At one level it is. And it may be that over time, the change in the law is part of the dynamic that brings about a change in attitudes."

It was that kind of analysis that propelled the debate at the conference table in Nairobi. Winnie Kamau, a law professor at the University of Nairobi cautioned the group at the outset, "Customary law defines a woman's identity here. It is patriarchal and biased and goes against gender equality and trumps statutory law."

The task was clear – find a way to word the reform and get it into the legislation of the country without upsetting the presumptions of the parliamentarians. Elizabeth Archampong, a lecturer at the Faculty of Law in Ghana suggested looking at the reform from a perspective of caring about and protecting women rather than using words like marital rape. She suggested phrases like "free of violence" rather than "equal" so as not to invite a backlash. Her colleague Seodi White, a lawyer from Malawi said, "Play on humanity. Use non politicized language such as 'a man who loves his wife wouldn't beat her.'" The argument didn't gain ground at the table. "Marital rape is one of the toughest barriers to the full equality of women" said Eberts. "Conceptually at least, it is a remaining incident of married women's inferior, or non-existent, legal position. I do not, though, see that it is the keystone to change. Each barrier will still have to be taken, one by one."

When Malawi, Ghana and Kenya reformed their laws around sexual violence in 2006 and 2007, marital rape was part of that package but in each jurisdiction the parliamentarians on the review committee said, "Get rid of the marital rape section – it will never pass – our men will never allow it." All three succumbed and the reforms went through without it. The Canadian women at the table shared their experience with a similar resistance. Jennifer Koshan, a professor of law at the University of Calgary tells the story: In 1983 when Member of Parliament Margaret Mitchell presented the sexual assault law reform package to the House of Commons, the members burst out laughing. They called to each other across the house making derisive gestures about beating their wives. "Before 1983 there was immunity for men who raped their wives in Canada for the same reasons African women are struggling with now: women are assumed to be property once married and there is implied consent because of marriage vows," she says. And even today some judges rely on old adages like, "When a woman says no she means yes."

Together they examined the jurisprudence of the three African states and parsed every sentence of the proposed legislation, anticipated every argument, tried it against a dozen examples and finally came up with a draft for stage two. Their historic deliberations are scheduled to continue in October when they gather again in Malawi.

Participants

Elizabeth Archampong - Professor of Law, Kwame Nkrumah University, Ghana
John Burke Baidoo - Legal Counsel, Women in Law and Development in Africa, Ghana
Mary Eberts – Counsel for the Native Women's Association of Canada, Canada
Marceline Kabir - Registered Nurse, Board Member Women of Law and Development in Africa, Ghana
Ngeyi Kamyongolo - Professor of Law, University of Malawi, Malawi
Jennifer Koshan - Professor of Law, University of Calgary, Canada
June McCue - Professor of Law, University of British Columbia, Canada
Margaret Parsons - Executive Director, African Canadian Legal Clinic, Canada
Melanie Randal - Professor of Law, University of Western Ontario
Fiona Sampson - Director of the African and Canadian Women's Human Rights Project
Jane Serwanga - Legal Counsel, Federation of Women Lawyers, Kenya
Vasanthi Venkatesh - Barrister, Solicitor, Toronto, Canada
Seodi White, National Coordinator, Women and the Law in Southern Africa Research and Education Trust, Malawi

BULLETIN

Women's Networking Initiative



Contacts

TORONTO

May Cheng

416 865 4547

mcheng@fasken.com

Tracy Pratt

416 865 4429

tpratt@fasken.com

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