

WOMEN'S RIGHTS IN THE USA – LESSONS FOR ZIMBABWE

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Introduction

In 2004 I applied for a Hubert Humphrey Fellowship to study law and human rights in the USA. I was awarded the fellowship in 2005 for the 2005/2006 period.

The HH fellowship is a Fulbright funded activity that is targeted at mid career professionals who are committed to public service. It involves ten and a half months of academic coursework and professional development in the USA. As part of this fellowship I went for studies at the American University Washington College of Law.

Today I am going to talk about women's rights in the USA and what lessons Zimbabwe can learn. From the onset let me make it clear that its not entirely a bed of roses for women in the USA. For instance, women of color face double jeopardy. They are discriminated against on the basis of sex and color. Women had to fight to get the right to vote. Women are underrepresented in the political field. Although there is an Equal pay act, women still earn significantly less than men. Pharmacists can refuse to dispense emergency contraception even with a legal prescription on the basis of conscience . Approval for over the counter morning after pill was only granted by the FDA on the 24th of August 2006 but only for women over 18 years with proof of I.D.and the Supreme Court has ruled that paid maternity leave is not guaranteed, so at the AU for instance, maternity leave is six weeks paid and if a woman wants to take another six weeks, it will be unpaid. Having said that, I believe that Zimbabwe has something to learn from the women's rights discourse in the USA. My talk will be based on my observations and experiences. I am going to discuss five main themes. These are broadly :

- The education system and women's right in the curricular
- Domestic violence
- Trafficking in persons
- Domestication of international instruments with emphasis on CEDAW
- Strategies by women's organizations

WOMEN'S RIGHTS IN THE EDUCATION SYSTEM: MY EXPERINCES AT THE WASHINGTON COLLEGE OF LAW

WCL has a proud history of women's rights. It was founded by two women **Emma Gillett** and **Ellen Spencer Mussey** in 1896. WCL was founded for the express reason of offering legal education to women. As a result WCL has a long standing tradition for the respect of the contributions of women to the legal education system. The course content for both the law degree and the LLM is very strong in women's studies. Some of the courses offered are **sex based discrimination, women's legal history, feminist jurisprudence, work and parenting, critical race theory, the human body as a legal metaphor, feminism in theory and practice, gender and the law, gender and cultural differences, Gender perspectives across the world, International trafficking in persons, domestic violence and international human rights**. In addition, students can obtain a specialization in gender and the law. From my experience having taught at the University of Zimbabwe for three years, there are no course at undergraduate level on women's rights except for women's law. As a result, unless one goes further to do the Master's in Women's law, students leave the law school without an idea of important concepts such as gender. I am aware though that the Women's University and ZOU are offering courses in gender.

WCL has ten law clinics two of which are women and the law clinic and domestic violence clinic. Law students are given an opportunity to represent real clients at the DC superior courts and also the Maryland courts. Students are given an opportunity under the supervision of practitioners in residence to acquire practical knowledge on all aspects of lawyering. One of the challenges we face with DV in Zimbabwe is that not many lawyers are prepared to handle such issues. Legal aid and NGOs cannot handle the number of clients who require services. It would work wonders if law students are empowered to handle such cases which not only give them practical experience but also lessens pressure on legal aid services.

Washington DC gives students opportunities to integrate practical experience with theory. At WCL this is done through supervised externship programmes. Students can join NGOs as part of the externship programme to gain practical experience.

LESSONS FOR ZIMBAWE

- Include women's rights in the curricular and offer a wide array of courses related to women's issues.
- Empower students through legal aid programmes-clinical legal education
- NGOs should forge links with Universities so that they can take students on attachment. WLSA recently had a male journalist student from the Polytechnic. It was so refreshing to have him in the office and he also gained experience in women's rights issues.

DOMESTIC VIOLENCE

DV is a huge problem in the USA and the number one source of injury to women. It causes more injuries than rape, auto accidents and muggings combined. While statistics differ, estimates put the number of women assaulted annually at one million.

In the US the law provides for both criminal and civil remedies for DV. The law is at two levels – Federal and state. For Federal law there is the VAWA passed in 1994 and subject to re-authorization. In 1994 when WAVA was passed Congress appropriated \$ US 1, 6 Billion to confront DV. In the latest re-authorization , 3,8 Billion has been provided for. WAVA among other things provides for :

- Creation of safe houses
- Full faith and credit to protection orders issued by another state (reciprocal enforcement of judgements)
- Collection of data on DV
- Technical assistance offered to the state
- Creation of a toll free National domestic violence hotline 24 hours a day , seven days a week in 139 languages

State law defines DV widely. All the 51 states define DV differently e.g. – actual or attempted assault, stalking, kidnapping, reckless endangerment, child abuse, theft, trespass, harassment, terrorist threatening, arson, sexual offences, burglary, extortion and coercion, murder, molestation, battering, verbal and written abuse etc. All states provide for the issuance of civil protection orders – CPOs. Complainant is also defines widely- spouse of former spouse, persons related by blood, persons who have

a child together, same sex partners , parents and children , grandparents and grand children , parents and step children, cohabitees, person involved in an intimate relationship, adopted children against adoptee parents, caregivers against elderly persons etc. The list is very wide. The current bill seems to be modelled on USA law. Some critics of the Zimbabwean DV bill have pointed out that its too western centrist. However, I believe that there is nothing wrong in borrowing from other jurisdictions. For example the DV law in the USA has been successfully in part because of the comprehensiveness of the remedies sought and order given by the court. These include –

- Custody of children
- Child support (maintenance)
- Spousal support (maintenance)
- Kick out order (kicking the abuser out of the home)
- Stay away order (keeping a certain distance and not visiting the complainant)
- Restitution (for medical expenses and loss suffered)
- Catch all provisions- the order can include any relief that ins not inconsistent with DV)

Section 10 of the bill seems to have adopted a similar approach.

Yet another aspect of DV that has gained momentum in the USA is that of alternative dispute resolution , put simply – mediation. Not all states have this clause. There is no consensus on the issue of mediation. Critics of mediation state that it envisions the meeting of two equally situated parties. In reality the two parties are not equal and

involved in power dynamics. No fault is attributed to barterers and there is lack of process to address the victim's anger . Other states such as Oregon have developed safeguards which include the multi –disciplinary approach – involvement of mediators, defence attorneys, prosecutors, judicial representatives, health care providers, advocates for survivors of DV. Only exceptional cases are sent for mediation.

For Zimbabwe the challenges posed by mediation are legal pluralism , i.e. the existence of both customary and general law since customary law is premised on the belief that women are perpetual minors . Customary law encourages compensation rather than punishment for the offender e.g. paying of a goat or a cow. The dominance theory is also applicable to Zimbabwe. It is however an issue worth exploring in the Zimbabwean context and I believe that more research needs to be done in Zimbabwe on this aspect.

LESSONS FOR ZIMBABWE

- Appropriation of money in the budget to fight DV e.g. to fund safe houses
- Go beyond USA law and look at prevention of DV. Seems to be more focused on victims after the DV has already taken place
- Take into account dynamics in society e.g. VAWA takes into account women who have been historically marginalised and immigrants . Zimbabwe should look at the influence of SASFs such as religion and culture to ensure that there is no resistance
- Explore the issue of mediation in cases of DV

TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN

Trafficking in persons is one of the biggest issues in the USA today. The USA has responded by enacting a law called the Trafficking victims protection act (TVPA). of 2000 and the Trafficking victims protection reauthorization act of 2003. In addition the USA produces an annual report on the state of trafficking in the USA and in the world. The latest is the TIP 2005 which contains information on every country.

Zimbabwe is placed in tier two which are those countries whose governments do not fully comply with the TVPA minimum standards but are making significant efforts to do so. Zimbabwe is a source, destination and transit country. Trafficking is now part of the USA foreign policy in that countries that do not comply with the US law are subject to sanctions.

In the USA trafficking is taken seriously with several persons now behind bars. If trafficking involves a young child , the sentence is life imprisonment. The law is very comprehensive and recognises the vulnerability of women and children. It also makes a link between trafficking and HIV and AIDS infection. Trafficking is also viewed as a transnational crime. Measures are put in place to assist victims e.g. issuance of a T visa renewable up to three years for victims. The law looks not only at assisting victims but also at prevention measures e.g.- micro credit lending, training in business, capacity building, keeping children especially girls in school and education persons who have been victims of trafficking.

LESSONS FOR ZIMBABWE

There have been several media reports on trafficking . The challenge for Zimbabwe is that not much is known about trafficking. Limited studies have been done but not much. At WLSA we have adopted trafficking as our next research topic and we are already gathering data on before embarking on field work. We have done a small publication on the 2000 UN protocol on trafficking. However all of us need to take trafficking seriously .

Lessons for Zimbabwe

- Multi – disciplinary approach to trafficking
- Need to fight pull and push factors e.g. poverty
- Not rush into passing anti –trafficking legislation without understanding the dynamics on the ground.

DOMESTICATION OF INTERNATIONAL INSTRUMENTS WITH EMPHASIS ON CEDAW

The women's movement in Zimbabwe has adopted as one of its issues the domestication of international instruments. While Zimbabwe has ratified CEDAW, the USA has not. There is ambivalence in the USA towards international law for e.g. USA has not ratified the CRC which is the international instrument that has been ratified by more countries than any other. US has not ratified the Inter American convention on violence against women. CEDAW has proved to be a valuable tool for governments wanting to improve laws by broadening basic rights of women :

- Uganda , SA , Brazil , Australia have incorporated treaty provisions in their constitutions and domestic legal codes
- Ukraine, Nepal , Thailand , Philippines passed new laws to curb sex trafficking
- India developed national guidelines on workplace sexual assault after the SC in a ruling on a major rape case found that CEDAW required such protections.

190 women's groups in the USA have formed a working group on ratification of CEDAW . The groups engage in outreach and education to achieve ratification. The working group has worked tirelessly to publicise the benefits of ratification e.g. court decisions from other jurisdictions

- **South Africa ; State vs. Baloyi (1999) -** The SA Supreme Court recognized DV as a form of discrimination .
- **Dow vs. AG of Botswana (1992) –** Court decided that the constitution should be interpreted to prohibit discrimination on the basis of sex .
(Citizenship act amended)
- **Dhungana vs. The government of Nepal (1993) –** The SC made reference to CEDAW when it ordered the government to introduce a parliamentary bill addressing discriminatory inheritance laws.

Lessons for Zimbabwe

- Need to form a working committee on domestication of international instruments.
- Take advantage of the ratification of CEDAW

- Use of International instruments in arguments before the courts so as to create judicial precedents e.g. In H vs. H the case on marital rape , the judge referred to CEDAW.

STRATEGIES BY WOMEN'S ORGANIZATIONS

- The USA has a lot of non profit organizations dealing in women's rights issues. What is refreshing however is that no organization claims a specific issue as its own . From my experience in Zimbabwe sometimes organizations tend to carve territories for themselves e.g. WLSA we do action research on laws and policies affecting women. That does not mean that no other organization should do action research. There is so much out there to be done such that we can all fit in.
- There is also power in numbers. Women's organizations need to work together to achieve results e.g. DV bill, there should be involvement of all organizations so that we will form a critical mass . Getting the law passed is only the beginning. There will be implementation and acceptance by all stakeholders.
- Filing of amicus briefs in the Supreme Court- When an issue that concerns women's rights is before the SC, organizations file amicus briefs in support. This has assisted women's issues in that the court is constrained to take into account the submissions filed.

- More use of print and electronic media to reach the marginalized.
- Use of celebrities and role models- Hearing on sexual violence graced by Gabrielle Union an African American who was raped. She stood in front of everyone and said she was raped. That was powerful.
- Volunteerism and donations - There is a lot of it in the USA- Women are involved in many aspects of other women's rights – serving soup in the DV shelter. In Zimbabwe we do not seem to have a lot of volunteerism. There is an organization that empowers DV victims to get employment so they collect suits that the victims will wear for interviews so women donate nice suits for that purpose. Donations should not only be looked at in terms of hard cash.
- , people will want to know why and what can be done to make amends.
- Finally perseverance- no matter how difficult an issue is , people persevere. This can be seen for instance from the right to vote and also the morning after pill. I took time but finally something was done.

