

**Victoria Falls Declaration of Principles
for Promoting the Human Rights of Women
as agreed by Senior Judges at the
African Regional Judicial Colloquium**

Zimbabwe, 19 – 20 August 1994

1. The participants reaffirmed the principles stated in Bangalore, amplified in Harare, affirmed in Banjul, confirmed in Abuja, reaffirmed at Balliol, Oxford and reinforced at Bloemfontein. These principles reflect the universality of human rights – inherent in men and women – and the vital duties of an independent judiciary in interpreting and applying national constitutions and laws in the light of those principles. These general principles are applicable in all countries, but the means by which they become applicable may differ.

2. All too often, universal human rights are wrongly perceived as confined to civil and political rights and not extending to economic and social rights, which may be of more importance to women. Civil and political rights and economic and social rights are integral and complementary parts of one coherent system of global human rights.

3. Universal human rights, are usually interpreted as applying to regulate the public sphere. Violations of human rights in the private sphere, including the family – the site of much of women’s experience of violations – are usually perceived to be outside the reach of human rights. Although the state does not usually directly violate women’s rights in the private sphere, it often supports or condones an exploitative family structure through various laws and rules of behaviour which legitimate the authority of male members over the lives of female members of the family and fails to act to protect women from private violations or tolerates or, indeed, encourages, a structure wherein private violations occur all too frequently.

4. Many of the existing international and regional human rights standards were formulated within a primarily male perspective and with insufficient gender sensitivity and therefore sometimes fail to provide protection for the gender specific interests of women. There is an urgent need for the formulation of further specific rights for women, particularly in the economic and social field. It is vital for women to be centrally involved in decision-making at all levels.

5. Discrimination against women can be direct or indirect. Indirect discrimination requires particular scrutiny by the judiciary. There is a need to ensure not only formal but also substantive equality for women and, for that purpose, affirmative action may be adopted if necessary.

6. Although international human rights are inherent in all humankind, very often such rights are perceived to be owned only, or largely, by men. Participants

emphasised that the human rights of women are as valuable as the human rights of men.

7. International human rights instruments, both generally and particularly with reference to women, and their developing jurisprudence enshrine values and principles long recognised as essential to the happiness of humankind. These international instruments have inspired many of the constitutional guarantees of fundamental rights and freedoms within and beyond the Commonwealth. These constitutional guarantees should be interpreted with the generosity appropriate to charters of freedom. Particularly, the known discrimination guarantee should be construed purposefully and with a special measure of generosity.

8. It is essential to promote a culture of respect for internationally and regionally stated human rights norms and particularly those affecting women. Such norms should be applied in the domestic courts of all nations and given full effect. They ought not to be considered as alien to domestic law in national courts.

9. All Commonwealth governments should be encouraged to ratify the Convention on the Elimination of All Forms of Discrimination Against Women before the Fourth United Nations World Conference on Women to be held in Beijing in 1995. Those governments which have ratified the Convention with reservations, should examine the content of those reservations, with a view to their withdrawal.

10. All Commonwealth governments should ensure that domestic laws are enacted or adjusted to conform with the international and regional human rights standards.

11. The judicial officers in Commonwealth jurisdictions should be guided by the Convention on the Elimination of All Forms of Discrimination Against Women when interpreting and applying the provisions of the national constitutions and laws, including the common law and customary law, when making decisions.

12. The speedy preparation of an optional protocol to enable individual petition under the Convention on the Elimination of All Forms of Discrimination Against Women should be encouraged.

13. All Commonwealth governments should subscribe to the principles contained in the Declaration on Violence Against Women, adopted by the UN General Assembly in December 1993. Violence against women is a form of discrimination and violation of human rights as stated in the Declaration.

14. All Commonwealth governments should offer appropriate assistance to the United Nations special rapporteur on violence against women.

15. There is a particular need to ensure that judges, lawyers, litigants and others are made aware of applicable human rights norms as stated in international and regional

instruments and national constitutions and laws. It is crucially important for them to be aware of the provisions of those instruments which particularly pertain to women.

16. New gender-sensitised initiatives in legal education, provision of material for libraries, programmes of continuing judicial discussion and professional training to lawyers and other interest groups in the protection of the human rights of women, and better dissemination of information about developments in this field to judges and lawyers should be undertaken for effective implementation of these principles.

17. There is a need to translate the international human rights instruments and the African Charter of Human and Peoples' Rights into local languages, in a form accessible to the people and governments should therefore undertake or support that task.

18. Governments should mount extensive awareness campaigns through diverse means to disseminate and impart human rights education and encourage and support efforts by non-governmental organisations in this context.

19. Non-governmental organisations play an important role in the dissemination of information about women's human rights and making women aware of those rights. Governments should therefore acknowledge and support the work of non-governmental organisations in promoting the human rights of women.

20. Non-governmental organisations should be enabled to provide *amicus curiae* briefs and other legal advice, assistance and representation to women in cases involving human rights issues. Free legal aid and advice should be provided to women at state cost for enforcement of their human rights.

21. Public interest litigation and other means of access to justice to litigants, especially women, who wish to complain of violations of their rights should be developed. Non-governmental organisations involved in women's issues should also be permitted to bring violations of the human rights of women before the courts for redress.

22. Judges and lawyers have a duty to familiarise themselves with the growing international jurisprudence of human rights and particularly with the expanding material on the protection and promotion of the human rights of women.

23. Closer links and co-operation across national frontiers by the judiciary on the interpretation and application of human rights law should be encouraged.

24. Law schools should be encouraged to develop courses in human rights, which must include a module on the human rights of women.

Conclusions of Asia/South Pacific Regional Judicial Colloquium for Senior Judges on the Domestic Application of International Human Rights Norms Relevant to Women's Human Rights

Hong Kong, 20 –22 May 1996

Having regard to the central place of the Victoria Falls Declaration in the recognition and enforcement of the human rights of women, the participants in the Hong Kong Colloquium of judges, lawyers and law academics from the Commonwealth countries of the Asia/Pacific region reaffirmed the principles of the Victoria Falls Declaration and expressed their commitment to uphold and implement those principles.

Recalling the Declaration on the Elimination of Violence against Women, the discussions at the Commonwealth Heads of Government Meeting in New Zealand in 1995, the Beijing Declaration and Platform for Action and the conclusions of the meeting of Commonwealth Law Ministers in April 1996, the participants expressed their deep concern at the large-scale violence against women and the girl-child which is taking place in various forms in most countries of the Commonwealth. Violence against women is a manifestation of historical unequal power relations between women and men which have led to domination over and discrimination against women and is a social mechanism by which the subordinate position of women is sought to be perpetuated. All Commonwealth Governments should condemn violence against women and girls as a violation of fundamental human rights, including the right to personal security and the right to be free from discrimination on the basis of sex. No law, custom, tradition, culture or religious consideration should be invoked to excuse violence against women. Judges and judicial officers at all levels should be gender-sensitive and aware of the need to protect women against violence through a proactive interpretation of the law.

The participants expressed particular concern at the many forms of violence against women in the family. This violence is widespread, but frequently goes unnoticed and unrestrained because of oppressive social, cultural or religious traditions and values. These factors have led to the subordination of women and continue to dominate social attitudes because of lack of awareness of basic human rights of women, as well as their economic dependence on men. It is incumbent on law enforcement agencies, the legal profession and the courts to intervene appropriately in relation to violence in the family and not to allow its perpetuation through indifference or inadequate response.

Participants recognised the importance of custom, tradition, culture and religion as a part of individual and group identity. They recognised that these concepts were sometimes interpreted so as to be oppressive to women. They stressed the need to preserve and enhance worthy customs, while at the same time discouraging those that have an adverse impact on women and girls.

Participants recognised that a majority of the world's refugees and internally displaced persons are women and children and that these persons are an especially vulnerable group who are frequently denied their basic human rights and subjected to violence and sexual exploitation. The importance of judicial sensitivity to gender-specific violations of human rights in dealing with cases relating to physical or mental abuse and or claims to refugee status was underlined.

Recalling that the 1995 Meeting of Commonwealth Heads of Government at Auckland urged all Commonwealth governments to ratify the Convention on the Elimination of All Forms of Discrimination against Women and underlining the importance of accession, ratification and implementation of this Convention and other human rights treaties to the advancement at the national level of the human rights of women and the girl-child, the participants noted that it would be desirable if all States in the region became parties to and implemented the Convention.

The participants noted that many opportunities exist for judges and other judicial officers to draw on the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments so as to interpret and apply creatively constitutional provisions, legislation, the common law and customary law. In so doing, they drew attention to the wealth of decisions from countries with shared jurisprudential traditions where judges had engaged in such creative interpretation and application. The importance of educating the judiciary and the legal profession with respect to international human rights standards and principles relevant to gender issues was stressed, as well as the need for national judiciaries to carry out studies on gender bias in the judicial process.

Participants noted that it was important that the judiciary reflect the population it serves. Accordingly, it encouraged the exploration of ways to ensure a gender balance in the judicial system.

Participants identified a number of areas where there are clear violations of the human rights of women which might be addressed by the utilisation of international norms in domestic decision-making. These included, in particular, discrimination in matters of nationality, citizenship, property and inheritance, which has serious implications for the exercise and enjoyment by women of other fundamental human rights. Participants also encouraged the review of legislation to ensure its consistency with international human rights obligations undertaken by individual countries.

Noting the complementarity between the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, participants drew attention to the special vulnerability of the girl-child to violations of human rights and identified this as a matter requiring particular judicial attention. They noted that the principle of the best interests of the child could be used to promote the full enjoyment by the girl-child of her rights.

Participants noted that litigation to advance the human rights of women was limited at both the national and international levels. They emphasised women's limited access to the judicial process to enforce their rights and they proposed the further development of a number of measures to increase women's access to justice, including legal literacy programmes and assisted legal advice and representation. Participants drew attention to the important role that the media could play in creating an awareness of the human rights of women. They suggested that consideration might also be given to encouragement of representative actions and relaxing traditional limitations on locus standi. They also supported the adoption of an optional complaints mechanism for the Women's Convention.

**Georgetown Recommendations and Strategies for Action
on the Human Rights of Women and the Girl Child
issued by the Caribbean Regional Judicial Colloquium
for Senior Judges**

Georgetown, Guyana 14 – 17 April 1997

1. The participants reaffirmed the Victoria Falls Declaration of Principles for the Promotion of the Human Rights of Women (1994) and the Hong Kong Conclusions (1996) and commended these to States for acceptance and implementation.
2. The Colloquium welcomed the adoption of the Charter of Civil Society for the Caribbean Community by the Conference of Heads of Government at its 8th inter-sessional meeting in Antigua and Barbuda in February 1997.
3. The Colloquium underlined the fact that the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights, and they must be taken as forming part of mainstream human rights.
4. The Colloquium expressed concern that civil and political rights have received extensive attention within the mainstream human rights discourse while economic, social and cultural rights have been neglected. This has adversely affected women's concerns.
5. Traditional human rights theory primarily focuses on violations perpetrated by the State. This distinction between State responsibility in relation to public and private acts has contributed to a failure to recognise many violations of women's rights as human rights violations.
6. The Colloquium recognised that the fundamental duty of judges to ensure the fair and due administration of justice requires judges to be alert to manifestations of gender discrimination in the law and in the administration of justice, and to take such measures as lay within their power to redress or eliminate any such discrimination. The Colloquium also recognised that the community's understandings of fairness and equality may evolve over time and that judges had both the power and responsibility to adapt the common law or interpretations of constitutional provisions to meet the changing circumstances of society. The full enjoyment by women of their human rights could only be realised through the creative interpretation and effective enforcement of these rights by the courts. This can only occur if there is an independent and competent judiciary which enjoys the confidence of the people it serves.

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7. The Colloquium noted with concern that some States in the Commonwealth support or condone an exploitative family structure through various laws and rules of behaviour which legitimise the authority of the male over the female and fail to protect women from private violations of their rights.

8. The Colloquium emphasised that culture, customary and traditional practices or religion should not be invoked as justification for violations of the fundamental rights and freedoms of women.

9. The Colloquium emphasised the goal of universal ratification of international human rights instruments and relevant international labour conventions, in particular the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It underlined the obligation of States parties fully and effectively to implement their treaty obligations by bringing their constitutions and domestic law and practice into conformity with these human rights commitments. It also urged those States parties that had entered reservations to conventions to consider their withdrawal.

10. The Colloquium emphasised the utility of international human rights norms to domestic litigation, noting that in general there was no constitutional or other bar to referring to international human rights treaties. Among other uses, these norms might in appropriate cases provide a standard that could be used in order to elucidate the meaning of constitutional guarantees.

11. Both the United Nations Declaration on the Elimination of Violence against Women and General recommendation 19 of the Committee on the Elimination of Discrimination against Women recognised that violence against women takes many forms. These include domestic violence; rape (including rape within marriage); exploitation of girl children (including the disadvantaged); trafficking in women and girls; violence associated with prostitution and with pornography; dowry deaths; violence in the work place; and sexual harassment. The personal, economic and social costs of this violence are enormous. States must take effective measures in accordance with the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on the Elimination of Violence Against Women, and, where applicable, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. States parties should fulfil their obligations to prevent and eradicate these and other forms of violence against women, as an indispensable part of the process of eliminating gender discrimination.

12. The Colloquium noted with satisfaction that some countries had enacted legislation addressing domestic violence and other forms of violence against women. The Colloquium recommended that other States in the Commonwealth consider the enactment of similar legislation, and stressed the need for such legislation to be regularly monitored and updated as appropriate.

13. The Colloquium expressed its concern with regard to the commercial sexual exploitation of women and girls, including trafficking for the purposes of prostitution. The Colloquium urged States throughout the Commonwealth to take effective measures to eradicate this phenomenon. These measures could include the enactment of legislation (including appropriate penal provisions), and administrative and other measures such as efforts to rehabilitate and re-integrate into society those subjected to these violations.

14. The Colloquium acknowledged the work that the Commonwealth Secretariat had done in developing publications and training materials relating to human rights, including the human rights of women, and urged the organisation to continue this work.

15. Judges participating in the Colloquium expressed their appreciation for the informative and constructive contribution made to the discussions by representatives of non-governmental organisations and noted the recommendations proposed by them.

Recommendations

The Colloquium adopted the following recommendations:

Information and publicity activities

16. States that become parties to international human rights treaties should publicise that fact widely among their community and ensure that copies of the treaties, reports of the country under the treaty and other relevant documentation (where possible in local languages) are made widely available.

17. The Gender and Youth Affairs Division of the Commonwealth Secretariat should ensure that copies of the Convention on the Elimination of All Forms of Discrimination against Women and *Assessing the Status of Women: A Guide to Reporting under the Convention on the Elimination of All Forms of Discrimination against Women* (2nd ed. 1996) are made available to the judiciary and to the Bar Association in each State of the Commonwealth.

Access to information and exchange of information

18. The Commonwealth Secretariat, the United Nations and its agencies, and other bodies should explore ways of making available to judges, judicial officers and practitioners access to electronic sources of information on human rights, in particular relating to the human rights of women, and should ensure the availability of basic international and comparative materials in libraries accessible to the judiciary and the profession.

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19. Judges in the Caribbean and other Commonwealth countries who render decisions in constitutional human rights cases, in cases in which international instruments are invoked or which significantly advance the rights of women under domestic legislation should, as far as possible, send copies of those decisions to:

- a) the Commonwealth Secretariat, for inclusion in the *Commonwealth Law Bulletin*;
- b) Interights, for inclusion, as appropriate, in the *Commonwealth Human Rights Law Digest*, in the Caribbean, to the CARICOM Secretariat and universities in the region for appropriate publication.

20. The Commonwealth Secretariat and the CARICOM Secretariat should endeavour to ensure that all judges in the Caribbean as well as in other regions are provided with access, either in electronic or hard copy format, to the *Commonwealth Human Rights Law Digest*, the *Commonwealth Judicial Journal*, the *Commonwealth Law Bulletin*, and the *Law Reports of the Commonwealth* and regional publications.

21. Judges, practitioners and academics should be encouraged to submit articles and other material for publication in the *Commonwealth Law Bulletin* and *Commonwealth Judicial Journal* and regional publications.

22. The Commonwealth Secretariat and the CARICOM Secretariat should explore ways of developing, either on their own or in conjunction with other suitable bodies or NGOs, a World-Wide Web (WWW) site which would contain human rights and related materials, including material on the gender dimensions of human rights, and which would complement the existing work in this area of bodies such as the United Nations, the ILO and United Nations High Commissioner for Human Rights.

Judicial studies programmes and continuing legal education on gender issues

23. Gender-sensitive training and information about women's human rights should be provided to the judiciary, lawyers, law enforcement agencies, court personnel, law students and community leaders. Legal literacy programmes to raise public awareness should also be undertaken.

24. Those bodies involved in judicial education seminars at the international, regional and national level should co-operate in and co-ordinate their activities in order to make best use of limited resources.

25. The Commonwealth Secretariat should explore ways in which the experiences of the two series of Judicial Colloquia on human rights which it had organised might be drawn on in order to ensure that gender issues are fully integrated in any future judicial training in which the Secretariat is involved.

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26. The Commonwealth Secretariat, in liaison with the CMJA and other organisations with expertise in the area, should explore the need for the development of further training materials on international human rights, generally and as they relate specifically to women.

The operation of the legal system and reform of the law

27. The language used in human rights instruments, national legislation and in court proceedings and judgements should be non-sexist, and, as appropriate, gender-neutral language should be employed.

28. Where general or specific reviews of the law are undertaken by Law Reform Commissions or other bodies, the terms of reference of such reviews should ensure that the impact of existing and proposed laws on the human rights of women is fully taken into account in the process of review and reform of the law.

Operation of the courts and the court system

29. States should, where possible, put in place information systems for the production of gender disaggregated data on the operation of the courts for research, policy formulation and for planning timely interventions.

30. Notwithstanding the obligation to ensure a fair trial for all, judges and prosecutors are encouraged to be vigilant about the withdrawal of cases in order to ensure that the legal system fully protects the rights of women and girls.

Support services and programmes

31. States should, where possible, establish comprehensive legal aid programmes to ensure the availability of legal aid or *pro bono* legal assistance for court and administrative proceedings in which redress for violations of human rights, including those suffered by women and girls, is sought. States should also establish counselling programmes for women and girls who have suffered violations of rights, as well as special programmes for offenders.

32. States should establish specially trained units in the police force for the investigation of offences by and against women and girls, the functions of which should include counselling for those who have been subject to abuse.

The use of international and regional human rights

33. Lawyers should consider whether more effective use could be made of applicable international and regional complaint procedures to advance women's human rights, in cases in which a remedy was not available within the domestic system. These procedures include the procedures of the Organisation of American States, including those of the Inter-American Commission under the American

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Declaration of the Rights of Man; the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará); the procedures of the Council of Europe under the European Convention on Human Rights; and the procedure under the First Optional Protocol to the International Covenant on Civil and Political Rights, as well as applicable complaints procedures relating to the implementation of international labour conventions.

Enhancement of regional co-operation and exchange of information

34. The Commonwealth Secretariat, the CMJA, and other responsible international, regional or sub-regional agencies, should explore, in close collaboration with the judges of each region and taking into account existing institutions and programmes, the desirability of the establishment of a regional judicial studies institute or programme to facilitate continuing judicial education and the exchange of legal material among the judges of the region.

Follow up

35. The Colloquium recommended that a Reference Group be constituted to follow up the recommendations contained in this document, as well as assessing the impact of previous judicial colloquia on the domestic enforcement of international human rights norms through national courts.

36. The Colloquium recommended broad dissemination of the Victoria Falls Declaration, the Hong Kong Conclusions and the Georgetown Recommendations and Strategies for Action, as well as the reports of those Judicial Colloquia.

37. The Colloquium requested the Commonwealth Secretariat to transmit the Georgetown Recommendations and Strategies for Action to:

- a) the Commonwealth Heads of Government meeting to be held in Edinburgh in October 1997;
- b) the triennial meeting of the CMJA to be held in Capetown in October 1997; and
- c) the next meeting of Commonwealth Law Ministers.