

Gender Mainstreaming in Legal and Constitutional Affairs

A Reference Manual for Governments and Other Stakeholders



Christine Chinkin



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Commonwealth Secretariat

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Preface

In 1996, the Commonwealth Ministers Responsible for Women's Affairs mandated the Commonwealth Secretariat to develop the concept of the Gender Management System (GMS), a comprehensive network of structures, mechanisms and processes for bringing a gender perspective to bear in the mainstream of all government policies, programmes and projects. The success of the GMS depends on a broad-based partnership in society in which government consults and acts co-operatively with the other key stakeholders, who include civil society and the private sector. The task of gender mainstreaming has both technical and managerial dimensions, as well as the political and socio-cultural aspects of creating equality and equity between women and men as partners in the quest for social justice. The establishment and strengthening of Gender Management Systems and of national women's machineries was the first of 15 government action points identified in the 1995 Commonwealth Plan of Action on Gender and Development.

This reference manual has been produced to assist member governments in meeting their commitment to implementing the Plan of Action. It is hoped that it will be used by development policy-makers, planners, field staff and others, in conjunction with other publications relating to the particular national context. It is intended to serve as an accessible reference manual to aid users in setting up a GMS and managing problems encountered in advancing the goal of gender equality and equity in legal and constitutional affairs. As part of the Gender Management System series, it can be used alone or in conjunction with other titles, particularly the *Gender Management System Handbook*, which presents the conceptual and methodological framework of the GMS.

The development of the GMS series has been a collective effort between the Commonwealth Secretariat's Gender and Youth Affairs Division and many individuals and groups. Their contributions to the thinking behind the GMS are gratefully acknowledged. In particular, I would like to thank the following: Commonwealth member governments who supported the development of the GMS and encouraged us to move the project forward; participants at the first GMS meeting in Britain in February 1997 and at the GMS Workshop in Malta in April 1998, who provided valuable input and feedback; and the Steering Committee on the Plan of Action (SCOPA). I would like to thank especially the Canadian International Development Agency's (CIDA) Gender Equality Division, Policy Branch, for co-funding this manual. I am also most grateful to Professor Christine Chinkin of the London School of Economics, who wrote the text of the manual; Florence Butegwa, contributing author; Tina Johnson, Editor; members of the Guest Editorial Committee; and the staff of the Gender Affairs Department, Gender and Youth Affairs Division, particularly Dr Rawwida Baksh-Soodeen, GMS Series Co-ordinator, who conceptualised and guided the series of reference manuals through to publication.

We hope that this resource series will be of genuine use to you in your efforts to mainstream gender.

Nancy Spence
Director
Gender and Youth Affairs Division
Commonwealth Secretariat

Executive Summary

This reference manual offers guidelines for mainstreaming gender into the legal and constitutional affairs of states. Its main objective is to assist governments in advancing gender equality in their countries. Gender mainstreaming in the state's legal and constitutional structures is a corollary to mainstreaming gender in development and ensuring equal opportunities and outcomes for women and men. Many states have taken important steps in this direction through legislative and social programmes of gender mainstreaming. Such programmes are needed because in most societies women have long been discriminated against and have been the subject of stereotyping that presents them as inferior, passive or essentially as mothers. While gender mainstreaming focuses on women and men, in most instances its primary focus must be to enhance the position of women. Constitutional guarantees and legislative reform are insufficient, however, unless they translate into positive commitments to women's advancement, empowerment and enjoyment of equal choices and opportunities. Major factors for achieving real change include political will and commitment of resources, concrete and realistic targets, programmes grounded at the national level based on local contexts and evaluation.

Chapter 1 provides a gender framework and offers definitions of key concepts such as gender, gender analysis and gender mainstreaming. It notes that mainstreaming is required to implement the 1995 Commonwealth Plan of Action on Gender and Development and its Update (2000–2005) and is supported by arguments of efficiency, effectiveness and social justice. This chapter also suggests some of the obstacles that may be faced by a programme of gender mainstreaming and that need to be addressed. These may be found in existing laws, including legislation and customary laws, and in societal structures that have come to be seen as 'natural', 'the way things are done' and 'moral'. Other obstacles may be the attitude of key stakeholders (those responsible for determining and formulating legal policy, applying it and ensuring its enforcement); the representation of gender concerns as foreign or 'western' imports; and policies connected to economic globalisation.

Chapter 2 explains how the establishment of a Gender Management System (GMS) provides a means of mainstreaming gender across all government policies, plans, programmes and projects. Developed by the Commonwealth Secretariat, the GMS is an integrated network of structures, mechanisms and processes put in place in an existing organisational framework in order to guide, plan, monitor and evaluate this process. It is designed to promote the advancement of gender equity and equality in society.

The case for using a rights-based approach to gender mainstreaming is made by Chapter 3. An understanding of the international legal requirements for the guarantee of women's human rights is an important basis for gender mainstreaming in legal and constitutional affairs, and policies for gender mainstreaming must be developed in the context of respect for women's human rights. International human rights offer a central framework that citizens can use to hold their states accountable for the provision of basic needs. A rights-based approach affirms the legitimacy of women's claims, allows progress to be measured against objective standards and upholds the state's international obligations.

Respect for human rights lies at the heart of the United Nations Charter and the International Bill of Rights. Despite the fact that these instruments clearly state that there should be no discrimination on the basis of sex, women's rights have only

recently been explicitly articulated as an integral part of international human rights. An important milestone was the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). There are also a number of other international instruments that are relevant in determining states' responsibility for ensuring and protecting the rights of women.

Despite all these legal instruments, sex discrimination has persisted world-wide and women are still excluded from the universal vision of human rights. Also, the human rights discourse has tended to focus on the relationship between the state and the individual in the public arena, and there has been an unwillingness by states to assume responsibility for the elimination and punishment of violations against women in the private sphere, where many such abuses take place.

Chapter 4 looks at the specifics of gender mainstreaming in the legal and constitutional sector. The goal of contextuality in gender mainstreaming calls for a gender audit of law and legal institutions for each state. Gender mainstreaming must change people's lives, not just change the formal legal structures and law on the books. Legal, and consequently societal, changes must be owned by the people and must be located within the context of their religion and culture. Stakeholders need to be identified and consulted in the formulation of objectives, strategies, projects and evaluations. These include both government and legal personnel and members of civil society.

After the gender audit, there are a number of areas in which concrete changes need to be made. These may include constitutional reform and legislative and customary law reform. Areas where the substance of the law most needs examination include public life, nationality laws, labour laws, health and reproductive rights, violence against women and family law. Other important components in mainstreaming gender in legal and constitutional affairs are the relevant institutions and personnel. There is a need for gender-sensitive government structures, which can be either specific to women or general (mainstreamed). A number of examples are provided from the Commonwealth. The judiciary and law-enforcement agencies have a vital role to play in ensuring that women's rights are protected and promoted. Education and training programmes will be required for these stakeholders as well as others. Training should include gender sensitivity and human rights and should use both traditional and non-traditional methodologies.

Recommendations for actions by governments to further implement the Beijing Platform for Action (PFA) provide the basis for Chapter 5. These are taken mainly from the PFA and from the Report of the Ad Hoc Committee of the Whole of the twenty-third Special Session of the General Assembly entitled 'Women 2000: Gender equality, development and peace for the twenty-first century', held to review PFA implementation. The recommendations have been grouped under five general headings: international agreements; national legislation; taking a holistic approach to violence against women; gender mainstreaming; and working with and educating civil society.

Chapter 6 provides a model of how to apply the GMS principles to the issue of violence against women. These principles are: promoting political will; forging a partnership of stakeholders, including government departments and NGOs; building capacity; and sharing good practice. It is an operational cum intervention framework for planning and implementing an integrated strategy. An integrated approach to combating violence against women enables government to reconceptualise violence against women as a complex social problem to which it has an obligation to respond with appropriate policy, implementation plan and adequate resources. The model is based on a number of assumptions, including that the state has an obligation to eliminate violence against women and has the commitment and political will to do so,

and that multidisciplinary effort and interdepartmental collaboration and co-ordination are possible in government structures. It also assumes that it is possible to eliminate gender-specific violence against women and girls. The model identifies four key steps in the process of eliminating violence against women: conceptualisation, deeper understanding, action strategies and co-ordination.

Chapter 7 provides two practical tools: a checklist that can be used to assess a government's compliance with the CEDAW Convention; and a checklist for assessing progress towards gender mainstreaming. Appendices offer a list of Commonwealth States Parties to international treaties prohibiting discrimination on the basis of sex; and a selection of equality clauses in Commonwealth constitutions.

1

Introduction

Scope and Objectives of this Reference Manual

This Manual provides guidelines for mainstreaming gender into the legal and constitutional affairs of states. Its main objective is to assist governments in advancing gender equality in their countries. A multi-pronged approach, including a programme of law reform, is essential to gender mainstreaming and to transforming gender relations in the context of the particular society. Where government structures include a Ministry of Justice/Legal Affairs, it will play a pivotal role in legal reform. The Manual may also be of use to other stakeholders that are involved in determining and formulating legal policy, applying it and ensuring its enforcement. These include government departments, NGOs, women's groups, professional associations, the academic community and others committed to promoting gender equality.

The Manual seeks to promote the human rights of both women and men as partners in development, while considering that women's human rights have been neglected for a long time in human rights discourse. A rights-based approach to development rests on principles of good governance and the rule of law. The Manual provides an overview of the international legal requirements for the guarantee of women's human rights, which are an important basis for gender mainstreaming. It then considers constitutional reform and looks at substantive law reform in a number of areas: public life, nationality laws, labour laws, health and reproductive rights, violence against women and family law. Central to a gender mainstreaming policy must be laws that prohibit gender-based discrimination, that seek to establish true equality of opportunity between women and men and that promote equality of access to resources. The need for gender-sensitive government structures is emphasised, with the concomitant need for training.

There is an extensive list of recommendations, and tools are provided to enable an assessment of compliance with the provisions of the Convention on All Forms of Discrimination Against Women (CEDAW) and an evaluation of progress towards gender mainstreaming.

The Manual is part of the Gender Management System (GMS) Series, which consists of a number of publications presenting the concept and methodology of the GMS, with sector-specific guidelines for mainstreaming gender in key areas. The GMS is explored most fully in the *Gender Management System Handbook*.

A Gender Framework

What is Gender?

'Gender' refers to socially constructed roles of women and men ascribed to them on the basis of their sex, whereas the term 'sex' refers to biological and physical characteristics. Gender roles depend on a particular socio-economic, political and cultural context, and are affected by other factors, including age, race, class and ethnicity. Gender roles are learned and vary widely within and between cultures . . . [and] can change. Gender roles help to determine women's access to rights, resources and opportunities.'

Implementation of the outcome of the Fourth World Conference on Women, A/51/322, paras 7–14)

Included in the construct of gender are gender hierarchies: the unequal power relations (social, political, economic) between women and men; the stereotyping of women as inferior; the greater value that is put on men's roles and functions in society; and the sexual division of labour that locates women in less highly paid and socially under-valued work.

Why Focus on Gender?

'Gender' is a more useful defining category than a focus only on 'women' for a number of reasons, including:

- ◆ Gender is not only about women; gender analysis is also applicable to men.
- ◆ Gender is not an isolated issue but one that interacts with many others, including economic development, the environment, law-making, law enforcement and compliance with the law.
- ◆ A focus on gender shifts the emphasis from special pleading for women to the identification of different needs in the community and the formulation of policies and strategies that address those needs. Policies can thus take account of difference without undermining the assumption of legal equality between women and men and the prohibition of discrimination on the basis of sex. It thus prioritises equality of opportunity and outcomes rather than formal equality.
- ◆ Since gender is a social construct that is subject to change, assumptions about what it means can be examined and changed. There is nothing 'natural', 'pre-ordained' or 'permanent' about societal gender roles.

Using a gender perspective in the human rights context facilitates an understanding of how women's enjoyment of human rights is adversely influenced by the social construction of female and male roles, in which women are invariably relegated to a subordinate position.

As noted above, gender is only one social construct. Others include those relating to race, ethnicity, class, age, disability, marital status and sexuality. In assessing the impact of actual or proposed policies and law on individuals, attention must be given to the intersection of all such variables. The gendered impact of a particular policy may be obscured by other forms of disadvantage; similarly, a focus on gender must not obscure the relevance of other factors. (For a good example of considering race and gender, see the Committee on the Elimination of Racial Discrimination, General Recommendation 25 on the Gender Dimensions of Racial Discrimination, 2000.)

What is Gender Analysis?

Gender analysis begins with the identification of the social roles of men and women and the implications these have for status, opportunities and access to and control of resources. It thus involves the collection and use of sex-disaggregated data that reveal the roles and responsibilities of women and men. These data are fed into the policy process to enable assessments of how existing and proposed policies and programmes may affect women and men differently and unequally. Gender analysis also involves assessing how gender roles and gender-inequitable power relations may affect the achievement of a range of development goals, including the goal of gender equality and equity.

Gender analysis needs to be both quantitative and qualitative. The use of gender-sensitive indicators in such areas as demographics, patterns of human settlement, households and families, education, health, economic activity, access to land and credit, legal rights, gender-based violence and macroeconomics can provide useful quantitative data. This should be complemented by qualitative data, which trace historical, political, economic, social and cultural forces in order to clarify how and why gender differences came about, and thus provide indicators as to how they might be changed.

What is Gender Mainstreaming?

Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension in the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.

Agreed conclusions of the UN Economic and Social Council 1997/2

At the same time, gender mainstreaming does not automatically remove the need for women-specific programmes or for projects targeting women. These will often remain necessary to redress particular instances of past discrimination or long-term, systemic discrimination. However, whenever separate programmes, projects or institutions are set up for women in the context of mainstreaming gender, it is vital to ensure that they are accompanied by concrete measures for integration and co-ordination. Women-specific programmes and gender mainstreaming are two strategies directed towards the same goal – gender equality – and may operate simultaneously or separately.

Gender mainstreaming involves a number of activities:

- ◆ forging and strengthening the political will to achieve gender equality and equity at the local, national, regional and global levels;
- ◆ incorporating a gender perspective into the planning processes of all ministries and departments of government, particularly those concerned with macroeconomic and development planning, personnel policies and management and legal and constitutional affairs, including the administration of justice;
- ◆ integrating a gender perspective into all phases of sectoral planning cycles, including the analysis, development, appraisal, implementation, monitoring and evaluation of policies, programmes and projects;
- ◆ developing systems for institutionalised collection and use of sex-disaggregated data in statistical analysis to reveal how policies affect women and men differently;
- ◆ increasing the numbers of women in decision-making positions in government and the public and private sectors;

- ♦ providing tools and training in gender awareness, gender analysis and gender planning to decision-makers, senior managers and other key personnel to ensure that they understand the importance of and know how to integrate a gender perspective into their work;
- ♦ forging linkages between government, the private sector, civil society and other stakeholders to ensure a co-ordination of efforts and resources.

Because gender mainstreaming cuts across government sectors and other social partners, it requires strong leadership and co-ordination. The Commonwealth approach to providing the necessary leadership and co-ordination is through the Gender Management System (GMS), which is designed to facilitate gender mainstreaming (see Chapter 2).

Gender mainstreaming in legal and constitutional affairs requires a rights-based approach to social policy. Gender factors must be an integral part of all legislative programmes, judicial decision-making, administrative policy and decision-making. Since the forms and manifestations of inequality differ among states, the implementation of gender mainstreaming must be context-specific and take account of such variables as economic development, political and governmental institutions, local government structures, religion and the place of customary law. Issues that will facilitate or impede gender mainstreaming in the particular society must be identified and addressed.

This means that there is a need for an individualised and localised gender audit of law and legal institutions for each state and sub-state unit. Also, gender mainstreaming must bring about actual change, thus going beyond changes to the formal legal structures and law on the books. Legal, and consequently social, changes must be owned by the people and must be located in the context of their culture and religion. Strategies must therefore be worked out within those frameworks through co-ordination and consultation with women and men at the grassroots level.

It is also important to note that such advances as greater participation of women in decision-making and in activities of governmental departments, although an important step in mainstreaming and ensuring gender equity, are not of themselves sufficient to ensure the required cultural and behavioural changes necessary when asserting that gender matters. Care must be taken not to perpetuate the system through strategic window-dressing without addressing the related issues in political, social, cultural and economic affairs.

States can seek technical assistance in designing, implementing and evaluating programmes from UN agencies (including the Office of the High Commissioner for Human Rights, the UN Division for the Advancement of Women, UNIFEM and UNDP) and regional groups working on gender analysis, such as the Southern African Research and Documentation Centre (SARDC). Guidance is also available from the Gender and Youth Affairs Division of the Commonwealth Secretariat. Their manuals and training sessions can be used for assistance.

Why Mainstream Gender?

Despite major differences in levels of economic development, social structures and prevailing religious and secular ideologies, states have in common that inequality exists between women and men. This allows suggestions for gender mainstreaming to be made with respect to all states.

Gender mainstreaming has been promoted as an international strategy for the achievement of gender equality since the Third UN World Conference on Women

held in 1985 (Nairobi, Kenya) and was further urged at the Fourth UN World Conference on Women in 1995 (Beijing, China) and its follow-up process at the 23rd Special Session of the General Assembly (Beijing+5, June 2000).

The Beijing Platform for Action, 1995 in paragraph 217 refers to the 'gap between the existence of rights and their effective enjoyment'. Mainstreaming is a tool that can be used to redress this gap. Further, in paragraph 221 the PFA states that 'intensified efforts are needed to integrate the equal status and human rights of all women and girls into the mainstream of United Nations system-wide activities'. The obligation on UN institutions is extended to member states in paragraph 229, which stipulates that 'Governments should promote an active and visible policy of mainstreaming a gender perspective in all programmes and policies'.

The need to accelerate the process of mainstreaming a gender perspective was recognised in the Outcome Document adopted at the 23rd Special Session of the General Assembly: 'Women 2000: Gender equality, development and peace for the twenty-first century' in June 2000. Paragraph 80 of the *Further actions and initiatives to implement the Beijing Declaration and the Platform for Action* calls on governments to: '[d]evelop and use frameworks, guidelines and other practical tools and indicators to accelerate gender mainstreaming, including gender-based research, analytical tools and methodologies, training, case studies, statistics and information'.

In addition to the commitment to gender mainstreaming contained in these international statements of policy, there are other reasons for its adoption. Gender mainstreaming is essential for a properly functioning democracy. It puts people at the heart of policy-making; leads to better informed policy-making and therefore enhanced government; makes full use of all human resources and acknowledges the shared responsibilities of women and men in all spheres of social ordering; makes gender visible at all levels of society; and takes account of diversity between women and men and between women and women, men and men (Council of Europe, 1998).

In sum, arguments of efficiency, effectiveness, economics, equity and social justice all support the integration of gender issues into national legal policies and programmes.

Obstacles to Gender Mainstreaming

It is important to identify obstacles to gender mainstreaming so that they can be addressed. These may be found in existing laws, including legislation and customary laws, and in societal structures that have come to be seen as 'natural', 'the way things are done' and 'moral.' Other obstacles may be the attitude of key stakeholders; the representation of gender concerns as foreign, 'western' imports; and policies connected to macro-economics and globalisation, including structural adjustment programmes and privatisation of services previously viewed as public. Particular obstacles include the following:

Lack of constitutional guarantees

In many countries there are still no constitutional guarantees against discrimination on the basis of sex and some constitutions make the guarantees of non-discrimination subject to customary or traditional law. Judges may be unwilling to apply constitutional guarantees of sex equality. In addition, there may be a legally sanctioned hierarchy of rights: political rights are guaranteed by many constitutions but very few constitutions have similar guarantees in relation to social and economic rights. This privileging of the political over the economic may have a disproportionately negative impact on

women, who are largely responsible for managing the household economy and for the care of children, the aged and the disabled.

Reservations to treaties

States may have far-reaching reservations to international obligations, including to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These include reservations that specify non-application of the Convention where it is contrary to constitutional provisions or professed religious requirements.

Discriminatory laws and legal practices

In Commonwealth countries where the legal system derives from the 'Westminster' model, international treaties are not self-executing and may not be incorporated into national law. Further, in many countries there is no anti-discrimination legislation that would give women legal redress against sex-based discrimination perpetrated by state or non-state actors. Women continue to face discrimination in employment practices and in access to educational facilities amongst other areas. Even when there are laws prohibiting discrimination, there may be no legal process or remedy or these may be inadequate to protect women against discrimination.

A multiplicity of laws

There may be several different legal systems and structures, including secular state (civil and criminal), personal, religious and customary laws. Even when the government is willing to legislate for gender equality, conflicts between legal hierarchies and an unwillingness to confront these differences for fear of social unrest or instability restrict claims for women's rights. Having different tribunals operating under these different laws leads to inconsistency and uncertainty.

Harsh criminal and civil law regimes

Perceived transgressions committed by women, such as sexual activity outside of marriage, may receive especially harsh sentences compared with men committing the same offence. Men who commit violent crimes may have recourse to defences such as family honour. Where judges are overwhelmingly male, there may be a lack of understanding of how such laws discriminate against women and they may be harshly applied.

An informal sub-legal culture

This is the exercise of quasi-legal power by bodies with no formal legal authority from the state, such as religious organisations and village communities or elders. Village councils (mostly male) in some countries, for example, impose harsh 'sentences' on women for violations of religious law or moral standards.

The interaction of multiple discriminations

Differentiation based on gender might be made invisible because another aspect of discrimination is highlighted. For example, there may be discrimination based on ethnicity, race, religion, disability, age or sexuality. Programmes that address one basis for discrimination might ignore the gendered aspects of the problem.

Indifference or lack of comprehension by key stakeholders

Stakeholders may fail to explain policies to those in the sector and therefore meet resistance in implementation. At times there is a gap between policy formulation and implementation due to a lack of effective communication between senior policy makers and lower staff cadres who are to put such policies into practice. Key stakeholders may not be committed to change or to effective legal reform. Economic development may be prioritised, but the linkage between gender equality and economic development may not be considered. Even where there is a formal acceptance on the part of the state that they should eliminate gender-based discrimination, such discrimination may continue to be reflected in policy formulation uninformed by gender impact analysis. It may be difficult to gain the political will to implement judicial rulings upholding sex equality. For example, the ruling in *Longwe v. Intercontinental Hotels* (practice of excluding unaccompanied women from the hotel violated her constitutional rights) was not implemented in Zambia, and the Longwe judgement was subsequently over-ruled in *Mwanza v. Holiday Inn*; the Nepalese government did not introduce new laws on inheritance after the case of *Dhungana v. Nepal* (laws that limit women's ability to inherit ancestral land found discriminatory); and the decision in *Md Ahmed Khan v. Shah Bano Begum* (Muslim man required to pay alimony on divorce in accordance with secular Criminal Code) was reversed by the Indian government.

Limited political participation by women

CEDAW calls on States Parties to eliminate discrimination against women in political life by ensuring their right to vote in all elections and participate in the formulation and implementation of government policy. However, women continue to be marginal participants in the formal and institutional political processes in most countries. Too often, the issue of representation of women as a social group is avoided by assuming a community of interests between men and women and taking women's consent as given. While it is true that not all women are committed to gender equality (and that some men are), the chances for success in mainstreaming appear to be enhanced when there are women in key positions for the planning, design and implementation of policy. About one third is regarded as sufficient 'critical mass' to influence decision-making.

The view that human rights are only applicable in the public sphere

At the international level, gains have been made in linking violations against women by non-state actors (in the private sphere) and systemic or societal gender discrimination. However, many states have not acted to protect women from, eliminate and punish 'private violations'. There is still a perception that human rights relate to the public sphere and that what takes place in the family is a private matter. Thus women's experiences of inequality, abuse and lack of personal autonomy in the private sphere are not redressed. There may be a lack of knowledge or reliable and objective data about gender inequalities.

Cultural acceptance of gender discrimination

This includes the perception that the subordinate position of women in society is 'natural' and that attempts to address it are socially disruptive and divisive. The growth of religious fundamentalism, which emphasises and at times distorts the role of culture, religion, community and the family, reinforces notions of women's roles in and outside the family that deny them access to the full realisation of their rights.

Lack of or limited access to education

Of the billion people world-wide who can neither read nor write, two-thirds are women. In some states, illiteracy rates are particularly high and girls' access to education even at the primary level is severely limited. Economic hardship, worsened through structural adjustment programmes, may mean the removal of girls from schooling. High levels of teenage pregnancy may lead to early drop-out, or expulsion, from school. Even where women have reached reasonable levels of primary and secondary education, there may be a lack of training available for women in technical and professional skills.

Legal illiteracy

Women may have little or no knowledge of their legal rights, and may also be unwilling or unable to seek legal redress even where remedies exist. A woman may be reluctant to report domestic violence, for example, if there is no protection from further instances. She may also fear the costs of legal assistance. Access to legal institutions and processes may be practically impossible in rural areas.

The sexual division of labour

Much of women's time is spent in household activities, such as collecting water and fuel, preparing food and caring for children and the elderly. The lack of recognition of women's unpaid labour leads to an undervaluing of the same tasks when performed in the paid workforce. Certain forms of paid work are seen as especially suitable for women, typically those involving caring, service, domestic-type tasks and passive labour. The double burden of unpaid domestic labour and paid labour is not recognised.

Early or customary marriages

Early marriage deprives girls of education and also limits their opportunities to develop skills that would give them social or economic independence. Early sexual activity and childbearing can cause severe health problems. Customary marriages may not be registered, leaving women unable to claim property rights, inheritance and/or economic support.

Lack of access to credit; prohibitions on land ownership

Gender-biased access to economic resources such as bank loans, mortgages or other types of credit may restrict women's ability to be financially independent. Women may also be prevented from owning or inheriting property by discriminatory property and inheritance laws and policies. These factors contribute to the feminisation of poverty.

Disparity between urban and rural women

Despite gains made by women in urban areas, rural women may lack opportunity in education and employment and lack access to health care and legal services. They may be especially vulnerable to local community elders.

Economic restructuring and structural adjustment programmes

The adverse impact of economic liberalisation and privatisation can fall disproportionately on women. Countries that have entered into structural adjustment

agreements may cut back social services and food subsidies, privatise social services and undertake monetary reform (which frees national income for servicing the foreign debt). The government may be given no choice by international financial institutions (IMF, World Bank) and there may be long-term benefits, but such programmes affect women much more than men. This is because women are disproportionately represented as carers and accordingly must make up the gap left by the lessening of public services and because there are greater numbers of women in poverty in the first place (see Beijing PFA para. 59 (a) and (f) for strategies for the IMF and World Bank in this regard). The Independent Expert on Human Rights and Extreme Poverty, who has analysed the effects of poverty on the human rights of women, has pointed out that taking all developing countries together, military expenditure equals the combined total spending on health and education.

Effects of armed conflict

Most recent and on-going conflicts are civil wars that make the entire country a war zone and cause a major increase in the number of civilian casualties. These wars are characterised by crimes and human rights abuses, such as sexual violence against women including rape and enslavement. The burden of caring for injured and traumatised people throughout the conflict also falls most heavily on women. Conflicts have created massive movements of peoples both within their own nations (making them internally displaced persons) and into neighbouring countries and further afield as refugees. The dislocation thus caused has left women increasingly susceptible to gender violence which they may experience prior to flight, during flight, in the country of asylum, and when they are being repatriated. The consequences for women of the social dislocation caused by armed conflict must also be taken into account in post-conflict reconstruction.

The media

The mainstream media may be unwilling to carry articles and programmes on matters of concern to women or may trivialise them. There may be an ideological tension between upholding a free press, allowing for the full expression of different views, and the necessity of combating gender stereotyping through the popular media.

Lack of resources

Resources may be lacking or there may be an unwillingness to commit resources to what is regarded as a low priority issue.

Inadequate research

Lack of research on, for example, the economic causes and situation of prostitution, voluntary migration of women workers and trafficking can inhibit appropriate legal responses.

Non-governmental organisations (NGOs)

There may be no legal framework for NGO activity, or restrictions on their activity, limiting their effective involvement in seeking change. Development NGOs may not include women's concerns on their agendas, leaving these to women's NGOs.

Trade Unions

Opposition to trade union activity and oppression of trade union activists might limit attempts to improve conditions for women workers. In any case, male-dominated Trade Unions may be more concerned in maintaining male privileges in the workplace than in enhancing the protection of women's rights.

Such obstacles are likely to exist to a greater or lesser extent in most states. Their identification is a first step in gender mainstreaming, and determination of which are most applicable in a particular context. Measures for their lessening or removal may be required at the political, legal, budgetary or social level, requiring co-operation of all stakeholders, including government, legal bodies, employers, media and public and private finance sectors. These issues are explored further below.

2

The Gender Management System

The Commonwealth Secretariat is encouraging the establishment of Gender Management Systems at the national level. This means that the design, implementation, monitoring and evaluations of laws, policies and programmes within the legal and constitutional sector should not only ensure equality and justice for all regardless of sex and gender, but should also take into account the contributions that can be made by all stakeholders working in this area. Stakeholders include Ministries of Justice, Legal and Constitutional Affairs, Ministries of Women's Affairs, Ministries of Internal/Home Affairs, Law Reform Commissions, Legislature, Judiciary, Human Rights Commissions, Electoral Commissions, Constitutional Commissions, police, prisons, probation, Law Societies, and relevant women's organisations. The guiding principle should be working together to promote human rights for all, fairness in the administration of justice, and a world free of violence against women, men and children. This can be achieved if there is an enabling environment including: (i) political will and commitment at the highest level to put in place gender sensitive policies and laws; (ii) adequate structures and mechanisms to allow effective collaboration and co-ordination of the work of all stakeholders; and (iii) willingness of those stakeholders and implementers who have never been exposed to issues related to gender, human rights and the law, as well as, women and the law to acquire knowledge and skills in gender awareness, and gender analysis and planning. To this end, training and capacity building are essential. The Ministries of Justice, Legal and Constitutional Affairs and associated agencies, the judiciary and Ministries of Internal/Home Affairs, should therefore consult and also harness the knowledge and skills in gender awareness and sensitisation, gender analysis and planning that exist within the Ministries of Women's Affairs, women's organisations, and Women's Studies Departments at the University and train their staff in order to fully address gender concerns in the legal process.

The Commonwealth Secretariat has developed a model framework for an integrated approach for combating violence against women based on the gender management system principles that illustrates how state and non-state stakeholders can work together to address violence against women (see Chapter 6 for details).

What is the Gender Management System?

The Gender Management System is an approach to gender mainstreaming developed by the Commonwealth Secretariat. It is an integrated network of structures, mechanisms and processes put in place in an existing organisational framework in order to guide, plan, monitor and evaluate the process of mainstreaming gender into all areas of an organisation's work. It is intended to advance gender equality and equity through promoting political will; forging a partnership of stakeholders including government, private sector and civil society; building capacity; and sharing good practice. The GMS is described most completely in the *Gender Management System Handbook* (Commonwealth Secretariat, 1999b).

What are the Objectives of the GMS?

Objectives of the GMS include:

- ◆ assisting government and non-state actors in implementing the 1995 Commonwealth Plan of Action on Gender and Development and its Update, The Beijing Platform for Action, and other gender-aware international mandates;
- ◆ strengthening National Women's Machineries;
- ◆ strengthening the capacity of National Women's Machineries, core and sectoral government ministries, development NGOs, the private sector and other members of civil society to make gender-aware development policies, plans and programmes at all levels, and to facilitate partnership-building so as to create a broad-based national constituency committed to gender equality; and
- ◆ creating an enabling environment which takes into account both favourable factors and obstacles to the effective implementation, monitoring and evaluation of gender-aware plans and programmes.

The Stakeholder Framework

The GMS adopts a stakeholder approach to gender mainstreaming. This recognises that the state is not the only player in efforts to achieve gender equality and equity, but must work in partnership with other social partners or stakeholders. The key stakeholders in a GMS are the National Women's Machinery, other government ministries and departments, NGOs, the media, academic institutions, professional associations, inter-governmental organisations, donor agencies and women and men in the broader civil society. Within the stakeholder framework, the GMS is based on the three broad principles of empowerment, integration and accountability.

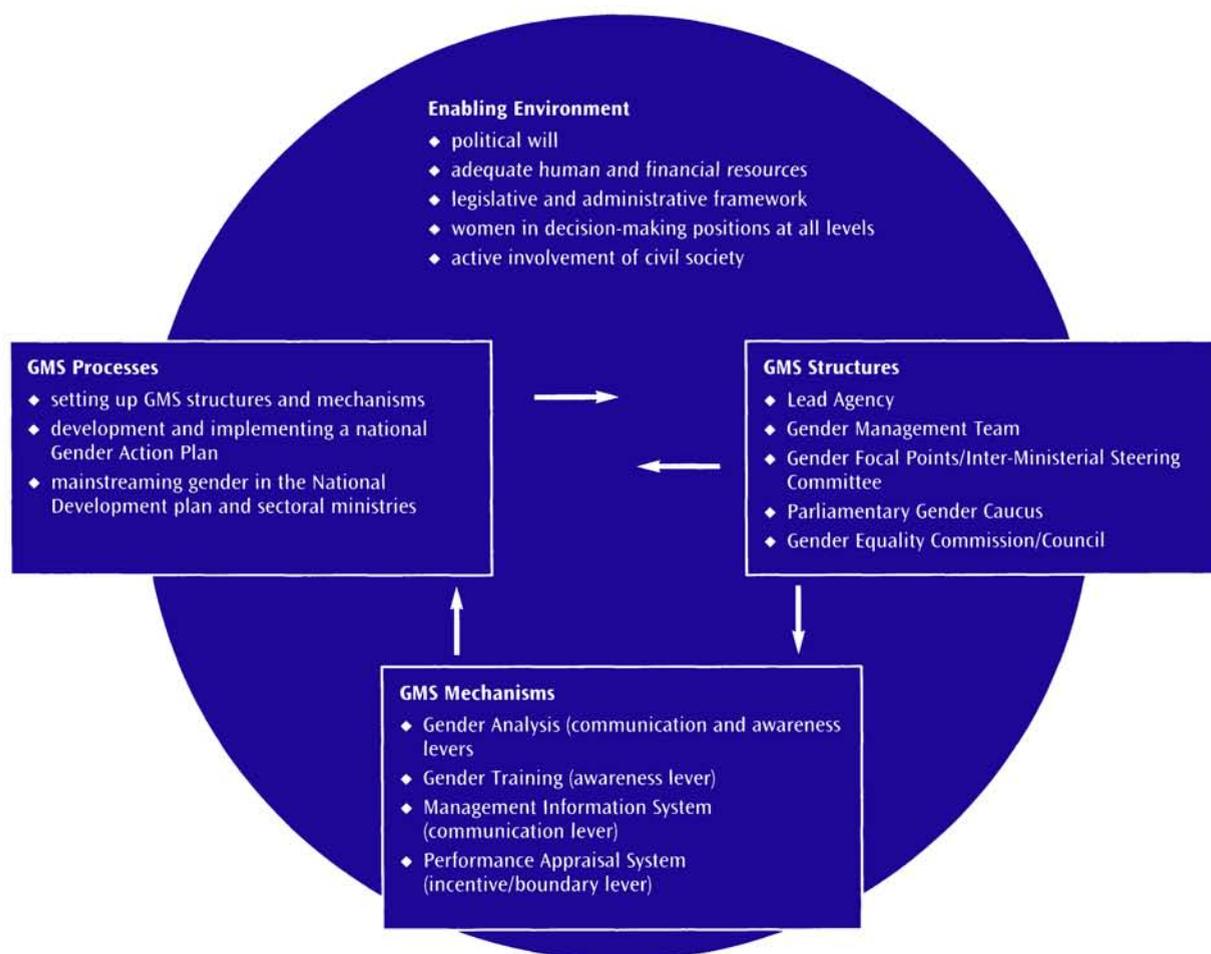
Empowerment: Empowerment means having control over the decisions and issues that affect one's life. In particular, it means having representation in decision-making bodies and control over the distribution of resources. Where women are under-represented in decision-making positions, the GMS recommends action to redress the imbalance. Participation in planning and decision-making processes has the additional benefit of increasing a sense of commitment to and ownership of the plan's objectives. At the personal level, this means that equality will inform the choices women and men make in defining gender roles and responsibilities expressed at home, in the work place and in community life. The widest possible participation in gender planning is therefore desirable.

Integration: The GMS adopts a systemic, holistic approach to mainstreaming. It aims to transform the structures in societies that create and perpetuate gender and other inequalities rather than to merely make ad hoc piecemeal interventions. This entails a high degree of analysis, co-ordination and integration of effort. The GMS is structured to operate in a co-ordinated way at different levels and in different sectors of government and society. Such integration is necessary if the GMS is to reflect the diversity in society; 'women' and 'men' do not exist separate from other constructs such as race/ethnicity, class/caste, age and disability. Gender inequalities cannot be addressed adequately unless the inequalities arising from these other variables are also addressed.

Accountability: Creating change in an organisation and in society requires action to motivate people to effect the necessary changes. The systems that motivate change can be of two kinds: incentive systems, which provide rewards for the achievement of specific goals; and boundary systems, which define what behaviour is unacceptable, set minimum standards of achievement and impose sanctions if these standards are not attained.

Figure 1

The Gender Management System (GMS)



GMS Structures

Enabling all the key stakeholders to participate effectively in the mainstreaming of gender into governments' policy and programming requires the establishment and/or strengthening of formal institutional arrangements within and outside government.

These arrangements can be summarised as follows:

- ◆ A **Lead Agency** (usually the Ministry of Gender or Women's Affairs or other National Women's Machinery), which initiates and strengthens the GMS institutional arrangements, provides overall co-ordination and monitoring and carries out advocacy, communications, media relations and reporting;
- ◆ A **Gender Management Team** (consisting of representatives from the Lead Agency, key government ministries and civil society), which provides leadership for the implementation of the GMS; defines broad operational policies, indicators of effectiveness and timeframes for implementation; and co-ordinates and monitors its performance;
- ◆ An **Inter-Ministerial Steering Committee** whose members are representatives of the Lead Agency and the Gender Focal Points (see below) of all government ministries, and which ensures that gender mainstreaming in government policy, planning and programmes in all sectors is effected and that strong linkages are established between ministries;

- ◆ **Gender Focal Points** (senior administrative and technical staff in all government ministries), who identify gender concerns, co-ordinate gender activities (for example training); promote gender mainstreaming in the planning, implementation and evaluation of all activities in their respective sectors; and sit on the Inter-Ministerial Steering Committee;
- ◆ **A Parliamentary Gender Caucus** (consisting of gender-aware, cross-party female and male parliamentarians), which carries out awareness raising, lobbying and promoting the equal participation of women and men in politics and all aspects of national life and brings a gender perspective to bear on parliamentary structures and procedures and matters under debate;
- ◆ **Representatives of civil society** (a National Gender Equality Commission/Council, academic institutions, NGOs, professional associations, media and other stakeholders), who represent and advocate the interests and perspectives of autonomous associations in government policy-making and implementation processes.

GMS Mechanisms

There are four principal mechanisms for effecting change in an organisation using a GMS:

- ◆ **Gender analysis:** This clarifies the status, opportunities, etc. of men and women. It involves the collection and analysis of sex-disaggregated data which reveal how development activities impact differently on women and men and the effect gender roles and responsibilities have on development efforts. It also involves qualitative analyses that help to clarify how and why these different roles, responsibilities and impacts have come about.
- ◆ **Gender training:** Many of the stakeholders in a GMS will require training in such areas as basic gender awareness and sensitisation, gender analysis, gender planning, the use of gender-sensitive indicators, monitoring and evaluation. Since the GMS aims at the gradual transformation of organisations and a realignment of the belief systems, power structures and policy and planning processes in them, training must also include segments on overcoming hostility to gender mainstreaming and may also need to include conflict prevention and resolution and the management of change.
- ◆ **Management Information System:** This is the mechanism for gathering the data necessary for gender analysis and sharing and communicating the findings of that analysis, using sex-disaggregated data and gender-sensitive indicators. The Management Information System is much more than just a library or resource centre; it is the central repository of gender information and the means by which such information is generated by and disseminated to the key stakeholders in the GMS.
- ◆ **Performance Appraisal System:** Based on the results of gender analysis, the GMS should establish realisable targets in specific areas. For example, women should make up 20 per cent of judges, or 30 per cent of those in decision-making positions in government, by the year 2005 and, on achievement, further targets should be set. The achievement of these targets should be evaluated both at the individual and departmental level through a gender-aware Performance Appraisal System. This should not be separate from whatever system is already in place for appraising the performance of employees; rather the present system should be reviewed and overhauled to ensure that it is gender-sensitive. The Performance Appraisal System should also take into account the level of gender sensitivity and skills (for example as acquired through gender training or field experience) of individuals. The Gender Management Team should work in partnership with the central personnel office of government and sectoral personnel departments to ensure that the Performance Appraisal System in place reflects these concerns.

What does a GMS Achieve?

A Gender Management System can have the following beneficial impacts:

- ♦ development policies and programmes that work because they take into account the realities of, and draw upon the skills of, all the world's population, not just the male half;
- ♦ a fair and equitable distribution of power, resources and decision-making between women and men;
- ♦ government ministries and institutions that are able to respond to the needs of both women and men in their respective sectors;
- ♦ staff who are trained and experienced in addressing issues from a gender perspective; and an efficient and effective mechanism for meeting reporting requirements under international treaties and agreements such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and for implementing the concluding comments and recommendations of such bodies (see Chapter 3).

3

Using a Rights-Based Approach to Gender Mainstreaming

Policies for gender mainstreaming in the legal and constitutional sector must be developed in the context of respect for women's and men's human rights. Since the human rights discourse did not initially focus on women's human rights, an understanding of the international legal requirements for the guarantee of these rights is an important basis for gender mainstreaming.

Certain rights are foundational. These include equality before the law without distinction based on sex, race, ethnicity, religion or political belief; the independence of the judiciary; freedom of expression and a free press; and procedures for a fair trial. The concentration in this Manual on gender equality does not detract from the importance of the obligation on states to respect and to ensure respect for all human rights and freedoms to all people in their jurisdiction. Gender equality and respect for all human rights, economic and social as well as civil and political, are complementary and interactive.

International human rights offer an important framework that citizens can use to hold their states accountable for the provision of basic needs. A rights-based approach affirms the legitimacy of women's claims, allows progress to be measured against objective standards and upholds the state's international obligations.

Universal Human Rights

Human rights are 'fundamental principles of justice, whose underlying values are found in elements of many of the world's systems of religion and ethics' (Connors, 1995). Respect for human rights lies at the heart of the United Nations Charter and is one of the accepted goals of the international community, as well as most national governments. Numerous international agreements and conventions (treaties) show the importance of this concept. Some date back to the beginning of the 20th century, for example the measures adopted by governments in 1902 with respect to marriage, divorce and custody of minor children; the League of Nations' work on slavery and trafficking of women; the International Labour Organisation's commitment to equality in the workplace; and the important pioneering work of the Pan American Union. However, the majority come from negotiations that have taken place under the auspices of the United Nations, starting with the UN Charter in 1945.

In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights which 'eloquently describes the "inalienable and inviolable rights of all members of the human family" . . . [and] marks a moral milestone in the history of the community of nations' (International Women's Tribune Centre, 1998). This Declaration, together with its two implementing Covenants – the International Covenant on Civil and Political Rights (ICCPR, 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) – and the Optional Protocols to the ICCPR, constitute what is known as the International Bill of Rights.

These and other international treaties are legally binding on the states that have become party to them and provide standards of conduct for governments to fulfil. States Parties are obliged to take measures to ensure their implementation at the national level. Each of the core human rights treaties has a treaty monitoring body, a Committee of independent experts that monitors its implementation and to which states must submit periodic reports on their compliance. In some cases, the Committee can initiate inquiries into reports of systematic violations. Working groups and special rapporteurs can also be appointed by the UN Commission on Human Rights to report on specific human rights violations. Four human rights conventions allow for individual complaints.

Women's Rights as Human Rights

Women's rights have only recently been explicitly articulated as an integral part of international human rights law. Although the UN Charter, International Bill of Rights and every major human rights treaty clearly states that there should be no discrimination on the basis of sex, 'tradition, prejudice and social and economic interests have generally excluded women from prevailing definitions and interpretations of these basic human rights and relegated women to secondary and/or "special interest" status in human rights matters' (Bunch, 1999). The growth of the international women's movement has been a significant factor in the growing acceptance that 'women's rights are human rights'.

Up until the 1970s, the focus was on discrimination, development and the political and economic rights of women. This led to the adoption of the Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW Convention) by the UN General Assembly on 18 December 1979. The Convention contains provisions on the rights to political and social equality and the rights to equality in health, education, employment and family life (see below). After its adoption, the women's movement began to concentrate on women's issues in terms of human rights, focusing specifically on violence against women. This had a major success in 1993 at the World Conference on Human Rights, Vienna. The Conference asserted that 'all human rights are indivisible, and interdependent and inter-related', and women's groups from all over the world successfully demanded that the UN General Assembly adopt a Declaration on the Elimination of Violence Against Women and that the UN Human Rights Commission appoint a Special Rapporteur on Violence Against Women, Its Causes and Consequences.

The Vienna Declaration and Programme of Action, signed by 171 governments, emphasises the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. Despite this, and the fact that the majority of countries are parties to the conventions comprising the International Bill of Rights, debate continues concerning whether human rights are universal and indivisible or represent 'Western' values. Claims are made for cultural and traditional particularity in preference to the values of human rights. Central to this debate has been women's rights in the family (around such issues as polygamy, divorce, free and full consent to and in marriage, honour killings, dowry and child custody) as well as regarding female genital mutilation, property and inheritance rights, and employment rights. 'Cultural relativism is usually asserted when someone is trying to assert the rights of women. Women's rights activists argue that once states sign the United Nations Charter, they are obligated to respect human rights as set out in the Universal Declaration of Human Rights and that they cannot suddenly claim cultural relativism in certain areas' (Coomaraswamy, 2000).

In 1995 the Commonwealth adopted the Commonwealth Plan of Action on Gender

and Development in which governments reaffirmed that women's rights are human rights and urged member governments to adopt legislation and develop national strategies to promote the advancement of women. They also urged governments to ratify and implement other relevant human rights treaties and instruments including CEDAW, and to implement the principles and standards contained in the Declaration on the Elimination of Violence Against Women (1993), the Convention on the Rights of the Child (1990) and the Declaration and Programme for Action of the World Congress on the Commercial and Sexual Exploitation of Children (1996).

International Guarantees of Non-discrimination on the Basis of Gender

At its most simple, the guarantee of women's human rights requires the prohibition of discrimination on the grounds of sex and the positive obligation to ensure equality between women and men. As noted above, the general obligation of non-discrimination on the grounds of sex has been laid down in a number of international instruments, including:

- ◆ The United Nations Charter, Articles 1 (3), 55 and 56;
- ◆ The Universal Declaration of Human Rights, 1948, articles 1 and 2;
- ◆ The International Covenant on Civil and Political Rights (ICCPR), 1966, articles 2, 3 and 26;
- ◆ The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, articles 2 and 3.

The UN Charter, Article 55, states, for example:

With a view to creating conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote . . .

(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The ICESCR, article 2 (2), states:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The principle of non-discrimination requires the equal treatment of women and men with respect to the guarantee of rights in the various Conventions. Article 26 of the ICCPR goes further by establishing a free standing right of equality before the law: 'it prohibits discrimination in law or in fact in any field regulated and protected by public authorities' (HRC General Comment no. 18). The Human Rights Committee (the monitoring body of the ICCPR) has drafted another General Comment on that Covenant, article 3 (2000) that provides a comprehensive gender analysis of all its provisions and highlights aspects of particular concern to women. States Parties to the ICCPR and ICESCR should ensure compliance with their non-discrimination provisions.

This consistency in international instruments provides a sound basis for the assertion that the principle of non-discrimination on the ground of sex constitutes customary international law and as such is binding on all states. Even without this assertion, most states are UN members and thus are bound by the provisions of the Charter. In addition many are parties to at least some of the other instruments discussed in this section (see Appendix I).

Mainstreaming women's human rights throughout UN human rights bodies was emphasised by the Vienna World Conference on Human Rights in 1993 and ways of achieving this are being worked on by the Secretary-General and the UN High Commissioner for Human Rights. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights are increasingly asking for information about gender differences with respect to the rights in the Covenants and the steps states have taken to address them. States can anticipate and contribute to this process by co-ordinating their reports to the Human Rights Committee and the Committee on Economic and Social Rights with those to the CEDAW Committee. These reports should be seen as part of an integrated process rather than as distinct.

The Convention on the Elimination of All Forms of Discrimination Against Women

The principle of the elimination of discrimination between women and men and the achievement of women's equality is the explicit objective of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Convention had 166 State Parties at the time of writing, including most members of the Commonwealth (see Appendix I).

Substantive provisions

CEDAW identifies areas where gender-based discrimination is most marked, covering civil and political rights and economic and social rights. It includes provisions on the suppression of prostitution and trafficking in women (article 6); participation of women in the public life of states (articles 7 and 8); equality in nationality laws (article 9); equality in access to, and in all other aspects of, education (article 10); equality in employment (article 11); equality in access to health services (article 12); equality in other areas of economic and social life (article 13); equality before the law (article 15); and equal rights in the family, in particular before, during and after marriage (article 16). Of particular relevance to many Commonwealth states is the attention given to the specific needs of rural women (article 14).

Importantly CEDAW, article 1, defines discrimination against women as:

... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

This definition has been accepted by the Human Rights Committee as applicable to discrimination under the ICCPR. It encompasses both direct and indirect discrimination. In direct discrimination, the purpose of the 'distinction, exclusion or restriction' is relevant, for example legal prohibitions on women owning or inheriting property, being employed in certain sectors or having access to contraceptive services. Indirect discrimination occurs when 'distinction, exclusion or restriction' is the effect of the provision, for example height requirements for employment or non-provision of benefits for part time workers (the majority of whom are women), or preferential treatment for demobilised soldiers (the majority of whom are men). The definition does not, however, prohibit positive discrimination or temporary special measures. Affirmative or preferential treatment in order to correct conditions that have caused or perpetuated adverse treatment in the past is envisaged under article 4 as a temporary measure to accelerate the achievement of equality of opportunity and treatment.

Unlike the ICCPR and ICESCR, CEDAW is not limited to discrimination in the public sector. Article 2 (d) requires states to ensure that public authorities refrain from

discrimination and 2 (e) requires them to take appropriate measures to eliminate discrimination by any 'person, organisation or enterprise'. Other provisions, notably articles 5 and 16, explicitly relate to discrimination in private arenas, for example the family. Article 2 also sets out the obligations on States Parties, who must condemn discrimination against women in all its forms. This is absolute, allowing for no exceptions or justifications. States agree to pursue a policy of elimination of discrimination 'by all appropriate means and without delay' through:

- ◆ constitutional and legislative inclusion (2 (a));
- ◆ legislative measures, including sanctions (2 (b));
- ◆ competent tribunals to ensure implementation (2 (c));
- ◆ appropriate measures to abolish existing discriminatory laws, regulations, customs and practices (2 (f));
- ◆ repeal of discriminatory penal laws (2 (g)).

In its General Comment No 3 (1990), the Committee on Economic, Social and Cultural Rights considered the content of states' obligations under the ICESCR. Their comments are relevant to CEDAW because economic and social rights are included in it and similar language is used (for example, 'appropriate' means and measures). The Committee dispelled the notion that the ICESCR creates no immediate obligations and that its rights are non-justiciable. It emphasised the immediate, positive obligation to 'take steps' that are 'deliberate', 'targeted' and 'concrete' for the elimination of discrimination. It also found certain rights to be inherently justiciable, including workplace rights and rights of access to education.

Reservations

Reservations to CEDAW are allowed subject to article 28 (2), which states: 'A reservation incompatible with the object and purpose of the present Convention shall not be permitted'. As well as being the treaty with the second highest number of ratifications (after the Convention on the Rights of the Child), CEDAW also has a large number of substantive reservations, including from a number of Commonwealth States Parties. Some of these are broad and subject the provisions of the Convention to other criteria, including domestic and religious laws. Most frequently, they concern the family – the place where women's rights are most often in need of protection. The existence of such reservations is an obstacle to gender mainstreaming in national legislation, especially where they are framed in terms of refusal to change existing laws.

Under the Vienna Convention on the Law of Treaties, 1969, states may make objections to the reservations of other states that they regard as incompatible with the object and purpose of the Convention. Few Commonwealth states have used this possibility, however, although Canada has done so with respect to the Maldives, which has removed the most extreme aspects of its reservations entered upon ratification of CEDAW. Moreover, no state has indicated that it is not in treaty relations with a reserving state. Failure to object gives tacit acquiescence to such reservations.

The Committee on the Elimination of Discrimination Against Women has called on states to narrow the terms of reservations, to consider whether they are needed and to withdraw them where possible. The CEDAW Committee has subjected states to close questioning on their reservations during the presentation of their reports. Some states have withdrawn or modified reservations (for example, UK, Canada, Malaysia and the Maldives). The Human Rights Committee in its General Comment No. 24 has asserted that it will sever reservations that it regards as incompatible with the ICCPR, a view that has been strongly challenged by some states, including the UK, as contrary to the exclusive power of states to object to reservations. The CEDAW Committee has not indicated whether it will take the same line.

Monitoring and enforcement

All the committees of experts created by the UN Human Rights treaties provide for initial and periodic reporting by states. CEDAW article 17 establishes a Committee of independent experts (the CEDAW Committee) to which states must report within a year of becoming a party to the Convention and subsequently at four-yearly intervals or whenever the Committee requests a report. States should make every effort to keep to this reporting schedule. Late or outdated reports reduce the usefulness of the process to states, as well as to the Committee. Increased meeting time for the Committee is reducing a backlog that had developed and allowing more timely consideration of reports. The General Assembly has adopted an amendment to article 20 of the Convention formalising this ad hoc arrangement. States should ratify this amendment to ensure that the greater effectiveness achieved through more meeting time is maintained. The Committee also agreed at its 23rd session (June 2000) to allow 'on an exceptional and as a temporary measure, that States Parties with overdue reports should be invited to combine these into a single document' (General Assembly A/55/38).

State reporting provides an assessment of compliance with the Convention. To gain maximum advantage from the process, states should follow the reporting guidelines set out in the Commonwealth Secretariat/UNDAW/IWRAW publication, *Assessing the Status of Women: A Guide to Reporting Under the Convention on the Elimination of All Forms of Discrimination Against Women* (2000), and respond fully to the Committee's questioning. The CEDAW Committee recently introduced new procedures whereby states are presented with questions in advance of their oral presentation, based on their periodic report. This allows states to give more complete consideration to points of concern to the Committee and to exchange in a fuller dialogue with Committee members, including about ways of overcoming obstacles to effective implementation. This in turn enhances the opportunity to benefit from the Committee's expertise and experience gained from their dialogues with other states. States' reports and the Committee's Concluding Comments provide a public and readily available resource on the approaches of other states to gender equality.

The CEDAW Committee has developed its Concluding Comments to improve their usefulness by making them more precise and specific. States should study and respond to these comments, and use them as a starting point for the next report. They are available on the web site of the UN Division for the Advancement of Women (<http://www.un.org/womenwatch/daw>). Concluding Comments should also be given media coverage and forwarded to national NGOs. The reporting system is a valuable mechanism for linkage between the state and NGOs and states should use this opportunity to consult with civil society, especially women's NGOs, and to respond to their concerns. 'Shadow' reports, which are being produced by NGOs in some countries to provide the CEDAW Committee with additional information and an alternative viewpoint, should be used in such consultations. Consultations should continue after the reporting process to inform NGOs of the dialogue with the Committee and to consider in partnership ways of implementing the recommendations.

Gender mainstreaming throughout the UN Human Rights system has encouraged the other Human Rights Committees increasingly to address gender issues. States should therefore include in their reports gender aspects of their obligations under these treaties and be prepared to engage in dialogue about them.

CEDAW has recently been strengthened by an Optional Protocol (adopted by the General Assembly, 6 October 1999; entered into force 22 December 2000) that allows individuals and groups claiming violations of the Convention to bring petitions before the CEDAW Committee. NGOs and groups can represent individuals with the consent of the individuals but the Committee can conclude that consent is not

necessary if the author can justify acting without it. The Committee can make recommendations to the government concerned but cannot make a binding decision. The new Optional Protocol also gives the Committee investigative powers if it receives reliable evidence of grave or systematic violations.

The CEDAW Committee has adopted a number of important general recommendations on the interpretation and application of the Convention. These provide guidelines to states on measures to be taken to comply with the Convention. Among the most important are:

- ◆ General Recommendation 18, 1991: Disabled Women
- ◆ General Recommendation 19, 1992: Violence Against Women
- ◆ General Recommendation 21, 1994: Equality in Marriage and Family Relations
- ◆ General Recommendation 23, 1997: Political and Public Life
- ◆ General Recommendation 24, 1999: Women and Health

Other international conventions

Other international treaties contain provisions that address matters of particular concern to women, although these are not always presented in human rights terms. Where they are not already bound by such treaties, states should examine their ability to become so.

The Constitution of the International Labour Organisation (ILO), 1919, Article 41 asserts the 'special and urgent importance' of the principle of equal remuneration for work of equal value for men and women. ILO Conventions are particularly valuable as there are procedures for their implementation. Relevant ILO Conventions include:

- ◆ No. 3 on Maternity Protection, 1919; No. 103 on Maternity Protection, 1952
- ◆ No. 100 on Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951
- ◆ No. 111 on Discrimination with Respect to Employment and Occupation, 1958
- ◆ No. 156 on Equal Opportunities and Equal Treatment for Men and Women Workers, Workers with Family Responsibilities, 1981
- ◆ No. 175 on Part-time Work, 1994
- ◆ No. 177 on Home Work, 1996 (supplemented by Recommendation No. 184)
- ◆ No. 183 Maternity Protection Convention, 2000 (supplemented by Recommendation)

Other international conventions of importance for women include:

- ◆ Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1951
- ◆ Convention Relating to the Status of Refugees, 1951 (and 1967 Protocol)
- ◆ Convention on the Political Rights of Women, 1954
- ◆ Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1957
- ◆ Convention on the Nationality of Married Women, 1957
- ◆ UNESCO Convention on Discrimination in Education, 1960
- ◆ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1964
- ◆ International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- ◆ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- ◆ International Convention on the Rights of the Child, 1989
- ◆ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158 (1990) (not yet in force).

The International Criminal Court

The International Criminal Court (ICC) will be a global judicial institution that will investigate and bring to justice individuals, but not states or corporations, who commit the most serious crimes of concern to the international community. Its particular importance for women lies in the affirmation that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence constitute war crimes and, in defined circumstances, crimes against humanity. As of January 2001, the Rome Statute setting up the ICC had been signed by 139 countries and ratified by 27, including Botswana, Canada, Ghana, New Zealand, South Africa and Trinidad and Tobago. Other countries are encouraged to ratify the Statute; 60 ratifications or accessions are necessary for it to enter into force.

Regional human rights treaties that prohibit discrimination

Regional human rights treaties include:

- ♦ the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (to which the United Kingdom became a party in 1953, and which it incorporated into national law with the Human Rights Act of 1998, Cyprus became a party to in 1962 and Malta in 1967);
- ♦ the American Convention on Human Rights, 1969 and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994 (to which states in the Americas are party);
- ♦ the African Charter on Human and Peoples' Rights, 1981 (to which African states are party).

All these treaties prohibit discrimination on the grounds of sex. Protocol No. 12 to the European Convention, which was adopted on 4 November 2000, reaffirms the principle of non-discrimination in a free-standing prohibition of discrimination. It requires acceptance from states to come into force. The African Charter, Article 18(3) states that:

The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

This provision appears to assert that incorporation of the Africa Charter into national law carries with it incorporation of the CEDAW Convention and other relevant human rights instruments. In addition, Article 25 of the Charter imposes a duty on States Parties to promote the rights contained in the Charter through education and publication and to ensure understanding of both the rights and obligations.

There is a considerable body of case law on the interpretation and application of both the European Convention and the Inter-American Convention.

Other international instruments

In addition to the treaties mentioned above, other UN human rights instruments are also relevant in determining what responsibility states have in ensuring and protecting the rights of women. While they do not have the force of law, these agreements set a moral standard and provide a framework for international and national actions, monitoring and accountability. In them, governments agreed to take action on a broad range of social and economic issues so that women can realise their rights (Elson, 2000).

The Vienna Declaration and Programme of Action (1993)

The Vienna Declaration for the first time recognises violence against women as a human rights abuse, and states that:

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in the political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on the grounds of sex, are priority objectives of the international community.

The Declaration on the Elimination of All Forms of Violence Against Women (1993)

The Declaration defines violence against women as:

. . . any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

It asserts that states should 'exercise due diligence to prevent, investigate and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons'. In addition, states 'should not invoke any custom, tradition or religious consideration to avoid their obligations' with respect to violence against women.

The Cairo Programme of Action (1994)

The International Conference on Population and Development agreed on a Programme of Action which, in Principle 4, declares that advancing gender equality and equity and the empowerment of women, the elimination of all kinds of violence against women and ensuring women's ability to control their own fertility are cornerstones of population and development-related programmes. It also asserts that states should act to empower women and to eliminate inequalities between women and men.

The Beijing Declaration and Platform for Action (1995)

The Platform for Action (PFA), the major policy document produced by the Fourth UN World Conference on Women, reaffirms that all human rights – civil, cultural, political and social, including the right to development – are universal, indivisible, interdependent and interrelated, and that the human rights of women and the girl-child are an inalienable, integral and indivisible part of human rights. The PFA sets out strategic objectives, and actions to be taken by states to achieve those objectives, in each of twelve areas of critical concern: poverty, education, health, violence, armed conflict, economy, power and decision-making, institutional mechanisms, human rights, media, environment and the girl child. It therefore provides an action plan for states.

The Beijing+5 Outcome Document (2000)

Five years after Beijing, governments met in New York at a Special Session of the General Assembly entitled 'Women 2000: Gender Equality, Development and Peace for the Twenty-first Century' (popularly known as Beijing+5). The Ad Hoc Committee of the Whole produced a Political Declaration and Outcome Document, *Further Actions and Initiatives to Implement the Beijing Declaration and the Platform for Action*. This recognises that:

the full realisation of all human rights and fundamental freedoms is essential for the empowerment of women. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. (para. 3)

The Persistence of Discrimination

It is increasingly recognised that, despite the vision of universal human rights and the mechanisms noted above which exist to concretise this vision, gender discrimination has persisted world-wide. Some examples of the obstacles faced by women include:

- ◆ Violence or the threat of violence, which restricts the range of choices open to them in almost every sphere of life. The type of violence varies depending on cultural context and includes dowry deaths, 'honour' killings, rape and other sexual assault, domestic violence, sexual harassment and genital mutilation.
- ◆ Their invisibility in formal political institutions. For example, world-wide, women hold only 10 percent of parliamentary seats.
- ◆ Their unequal status as enshrined explicitly or implicitly in the legal system and the injustice they continue to face because of their gender. Legal and regulatory provisions that discriminate against women perpetuate gender inequalities and restrict women's ability to participate fully in social and economic development.
- ◆ The continuation of harmful traditional practices, rooted in cultural assumptions and/or religious practices.
- ◆ The growth of religious and cultural extremism and fundamentalism which narrowly define women's choices and restrict their movement.
- ◆ The multiple roles women have to perform in productive and reproductive labour, paid and unpaid, that are not reflected in official measures of economic activity.
- ◆ The increasing burden of unpaid care work, caused by cuts in public expenditure in pursuance of structural adjustment programmes, which falls on women who have primary responsibility for family healthcare and provision of services.
- ◆ The effects of globalisation, including the migration of women for employment but creating vulnerability to violence and exploitation.
- ◆ The effects of armed conflict, including increased incidents of violence against women, further economic hardship and demands of caring for those injured and traumatised by war.

These obstacles to women's equality ensure that women remain excluded from the vision of universal human rights. Expanding the understanding of state responsibility and accountability is therefore an important component in implementing, enforcing and asserting human rights instruments from a women's rights perspective (Clarke, 1996).

Limitations of the Prohibition of Discrimination

The principle of non-discrimination requires the equal treatment of women and men with respect to the guarantee of rights in the various Conventions. This development at the international level has been mirrored at the national level as many constitutions now prohibit discrimination on the basis of sex. However, prohibiting discrimination is not of itself enough to ensure that women have the same opportunities for advancement and full enjoyment of their rights as men. Full equality of access to opportunity, supported by social policies and programmes, is also required. Such substantive equality requires that all groups are able to enjoy equal human dignity and to participate fully in society. It accordingly allows for different treatment where needed to achieve that goal. CEDAW specifically notes that 'temporary special measures aimed at accelerating de facto

equality between men and women shall not be considered discrimination' (article 4). The traditional human rights framework is, however, limited in its ability to achieve such equality of opportunity. Human rights discourse has tended to concentrate on the relationship between the state and the individual as it is played out in the public arena. While the standard of equality is important, it most benefits women where their circumstances are comparable to those of men, for example in paid work, in public life or in facing criminal charges. In such situations women's legal right to equal treatment, at least in theory, provides them with the same guarantees as men. However, the sexual division of labour restricts the employment opportunities for many women to occupations deemed 'suitable' for women, typically in the 'caring' professions, social services, working with children and the elderly, cleaning and domestic service. Some forms of employment exploit women's sexual desirability and may suggest availability, for example jobs in the tourist industry, itself often seen as vital to the state's economic development and therefore involving government complicity. Other forms of employment focus on women's assumed passivity and manual dexterity (small fingers/delicate tasks), for example factory working, especially in clothing and light assembly work. What all such forms of employment typically have in common is low pay, lack of unionisation and the lack of similar male occupations that can be used as a comparison to determine equality of treatment. It is often assumed that men are the primary source of paid income (without reference to statistics on female-headed households) and there is no basis on which to compare conditions of leave from paid employment for child birth and infant care.

The impact of globalisation has been mixed. Corporate investment and increased transborder mobility have allowed many women to enter the paid workforce who previously had been unable to do so. A level of economic independence furthers the empowerment of women. However, the Special Rapporteur on Human Rights of Migrants, the Special Rapporteur on Violence Against Women and the UN Secretary-General have reported on the linkages between exploitation, migrant women and violence.

While there has been an emphasis on standards of equality and on the public arena, there has been an unwillingness to assume responsibility for the elimination of violations that occur in the private arena, where many abuses against women take place. For example, the majority of women who experience 'severe physical or mental pain or suffering' do so at the hands of male members of their own families, although such an act committed by a public official would fall under the definition of torture. This victimisation is frequently facilitated by the maintenance of a social, cultural or legal framework by the state that tolerates, condones or, in some cases, encourages such activity (Connors, 1995). State failure to expose and attempt to redress such abuses make them a matter of public, rather than private, import. States have to accept that gender equality goes beyond ensuring women the same rights as men with respect to the processes of law. It requires positive action to guarantee the means for the enjoyment of rights and for ensuring participation in society on equal terms with men.

A specialist group of the Council of Europe decided that:

Gender equality means an equal visibility, empowerment and participation of both sexes in all spheres of public and private life. Gender equality is the opposite of gender inequality, not of gender difference, and aims to promote the full participation of women and men in society.

As well as recognising women's rights as human rights, other important elements of gender equality are: the development and improvement of representative and participatory democracy; women's economic independence; education; and women's and men's common acknowledgement of the need to remove imbalances in society and their shared responsibility in doing so.

A good illustration of what such a positive response to human rights guarantees might require is the decision of the European Court of Human Rights in *Airey v. Ireland*. Irish law allowed a wife to seek judicial separation from a violent spouse but she could not afford legal assistance. The Court held that respect for family life requires the state to provide legal aid for an impoverished wife to make good this right. Formal equality in the law with respect to separation was not sufficient for its practical achievement. Another example is *X and Y v. the Netherlands*, where the state had failed to provide any legal remedy for a 16-year-old mentally retarded child who had been sexually abused by a private individual. The state's failure to provide for this situation within its criminal law constituted a violation of the Convention. These cases go beyond equality and show the state's responsibility to ensure respect for family life for all people in its jurisdiction. They also demonstrate how gender mainstreaming has benefits for all citizens in that analysis showing the obstacles to actual enjoyment of formal human rights is applicable to both women and men.

4

Gender Mainstreaming in Legal and Constitutional Affairs

In a review of a state's legal system, attention must be given to all sources, structures and processes of law. Without this information it is not possible to understand how laws and practices can be modified, challenged or repealed. Most forms of law-making require parliamentary-style formal processes to be followed, while policies and practices may be more informally amended. The legal system in most Commonwealth states is based on the common law system inherited from their colonial past. Some laws that were in force in England at the time of colonisation and became part of the law of the colonised entity, as well as statutes passed during the colonial era, will have remained in force unless repealed by the independent state. While the degree of legal change introduced since independence varies from state to state, there remains some commonality in the making and interpretation of law through state agencies. Some Commonwealth states have pluralistic legal systems through their retention of customary and religious laws.

Sources of national law are the Constitution, legislation (statute), common law (judge-made law) and religious and customary law. Most Commonwealth states have a written Constitution that constitutes the supreme law of the land. The Constitution allocates legal and political power between the organs of the state. Many Constitutions also include human rights and equality provisions (see Appendix II). The Constitution will contain procedures for its amendment which are normally more onerous than for legislative change, for example the requirement for a referendum or specified majority within the separate Parliamentary chambers.

Non-constitutional legislation can be changed through the same processes as those for enacting new legislation, normally including consideration by relevant Parliamentary committees and the appropriate Parliamentary chamber(s). The legislative process must allow for consultation and input on draft legislation from civil society, ensuring representation from women's groups. In order to achieve this, it may be necessary to disseminate information about legislative proposals more widely and in different ways than previously, for example within rural and indigenous communities. Interest groups and those with specialist expertise (for example women lawyers' groups, women trade unionists, other professional bodies) should ensure that they maintain an awareness of legislative programmes, scrutinise proposed legislation from a gender perspective and feed their comments into the process.

Once passed, legislation must be interpreted and applied by the courts. Principles of statutory interpretation normally require attention to the plain meaning of the statute's language, although interpretative aids may be resorted to where there is ambiguity or the plain meaning gives rise to an absurd result. Such interpretative aids may include international conventions. In addition many states follow the practice that, wherever possible, a statute should be interpreted so to give effect to the state's international obligations, including its treaty obligations. For example, in *the A-G of the Republic of Botswana v. Unity Dow*, the court held that it could look to

international treaties, agreements and obligations entered into before or after the legislation was enacted, to ensure conformity with those obligations. Subordinate or delegated legislation in the form of orders, rules and regulations made by bodies with legislative authority are also binding on individuals. Such subordinate legislation can generally be passed more quickly and informally than primary legislation. It is important therefore that those with delegated law-making power understand the meaning and importance of non-discrimination and of gender equity and equality.

The common law comprises the body of law and equity created by the national courts. For example, the Constitution of Ghana defines the common law as 'the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature'. A major feature of the English common law system, inherited by most Commonwealth states, is the doctrine of precedent. This rests on an integrated hierarchy of superior courts that is normally laid out in the Constitution. Under the doctrine of precedent, decisions of courts higher in the hierarchy of courts and tribunals are binding on lower courts and, except in exceptional circumstances, decisions of the highest appellate Court are binding on subsequent decisions of the same Court. This doctrine gives law-making powers to the superior judges, especially in areas where there is no statutory law, and provides stability and certainty in the law. However, it can also act as an obstacle to legal change through judicial means, for example through progressive judicial interpretation of new ideas such as those relating to gender equality. Persuasive argument by lawyers is required in which reference to cases decided by other Commonwealth courts may be useful.

Many states still retain indigenous customary law, sometimes based on religious principles, which applies alongside state-made law. Customary law is unwritten and different variations of customary law may apply to different communities within the state. The Constitution or statute may specify the relationship between customary law and state-made law, but there can be uncertainty as to which law will prevail or as to the content of customary law. In some states there have been attempts to codify customary law. In a number of African states, provisions may require that customary law should not be applied if to do so would lead to a result 'repugnant to justice and morality' (Kenya), or to ensure a just result. Such provisions allow for subjective evaluations by judges applying customary law of what is just and moral, which may be influenced by their personal understandings of women's status. States may also have religious courts (for example Bangladesh, India, Kenya, Nigeria, Pakistan) that apply laws based on religious texts. Both customary and religious law are especially applicable to personal status law and thus determine gender relations.

Preliminary Steps

A number of preliminary steps, that follow the Commonwealth Plan of Action on Gender and Development and its Update, are required at the national level for gender mainstreaming. These include data collection and an analysis of law and legal systems and of gender differences in social indicators. This understanding then needs to be incorporated into the work programme by the development of strong skills in advocacy and in participatory and consultative policy and planning methodologies.

Gender Analysis and Audit

Gender analysis and audit concerns the content of the laws in relation to the goals of non-discrimination as specified in international obligations. A situational analysis of

women and men will guide in the identification of areas where there are gaps, inadequacies or inequalities either in the content or application of the law. The current position of women and men in the particular context must be determined through quality empirical research and dissemination of the findings. In many cases this has already been carried out, or at least commenced – see, for example, the research done in Southern Africa on the problems women face in accessing the law as part of a gender audit of the administration of justice and a first step towards addressing the problems (Women and Law, Southern Africa Research Fund, 1999); and the research project of the Asian Development Bank on the socio-legal status of women in selected developing member countries (including Malaysia). Such studies provide useful models for this task.

The Committee on the Elimination of Racial Discrimination (in its General Recommendation on Gender Dimensions of Racial Discrimination, Commentary and Background Information) has suggested looking at the law, social practices, etc. under four headings:

1. The form or nature of a particular violation, hardship or discrimination under the law, for example targeting of women for abuse in conflict situations; denial of property or inheritance; subjection to personal status or religious laws.
2. The circumstances in which such adverse treatment occurs, for example in the work place, where there are no sex discrimination or sexual harassment laws in place or even labour standards; in the home, where a woman may for cultural reasons be unable to demand safe sex with a HIV-positive partner; in a single woman-headed household, where property laws or welfare laws have a disproportionately adverse impact.
3. The consequences of such adverse circumstances, which can also be gender specific, for example poverty; her or her children becoming infected with HIV/AIDS, being socially ostracised after a rape.
4. The availability of remedies or complaint mechanisms that address the particular consequences for women and men, i.e., that are also gender sensitive.

An important dimension of gender analysis is that it permits the policy-maker to more clearly delineate the differences between the roles and experiences of women and men and to draw out the meanings and implications of these differences. Examples of relevant areas of inquiry are:

- ♦ What, if any, difference is there in the direct or indirect impact on men and women of a constitutional, legislative or international law provision, legal practice or policy decision?
- ♦ What are the consequences of any such differential impact? On men? On women?
- ♦ Do constitutional/legal structures in their particular economic and political environment offer the same choices to men and women? If not, how are opportunities for advancement affected by the different choices?
- ♦ Does the law, policy or practice make any assumptions about the respective position in society of men and women? Is it based on, or does it contribute to, a stereotypical, or constructed understanding of gender?
- ♦ If there is such impact or difference (and this will not necessarily be the case in every instance) then how should this be taken into account in the advice that is offered, the structure of the project or programme and in evaluation of the project?

Documentation and sex-disaggregated data

Documentation and statistical data disaggregated by sex are important to provide both indications of the extent of problems and objective criteria for evaluation of where legal reform is necessary. For example, in the context of labour, social security and tax laws, data are required on numerous matters. Data that show that there are large numbers of women working in non-unionised sectors of the labour market might lead to minimum conditions of work legislation. An example of this is the Minimum Wages Order in Trinidad and Tobago which was amended to extend maternity protection to household assistants even before the Maternity Protection Act was passed in 1998. Data to be collected therefore might include:

- ◆ the number of women in the paid work force;
- ◆ the age spread;
- ◆ ages of women in particular forms of employment;
- ◆ educational achievement in particular forms of employment;
- ◆ women's participation in different types of employment: factory, office, agricultural, services, 'caring', professional, entertainment, etc.;
- ◆ self-employed women;
- ◆ women's representation in the public and private sectors;
- ◆ women's levels of employment: management, support staff, secretarial, etc.;
- ◆ recruitment, retention and promotion of women in particular sectors;
- ◆ women's pay brackets;
- ◆ the breakdown among women workers into full time, part time, shift, permanent, casual, agency, seasonal, etc.;
- ◆ numbers of women employed by foreign companies in the state, rates of pay and conditions of work;
- ◆ numbers of women employed in Export Processing Zones in the state, rates of pay, contractual terms (including length of contract), conditions of work;
- ◆ numbers of women heads of household in paid employment;
- ◆ length of service in particular jobs;
- ◆ urban/rural areas break down;
- ◆ foreign women workers or women working abroad;
- ◆ the breaks women take from work for child birth and child care;
- ◆ numbers of women working in unionised employment;
- ◆ level of union membership;
- ◆ positions of responsibility in unions;
- ◆ employment of women in the informal sector.

These data must be compared with that gathered about men to acquire a gendered understanding of the composition and work conditions of the paid work force. Data are also needed over a time period so that trends can be identified and taken account of.

Similarly, in the context of penal policy data are required on such issues as:

- ◆ numbers of women arrested;
- ◆ numbers of women charged with offences;
- ◆ what classes of offence: personal injury, property, public order, drug, prostitution, etc.;
- ◆ severity of the offence;
- ◆ conviction rates;
- ◆ sentences given: monetary, corporal, custodial, community orders, suspended, etc.;
- ◆ length of sentence served (custodial);
- ◆ location of custodial sentence;
- ◆ repeat offenders;
- ◆ age of offenders;
- ◆ marital status and maternal status;
- ◆ geographic distribution: urban or rural;

- ◆ facilities available in women's prisons (exercise, job and skills training);
- ◆ security in women's places of detention.

In the area of penal law, it is equally important to take account of men's experiences with the penal system since it is gendered factors as much as economic ones which determine contact with the penal system. These data must therefore be compared with that gathered on men to acquire a gendered understanding of penal policy. In particular it must be asked whether there are offences where a man is not criminalised for his behaviour whereas a woman is (prostitution, adultery, public behaviour such as dress) and vice versa. Questions of access to legal representation and attitudes of judicial officers to men and women offenders are also relevant. Changes in criminal law must be monitored. For example, more stringent probationary measures may be indirectly discriminatory if more women than men are given such sentences. Attention should be paid to the special circumstances of women in deciding the rules of evidence, especially related to acts of domestic violence. Sex-disaggregated data and gender analysis can also play an important role in developing policy approaches to the penal system which do not reproduce cultures of violence, including violence against women.

Analysis of other social indicators

Statistical evaluation needs to be supplemented by analysis of other social and inter-connected indicators with respect to women's position in society and their economic dependency. This would include a gender audit of laws as well as of social policy:

- ◆ access of girls and women to primary, secondary and tertiary education;
- ◆ access to skills training;
- ◆ type of skills training to which women have access;
- ◆ participation rates in these levels of education;
- ◆ length of time spent in these levels of education;
- ◆ qualifications achieved;
- ◆ average age of marriage;
- ◆ average age of first giving birth;
- ◆ laws of property holding, inheritance and dowry;
- ◆ access to banking and credit;
- ◆ divorce rates;
- ◆ laws on maintenance and custody;
- ◆ religious norms in the society with respect to women's employment;
- ◆ access to public spaces;
- ◆ availability of affordable child care,
- ◆ existence of extended families; and
- ◆ urban and rural demography.

In particular, the impact of proposed legal measures on women's economic situation must be considered. The so-called 'feminisation of poverty' needs to be understood in terms of the numbers of women living in poverty and the gendered ways in which they become poor and in which they experience poverty. Factors contributing to women's poverty need to be understood, analysed and guarded against. The linkages between poverty, prostitution and trafficking must be addressed and the connection between discrimination and poverty must also be examined. The nuances and complexities of people's lives must be deconstructed, informed by an understanding of power inequalities in society. Data and analysis should be made publicly available and public debate and discussion encouraged.

Since policy integration and co-ordination are important aspects of mainstreaming, data relevant to one sector may also be applicable to understanding another sector. A holistic view is required. For example, information about employment patterns, levels

of pay and education achievement levels may be relevant to the incidence of gender violence and society's perception of women as victims rather than as agents of change. There is therefore the need for a Management Information System, as envisaged by the GMS with overall responsibility for co-ordination and dissemination of data analysis. Where there are divisions in a state based on ethnicity, or minority, immigrant or indigenous populations, statistical analysis must be developed to take account of both gender and the other variables.

Policy Development and Appraisal

After the analysis and audit of the content of existing laws and social indicators and of the current position of women and men, policy objectives must be determined and methods for achieving those objectives identified. Policy makers need to decide at what levels the problems or limitations exist:

- ◆ substantive (the content of the law): law should be reformed, new legislation is needed, existing law should be repealed;
- ◆ structural: inadequate court processes, absence of legal aid, absence of ancillary services (for example data collection in courts);
- ◆ cultural: persons do not access the legal system because of widespread acceptance of discriminatory practices, judicial insensitivity;
- ◆ economic: persons do not or cannot access the legal system because of the costs of legal services, or cannot afford time away from work to attend court or consultations.

Options must be reality tested: are they workable? What obstacles are likely to be met? Which is likely to be most efficient in achieving change in gender relations cost-effectively? Priorities may have to be determined, according to immediate, medium term and long term objectives.

Identification of Stakeholders

The audit will also assist in identifying the stakeholders in the gender mainstreaming process. Stakeholders are those responsible for determining and formulating legal policy, applying it and ensuring its enforcement. Ongoing consultation and co-ordination between stakeholders in the formulation of objectives, strategies, projects and evaluations is central to effectively addressing both gendered differentials and the concerns of those who feel threatened by such policies.

Stakeholders include government personnel and representatives of what might be generically termed civil society. Government personnel will be stakeholders at both the substantive level (parliamentarians, legal drafters, law commissions, attorney-general departments, ministries of justice, ombudspersons, etc.), and at the structural level (law enforcement agencies, police, courts, probation departments, etc.). Civil society plays a particularly important role on the cultural level.

Exchanges of information and meetings between stakeholders from different countries can be especially valuable, for example, judicial colloquia, associations of women lawyers, and meetings between law reform commissions and ombudspersons.

Government personnel

Where governmental structures include a Ministry of Justice/Legal Affairs, it will play a pivotal role in legal reform but there will also be the need for co-ordination with

many other Ministries, for example the Home Office and Ministries of Health, Agriculture, Finance, Education, Social Services, Labour, Gender and Women's Affairs. Where there is no Ministry of Justice, responsibility for legal affairs will be dispersed between all relevant Ministries.

The role of law reform commissions in legal research, the evaluation of the feasibility of law reform and the preparation of reports and draft legislation make these especially important players. One example of the work of law reform commissions is the Australian Law Reform Commission's work on Equality before the Law, which provides a gender analysis of the legal system as a basis for legislative change. Another is the work of the South African Law Reform Commission, which is required to 'draw on the provisions of the CEDAW Convention when investigating and making recommendations regarding the harmonisation of common law and indigenous law'.

In a federal constitutional structure, there are stakeholders at the central government level and at the federal unit level (as in Australia, Nigeria and Canada, for example), as well as at local levels. Constitutional allocation of power between central government and federal units determines legal competency and may cause disputes between the levels of government and between federal and local units.

Other stakeholders include:

- ◆ government advisers, members of the civil service;
- ◆ legislators at national, provincial and local levels;
- ◆ law officers, including the Attorney-General (especially responsible for constitutional affairs) and the Solicitor General;
- ◆ law enforcement agencies, including prosecutors (for example Director of Public Prosecutions, Crown Prosecution Service), prison service, police, probation and social services and social security agents;
- ◆ the judiciary, including judges of all trial and appellate courts, magistrates, tribunal adjudicators and customs and immigration adjudicators;
- ◆ parliamentary drafters;
- ◆ human rights commissions;
- ◆ local officials, administrators and councillors;
- ◆ military personnel, notably officers and advisors;
- ◆ ombudspersons.

It is especially important that those at the highest level in each category understand and are committed to the policy of gender mainstreaming, and make this commitment known throughout the institutional setting.

Civil society

Representatives of civil society include:

- ◆ national NGOs, including women's NGOs, human rights organisations, and also organisations concerned with especially vulnerable groups such as refugees, migrant workers, immigrants, people with disabilities and women prisoners;
- ◆ men's clubs;
- ◆ educational establishments at primary, secondary and tertiary levels;
- ◆ research bodies and research funding agencies;
- ◆ skills training bodies;
- ◆ apprenticeship schemes;
- ◆ employers' organisations;
- ◆ trade unions;
- ◆ media, including electronic media;
- ◆ church and religious bodies;
- ◆ professional societies;
- ◆ private sector of industry, multinational corporations and trading organisations;

- ◆ leisure organisations;
- ◆ youth organisations;
- ◆ community leaders;
- ◆ funding bodies.

It cannot be assumed that all sectors of civil society are necessarily conducive to, or in favour of, mainstreaming gender. For example, professional societies may have policies and practices that restrict women's advancement such as large joining fees, membership dependant on periods of unbroken practice, posts of responsibility determined through seniority and professional meetings at times that are incompatible with primary childcare responsibility. Trade Unions may not be receptive to the different needs of women workers, be concerned to protect 'men's jobs' and discourage women's participation at their decision-making meetings, for example by holding meetings at times when women with family responsibilities cannot attend. NGOs may consider equality issues as a distraction from their work on 'real' human rights violations.

Consultation, collaboration and partnership between various sectors of civil society is especially important and linkages between them must be identified. Steps to facilitate community outreach should be taken, for example by identifying points of leverage and establishing systems for input into governmental policy and legal programmes. These might include:

- ◆ the formation of an umbrella NGO on women's issues that would co-ordinate NGO action, prepare documentation, share information and have access to governmental advisers and decision-makers;
- ◆ greater NGO/government collaboration and exchanges, for example, internships;
- ◆ requirements for extensive consultation before the formulation of policy;
- ◆ networking between NGOs;
- ◆ the co-opting of members of civil society with relevant expertise, for example university staff or health staff, where legal reform is under consideration, for example by a law reform commission.

Where there are ethnic, racial or other divisions in society, liaison bodies between the dominant (or governmental) group and others must include women representatives in positions of authority. Relations between majority and minority groups must not be conducted solely by male community leaders or representatives. Women in minority groups may experience difficult conflicts of interests in that they may fear that expressing concerns about inequality in the group or adverse discriminatory practices supported by the group will be perceived as disloyalty to the group and its claims. The same is true of consultations with those representing the needs of vulnerable groups such as refugees, migrant workers and people with disabilities. It is important to ensure that the particular needs of women in these groups are considered.

Consultation and input is required throughout the process and not just in the early stages. For example, the intention of the legislation can become obscure or ambiguous through the drafting process. The same can occur through implementation of legal reform by people who are not familiar with its objectives. An essential part of the consultation process is listening to capture the true essence of the impact of inequality. This takes time and cannot be achieved in brief formal consultations.

National NGOs should be assisted in working with international NGOs, for example by ensuring women's NGO representatives at international meetings (in accordance with the CEDAW Convention, article 8); by non-restrictive access to and from the country; and by the availability of foreign media. NGOs should be encouraged to familiarise themselves with international treaty provisions and the machinery for their implementation. Training sessions should be held on the international provisions to facilitate campaigns for ratification and subsequently implementation. Linkages may be

formalised, for example through lay appointments to quasi-governmental positions such as advisory bodies, regulatory bodies with respect to privatised services, statutory boards, watch dog bodies and public trusts. A full inventory of such bodies is required. Steps are needed to break the trend in male domination of appointments to such bodies. Transparency in appointment procedures would be enhanced by public advertisements, job descriptions and specified criteria. Advertisements should be placed where women would be more likely to see them, for example local community centres, as well as newspapers and electronic dissemination. Other policies that would encourage women's participation include:

- ◆ identifying appropriate women (for example through inquiry of NGOs and women's groups);
- ◆ maintaining a register of such women;
- ◆ inviting identified women to apply;
- ◆ setting a quota or target for women on such bodies and assigning responsibility for failure to reach targets;
- ◆ recognising the role women can play and the skills and perspectives they can bring to all issues through flexibility with respect to qualifications and criteria for appointment (for example experience with grassroots NGOs or local school boards should be given weight as well as formal education qualifications or experience in public, corporate or financial sectors);
- ◆ providing appropriate training for people who are willing to undertake such positions to strengthen their applications;
- ◆ providing on-going training to people who have undertaken such positions to enhance their effectiveness;
- ◆ fixing meeting times that are compatible with family and child care responsibilities (or provision of child care during meetings);
- ◆ making provision for reimbursement for time off work and to employers to ensure that time from work for the demands of the position is granted.

It is important that such policies are not restricted to boards and institutions on matters that are perceived as 'women's issues' (for example inclusion of women only on health committees, children's committees or education boards), but that they are extended to all areas of civic and political life (for example, social security, agricultural policies, integrated transport policies and financial meetings). Such bodies should not be merely advisory and co-ordinating but decision and policy-making.

Some Available Tools

Tools for gender mainstreaming have been described as analytic, educational, or a strategic mix (Council of Europe, 1998). One essential tool is the collection and dissemination of best practices across all sectors. Examples of such tools given in the Council of Europe's examples of good practices are:

Analytical tools

One example is the routine use of a gender impact assessment, similar to environmental impact assessment requirements that have been introduced in a number of jurisdictions. A gender impact assessment project provides a tool to evaluate the impact on gender relations of any policy proposal or decision at the national or local levels. The gender impact assessment is made on the basis of predetermined objective criteria before the implementation of any policy. Two sets of criteria to measure the impact on gender are suggested: equality in the sense of equal rights between women and men and equal treatment for equal cases; and autonomy, in the sense of allowing women the political and social space to make decisions about their own lives. The assessment can be qualitative or quantitative, or both.

Another analytic tool described among the good practices of the Council of Europe is SMART: a Simple Method to Assess the Relevance of Policies. It is described as comprising two questions: Is the policy directed at one or more target groups? Are there differences between women and men in the field of the policy proposal, for example with respect to rights, resources, choices, positions, representation, values and norms? Other criteria could be added such as participation, choices, obligations and dependencies.

Other analytic tools are cost-benefit analysis and statistics. None of these tools of themselves dictate the response of the policy makers. They provide a means of analysis allowing for a determination of whether to go ahead in the light of the best available information. A follow-up step could be included of formulating alternative policies where appropriate.

Another analytic tool is the capacities and vulnerabilities analysis used in development projects. This requires a full assessment of the capacities of women (and men) and identification of vulnerabilities. Programmes should seek to harness and use capacity and lessen vulnerability. Throughout such analysis there must be a willingness to think laterally and imaginatively about capacity.

Educational tools

An example of an educational tool is the secondment of gender or equality experts from other governmental units to those concerned with law and legal policy on a full or part-time basis to assist in training, identification of problem areas and offering assistance. Guidance on approaches can be found in the Concluding Comments of the CEDAW Committee to states' reports. Educational and analytical tools can be combined. Technical assistance from UN agencies (the Office of the High Commissioner for Human Rights, the Division for the Advancement of Women, UNIFEM and UNDP), the Commonwealth Secretariat, human rights institutions and regional bodies should be sought. Assistance should also be sought within the programmes of the International Financial Institutions.

Strategic mix of tools

A variety of approaches can be introduced, either sector specific or more generally. These can include: the introduction of guidelines; use of a task force of experts; publication of handbooks or reference manuals targeted at particular sectors or levels of management; formation of pilot projects with criteria for determining their effectiveness; and checklists. (See page XX for an example of how a checklist could be used to monitor compliance with the CEDAW Convention).

It is important to recognise that gender mainstreaming is an ongoing process that may require different strategies and methodologies according to the sector in question and the familiarity with the concept in it. What remain constant are the setting of a timetable for the initiative (starting date and appraisal dates) and the identification of a person with responsibility for the initiative. The following also need to be identified:

- ◆ objectives;
- ◆ targets;
- ◆ techniques and tools;
- ◆ actors;
- ◆ policy areas;
- ◆ persons, techniques and tools for monitoring and evaluation;
- ◆ follow-up.

Making Changes

Incorporating International Human Rights Agreements into National Law

Under the domestic law of some states, treaties to which the state has become a party automatically become part of national law. In others, including those based on the Westminster system, treaties have to be expressly incorporated by domestic legislation to create rights that can be relied on under domestic law. Implementing legislation is therefore required to incorporate the CEDAW Convention (and other human rights treaties) into the domestic law of many Commonwealth states, either through a general implementation statute or by subject specific legislation, where appropriate.

Legislation can be informed by the requirements of international obligations without express incorporation. Similarly, international law (including the CEDAW Convention) does not need to be formally incorporated for judges to use it as an interpretative aid to achieve gender equality. The principle of statutory interpretation that a state is presumed to give effect to its international obligations can be called into use, as has been done in some instances.

Figure 2

A Human Rights Model

The following model (Eide, 1987) presents states' obligations with respect to human rights guarantees in four layers:

<i>the duty to respect</i>	<ul style="list-style-type: none"> ◆ checks on enforcement of health and safety requirements at work
<i>the duty to ensure</i>	<ul style="list-style-type: none"> ◆ women's national health care programmes ◆ provision of affordable health services ◆ non-removal of health benefits; maternal health care programmes ◆ protected access to clean water supplies and fuel ◆ provision of safe and affordable abortion facilities
<i>the duty to protect</i>	<ul style="list-style-type: none"> ◆ screening for breast cancer ◆ HIV/AIDS education ◆ restrictions on advertising for unsafe products, or false representation of their value (tobacco, 'junk' foodstuffs, breast milk substitutes) ◆ decriminalising prostitution ◆ spousal consent for abortion or contraception should not be required
<i>the duty to promote</i>	<ul style="list-style-type: none"> ◆ education programmes on diet, nutritional values of certain foods, especially at different stages in the life cycle ◆ contraceptive and family planning education

In order to achieve such rulings, the Convention and relevant legislation must be argued before judges and the latter convinced of their value. The work of legal clinics and women's advocacy groups is enormously important in this regard (one good model is the Delhi Unit), as is dissemination of judicial decisions from other Commonwealth

jurisdictions that can be used for persuasive argument. Collections of this jurisprudence, such as those in the Commonwealth Law Bulletin and the Interights publications, are extremely useful. Compilations of cases on the Internet, such as that by Interights at <http://www.interights.org> are effective for the dissemination of jurisprudence and can be expected to grow in importance.

There are good arguments for asserting that the principle of non-discrimination on the grounds of sex constitutes customary international law and as such is binding on all states. Even without this assertion, all Commonwealth member states are UN members and thus are bound by the provisions of the Charter. In addition, many are parties to at least some of the other instruments prohibiting discrimination (see Chapter 3).

Types of Law-Making

Constitutional reform

Constitutionalism provides a framework for good governance in the rule of law and support for human rights. Use of law to achieve women's advancement assumes a rights-based approach rather than a welfare response to needs or a socio-economic development approach. Constitutional guarantees of formal equality on the grounds of sex provide a 'baseline' for rights protections, bring a state into line with its international obligations and assist in transforming women from passive beneficiaries to active agents. Using the CEDAW Convention gives clarity and legitimacy to demands for gender equality and the language to express them, for example the definition of discrimination against women in article 1. In some states the constitutional prohibition of discrimination does not include sex or gender, while in others certain areas may be excluded from the protection, for example personal status law, inheritance and abortion. Where there is no constitutional guarantee of equality, it may be difficult for discrimination to be combated through courts or tribunals.

Constitutional reform is a sign of broad societal and structural restructuring and frequently follows political transformation, for example from military to democratic government, post-conflict reconstruction or post-apartheid South Africa. It is generally a rare event since stability is a requirement of social order. Where Constitutional reform is on the agenda, it is vital that women's participation is ensured in all possible consultations at all levels of society. If this is not provided for in the process, women's groups will have to take the initiative in lobbying and demanding access, as was done for example in South Africa and Uganda. Consultations must take place in arenas to which women have free and easy access and where they are able to express their views openly and without mediation through male participants. One approach is to hold meetings between constitutional advisers and women through community organisations and women's NGOs. The use of media, including local media outlets, to express such demands is another.

It is essential that the constitution include a broadly worded equality/non-discrimination clause. The South African Constitution has the broadest such clause (see Fig. 3). By giving no priority between the heads of non-discrimination, the Constitution allows for decisions that take account of multiple forms of discrimination. Another important technique is the formulation of guidelines to inform all constitutional decision-making that call for gender representation and balance (as required by the Uganda Constitution, for example). It is also vital that the constitutional machinery, in particular any Constitutional court, includes provision for gender balance in appointments. Without such provisions it is likely that judicial appointments will continue to be made from a small group of elite, mainly male lawyers. While men can make judicial decisions

favourable to gender equality (see *Unity Dow v. A-G of Botswana* and the Indian case of *Apparel Export Promotion Council v. A. K. Chopra*, for example) there is some evidence to suggest that women may be more alert to or ready to address this issue. While most Commonwealth states have guarantees of non-prohibition on the basis of sex (see Appendix II), these do not of themselves enhance the position of women and remain empty promises unless they are supported by detailed legal provisions throughout all areas of law and include steps to ensure service delivery. Also, constitutional guarantees of non-discrimination generally bind only state actors; therefore, in any event, sex discrimination legislation is also imperative.

Figure 3

Examples of Constitutional Guarantees of Women's Rights

INDIA

Adopted: 26 Jan 1950

Article 15 [Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth]

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

NAMIBIA

Adopted: Feb 1990

Article 10 [Equality and Freedom from Discrimination]

- (1) All persons shall be equal before the law.
 (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

SOUTH AFRICA

Adopted: 8 May 1996 (Amended: 11 Oct 1996)

Section 1 [The Republic of South Africa]

The Republic of South Africa is one sovereign democratic state founded on the following values:

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
 (b) Non-racialism and non-sexism.

Section 9 [Equality]

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
 (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
 (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
 (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
 (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

Source: <http://www.uni-wuerzburg.de/law/home.html>

Legislative reform

The CEDAW Convention, article 2 recognises the pivotal role of law reform in achieving gender equality. Primary responsibility for this lies with the government. The Commonwealth Secretariat has developed Model Legislation for the Caribbean Region which can be used by governments which are developing domestic legislation to address women's rights issues. This can be found on the Caribbean Community (CARICOM) web site at www.caricom.org.

A holistic approach to the integration of gender in legal programmes requires a gender analysis of existing law (statute and statutory interpretation through case law). This will identify directly discriminatory laws, laws that adversely impact on women (indirect discrimination) and apparently neutral laws that fail to take account of women's circumstances and are therefore largely irrelevant to them. The CEDAW Convention provides a useful guide in this exercise. The Committee on Economic, Social and Cultural Rights in its General Comment No. 3 has stated that removal of discriminatory measures is an immediate obligation for States Parties, not one of progressive achievement. An example of apparently neutral laws are those that offer protection against publicly committed violence, for example through criminal laws relating to public order and personal injury. If such laws in word or application by law enforcement officials disregard violence committed in private spaces (for example, the home) or by private actors (family members), their ability to protect women against violence is greatly limited. While gender neutral language (avoidance of the male noun or pronoun to include the female in legislation and administrative policies) is desirable, it should not be assumed that because the language of a law is gender neutral, it will also automatically be gender-neutral in application.

Gender-sensitive analysis, making full use of the data described above, will also reveal where the legal system is based on gender-biased assumptions and myths that need to be dispelled by sociological and empirical research. Examples of such myths are:

- ◆ the notion of 'bad' women in opposition to that of 'good' women;
- ◆ that prostitutes are bad women;
- ◆ that 'bad' women are sexually promiscuous and therefore cannot be raped;
- ◆ the model of 'ideal' motherhood;
- ◆ the depiction of women as emotional and irrational and not capable of legal acts such as providing accurate and honest evidence, owning and managing property, having and maintaining bank accounts or assuming legal guardianship of children as opposed to their nurturing;
- ◆ that women are economically dependent on men and do not require 'living wages';
- ◆ that certain forms of employment are better suited to, or unsuitable for, women.

The extent to which the legal system both constructs and reinforces such gender stereotyping, and thus leaves many women without adequate legal protections, needs to be determined. Gender analysis of existing laws will clarify which ones require amendment or repeal and areas where new legislation is required. Some areas of law (family and criminal law) are more evidently amenable to gender analysis than others. However, human rights and gendered assumptions cut across accepted categories of law. For instance, providing adequate responses to gender-based violence is directly relevant to family and criminal law but also impacts on issues of civil procedure and civil remedies, criminal procedure, social security law (payment of benefits, pension systems), property law, taxation and torts (medical malpractice). It is therefore necessary to address how rights intersect with existing legal categorisations and to determine the points of entry for rights application. It is essential that all those involved in the law making, application and enforcement processes receive training in gender analysis and planning to enable them to recognise and understand prejudice and stereotypes.

It is impossible here to discuss all the areas in which legal reform may be required in order to achieve gender equality. In many instances states will have commenced this process and addressed certain areas of law. Prioritising legal reform has to be carried out in the state itself, as do the actual policies of reform. Good starting points to begin making changes are areas that are not controversial or where there is consensus as to the appropriate action. Building up an expectation of reform through pilot projects in identified contexts can also be useful. The entire legal system cannot be overhauled in one go and attempting to do so can be counter-productive. What is important is that initial steps do not become the only steps as attention is turned elsewhere in the legal system. It is also important that the impact of change in one area of law on other areas is examined. A planned programme of law reform requires an ongoing timetable for research, analysis, reform design, drafting of legislation, implementation and evaluation.

Preparation of reports for the CEDAW Committee, through an article by article consideration of the application of CEDAW in the state, can provide valuable guidance as to priorities and approaches (see Chapter 7). The Concluding Comments of the Committee to all States Parties' reports, not just a State Party's own report, are also invaluable in this regard. This process can be enhanced by seeking NGO input to the state's report or through consideration of an NGO alternative (or 'shadow') report. It also makes the reporting process work for the state rather than being a burden.

Law reform must be carried out in the context of broader social and economic policies (for example, decriminalising prostitution must be accompanied by social policies providing women with economic alternatives). Legislative reform on its own will not achieve gender equality, especially where gendered roles are rooted in custom, tradition or religion, or in deeply held philosophical beliefs about 'proper' social ordering. The CEDAW Convention in article 5 requires that:

States Parties shall take all appropriate measures: (a) to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Women-specific strategies and gender mainstreaming can be introduced separately or together, with preference being given in specific contexts to one or the other. For example where there has been entrenched discrimination, a policy targeted at women might be more effective in the first instance than mainstreaming.

Customary Law

Customary law can present a major obstacle to gender mainstreaming. Since the latter is a new concept it will not form part of customary law. In some instances judges have been willing to give effect to constitutional guarantees in the face of customary law, for example *Unity Dow v. A-G of Botswana*. Also, in the Nigerian case of *Mojekwu v. Mojekwu*, the court of Appeal held that the Constitutional right of women to non-discrimination meant that a wife could inherit her husband's property irrespective of Igbo customary law to the contrary. In the more recent Nigerian case of *Mojekwu v. Eijkeme*, the court held that the fact that the appellants were born out of wedlock could not be used against them in exercising their constitutional rights to the estate of their deceased great-grandfather. However the 1999 Zimbabwe case of *Venia Magaya v. Nakayi Shonhiwa Magaya* shows how constitutional provisions can be interpreted to shield customary law from equality provisions. In that case customary law was used to deny inheritance rights for women. Research on the understanding of customary laws and their effect on gender equality is required, with strategies for its replacement. A

good model here is the process within South Africa, including the role of the South African law reform commission.

Where women are blocked from exercising their rights, for example by obstructive traditional laws or officials continuing to assert the validity of such laws, the urgent intervention of a statutorily empowered official, for example an ombudsperson, may be required. The powers of such an official should be well advertised, especially in less developed or rural areas and easy access must be ensured.

Substantive Issues

Some particularly important areas for legal reform are briefly discussed below. Despite their separate consideration, they are clearly connected. For example, women's effective participation in public life and the labour market are affected by laws relating to status in marriage, access to education, reproductive and other health issues and freedom from violence.

Public life

The participation of women in public life must be encouraged to ensure gender balance at all levels of government (CEDAW, article 7). Having more women in decision-making positions, particularly in parliament, is essential for law reform. The CEDAW Committee's General Recommendation 23 on political and public life provides guidelines on the appropriate interpretation of articles 7 and 8. Bangladesh, for example, has made the participation of women in all spheres of public life a constitutional principle of state policy. Awareness campaigns designed to alert women to the possibility of public service may not be sufficient to redress the gender imbalance. Positive action may be needed to promote and protect the advancement of women, for example by establishing targets or quotas both for a specified percentage of women candidates in winnable seats and for Parliamentarians. Some states have set, or proposed, quotas. Bangladesh, for instance, has reserved 30 seats for women in Parliament and 300 seats elected directly from territorial constituencies. India enacted constitutional amendments to ensure that one third of all local government seats are filled by women, and has proposed that one third of seats be held by women in the state and national legislatures. In Uganda, each administrative district has at least one woman representative and at least one third of local government seats must be filled by women. Pakistan has quotas for women's seats in municipal elections.

Quotas are not without controversy and it has been argued that they are non-democratic, compromise quality and distort the Parliamentary process. On the other hand, without such steps, real change has not occurred. The dilemma is well illustrated by the UK, where the 1997 elections saw an enormous increase in the number of women MPs without a quota system. However, the increase was confined to Labour MPs and was the direct result of all-women selection lists (which were held to be illegal but nevertheless increased the number of women elected). Without such lists, there has been no increase in the numbers of Conservative women MPs and there are still only just over 100 women MPs out of over 600. There is also a danger of low quotas being set and subsequently regarded as a maximum rather than a minimum objective.

What is clear is that whether or not quotas are adopted, they must operate alongside supplementary measures such as programmes to identify and encourage suitable candidates. Candidates also need training in many areas, such as Parliamentary procedures, political and financial issues, agenda setting, public speaking, presentation, negotiation skills and committee work. This may operate along party lines, but

responsibility must be allocated for ensuring that it is done and that appropriate and realistic budgets, including a specified percentage of the public funding for elections, are committed to it.

Political life should be reorganised to facilitate women's participation, in consultation with women in politics. All night parliamentary sittings and lack of child-care facilities in government institutions are obvious examples of where change is needed. A mentoring system for new MPs could ease the transition into parliamentary life. The formation of a Parliamentary Women's Caucus (as in Namibia, for example) or of an informal women's caucus to bring women together across party lines can provide support and ensure that women's concerns are addressed. In a Westminster-style parliamentary system, pairing of women for voting purposes can also relieve pressures of compulsory attendance. Women should not be allocated only to committees or working groups addressing 'women's' matters but should be encouraged to be active in the entire range of governmental (or opposition) affairs, including 'hard' matters such as national security, defence and public expenditure.

Public participation does not only take place at the national level. CEDAW article 8 covers equal representation and participation in the work of international organisations. Compliance with this provision is more directly in the hands of governments and would help to redress the gender imbalance in international institutions, especially at senior levels. The UN Commission on Human Rights Resolution 2000/46 recognises that gender mainstreaming will strongly benefit from the enhanced and full participation of women, including at the higher levels of decision-making in the United Nations system, and in this regard strongly encourages Member States to promote gender balance by, inter alia, regularly nominating more women candidates for election to the human rights treaty bodies and for appointment to UN bodies, the specialised agencies and other organs. Greater numbers of women in international institutions would facilitate the inclusion of women's interests on international agendas. Women would experience other systems and networking at higher governmental levels, as well as at the grass roots NGO level, would be facilitated.

Posting women in intergovernmental institutions would require the rejection of the assumption that women's advancement in their careers terminates on marriage and that their careers are subordinate to those of their spouses. It would also require recognition that women's place in international positions need not be the subsidiary one of providing social support. At the same time, there would also have to be flexibility to support changes in spousal employment where the spouse wishes to accompany the woman abroad in the way that has long been accepted with respect to women. The spouse may need a work permit and it may be necessary to pay overseas allowances to the woman as the primary employee, with possible tax repercussions. Women should be encouraged to join and be active in transnational professions and organisations, for example organisations of women judges, lawyers, diplomats and legislators. Where possible allowances should be made to enable women to participate in such organisations.

Nationality Laws

The CEDAW Convention, article 9 provides for equal rights with respect to the acquisition, change or retention of nationality. There are discriminatory nationality laws in a number of states. These typically have two aspects: discrimination against women who marry non-nationals, in that their spouses cannot acquire nationality in the same ways as can foreign women who marry male nationals, and restrictions on women passing their nationality to their children.

Such restrictions are based on the desire of states to maintain control over who receives citizenship and on gendered stereotypes of valuable citizenship. This assumes that women will go to live in the place of their husband's nationality (and thus have no need to maintain their own nationality); that children 'belong' to the father; and that foreign males entering the country impact on the paid workforce in a way that women who follow their spouses do not. Given the large and growing numbers of women migrants, the ability for women to bequeath their nationality to their children and to maintain their own is increasingly important, especially in the case of marital breakdown. Social benefits may depend on citizenship, for example employment in the public sector, free state education and access to health services. Such laws are especially ripe for gender mainstreaming.

Closely associated are conflicts of laws that assert that a woman's domicile is based on that of her husband rather than on her own intent and residence. This again might have repercussions on legal proceedings relating to divorce, maintenance and custody.

Immigration laws too are frequently discriminatory, for example as regards alien spouses or fiancé. The adverse impact may fall directly on the man, although the discrimination is against the woman. In a number of states, the foreign wives or fiancées of national men may enter the state while the foreign husbands or fiancés of national women may not. Once he has entered, a foreign man may have to satisfy more stringent residency requirements to be eligible for naturalisation than a foreign wife would. Such discrimination is based on gendered (and often racist) prejudices and stereotypes. There may be fears that foreign men will seek paid employment at the expense of local men and will disrupt the social balance in the country. Women are perceived as joining their husband's family rather than becoming a burden on the state while the opposite is the case with men. Immigration laws that accord entry to people with defined skills may constitute indirect discrimination. Laws relating to nationality and immigration should therefore be subjected to a gender audit, with a view to reform if this reveals direct or indirect discrimination.

Labour Laws

The CEDAW Convention, article 11 covers the elimination of discrimination in the field of paid labour. Requirements to achieve this include the provision for workplace equality through non-discriminatory labour recruitment, promotion and retention policies; equal pay for equal work; minimum wage; maternity protection; policies against sexual harassment in the workplace; and family friendly environments. In some states (for example Ghana) these issues are given constitutional protection. There is a large body of legislation and case law in many Commonwealth states on these issues that can be used for guidance and reference. It should be noted, however, that labour laws are mostly directed at the urban workforce and do not protect the vast number of women (87 percent of Sri Lankan women workers, for example) who work in the agricultural sector (Coomaraswamy, 1994).

A legal definition of discrimination in the work place is required. The CEDAW Convention provides a good basis for such a definition, which can be adapted to local conditions. The prohibition of discrimination covers all aspects of labour relations, including:

- ◆ Women's recruitment
 - public advertising of vacancies;
 - job specifications;
 - hiring panels including women;
 - encouraging women to apply.
- ◆ Retention of women

- equal pay for work of equal value;
 - targets for inclusion of women on management training schemes;
 - targets for women's employment in management positions;
 - day care provision that is affordable, scrutinised for compliance with health and safety measures) and run by trained people;
 - provision for day care for children from birth to school starting age a priority for low income or single parent headed households;
 - day care facilities for children with disabilities, including HIV positive children;
 - incentives to the private sector to provide day care;
 - state sharing costs of day care with parents;
 - day care for elderly people;
 - leave entitlement, especially parental leave;
 - job-sharing schemes;
 - flexible working hours;
 - transparent, objective criteria for promotion;
 - accessible and transparent procedures for appealing against adverse decisions.
- ♦ Accordance of rights to categories of workers who are predominantly female, for example part-time workers and home-workers.

While such provisions are intended to benefit women, and can provide very real assistance to women in the paid work force, they need to be carefully monitored to ensure that they are not in fact disadvantageous or of no practical assistance. Studies in some countries have shown that this can be the undesired result.

With respect to employment in the public sector, the government can take measures to accelerate recruitment of women (Bangladesh, for example, has a quota system for female primary school teachers). However, another problem has been the tendency to undervalue the public sector, as exemplified by the wages compared to the private (commercial) sector. The recruitment of women as, for example, nurses and primary school teachers, may be accompanied by low pay, itself supported by the perception of these jobs as suitable for women. This dilemma illustrates the interlocking of gender attitudes and economic trends. As regards the private sector, governments can adopt a 'carrot and stick' approach. Female participation can be encouraged, for example, through sponsorship of affirmative action awards that recognise industry/private sector initiatives and achievements of targets (as in Australia, for example). Governments can also require the private sector to report on its equal opportunity programmes and implementation and demand periodic progress report and explanations of failure to achieve targets. The tax system or government subsidies could be used to deal with those not complying, while reporting could be waived in recognition of effective implementation of high quality schemes over a period of years (also done in Australia). Throughout labour relations, a combination of legal requirement and good work place practice is required. The role of trade unions, and especially gendered objectives in unions, also needs to be considered.

Sexual harassment in the workplace (public and private) must be recognised as a form of adverse discrimination that affects peoples' ability to perform their tasks at work and which may cause stress-related illness. Employers must accept responsibility for the harassment of one employee by another in the same way as they would for failing to provide a safe work environment. One problem is defining sexual harassment in a way that is culturally sensitive and captures the essence of the behaviour from the point of view of the recipient. The UN Special Rapporteur on Violence against Women has proposed two useful criteria: that the behaviour is unwanted by the recipient and is threatening or offensive to the recipient. Training programmes in the work place on what constitutes sexual harassment and its effects are required for both women and men. Harassment advisers at work (trained in the workplace) and unthreatening complaints mechanisms are also needed.

States should enforce labour laws, for example through administrative and legal sanctions for failure to ensure equal access to skills training and education; for references to sex or marital status in employment advertising; for pregnancy testing as a condition for employment; and for dismissal for pregnancy or after maternity leave. What must be avoided is protective legislation that continues stereotyped assumptions about appropriate work for women and in fact reduces women's choices, for example with respect to work in some factories and industries or work at night. If conditions are deemed unsafe for women, the response should be to improve safety conditions, for example to provide transport home at night, not to ban women from that employment.

While the focus is on the paid labour force, women's unpaid work must also be acknowledged in various ways, for example with respect to rights in the family property on dissolution of marriage and entitlement to maternity leave. The double burden that women bear, because even those who work full-time in paid employment assume the major burden of domestic work and child care, must also be recognised to combat stereotyping and to present a true picture of women's work.

Patterns of paid employment (location, forms of work, mobility of workforce, etc.) are undergoing rapid and far-reaching change through economic globalisation. The impact of this on gender relations needs to be kept under constant review. Particular attention should be given to the problems faced by migrant workers, who are especially vulnerable to exploitation, abuse and violence. Where there is evidence of trafficking, such women should not be subject to criminal sanctions (for example, for illegal residency) rather than those responsible. In the context of trafficking, attention must be given to prevention, protection and legal process against the wrongdoers. The human rights of migrant women and their families must be ensured.

Health and reproductive rights

The CEDAW Convention, article 12 calls for an end to discrimination in the field of health, while article 16 articulates women's right to 'decide freely and responsibly on the number and spacing of their children'.

A holistic approach to health and health care for women and girls and gender sensitivity in the provision of health information and services are needed. The right to health must be seen in the framework of women's overall development, for health is a 'state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity' (Beijing Platform for Action). This includes reproductive and sexual health, at all ages. Examples of legislative initiatives that achieve compliance in this area are the Medical Termination of Pregnancy Acts of Barbados and Guyana, which decriminalise abortion. The right to health must also be seen in the wider legal context of family law, women's access to education, property and inheritance laws and criminal laws on rape and domestic violence. Attention must also be paid to the social and economic factors that affect women's health. Restructuring of the health sector and an increasing trend to privatisation of health care systems in some cases has resulted in poor quality, reduced and insufficient health care services and has also led to less attention to the health of the most vulnerable groups of women. Gender-specific health research and technology is lacking.

Women's health is also negatively affected by the unequal power relationships between women and men which often leave women unable to insist on safe and responsible sex practices. This increases their susceptibility to sexually transmitted infections, including HIV/AIDS. Health care officials and family planning officers and providers may abuse women's rights by refusing to bestow information or supplies without the consent of the male partner. In some Caribbean countries, the husband's consent is

required prior to tubal ligation or hysterectomy, a practice grounded in cultural attitudes rather than a legal system that requires equality of treatment and non-discrimination.

Columbia has introduced constitutional guarantees on health that provide a useful model. Taken together, these support the principle that women have the right to active participation in decisions that impact on their personal health, lives, body and sexuality. Explicitly, they include women's right to:

- ◆ found a family;
- ◆ decide the number of her children;
- ◆ have access to health education and information;
- ◆ the enjoyment of a healthy environment;
- ◆ health care and services.

The Committee on Economic, Social and Cultural Rights has asserted that the provision of such rights must be accessible, affordable and culturally appropriate. The CEDAW Committee's General Comment No. 24, 'Women and Health', also provides guidelines. A full analysis of laws relating to health in six African countries can be found in *Women of the World: Laws and Policies Affecting Their Reproductive Lives: Anglophone Africa* by the Center for Reproductive Law and Policy (CRLP, 1997). A similar report has been produced for Latin America and the Caribbean (CRLP, 1998).

Violence against women

There is no explicit provision on violence in the CEDAW Convention. However, the issue of violence against women is 'clearly fundamental to the spirit of the Convention', especially in article 5 which calls for the modification of social and cultural patterns, sex roles and stereotyping that are based on the idea of the inferiority or the superiority of either sex (Commonwealth Secretariat, 1989). In its General Recommendation No.19, 1992, the CEDAW Committee has also developed its understanding of gender-based violence both as a direct violation of human rights and as contributing to women's inability to enjoy other human rights guarantees. Taken in conjunction with the General Assembly Declaration on the Elimination of All Forms of Discrimination against Women (1993), this constitutes a clear obligation on states to condemn and eliminate gender-based violence, whether committed in public or in private and regardless of whether it is committed by a public official. Failure by the state to exercise due diligence to prevent and punish violence against women constitutes a violation of human rights for which it is responsible. Implementation of national laws that address gender-based violence is one very clear and pivotal way in which women's subordination can be addressed.

The Declaration recognises that gender-based violence is structural and systemic and based on unequal power relations between women and men rather than consisting of private and isolated acts. This understanding makes it clear that legal programmes that address violence directly must be located in a legislative framework that addresses other manifestations of women's inequality, including economic dependency, divorce laws (and the contribution of divorce to women's poverty), laws on the ownership of property and restrictive inheritance laws. They must also take account of social norms, including any shame and stigma attached to leaving a marriage and to divorce.

Commonwealth governments agreed in the 1995 Commonwealth Plan of Action on Gender and Development that women's human rights and the elimination of violence against women, the protection of the girl-child and the outlawing of all forms of trafficking in women and girls would be priority areas for action.

States need to identify the true incidence and causes of gender-based violence that are most prevalent in their own society. Gender-based violence is violence that is committed against women because they are women, and which does not occur to men or occurs disproportionately to women. It may include violence that occurs in the home (for example, domestic violence, marital rape, sexual assaults, dowry deaths, female infanticide, honour killings); in the community (work place violence, traditional practices, street violence, trafficking, sex tourism); and violence by state officials (in prisons, police stations, immigration offices and places of detention, state hospitals, including mental hospitals). These must be considered separately and attempts made to gain an accurate, national statistical profile of the nature and occurrence of each. This facilitates identification of the likely perpetrators and obstacles in dealing with them. It must be remembered that women as well as men support some of the attitudes that promote gender-based violence and the commission of such violence.

Some of the factors that foster an environment of violence against women and girls include:

- ◆ societal attitudes towards women as inferior, the property of men or emotional and irrational;
- ◆ son preference for cultural and economic reasons;
- ◆ the perception that women 'deserve' punishment for perceived faults such as bad housekeeping, 'nagging', 'unwomanly' conduct or actual or suspected infidelity;
- ◆ alcohol;
- ◆ the failure of police and other authorities to act when violence is reported;
- ◆ perception of such violence as private;
- ◆ high rates of acquittal by courts of those accused of such violence;
- ◆ legal defences such as 'honour' to violence;
- ◆ 'cautionary' rules of evidence, for example to treat women's evidence with caution on the premise that they habitually lie about sexual matters;
- ◆ traditional practices that continue even if formally legislated against;
- ◆ the perception of women as tenants-at-will in their marital homes who may be thrown out when the husband no longer desires cohabitation;
- ◆ behaviours, such as dress codes and non-access to public places, demanded by religious leaders and punishment for failure to conform;
- ◆ a perception of the victim as the offender, as 'bad' or 'tainted'.

The UN Special Rapporteur on Violence against Women has characterised impunity – failure of governments to ensure accountability for violence against women – as the greatest cause of that violence. The legal steps that states can take in response to gender-based violence are varied and involve:

- ◆ the criminal law (definitions of sexual assault offences that encompass the full range of abusive behaviours (for example a definition of rape that includes anal rape, insertion of other objects and forced oral sex), formulation of defences, outlawing of defences such as honour, criminal procedures that provide protection to the victim, sanctions);
- ◆ the civil law (binding over orders, protective orders, injunctive relief, orders with respect to property); and
- ◆ social services (provision of economic support, refuge, counselling and adjustment).

Reforms of criminal justice systems may require prohibition of evidence on the woman's past history (as, for example, in the Bahamas and Barbados) and prohibition of aggressive questioning and harassment in court. Abolishing the requirement for corroboration in all cases of sexual offences is desirable. Community services should include legal assistance, emotional support and crisis response. Such services may also include counselling and treatment for male perpetrators. Methods of conflict resolution that are acceptable in society, such as those that encourage self-responsibility and accountability for one's own behaviour, need to be emphasised.

Responses to gender-based violence, especially that occurring in the home, require co-operation between different branches of professionals, including lawyers, the judiciary, magistrates, medical personnel, counsellors and social and community workers. This will help to ensure an understanding of the trauma of violence and its physical and mental aftermath and to counteract prejudices about the sanctity of the family and the need to preserve it at all costs. A holistic approach is needed that looks at the causes of violence against women (including economic causes rooted in practices such as dowry and son preference), the needs of the battered person, ways of preventing recurrence, short term needs of security and safety and longer term economic, medical and counselling needs with a view to restoring self esteem and self confidence and reducing the dependency of the victim. A National Campaign on Violence against Women can be an effective way of bringing together different sectors of society (police, social workers, medical professionals, education sectors, men's clubs, religious bodies, youth clubs) around this issue.

The Commonwealth Secretariat has developed a model framework for an integrated approach, applying the principles of the Gender Management System (see Chapter 7). One outcome of this has been the provision of technical assistance to the Government of Mauritius, Uganda, Zambia and Kenya for the establishment of structures and processes to implement this framework with the Ministry of Women's Affairs, which is the Lead Agency working closely with other key ministries and NGOs.

Protective laws must be applicable to co-habitees as well as spouses. The legal disadvantage in many states of de facto relationships (not just in the context of violence) should be addressed. Victims of violence need to be able to gain civil law relief and protection from the violence separate from longer-term legal arrangements, such as divorce. There is a tendency in some states to require recourse to non-legal fora and processes for family law matters, such as mediation or other forms of alternative dispute resolution. Where such services are used, mediators must be trained to identify violence and to ensure safeguards are in place so that the victim is not placed at further risk through participation in such proceedings.

The UN Special Rapporteur on Violence against Women has drafted a model law on domestic violence. This provides a good starting point that can be adapted to local contexts and requirements. Real progress has already been made throughout the Commonwealth in extending protection to victims of domestic violence. In the Caribbean, for example, the following countries have enacted Domestic Violence legislation: Antigua and Barbuda, Barbados, The Bahamas, Belize, Guyana, Jamaica, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.

Other forms of violence against women must also be recognised. Legislation may be required to outlaw some practices, for example the prohibition of genetic testing for sex selection in India. Women who are especially vulnerable to violence must be identified and provided with legal and practical forms of protection. Some examples are migrant women (including illegal migrants and women who have been trafficked), refugee women and women in prisons and other places of detention. When these women are the victims of violent crime, the authorities must ensure that their response is to focus on the perpetrators and not to criminalise the women. Women should not have to fear prosecution (for example for prostitution) or deportation for reporting the commission of violence against them. Steps to combat the trafficking of persons require greater international co-operation through law enforcement agencies, immigration agencies, health officials, etc. Its connection with other forms of organised crime has to be recognised and taken into account.

At their Meeting in May 1999, Commonwealth Law Ministers discussed trafficking in persons and expressed their support for Commonwealth participation in United

Nations activities to prepare an international convention to combat transnational organised crime with Protocols: (a) to prevent, suppress and punish trafficking in women and children; (b) on the illegal trafficking of migrants; and (c) against the illicit manufacturing of and trafficking in firearms, ammunition and other related material. Law Ministers also felt that, in addition to the Secretariat's preparation of guidelines on administrative and legislative measures to address the commercial sexual exploitation of children, the Commonwealth should act on this issue by using existing Commonwealth schemes for mutual assistance and co-operation in criminal matters. This would constitute a solid base for co-ordinated collective Commonwealth action to fight this abhorrent practice.

Family Law

Family Law has been described as the 'litmus test in any society with regard to legal norms and the status of women' (Coomaraswamy, 1994). As article 16 of the CEDAW Convention recognises, assertions of equality in public life are of little effect unless there is an accompanying right to equality in the family. Article 16 provides for equality in choosing a marriage partner, during marriage and at its dissolution. Compliance with these provisions requires a full contextual analysis of familial relations and laws relating to the age of marriage, including: consent to marriage; registration of marriage; regimes for marital (and separate) property; rights and duties with respect to children whether or not born in the marriage; responsibilities in marriage; grounds for dissolution and annulment; and custody and maintenance proceedings. These issues will vary by country and are hence beyond the scope of this Manual.

Laws allowing either party to seek divorce are often sought. However, studies show that financially women suffer more from divorce than men and that divorce is a contributing factor to the feminisation of poverty. Women's post-divorce poverty has also been linked to judicial misunderstanding about the economic and social realities of women and men, some of which include inaccurate economic assumptions about the cost of raising children (Mahoney, 1999). Accordingly, divorce laws need to be looked at from a gendered perspective to determine the likely financial repercussions of divorce, for example the availability of paid income, pensions, distribution of property and custody of children.

It is worth noting that the CEDAW Convention is predicated on a marriage between people of the opposite sex. It does not provide for differently constituted family units, for example cohabitation without marriage, same-sex relationships, single parent households or extended families. Gender relations in all such relationships need to be considered. While legal regulation can be interventionist, exclusion can leave the more vulnerable members of the arrangement without legal protection for themselves or their property. Laws conferring on persons in cohabitational relationships rights analogous to married persons exist, for example, in Barbados, Guyana and Trinidad and Tobago.

Institutions and Personnel

These include bureaucratic mechanisms for the advancement of gender equality, the judiciary, and law enforcement agencies. Generally, all these institutions have functions of data collection and analysis in addition to their primary functions. Data collection by the judiciary, for example, feeds into and facilitates on-going evaluation of legislative policy.

Gender-sensitive government structures

Gender mainstreaming requires an examination of government structures to see whether they meet women's needs or whether there are gendered assumptions or biases that limit women's access to the law. Gender-sensitive government structures can be either specific to women or general (mainstreamed). They include legislative review bodies, monitoring bodies, implementation bodies, tribunals and bureaucratic structures. A good combination is to provide for women focal points with responsibility for gender issues in all Ministries with an allocated person to ensure leadership and co-ordination. It is especially important to have women focal points in a Ministry of Justice/Legal Affairs, where such a Ministry exists. There are numerous models of gender-specific structures in the Commonwealth. Such models include:

- ◆ Women's Ombudsman
- ◆ Equal Opportunities Commission
- ◆ Commission on Gender Equality
- ◆ Commission on Equity
- ◆ Human Rights Commission
- ◆ Commissioner for Women's Affairs on Human Rights Commission
- ◆ Inter-ministerial Committee on Human Rights (Zimbabwe)
- ◆ Sex Discrimination Commissioner
- ◆ Women's Unit, with responsibility in the Cabinet preferably directly to the Home Secretary
- ◆ Commission on Administrative Justice (Ghana)
- ◆ National Machinery for the Advancement of Women (Zimbabwe)
- ◆ Office on the Empowerment of Women (South Africa)
- ◆ National Committee of Women and Children (Nigeria).

Whatever model is chosen, accountability, access and transparency need to be ensured. Caution must also be taken that the existence of gender-specific structures is not interpreted as relieving other structures from the obligation to address gender and women's concerns. In order to be effective, the body must have the authority and resources to initiate and implement policy. Responsibility for women's issues must be at a high level (preferably a constitutional position), with independent and direct access and reporting to the highest levels of government. The Office on the Empowerment of Women in South Africa, for example, is in the Office of the President and there is a Department of Women's Affairs at Cabinet level in Namibia.

The functions of these bodies include:

- ◆ integrating women into all policy decisions;
- ◆ guiding policy formulation;
- ◆ promoting law reform;
- ◆ requiring all legislation to be vetted for consistency with gender mainstreaming;
- ◆ monitoring implementation;
- ◆ facilitating access to civil society;
- ◆ actively publicising the CEDAW Convention;
- ◆ assisting in test cases before the courts;
- ◆ intervening in litigation; and
- ◆ preparation of *amicus* briefs¹

A number of potential problems may need to be addressed, including inadequate financial and human resources and a lack of political will and commitment. Public programmes and services for women that fall within the relevant body's jurisdiction need to be defined, costed and detailed and accompanied by budget priorities and guidelines for setting those priorities. There may also be insufficient understanding of

¹Comments on relevant issues submitted to a court by an interested organisation/individual who is not a party to the case.

gender equality and of the need for gender mainstreaming among government structures. Prevailing gender stereotypes, discriminatory attitudes, competing government priorities and, in some countries, unclear mandates can all minimise the body's effectiveness.

Mainstreaming gender in government departments must operate at both horizontal and vertical levels, that is, it must cross-cut federal structures. Accordingly, equality must be enshrined throughout federal units and reach down to local levels: regional, city, municipal and rural councils. One example is a Women's Unit with downward reach to local panels and groups on such matters as education, health and security issues, then upwards to government and Cabinet. This is also important where there is

an isolated, or separated, area of the country. In Tanzania, for example, a Ministry of Community Development, Women's Affairs and Children has been established on Zanzibar as well as on the mainland.

Links to civil society are very important and extensive consultation is needed when drawing up policy and legislative changes. Data disaggregated by sex and age are vital, as well as gender-sensitive research and documentation. Targets need to be set and methods developed for assessing progress.

The policies and programmes of all government departments need to be examined for their impact on women. This includes the most important economic policy instrument of government: its budget. A gender budget, pioneered by the South African Women's Budget Initiative in 1996, requires the examination of budgeted spending for programmes targeted at women (women's healthcare programmes, for example) as well as analysis of all general expenditures to determine their effects on women as a category. An information kit entitled *Gender Budget Initiative* that has been produced by the Commonwealth Secretariat can be used to facilitate this process (Commonwealth Secretariat, 1999a).

The judiciary

Judges are expected to be impartial, knowledgeable, independent, practical, sensitive and fair. However, as human beings and members of a particular society they frequently base their assumptions on cultural values as well as on their particular experiences. Their decisions on social, moral, and economic issues are more likely to reflect these experiences than those of other groups of which they are not a part. The fact that the judiciary is everywhere overwhelmingly male as well as generally well-educated, middle-class and middle-aged means that certain perspectives are more likely to be held than others. This is compounded by the fact that courses on women and the law offered at university level are relatively new, and may be optional modules, so most judges and lawyers have never been instructed in gender and the advancement of women issues.

Despite the obligation that all persons are equal before the law and entitled to receive equal benefit and protection of the law (ICCPR, article 26; CEDAW, article 15), research has shown that, where judge-made law is biased, the adverse impact falls most often on already disadvantaged groups (Mahoney, 1999). Gender bias may take the form of stereotypical attitudes or misconceptions about the nature and roles of women and men and the social and economic realities they encounter. It is also found when issues are viewed from a male perspective (in the assumption of universality), so that women's problems are trivialised or oversimplified and are not given the same credibility as those of men. Examples of this include light sentences meted out for male sexual violence in many countries, because of the belief that women are somehow to blame for it, and the lesser value placed on women's testimony. Judges may also be unaware of the trauma caused to women in giving testimony of rape and fail to provide protection from abusive defence lawyers.

If gender biases are to be eradicated from judicial decision-making, therefore, judges must be given the necessary knowledge to enable them to be aware of their own prejudices and appreciate the perspectives of women, the consequences of stereotyping and the complications of intersecting characteristics such as race, class and gender, which compound disadvantages. Ongoing training in gender issues and human rights is an obvious way to address perspectives that are too limited (see Fig. 4). A gender balance in the composition of the bench, at all levels, and in all other court personnel is also required.

Figure 4

Judicial Training: Examples from Canada and India

The Western Judicial Education Centre (WJEC)

The WJEC is a project of the Canadian Association of Provincial Court Judges, organises continuing education programmes for judges from Western and Northwestern Canada. A key element of their judicial education programmes is peer leadership, i.e., judges are trained by other judges and 'outsiders' to instruct and lead other judges. This method of delivery challenges judges to participate and to take responsibility for their own continuing training while respecting the fundamental principle of judicial independence. At the same time, members of the broader community who are interested in improving the quality of justice delivery are able to participate in the workshops and other sessions. Women, aboriginal people, children, members of racial, cultural and ethnic minorities and other people very unlike judges describe and discuss the problems they experience in their daily lives as well as in the courts, supplying knowledge that judges require but seldom receive.

A WJEC workshop held in 1991 in Yellowknife, Northwest Territories, for example, spent two days focusing at gender equality. The workshop used a variety of teaching methods including lectures, dramatisations, panels and question-and-answer sessions. In small groups, other techniques such as discussions, brainstorming, buzz groups, videos and video commentary were used. Survivors of sexual assault as well as crisis centre workers provided the judges with first-hand information about the consequences of poverty and violence against women. Other topics on the programme looked at the issues of sexist language and credibility of men as a group compared to women as a group.

Source: Mahoney, 1999

Sakshi

Sakshi, an NGO based in New Delhi, India, organised a meeting in 1997 of 26 superior court judges and 12 lawyers from the Asia Pacific region to discuss gender bias in the courtroom. The meeting grew out of a study conducted by Sakshi in five Indian cities on the nature and extent of such bias among the judiciary, the findings from which challenged the notion of judicial neutrality. For example, 68% of the 109 judges interviewed believed that provocative dress was an invitation to rape and about half felt that women who were abused by the partners were partly to blame if they stayed in the relationship. At the same time, most judges also thought domestic violence was underreported and many expressed a willingness to participate in a training programme.

The regional meeting, Regional Perspectives on Gender Equality, brought together judges, lawyers and NGOs from India, Nepal, Sri Lanka, Pakistan, Bangladesh and Fiji, as well as from Canada and Australia. Judges chaired the sessions, putting their colleagues at ease, while NGOs provided perspectives on the realities women face. The meeting ended in the creation of the Asia Pacific Advisory Forum on Judicial Education on Equality Issues which has begun organising country level workshops. These bring together judges, NGOs, health care professionals and women complainants and use a wide variety of techniques including theatre, role-play and puppets. Judges are encouraged to explore the reasons behind their decisions and develop greater empathy for survivors of gender-based violence through visits to shelters and to women in prison.

Source: Spindel *et al.*, 2000

Judges not only interpret the law; they also have a law-making function. When the law – whether constitutional, statutory or common law – is ambiguous, uncertain or incomplete, the judge creates definitions that clarify it. In constitutional matters, judges have the opportunity to strike down or amend legislation to make it conform with the judicial interpretations of constitutional rights and freedoms and a particular vision of society. There is a large and growing body of international jurisprudence concerning women’s human rights which is of value to judges and lawyers, and most common law systems allow judges scope to draw on it as an interpretative aid. Rather than mechanically following the rules laid down by the legislature, judges must interpret the rules so that they are reconciled with the wider objectives of justice found in the international norms of women’s human rights. In the case of *Apparel Export Promotion Council v. A.K. Chopra* (Supreme Court of India, 1999) for example, the Court stated that international instruments (the CEDAW Convention, ICESCR, the Beijing Platform for Action) ‘cast an obligation on the Indian state to gender sensitise its laws and the Courts are under an obligation to see that the message of international instruments is not allowed to be drowned’.

The dissemination of judicial decisions from other Commonwealth jurisdictions and shared understanding by Commonwealth judges can be important tools. Starting with a meeting in 1988 in Bangalore, India, the Commonwealth Secretariat has convened a number of Judicial Colloquia that looked at the domestic application of international human rights norms and – in the *Bangalore Principles* – outlined the role of the judiciary in advancing human rights (Commonwealth Secretariat, 1988). Since 1994, the Secretariat, together with the Commonwealth Magistrates and Judges Association and the Commonwealth Foundation, has organised four further judicial colloquia focusing specifically on the promotion of the human rights of women and the girl-child through the judiciary. The colloquia were attended by chief justices, judges, lawyers, academics, researchers, representatives of UN agencies and NGOs. The recommendations that emerged from these meeting – such as the *Victoria Falls Principles* – recognise the duty of an independent judiciary to interpret and apply national constitutions and laws in conformity with women’s human rights. Further judicial colloquia (including attendance by magistrates) are desirable. Judges should familiarise themselves with the Victoria Falls Principles and apply them.

The following publications resulting from the colloquia provide valuable resource materials for judges, lawyers, human rights activists and NGOs working on women’s human rights: *Advancing the Human Rights of Women: Using International Human Rights Standards in Domestic Litigation* (Byrnes, Connors and Bik, 1997), based on the Asia/South Pacific Colloquium; and *Gender Equality and the Judiciary* (Adams and Byrnes, 1999), based on the Caribbean Colloquium. The Secretariat is currently engaged in the compilation of case law dealing with women’s human rights issues which will provide valuable reference material for judges and lawyers.

It must nevertheless be recognised that judges may be unwilling to adopt a forward-looking attitude towards women’s advancement, as seen for example in the Zimbabwe

case of *Magaya v. Magaya* (1999) where women’s equality on reaching the age of majority was denied. In a number of jurisdictions (for example Canada, Australia) a gender audit of the courts has been carried out to identify sexist attitudes and prejudices in court personnel with respect to witnesses, victims, plaintiffs, accused persons and all others who come into contact with the courts. NGOs in Bangladesh, India, Nepal, Pakistan and Sri Lanka have also conducted surveys among judges, female litigants and lawyers (Spindel *et al.*, 2000). These are a good way of identifying the problems in the courts themselves so that they can be addressed.

Women can also face challenges to their rights from non-formal, non-lawyers bodies

that exercise judicial power at the local level, for example the local councils in Uganda. Such bodies may remain outside any gender audit and changes made within the formal justice system.

Law enforcement agencies

The police have a critical role to play in protecting and promoting the human rights of women. This is particularly true in the area of violence against women. Despite the prevalence of these crimes, research from many countries, including Australia, Bangladesh, Britain, Canada, India and New Zealand, has shown that they tend to be treated less seriously by the police than crimes against men or property. This is true irrespective of explicit policies and laws in some countries that treat violence against women as any other offence against a person. Part of this is due to the fact that police attitudes are a reflection of attitudes held in the wider community and, in many countries, what takes place in the domestic sphere is seen as a private matter. There is also a tendency to 'blame the victim', particularly if – as is most often the case – the woman has been assaulted by someone she knows. This can make women reluctant to report violent behaviour and/or continue to press charges. Economic dependence also discourages reporting.

Police powers and duties in responding to domestic violence must be clarified and strengthened, for example with respect to rights of entry to property. Use of the criminal law for domestic violence needs to be backed by a police force that receives intensive training in how to deal with partner battering and other forms of violence against women, including allegations of sexual assault. This is taking place throughout the Caribbean, for example, through a collaboration between the Caribbean Association for Feminist Research and Action (CAFRA) and the Caribbean Association of Commissioners of Police. A police force that can respond sensitively to gender-based violence should include trained police officers on the ground; special police units with trained and large numbers of women, or at least a special reporting desk; private interview rooms; and female medical police staff. The practice of forced gynaecological examinations of women who have complained about sexual assault should not be followed.

The police response to violence needs to be sensitive and effective in order not only to assure the individual complainant of appropriate action but also to demonstrate that violence both inside as well as outside the family is unacceptable behaviour (see Fig. 5). Police forces need to review their methods of work and to consider seriously whether, consciously or unconsciously, their inaction is allowing men to behave in abusive ways towards women. As long as legal institutions do not take violence against women seriously, such violence is sanctioned, legitimised and even implicitly encouraged (Spindel *et al.*, 2000). If this is the case, then changes are needed so that: the seriousness of crimes against women is acknowledged by each police officer, both through informal force norms, or police culture, and through formal force policy; and the crimes are viewed from a victim-centred perspective, where the officers ask themselves what actions should be taken to assist the complainants and to curtail the criminal behaviour of the offender.

The police also need to liaise with other social and welfare organisations in tackling the issue of violence against women since it involves more than legal problems. There will need to be co-operation and co-ordination with hospitals and medical personnel, and referrals to counselling or to other agencies may also be necessary to help complainants come to terms with their experiences. Support services for victims of violence are absolutely necessary if the problems are to be dealt with effectively, and NGOs offering services to women and children can be particularly important to police

investigating family-based incidents. These organisations provide safe accommodation, advice and counselling, and include shelters for battered women, rape crisis centres, incest survivors groups and women's centres. They can also offer advice on civil law remedies to complement criminal law actions. It is important to strengthen with state assistance this partnership between the police and the NGOs working with women victims.

The police should collect data at all levels in order to inform responses to the issues of domestic and sexual crimes. Since many such crimes are not reported, non-police sources of data, such as NGOs or medical personnel, should also be used. Data collection can serve a number of different purposes, including:

- ◆ alerting the police to the seriousness of the problem, which is often underestimated;
- ◆ providing information on the causes of abuse;

Figure 5

Creating a More Sensitive Policing System

The acknowledgement of the seriousness of crimes of violence against women through informal police force norms and formal force policy interact to produce a more sensitive policing system. Different strategies being followed in different jurisdictions to achieve this result include:

- ◆ The recruitment of women and ethnic minority officers.
- ◆ The recruitment of officers with particular skills for responding to crimes involving violence against women. This includes, for example, the recruitment of women not only as officers but also forensic scientists and police surgeons.
- ◆ Gender-sensitive training at recruit level and later on in officer training, and placing recruits with trained partners who can act as role models.
- ◆ A rise in status for police work involving these crimes. There can be financial and promotional incentives for officers at all levels who reveal appropriate responses to training.
- ◆ The setting up of domestic violence and child protection units. These facilitate the development of expertise in investigation and can provide a career move from uniformed to criminal investigation as well as offering apprentice-type training.
- ◆ A formal policy that acknowledges the seriousness of the behaviour, including evidence-gathering approaches that remove the onus of laying a charge against the offender by the woman.
- ◆ The adoption of a pro-arrest policy for offenders who commit crimes in domestic settings.
- ◆ The development of peer pressure in police forces to shape informal attitudes to reflect the seriousness of the formal force policy.
- ◆ A formal policy that stresses the maintenance of careful records, so that the seriousness of the behaviour and the adverse effects on individual women and children and the wider community become clearer.
- ◆ Record keeping that provides information for attitudinal change in the force, as the police will acknowledge the existence of a problem if it is revealed by records.
- ◆ The introduction of victim-friendly systems for investigating and gathering evidence of crimes of violence, such as victim examination suites.
- ◆ The definition of annual objectives, such as specifying greater attention to domestic violence, which focus the organisation in directions that are in particular need of attention.

Source: Guidelines for Police Training on Violence Against Women and Child Abuse, Commonwealth Secretariat, 1999c

- ✦ providing information for the deployment of resources;
- ✦ identifying repeat offenders;
- ✦ identifying repeat victims;
- ✦ providing information for managers on police response;
- ✦ justifying the expansion of police operations;
- ✦ justifying funding and resources;
- ✦ providing a basis for police input into law reform processes.

Education and Training Programmes

Multiple strategies and a broad range of approaches to gender mainstreaming are desirable. Legal programmes alone will not be effective unless they are accompanied by public education and advocacy, for example through a public awareness campaign for gender sensitivity and respect for human rights. Such programmes should also be incorporated into school curricula in form and content appropriate to the relevant age, commencing at primary school and continuing throughout formal school education. The role of the media is crucial. Analysis should be carried out of programme time that is devoted to issues of concern to women and men respectively; on the images and stereotypes that are promoted; and on the gender balance of leading producers, presenters and directors.

Education and training of whom?

All stakeholders, especially legal policy and decision-makers at all levels and civil society, need to receive training. The CEDAW Committee's General Recommendation 19 (1992) states: 'Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention'. Training on gender sensitivity, how laws may have gendered consequences and on human rights are required throughout all levels of the judicial hierarchy, from magistrates to the Judges of the highest courts in the state. Research into gender balance within the courts in Canada has also shown that court personnel – clerks, registrars, etc. – are often also overwhelmingly male (Mahoney, 1999). They may be unsympathetic to women seeking to access their rights through legal claims and thus not offer assistance or appropriate advice when it is sought. Training should also be extended to such people, as well to state officials in positions of power over women, for example prison officers, immigration officials and social workers. A gender balance should also be sought in recruitment. Formal training programmes must integrate gender issues throughout, and not rely on a single session on women at the end of the programme that is likely to lead to early departures and be viewed as an 'add-on'.

Training and education does not just take place through formal training and education schemes, however, but continues throughout society. Public education is needed in all sectors, including health-care services, so that signs of gender violence and child abuse are recognised and dealt with appropriately. Teachers in infant, primary, secondary and tertiary establishments need training so as to understand ways of recognising and redressing cultural stereotyping, even in very young children. Human rights and gender equality should feature in primary and secondary school curricula. This also requires a review of textbooks, materials and teacher training programmes to facilitate teacher use of new materials and concepts, ensuring materials have positive images and constructions of girls and women and monitoring the registration and attendance of girls at school.

Training in what?

Training of stakeholders should include:

- ◆ Gender sensitivity and human rights. The former requires attention to the fact that decision and policy makers may have to change long-held life views (mind sets), and be willing to take seriously perspectives and attitudes different to those they have assumed.
- ◆ Active listening techniques to ensure fuller and detailed understanding of the different perspectives of peoples' lives. This is relevant at all stages, for example in consultations for determination of law reform and in judicial proceedings.
- ◆ Understanding of the CEDAW Convention, the Beijing Platform for Action and the Commonwealth Plan of Action on Gender and Development and its Update. These should be made widely available in multiple, especially minority, and indigenous languages; in simplified forms; and in picture form.
- ◆ How to train others so that people who have received some such training can themselves provide assistance to others, including to women's grass roots organisations. Combining 'bottom up' and 'top down' approaches to the issues is desirable.
- ◆ Use of internal machinery in the particular organisation including conducting a gender audit; integrating gender into the planning and implementation cycle; reviewing policy options; and determining when intervention is appropriate and who is to be targeted.
- ◆ Use of external machinery, including powers of and access to the CEDAW Committee, the Human Rights Committee and other international and regional bodies. While it is not to be expected that many people will use such processes, awareness of their existence and powers validates and strengthens internal demands and empowers women.

The Commonwealth Secretariat has produced some manuals which address different aspects of the problem of violence against women, including: *Confronting Violence – a Manual for Commonwealth Action*; *Violence Against Women – Curriculum Materials for Legal Studies*; and *Guidelines for Police Training on Violence Against Women and Child Sexual Abuse* (1999c). Background materials were collected on the commercial sexual exploitation of the girl-child and in-depth studies on the issue were carried out in six countries. These manuals are designed for use by national Women's Machineries, other relevant ministries and NGOs in training programmes designed to promote and protect women's human rights.

Societal change is unlikely to take place if only traditional methods of education are relied on. Theatre (including children's and popular theatre), dance, song and exhibitions can also be effective educational tools. The mainstream media should be encouraged to carry serious items on such issues as rape and harassment as leading stories, both to raise consciousness and to assist in lessening embarrassment and humiliation in talking about these things and in responding to questions on them.

Legal Processes and Procedures

Access to justice

It is important that legislation provides procedures and institutions (for example tribunals and courts) in which violations of gender equality can be challenged. These bodies should have the power to order effective remedies (such as monetary compensation, injunctive relief, reinstatement, protective orders and criminal sanctions). The requirement that states should ensure respect for the equal enjoyment of human rights imposes a positive obligation to provide effective and affordable legal

support to women, for example to seek legal action against violent partners as in *Airey v. Ireland* referred to above (p. 40). A women's legal defence office should be established to provide information on women's human rights (as is done for example with an Environmental Protection Agency or Defence Office or an Aboriginal Defence Office).

The competency of Ombudspersons should extend to allegations of sexual bias and harassment within bodies under their jurisdiction. Consideration should be given to appointing a Women's Ombudsperson with jurisdiction extending to the private sphere. Their recommendations on such matters should be given high profile in the appropriate reporting body and by the media. The work of Human Rights Commissions should also be highlighted.

Mediation and other forms of so-called informal justice or alternative dispute resolution are sometimes favoured as a cheaper and more flexible alternative to court processes, especially in the context of family matters. It is also argued that their participatory and consensual nature enables women to express themselves more fully than in court proceedings and allows their concerns to be addressed in the formulation of an agreement by the parties themselves. It must be realised that power imbalances do not disappear in mediation and that requiring people to attend mediation distorts the voluntary nature of the process. Mediation is not to be equated with counselling or therapy. Quality control for mediation programmes is required, for example to ensure that access is genuinely voluntary and that mediators are fully trained to recognise and deal with power imbalance. This would also provide reality checks to proposed agreements with clients to ensure full comprehension and that they are genuinely accepted and realistic. Mediators must be warned against policy preference for a certain outcome such as continuing (or discontinuing) a marriage. They must be prepared to terminate a mediation if they have concerns about such matters.

Many legal processes are technical, inaccessible for those without specialist knowledge and daunting. The difficulty that women can face in accessing the law has been compared to a maze, where the search for justice is complex, frustrating, confusing and time consuming (Women and Law, Southern Africa Research Fund, 1999). Efforts should be made to simplify legal language (plain language initiatives) and to disseminate information about legal processes in arenas frequented by women (women's centres, factories, health clinics, etc.). Legal remedies should not become unavailable through technical errors (delay in filing papers or lodging a response). Court sittings should, whenever possible, be held at the scheduled time to avoid additional loss of earnings or the need to make child care arrangements through adjournments or delays. Judges should control proceedings to ensure adjournments are not sought as a form of harassment or obstacle to justice. Courts might consider the introduction of protective devices to facilitate victims giving evidence (voice distorting techniques, use of pseudonyms, giving evidence from behind screens) where there is a real fear for the witness's security (for example in trafficking cases where there is involvement with serious crime).

5

Recommendations

The following recommendations are taken mainly from the Beijing Platform for Action (PFA) and the Outcomes Document agreed to at Beijing +5, the 23rd Special Session of the UN General Assembly held to review progress made in implementing the Platform (B+5). The latter do not add to the commitments already made by states but aim to facilitate their implementation.

At the International Level

States should:

- ◆ Work actively to ratify and/or implement international human rights norms and instruments [especially] the Convention on the Elimination of Discrimination of All Forms of Discrimination against Women (PFA 124e, 230a, 230b; B+5 68c).
- ◆ Limit the extent of reservations to the CEDAW Convention, ensure that reservations are not incompatible with its object and purpose and work to remove them (PFA 230c).
- ◆ Ratify or accede to the amendment to the CEDAW Convention, Article 20, to allow greater meeting time for the Committee on the Elimination of Discrimination against Women (PFA 230j).
- ◆ Consider ratifying the Optional Protocol to the CEDAW Convention, agreed by the General Assembly, 6 October 1999 (B+5 68d).
- ◆ Support further steps for the enhancement of the international protection of human rights including the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Protocol to the African Charter providing for an African Court of Human Rights.
- ◆ Consider signing and ratifying the Rome Statute of the International Criminal Court (B+5 68e).
- ◆ Support the ongoing negotiations on the draft protocol to prevent, suppress and punish trafficking in persons, especially women and children, which supplements the UN Convention against Transnational Organised Crime (B+5 97d).
- ◆ Seek to ensure the full and equal participation of women in the promotion of peace, in particular through the full implementation of the Declaration and Programme of Action on a Culture of Peace (B+5 99i).

- ◆ Ensure compliance with the reporting obligations of the international treaties to which they are parties; engage in constructive dialogue with the respective treaty bodies.
- ◆ Report on schedule to the Committee on the Elimination of Discrimination against Women regarding the implementation of the Convention, following fully the guidelines established by the Committee and involving NGOs or taking into account their contributions in the preparation of the report (PFA 230i).
- ◆ Include gender aspects in reporting under all human rights conventions and instruments, including ILO conventions (PFA 230h).

At the National Level

States should:

- ◆ Incorporate the human rights treaties into national law, in particular the CEDAW Convention, and review national laws, including customary laws and legal practices in the areas of family, civil, penal, labour and commercial law in order to ensure the implementation of the principles and procedures of all relevant international human rights instruments by means of national legislation, revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice (PFA 232d, 230g, B+5 68b).
- ◆ Work to implement the Concluding Comments provided by the treaty bodies.
- ◆ Draw up national plans for gender development and the implementation within their national legal systems of the Beijing Platform for Action.
- ◆ Review and revise national policies, programmes and legislation to implement the key actions for the further implementation of the Programme of Action of the International Conference on Population and Development adopted by the General Assembly at its twenty-first special session (B+5 79c).
- ◆ Provide constitutional guarantees and/or enact appropriate legislation to prohibit discrimination on the basis of sex, embody the principle of the equality of men and women promote and protect the enjoyment by women and girls of all human rights and fundamental freedoms (PFA 231b, 232c, B+5 68a).
- ◆ Strengthen existing or establish readily available and free or affordable alternative administrative mechanisms and legal aid programmes to assist disadvantaged women seeking redress for violations of their rights (PFA 58p, 232n).
- ◆ Translate laws and information relating to the equal status and human rights of all women, and how to use a justice system to exercise one's rights, into local and indigenous languages and into alternative formats appropriate for persons with disabilities and persons at lower levels of literacy. Publicise and disseminate them (PFA 233a, c).
- ◆ Include information about international and regional instruments and standards in their public information and human rights education activities and in adult education and training programmes, particularly for groups such as the military, the police and other law enforcement personnel, the judiciary, and legal and health professionals to ensure that human rights are effectively protected (PFA 233d).

- ◆ Make widely available and fully publicise information on the existence of national, regional and international mechanisms for seeking redress when the human rights of women are violated and develop human rights education programmes that incorporate the gender dimension at all levels of education, in particular by encouraging higher education institutions to include the study of the human rights of women as they appear in UN conventions (PFA 83j, 233e).
- ◆ Take measures to eliminate discrimination in education at all levels on the basis of gender, race, language, religion, national origin, age or disability, or any other form of discrimination and consider establishing procedures to address grievances (PFA 80a, B+5 68k).
- ◆ Undertake legislation and administrative reforms to give women equal rights with men to economic resources, including access to ownership and control over land and other forms of property, credit and traditional saving schemes, such as women's banks and cooperatives, inheritance, natural resources and appropriate new technology (PFA 61b, 165e, B+5 68h).
- ◆ Enact and enforce equal opportunity laws and the rights of women and men to equal pay for equal work or work of equal value; reform laws or enact national policies that support the establishment of labour laws to ensure the protection of all women workers, including safe work practices, the right to organise and access to justice (PFA 165a,o,r).
- ◆ Enact and enforce laws to prohibit direct and indirect discrimination on the grounds of sex, including by reference to marital or family status, in relation to access to employment, conditions of employment, including training, promotion, health and safety, as well as termination of employment and social security of workers, including legal protection against sexual and racial harassment (PFA 178b,c).
- ◆ Take action to remove structural and legal barriers as well as stereotypical attitudes to gender equality at work, addressing gender bias in recruitment, working conditions, occupational segregation, discrimination in social protection benefits, women's occupational health and safety, unequal career opportunities and inadequate sharing – by men – of family responsibilities (B+5 82a).
- ◆ Develop, adopt and fully implement laws and other measures, such as policies and educational programmes, to eradicate harmful customary or traditional practices, including female genital mutilation, early and forced marriage and so-called honour crimes and intensify efforts, in cooperation with local women's groups, to raise collective and individual awareness on how these harmful traditional or customary practices violate women's human rights (B+5 69e).
- ◆ Enact and strictly enforce laws to ensure that marriage is only entered into with the free and full consent of the intending spouses; in addition, enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age for marriage and raise the minimum age for marriage where necessary (PFA 274e).
- ◆ Remove legal, regulatory and social barriers to sexual and reproductive health education within formal education programmes regarding women's health issues (PFA 83k).
- ◆ Take necessary measures to protect individuals, groups and organs of society engaged in promoting and protecting women's human rights (B+5 98e).

Taking a Holistic Approach to Violence Against Women

States should:

- ◆ Adopt and promote a holistic approach to respond to all forms of violence and abuse against girls and women during all their life cycle and circumstances, including girls and women with disabilities, as well as vulnerable and marginalised women and girls (B+5 69j,k).
- ◆ Formulate and implement, at all appropriate levels, plans of action to eliminate violence against women and girls by any person, organisation or enterprise (PFA 124j, B+5 68j).
- ◆ Implement the Convention on the Elimination of All Forms of Discrimination against Women, taking into account general recommendation 19, adopted by the Committee on the Elimination of Discrimination against Women at its eleventh session (PFA 124f).
- ◆ Consider setting up or strengthening a national co-ordinating mechanism, for example, a national rapporteur or an inter-agency body, with participation of the civil society including NGOs, to encourage the exchange of information and to report on data, root causes, factors and trends in violence against women (B+5 70d).
- ◆ Support initiatives of women's organisations and non-governmental organisations to raise awareness on the issue of violence against women and to contribute to its elimination (B+5 102a).
- ◆ Mainstream a gender perspective in all policies and programmes related to violence against women; increase the knowledge and understanding of the causes, consequences and mechanisms of violence against women among those responsible for implementing these policies, such as law enforcement officers, police personnel and judicial, medical and social workers, as well as those who deal with minority, migration and refugee issues, and ensure that women victims of violence are not revictimised because of gender-insensitive laws or judicial or enforcement practices (PFA 124g).
- ◆ As a matter of priority, review and revise legislation with a view to introducing effective legislation and take other necessary measures to ensure that all women and girls are protected against all forms of physical, psychological and sexual violence, regardless of the relationship between the perpetrator and the victim (PFA 232l, B+5 69a).
- ◆ Enact and/or reinforce penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, including violence based on all forms of discrimination, whether in the home, the workplace, the community or society (PFA 124c, B+5 69c).
- ◆ Enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation, female infanticide, prenatal sex selection and dowry-related violence, and give vigorous support to the efforts of non-governmental and community organisations to eliminate such practices (PFA 124i).
- ◆ Establish legislation and/or strengthen appropriate mechanisms to handle criminal matters relating to all forms of domestic violence, including marital rape and sexual

abuse of women and girls, and ensure that such cases are brought to justice swiftly (B+5 69d).

- ◆ Adopt laws, where necessary, and reinforce existing laws that punish police, security forces or any other agents of the State who engage in acts of violence against women in the course of the performance of their duties; review existing legislation and take effective measures against the perpetrators of such violence (PFA 124o).
- ◆ Prevent acts of violence against women in situations of armed and other conflicts; undertake a full investigation of all acts of violence against women committed during war, including rape, in particular systematic rape, forced prostitution and other forms of indecent assault and sexual slavery; prosecute all criminals responsible for war crimes against women and provide full redress to women victims; (PFA 143e).
- ◆ Take urgent action to combat and eliminate violence against women, which is a human rights violation, resulting from harmful traditional or customary practices, cultural prejudices and extremism; refrain from invoking any custom, tradition or religious consideration to avoid obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women (PFA 232g, 124a).
- ◆ Increase co-operation, policy responses, effective implementation of national legislation and other protective and preventive measures aimed at the elimination of violence against women and girls, especially all forms of commercial sexual and economic exploitation, including trafficking in women and children, female infanticide, crimes committed in the name of honour, crimes committed in the name of passion, racially motivated crimes, dowry related violence and deaths, acid attacks and harmful traditional or customary practices such as FGM, and early and forced marriages (PFA 330n, B+5 70b , 96a).
- ◆ Take measures, including by strengthening existing legislation, to address the factors that encourage trafficking in women and girls for prostitution and other forms of commercialised sex, forced marriages and forced labour in order to eliminate trafficking in women, provide better protection of the rights of women and girls and punish the perpetrators, through both criminal and civil measures (PFA130b , B+5 70a).
- ◆ Provide women who are subjected to violence with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm they have suffered and inform women of their rights in seeking redress through such mechanisms (PFA 124h).
- ◆ Create, improve or develop as appropriate, and fund the training programmes for judicial, legal, medical, social, educational and police and immigrant personnel, in order to avoid the abuse of power leading to violence against women and sensitise such personnel to the nature of gender-based acts and threats of violence so that fair treatment of female victims can be assured (PFA 124n).
- ◆ Provide gender-sensitive training to all actors, including police and military personnel, corrections officers, health and medical personnel, social workers, including people who deal with migration and refugee issues, teachers at all levels of the educational system, the judiciary and members of parliament in order to enable them to better exercise their public responsibilities in dealing with victims of sexual violence (PFA 232I, B+5 78d).

- ◆ Organise and fund information campaigns and educational and training programmes in order to sensitise girls and boys and women and men to the personal and social detrimental effects of violence in the family, community and society; teach them how to communicate without violence and promote training for victims and potential victims so that they can protect themselves and others against such violence (PFA 125g, B+5 78a).
- ◆ Promote women's and girls' mental well-being, integrate mental health services into primary health-care systems, develop gender-sensitive supportive programmes and train health workers to recognise gender-based violence and provide care for girls and women of all ages who have experienced any form of violence (B+5 69i).
- ◆ Promote research, collect data and compile and publish statistics, especially concerning domestic violence relating to the prevalence of different forms of violence against women, and encourage research into the causes, nature, seriousness and consequences of violence against women and the effectiveness of measures implemented to prevent and redress violence against women (PFA 129a, B+5 69f, 77b).
- ◆ Develop with the full participation of all countries an international consensus on indicators and ways to measure violence against women, and consider establishing a readily accessible database on statistics, legislation, training models, good practices, lessons learned and other resources with regard to all forms of violence against women, including women migrant workers (B+5 92b).
- ◆ Provide well-funded shelters and relief support for girls and women subjected to violence, as well as medical, psychological and other counselling services and free or low-cost legal aid, where it is needed, as well as appropriate assistance to enable them to find a means of subsistence; disseminate information on the assistance available (PFA 125a, h).
- ◆ Mainstream a gender perspective into national immigration and asylum policies, regulations and practices, as appropriate, in order to promote and protect the rights of all women, including the consideration of steps to recognise gender-related persecution and violence when assessing grounds for granting refugee status and asylum (B+5 68i).

Gender Mainstreaming

States should:

- ◆ Mainstream a gender perspective into key macro economic and social development policies and national development programmes (B+5 73a).
- ◆ Ensure that responsibility for the advancement of women is vested in the highest possible level of government; in many cases, this could be at the level of a Cabinet minister, and strengthen national machineries to mainstream the gender perspective to accelerate the empowerment of women in all areas and to ensure commitment to gender equality policies (PFA 203a, B+5 76b).
- ◆ Provide national machineries with the necessary human and financial resources, including through exploring innovative funding schemes so that gender mainstreaming is integrated in all policies, programmes and projects (B+5 76c).

- ◆ Give all ministries the mandate to review policies and programmes from a gender perspective and in the light of the Platform for Action; locate the responsibility for the implementation of that mandate at the highest possible level; establish and/or strengthen an inter-ministerial coordination structure to carry out this mandate, to monitor progress and to network with relevant machineries. (PFA 204e).
- ◆ Work with members of legislative bodies, as appropriate, to promote a gender perspective in all legislation and policies including the design, development, adoption and execution of all budgetary processes in order to promote equitable, effective and appropriate resource allocation and establish adequate budgetary allocations to support gender equality and development programmes which enhance women's empowerment and develop the necessary analytical and methodological tools and mechanisms for monitoring and evaluation (PFA 204d , B+5 73b).
- ◆ Consider establishing effective commissions or other institutions to promote equal opportunities (B+5 76d).
- ◆ Strengthen or establish national collaborative and regular reporting mechanisms, with the participation of NGOs, especially women's organisations, to monitor progress on the implementation of national policies, programmes and benchmarks for achieving gender equality (B+5 83a).
- ◆ Analyse, from a gender perspective, policies and programmes with respect to their impact on women and adjust them, as appropriate, to promote more equitable distribution of productive assets, wealth, opportunities, income and services (PFA 58b).
- ◆ Develop conceptual and practical methodologies for incorporating gender perspectives into all aspects of economic policy-making, including structural adjustment planning and programmes and apply these methodologies in conducting gender-impact analyses of all policies and programmes, including structural adjustment programmes, and disseminate the research findings (PFA 67a,b).
- ◆ Develop and use frameworks, guidelines and other practical tools and indicators to accelerate gender mainstreaming, including gender-based research, analytical tools and methodologies, training, case studies, statistics and information (B+5 80).
- ◆ Train researchers and introduce systems that allow for the use of data collected, analysed and disaggregated by, among other factors, sex and age, other established demographic criteria and socio-economic variables, in policy-making, planning, monitoring and evaluation (PFA 109a).
- ◆ Collect, compile, analyse and present on a regular basis data disaggregated by age, sex, socio-economic and other relevant indicators, including number of dependents, for utilisation in policy and programme planning and implementation; (PFA 206a).

Working with and Educating Civil Society

States should:

- ◆ Provide a legal framework for the secure and effective operation of NGOs.
- ◆ Create and strengthen an enabling environment, in accordance with national laws, to support the capacity of women's NGOs to mobilise resources to ensure the sustainability of their development activities (PFA 125d).

- ◆ Encourage the establishment and strengthening of multi-stakeholder partnerships/co-operation at all levels among international and intergovernmental organisations, with relevant actors of civil society, including NGOs, the private sector and trade unions, and women's organisations and other NGOs (B+5 102b).
- ◆ Encourage collaboration among various levels of Governments, NGOs, grass-roots organisations and traditional and community leaders for the promotion and protection of all human rights and fundamental freedoms of women and girls and the dignity and worth of the human person and equal rights for women and men (B+5 78b).
- ◆ Encourage co-operation between governmental authorities, parliamentarians and other relevant authorities and women's organisations, including NGOs, as appropriate, in ensuring that legislation is non-discriminatory (B+5 78c).
- ◆ Encourage, co-ordinate and co-operate with local and regional women's groups, relevant non-governmental organisations, educators and the media, to implement programmes in human rights education and encourage the creation of training and legal literacy programmes which build and support the capacities of women's organisations to advocate for women's and girls' human rights and fundamental freedoms (PFA 233f, B+5 78a).
- ◆ Promote education on the human and legal rights of women in co-operation with education and human rights institutions, the relevant actors of civil society, in particular NGOs and the media networks and undertake public campaigns, including in the most widely used languages of the country, on the equality of women and men in public and private life, including their rights within the family, the remedies available for violations of women's human rights and relevant human rights instruments under national and international law (PFA 233g, B+5 98a, 99a).
- ◆ Develop policies and implement programmes, particularly for men and boys, on changing stereotypical attitudes and behaviours concerning gender roles and responsibilities to promote gender equality and positive attitudes and behaviour (B+5 82j).
- ◆ Encourage, through the media and other means, a high awareness of the harmful effects of certain traditional or customary practices affecting the health of women, some of which increase their vulnerability to HIV/AIDS and other sexually transmitted infections, and intensify efforts to eliminate such practices (B+5 98d).
- ◆ Increase awareness and knowledge of the Rome Statute which affirms that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence constitute war crimes and, in defined circumstances, crimes against humanity, with the aim of preventing such crimes from occurring; also increase awareness of the extent to which such crimes are used as a weapon of war (B+5 96b).
- ◆ Develop national capacity to undertake policy-oriented and gender-related research and impact studies by universities and national research/training institutes to enable gender-specific knowledge-based policy-making (B+5 77c).
- ◆ Strengthen or establish, where appropriate national collaborative and regular reporting mechanisms, with the participation of NGOs, especially women's organisations, to monitor progress on the implementation of national policies, programmes and benchmarks for achieving gender equality (B+5 83a).

6

Applying GMS Principles to the Issue of Violence against Women¹

This chapter offers a model that might be used for an integrated approach to eliminating violence against women. The model follows the principles of the Gender Management System (GMS) by promoting political will; forging a partnership of stakeholders, including the government departments and NGOs; building capacity; and sharing good practice. It is an operational cum intervention model designed to provide a framework for planning and implementation of an integrated overall strategy.

Statement of Current Situation

Violence against women in all its forms continues to be pervasive in Commonwealth countries and elsewhere in the world. Current efforts by governments and NGOs, though commendable, have had no significant impact on the magnitude of the problem. Part of the reason for this is the fragmented and sectoral nature both of the way the problem itself is perceived and of the resultant interventions. The various stakeholders – governmental and non-governmental – deal with the problem from different perspectives with little or no co-ordination. Either they are oblivious of each other's efforts or the knowledge that there are interventions by other disciplines has no impact on their own actions. Consequently policies, where they exist, are sectoral and interventions are not designed to take advantage of or reinforce strategies in other sectors. There is no policy framework in which violence against women can be handled at national and local government levels. Little analysis has been done to rationalise the involvement or non-involvement of individual government departments in the fight against gender-specific violence. Neither is there a framework for ensuring that existing interventions are mutually reinforcing and address all aspects of the problem.

The consequences of this approach continue to be far reaching. Services and support to survivors of the violence remain inadequate and ad hoc. Many perpetrators of violence continue to escape investigation and punishment or remain out of reach of psychological treatment, even where it is available. The legal system is not adequate and individual officers' attitudes and value systems impact on their responses to violence against women, especially if committed in a family context. The problem itself and its causes remain a matter of different theories whose relationships are not fully understood, forcing many interventions to focus on symptoms rather than the root causes of the problem. Systems and structures that support and sustain violence against women unfortunately remain in place.

The Benefits of an Integrated Approach

An integrated approach to combating violence against women presents a real opportunity for reversing these negative trends. This approach enables government to

¹Adapted from *Combating Violence against Women: The Case for an Integrated Approach* by Florence Butegwa

reconceptualise violence against women as a social and complex problem to which government has an obligation to respond with appropriate policy, implementation plan and adequate resources. The requisite policy and implementation framework acknowledges the expertise and strengths of its various departments, and thus rationally identifies roles and how the respective stakeholders relate to each other. The overall framework should be able to combine strategies that respond to the needs of survivors and deal with perpetrators of gender-specific violence while facilitating a clearer understanding of the problem, a change of societal values and attitudes and structural changes to deny violence against women structural support.

Assumptions

The model is developed with the following assumptions in mind:

- ◆ That states have an obligation to eliminate violence against women. In addition to any moral and/or social obligation in this regard, the assumption is that the state obligation is also legal. International human rights law freely adopted by Commonwealth countries, through sovereign acts like ratification, has created legal obligations on these states to eliminate violence against women.
- ◆ That states actually have the commitment and political will to do all that is necessary to eliminate violence against women. It is only with such commitment that governments will be able to provide the human, institutional and financial resources necessary for successful use of this model.
- ◆ That it is possible to eliminate gender-specific violence targeting women and girls. It is assumed that violence against female persons is not inherent in human nature but is learned behaviour sustained through socialisation processes and other structures.
- ◆ That multidisciplinary effort and the implicit interdepartmental collaboration and co-ordination is possible in government structures. The model is heavily reliant on joint and co-ordinated effort at different levels of government.

The Model

Four key concepts underpin the model and are used to form steps in the struggle to eliminate violence against women: conceptualisation, deeper understanding, action strategies and co-ordination (see Fig. 6).

Concept 1: Conceptualisation of the problem

The way a phenomenon is perceived will determine the response to it. Where it is perceived and conceptualised as a problem, the responses will tend towards a search for solutions. Violence against women in most of its forms is rarely perceived by governments as a problem requiring urgent action. Where the violence occurs in the family, it is seen as a private matter to be settled by the family members. Where the violence occurs in the community, its gender specific nature is either ignored or is treated as a moral problem for which women and their behaviour are to be blamed. It has not been perceived as a social problem like crime or poverty that the entire society needs to grapple with through government. Where government agencies have tried to conceptualise violence against women as a problem, their efforts have been fundamentally flawed by the limitations of their professional outlook and the absence of an overall policy framework. The problem is perceived narrowly by different sectors, preventing the emergence of a holistic definition of the problem and policy and resulting in misconceptions and inadequate responses.

The first step in an integrated approach must be the conceptualisation of violence against women as a social problem. It must be perceived as a single, though complex, problem. The definition of this problem must have the input of different sectors in government, NGOs and other stakeholders. Thus this model brings together the experiences and expertise of current stakeholders and harnesses new ideas to conceptualise the problem at hand more clearly.

Figure 6 **A Model for an Integrated Approach to Eliminating Violence Against Women**

<i>Conceptualisation</i>	Perception of One Complex Social Problem
<i>Deeper Understanding</i>	Causes Consequences Stakeholders
<i>Action Strategies</i>	Necessary Interventions
<i>Co-ordination</i>	Linkages Among Actors

Concept 2: Deeper understanding of the problem

The first step is so closely associated with the second that they merge into one. As violence against women begins to be defined as a social rather than individual problem, it will become clear that our understanding of it is still limited. The causes of violence remain unclear if not controversial and have tended to be seen differently by different professional, cultural and even gender actors. While each set of actors may be right, the relationships between the different identified causal factors remain unclear. For instance, feminist theory has tended to attribute violence against women to gender inequalities in power relations and access to and control of resources. This is variously linked to the socialisation process and/or to patriarchy. Others have attributed violence against women to psychological factors specific to perpetrators and the abused. The validity and relationship between these two and other sets of identified causal factors is not clear. This state of affairs has contributed greatly to strategies and individual interventions concentrating on symptoms rather than the underlying causes.

Another factor necessary to deepen perceptions of the problem of violence against women is a better understanding of the consequences or impact of such violence, not only on the individual women abused but on others, including dependents, family, community and nation. Even at the individual level, the complexity of the impact of gender-specific violence is not understood. Frameworks for measuring its effect on economies, social fabric and cohesion and to societal values hardly exist. Without a clearer understanding of the full range of the consequences, it is likely that violence against women will continue to be treated as a private matter rather than a societal problem. It is also likely that interventions will not adequately address the issues raised by the consequences.

The third piece in facilitating a deeper understanding of violence against women as a social problem is defining the stakeholders. Who has a stake in maintaining the status quo? Similarly, who has a stake in changing the situation? What is the nature of the respective stakes and what context provides the legitimacy or validity of the various claims? Better understanding of these aspects is absolutely necessary before appropriate strategies can be formulated. The strategies for responding to the fears and concerns of various stakeholders may differ because of individual contexts but they need to be consciously addressed as part of an overall strategy. With regard to those stakeholders whose interest is the elimination of violence against women, identifying and understanding them facilitates the development of strategies for government to involve them or collaborate with them.

It is worth noting that just as conceptualisation of the problem implied the involvement of many government sectors so does the deepening of our understanding of the entire problem. At each stage the integrated approach necessitates the identification and involvement, in a co-ordinated manner, of all departments and agencies whose input would contribute to the overall aim of eliminating violence against women.

Concept 3: Action strategies

With an in-depth understanding of the problem, it is possible to take meaningful and rational action. Key in this step is the design of an overall policy for the elimination of violence against women. The policy framework must lay down the principles on which it is based, determine strategies, identify the implementing departments/agencies and their respective roles and set targets that are time bound so as to facilitate the monitoring of progress. The policy must define indicators for impact assessment. It must identify and facilitate adequate resource allocation towards the implementation process.

The strategies need to be designed to respond jointly or severally to the various root causes of gender specific violence, to its consequences and to the concerns of the stakeholders. While the overall goal of the policy and implementation process is the elimination of violence against women, it is necessary to set specific intermediate short and medium term objectives of the strategies. These may, among others, include the following:

- ◆ to respond efficiently and adequately to the needs – immediate and short term, or long term or even both – of individual victims and other survivors of violence against women;
- ◆ to deepen understanding of the problem, its causes, consequences and stakeholders;
- ◆ to take appropriate action with regard to the perpetrators of violence against women;
- ◆ to positively change societal values, attitudes and behavioural patterns that facilitate, condone or encourage abusive gender relationships and particularly violence against women;

- ♦ to modify structures (legal, economic, cultural, etc.) that directly or indirectly support violence against women; and
- ♦ to build capacities in involved government and NGO sectors for greater efficiency.

Action strategies need to be conceived in relation to the causes and consequences of violence, the stakeholders and the ultimate goal of eliminating violence against women. Fig. 7 is a diagrammatic representation of this relationship. An example of some of the various government departments which may have a role in implementing an integrated strategy for the elimination of violence against women, and some

Figure 7

How Action Strategies relate to the Social Problem of Violence and the Goal of Eliminating this Violence



indication of the roles they might play, is shown in Fig. 8. This illustrates the extent of the roles that need to be performed and the possibility of involving sectors that would, on the face of things, be deemed irrelevant to efforts to combat violence against women.

Concept 4: Co-ordination

The components of this model naturally give rise to the need for linkages among the various actors in the overall strategy. The linkages are necessary for various reasons. Firstly, all actors are dealing with the same problem and under the same policy. Secondly, the linkages ensure that different actors remain informed of the activities of the others and thus can build on them or interpret their role and actions in relation not only to the problem but also to interventions by others. Thirdly, linkages can avoid duplication and facilitate the efficient use of limited resources, while ensuring that services reach as many people as possible in their communities.

For effectiveness, the linkages must be institutionalised rather than ad hoc. This can be achieved without creating inefficient bureaucracies and Fig. 9 is an example of a possible structure. It can be applied at a national level just as it can be applied at local government level (provincial or district). The departments are grouped together into four units, each identified with one of the intermediate objectives listed above. These are: responding to the needs of the survivors, dealing with the perpetrators, changing values and attitudes and better understanding of the problem. Departments whose role is directly linked to a particular objective relate to each other more directly and closely. The example shows that, for each objective, interventions are from different players who must see their work as part of a whole at whatever level they are acting.

Following the GMS principles, each department should have a focal point for the effort to eliminate violence against women. The focal points in each unit link to form an inter-departmental committee reporting to a co-ordinating body (inter-departmental at heads of department level or an autonomous body) representative of all government sectors playing a role in the elimination of violence against women. The latter would be charged with the responsibility of overall co-ordination of effort, monitoring progress and periodic policy reviews. This body would also be charged with the responsibility of directing strategies and action for structural change. This example also makes provision for linkages with NGOs whose work is relevant.

Some Commonwealth governments have some experience with similar bodies and may play a role in sharing lessons learned. For example, Australia has set up a National Committee on Violence against Women and the Canadian government has established a National Initiative on Family Violence that explicitly addresses the need for co-ordination. Whatever the composition, roles which might be played by the co-ordinating body include:

- ◆ developing an overall policy framework, to be adopted by government, for the elimination of violence against women;
- ◆ being in charge of the overall implementation of policy and co-ordination of effort;
- ◆ monitoring progress and assessing the impact of various interventions;
- ◆ ensuring regular policy and strategy reviews in response to new circumstances and to the findings of any monitoring exercise;
- ◆ directing and co-ordinate interventions for structural reforms; and
- ◆ ensuring that the efforts of relevant NGOs are harnessed and supported to complement government efforts.

Figure 8 Institutional Linkages

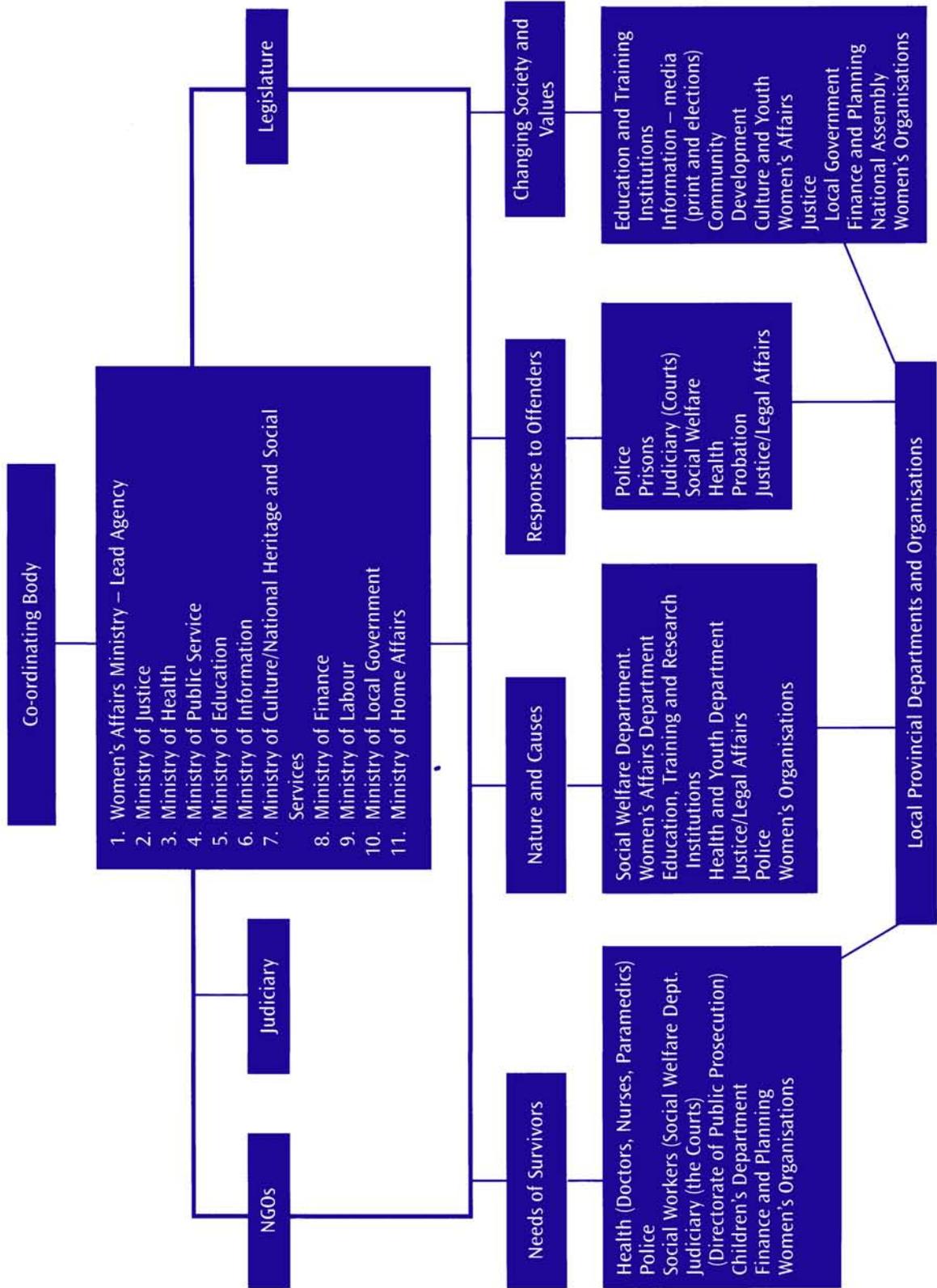


Figure 9

Meeting Objectives: Roles of Government Departments**Objective a:*****Responding to the needs of survivors of violence against women***

Below is an example of the different government departments that might be involved in an integrated strategy and possible roles, with the actors grouped around a specific objective as identified in the model.

Health Department

- diagnosis of injuries sustained by survivor
- medical/psychological/psychiatric treatment (as found necessary)
- counselling
- maintaining an adequate record of cases violence against women handled
- referring survivor to other actors within the integrated system
- training of personnel

Police Department

- receiving complaint from survivor
- counselling
- diligent investigation, proper handling of evidence and sympathetic handling of victims
- maintaining an adequate record of cases of violence against women handled
- referring survivor to other actors within the integrated system
- training of personnel

Social Workers/Social Welfare Department

- counselling
- provision of temporary shelter to survivors (where necessary)
- referring survivor to other actors within the integrated system
- training of personnel
- provision of financial and other benefits (where necessary)

Judiciary (the Courts)

- interpreting and applying law with gender sensitivity
- making protective orders (for example peace orders)
- ensuring victim-friendly proceedings
- maintaining an adequate record of cases of violence against women handled
- training of personnel

Justice Department (Directorate of Public Prosecution)

- reforming of substantive and procedural laws
- carrying out research and consultation
- training of personnel

Women's National Machinery

- referring survivors to relevant actors within the integrated system
- liaising with the various actors
- developing and facilitating training programmes to strengthen the capacity of various actors to handle cases referred to them with gender sensitivity
- compiling and disseminating statistics on violence against women (using records kept by the various actors). The compiled data can be used by each sector and jointly for planning purposes
- advocating for any necessary changes in the law or improvement of services offered by other government ministries

Children's Department

- (as for women's affairs department but specifically for female children as survivors)

Objective b:***Clarifying the causes and nature of the violence***

A clear understanding of the causes and nature of the violence, its consequences and stakeholders' calls for research from different perspectives and disciplines but with sufficient coordination so that research by one government sector can build on findings and perceptions from other sectors. The roles include research, facilitating public and institutional debate on violence against women and maintenance of an appropriate records/statistical base.

Key players here include:

- ◆ Social welfare department
- ◆ Women's affairs department
- ◆ Education department, especially institutions of higher learning
- ◆ Health department
- ◆ Justice department
- ◆ Police department

Objective c:***Taking appropriate action with regard to the perpetrator of the violence***

It is imperative that the perpetrator of violence is also a major point of focus. A weakness of current strategies is that apart from the few cases in which the perpetrator is apprehended and dealt with by the criminal justice system, he is often ignored. Just as with the other objectives the role must be a shared one.

Police Department

- investigate
- impress it on the perpetrator that violence against women is unacceptable
- counselling

Prisons Department

- special rehabilitation programmes for perpetrators of violence against women

Judiciary (the Courts)

- sufficient punishment
- order offender to attend counselling sessions

Social Welfare

- psychological treatment where necessary

Health

- psychological/psychiatric treatment where necessary

Probation

- counselling offender
- supervise offender during restraining orders

Justice

- prosecute (DPP)
- legal reform

Objective d:***Changing societal values, attitudes and practices***

Efforts to eliminate violence against women from society must deal with attitudinal changes within society. This is a task for many government departments including those below:

Education

- revise school and college curricula to remove stereotyped images of the roles of men and women and to promote behaviour which does not validate or condone gender inequality and gender specific violence.

Information

- public education and information about the illegal status of violence against women
- training journalists

Community Development

- public education
- refer victims to available services
- disseminate information on available services/options

Culture

- public education
- influence cultural and religious leaders
- expose the fact that violence against women is not part of culture]

Women's Affairs

- public education
- developing gender sensitive programmes for other actors

Justice

- Legal Reform

Local Government

- promote facilities and resources for public discussion

Objective e:***Modifying structures which support violence against women***

There is a dire need to move towards identifying and modifying structures, be they legal, social or economic, which support, condone or sustain violence against women. Action towards this objective must be at the highest level of government. Departments to play a role include:

Justice Department

- review all laws and procedures for gender equality and sensitivity
- in-house training to build capacity in dealing with broad gender issues, including violence against women

Department of Local Government

- integrate strategies to address gender imbalances and gender-based violence in development plans
- allocate adequate resources at local governance levels to programmes which enhance women's equality, incomes and capacities
- promote and support women's participation in local government structures and decision-making position

Department of Finance and Planning

- include the elimination of violence against women in the Country Assistance Strategies for support by bilateral and multilateral donor agencies
- treat institutions which promote women's equality, including the department for women's affairs, as important as other departments and therefore deserving equal and adequate resources
- Develop mechanisms for compiling gender disaggregated statistics in all areas, including violence against women and integrate them into national statistical frameworks. This will facilitate their use in planning.

Department of Education

- restructure curricula for the different levels of education (primary, secondary, tertiary, university) to promote gender equality and equal opportunities for boys and girls
- institutionalise gender sensitive career guidance at all levels

Department of Culture

- work with religious and cultural institutions on strategies which enhance positive elements in culture while promoting changing values and attitudes

Department of Women's Affairs

- Work for the adoption by government of a national gender policy to be implemented by all government departments at the different levels

7

Tools

Checklist for Gender Mainstreaming

The following six-fold list of different spheres of activity has been adapted from a one suggested as a good basis both for establishing a programme for achievement of women's advancement and as a check-list for assessing progress towards gender mainstreaming (Giele, 1977). The list is not comprehensive but rather provides a starting point. It can be added to in many ways according to specific contexts.

Political expression

- ◆ What rights do women possess, formally or informally?
- ◆ Can they attend or organise public meetings on matters that they identify as being of concern?
- ◆ Can they vote freely, both in theory and in reality?
- ◆ Can they own, hold, enjoy and transmit the use of property in their own right?
- ◆ Can they express dissent (in public or private) without fear of public or private retribution or denial of rights?
- ◆ How much media time (printed, radio, television) is given to coverage of political issues concerning women?

Work and mobility

- ◆ What jobs to women perform in the national labour force?
- ◆ What is women's participation in the informal labour force?
- ◆ How mobile are women and what facilities are provided for child care?
- ◆ Do they receive equal pay for equal work?
- ◆ How is equal work determined? How are all the tasks they undertake valued, formally and in reality?
- ◆ Are there statistics on male/female migrant workers?
- ◆ What access to female migrant workers have to social, medical and legal services?
- ◆ What leisure do women enjoy?
- ◆ Are they given the space to participate in leisure activities?
- ◆ Do women enjoy genuine freedom of movement on a local, regional, national and international level?

Family, formation, duration and size

- ◆ Can women choose their own partners?
- ◆ Can their chosen partners enter and remain in the country if non-nationals?
- ◆ Can they end their relationships with their partners?
- ◆ What is the social and economic status of single women, whether they are unmarried, divorced or widowed?

- ◆ What is the social and economic status of young women or elderly women?
- ◆ Do women have rights of custody over children?
- ◆ Can women bestow their nationality on their children?

Education

- ◆ What genuine access do women and girls have to all levels of education and skills training?
- ◆ What factors lead to the removal of girls from education?
- ◆ What provision is there for monitoring girls' regular attendance in education?
- ◆ How much can they attain and is the curriculum the same for both sexes?
- ◆ Are equal facilities and opportunities provided for children of both sexes?
- ◆ Are all forms of skills training open to women?
- ◆ Are they disproportionately represented in some forms of skills training?

Health and sexual control

- ◆ What are the rates of female mortality?
- ◆ At what ages are women most vulnerable to mortality?
- ◆ To what particular conditions are women most vulnerable, including both physical and mental stresses and illness?
- ◆ What control can women exercise over their own fertility and bodies?
- ◆ What are the rates of females infected by HIV/AIDS?
- ◆ What control can women exercise over their sexual relations?

Cultural expression

- ◆ What images of women and their place in society are prevalent?
- ◆ How are they perpetuated?
- ◆ How far do they reflect or determine the reality?
- ◆ What roles can women play in the cultural life of society?
- ◆ What aspects of culture subordinate women's social, legal and sexual rights?

Checklist of Compliance with CEDAW

These questions check whether measures to ensure equality have been taken. However, it is important to note that questions must go beyond equal rights with men to ensure equality of opportunity in accessing and using many of these services. In all cases it must be asked what the obstacles are to achieving equality and what steps need to be taken to overcome them.

Policy measures to be taken (article 2)

- ◆ Does the government have a policy for ending discrimination against women?
- ◆ Is the principle of equality between men and women incorporated in the national constitution or other appropriate legislation?
- ◆ Have legislation and other measures been put into effect to prohibit discrimination against women?
- ◆ Has the legal protection of the rights of women on an equal basis with men been established?
- ◆ Is the government engaging in any act or practice of discrimination against women?
- ◆ Is the government taking all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise?
- ◆ Are laws, customs and regulations that are discriminatory being modified or abolished?
- ◆ Have all national penal provisions that discriminate against women been abolished?

Guarantee of basic human rights (article 3)

Have all appropriate measures, including legislation, been taken in all fields – in particular in the political, social, economic and cultural fields – to ensure the full development and advancement of women so that they can enjoy their human rights equally with men?

Temporary special measures (article 4)

What temporary measures aimed at accelerating equality between women and men has the governments adopted, if any?

Sex roles and stereotyping (article 5)

- ◆ Have social and cultural practices that discriminate against women been identified?
- ◆ What are they?
- ◆ What is the government doing to eliminate these practices?
- ◆ Are women and men being educated to understand the role of maternity as a social function?
- ◆ Are women and men being educated to recognise that raising children is the equal responsibility of men and women?

Prostitution (article 6)

- ◆ Is the government working to eliminate trafficking in women?
- ◆ What steps is it taking against perpetrators of trafficking?
- ◆ Is it working to eliminate the exploitation of the prostitution of women?

Political and public life (article 7)

- ◆ Do women have the right to vote and stand for election?
- ◆ What steps are taken to ensure that women can vote without pressure or intimidation?
- ◆ Do women have the right to participate in the formulation of government policy and to hold public office?
- ◆ What steps has government taken to encourage women to enter public office?
- ◆ Can NGOs operate within a secure, legal environment?
- ◆ Do women have the right to participate in NGOs and associations concerned with the public and political life of the country?

Participation at international level (article 8)

What action has government taken to ensure that women have the opportunity to represent their government at the international level and participate in international organisations?

Nationality (article 9)

- ◆ Do women have the same rights as men to change or retain their nationality?
- ◆ Do women have the same rights as men to change or retain the nationality of their children?

Education (article 10)

- ◆ Do girls and women have equal access to education and vocational guidance at all levels?

- ◆ Have stereotypical concepts of the roles of men and women been eliminated, particularly through coeducation and the revision of textbooks and school programmes?
- ◆ Has the female student drop-out rate been reduced?
- ◆ Have programmes been organised for girls and women who have left school prematurely?
- ◆ Do both sexes have:
 - the same curricula, examinations, and standards for teaching and equipment?
 - equal access to scholarships and grants
 - the same opportunities for access to programmes of continuing education, including adult and functional literacy programmes?
 - the same opportunities to participate actively in sports and physical education?
 - access to specific educational information to help ensure the health and well-being of families, including information and advice on family planning?

Employment (article 11)

- ◆ Do women have the same employment rights as men, including the right to work in the same areas of employment?
- ◆ Do women and men have the same employment opportunities, including the application of the same criteria for selection?
- ◆ Do women have the right to:
 - free choice of profession and employment?
 - promotion?
 - job security?
 - benefits and conditions of service?
 - receive vocational training and retraining?
 - equal remuneration, including benefits?
 - equal treatment in respect of work of equal value?
 - equality of treatment in the evaluation of the quality of work?
 - social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work?
 - paid leave?
 - maternity leave with pay and special protection against harmful work during pregnancy?
- ◆ Are there social services that enable parents to combine family obligations with work responsibilities, particularly child-care facilities?

Health care and family planning (article 12)

- ◆ Do women have access to health care services, including family planning?
- ◆ Do appropriate services exist in connection with pregnancy, confinement and the post-natal period?
- ◆ Do services exist for women's health at all times of their life cycle?

Economic and social benefits (article 13)

- ◆ Do women have equal access to family benefits, bank loans, mortgages and other types of financial credit?
- ◆ Do women have an equal right to participate in recreational activities, sports and cultural life?
- ◆ What steps are taken to ensure that recreational activities, sports and cultural facilities are affordable by and accessible to women?

Rural women (article 14)

- ◆ Are rural women benefiting from rural development on an equal basis with men?
- ◆ Do rural women have access to adequate health care facilities, including information, counselling and services in family planning?
- ◆ Are rural women benefiting directly from social security programmes?
- ◆ Can rural women obtain all types of training and education, formal and non-formal?
- ◆ Do rural women have the right to organise self-help groups and co-operatives in order to obtain equal access to economic opportunities?
- ◆ Do rural women have the right to participate in all community activities?
- ◆ Do rural women have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as land resettlement schemes?
- ◆ Do rural women enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications?

Equality before the law (article 15)

- ◆ Do women have equality before the law?
- ◆ Can women access legal arenas and procedures?
- ◆ Do women have a legal capacity identical to that of men and the same opportunities to exercise that capacity, including the right to make contracts and administer property?
- ◆ Are women treated equally in all stages of procedure in court and tribunals?
- ◆ Do women have the right to choose their residence or domicile?

Marriage and family law (article 16)

- ◆ Do women of all ages have the same right as men freely choose a spouse and get married only with their free and full consent?
- ◆ Do women have the same rights and responsibilities as men at marriage and at its dissolution?
- ◆ Do women and men have the same rights and responsibilities as parents, irrespective of marital status, in matters relating to their children?
- ◆ Do women have the right to choose freely the number and spacing of their children and access to information and education that would allow them to exercise this right?
- ◆ Do women have the right to choose a family name, a profession and an occupation?
- ◆ Do women have equal rights and responsibilities regarding ownership, management and disposition of property?
- ◆ Is there an established minimum age for marriage?
- ◆ Is the registration of marriage compulsory?
- ◆ What steps have been taken to ensure that registration is carried out?
- ◆ Does failure to register a marriage cause hardship for women and how is it ensured that this does not occur?

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Appendix 1 *Commonwealth states parties to international treaties prohibiting discrimination on the basis of sex*

International Covenant on Civil and Political Rights, 1966, article 2 and 26

The following Commonwealth states are not parties: Antigua and Barbuda, Bahamas, Brunei Darussalem, Fiji, Kiribati, Malaysia, Maldives, *Nauru, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Samoa, Singapore, Solomon Islands, Swaziland, *Tonga, *Tuvalu and Vanuatu.

International Covenant on Economic, Social and Cultural Rights, 1966, article 3

The following Commonwealth states are not parties: Antigua and Barbuda; Bahamas; Botswana; Brunei Darussalam; Kiribati; Malaysia; Mozambique; *Nauru; Pakistan, Papua New Guinea; Saint Kitts and Nevis; Saint Lucia; Singapore; South Africa; Swaziland; *Tonga; *Tuvalu; Vanuatu.

Convention on the Rights of the Child, 1989, article 2

All Commonwealth States are parties.

African Charter on Human and Peoples' Rights, 1981, article 2 and especially article 18 (3)

All African states members of the Commonwealth are parties.

European Convention on the Protection of Human Rights and Fundamental Freedoms, 1950, article 14

Cyprus, Malta and the United Kingdom are parties.

Convention on the Elimination of all forms of Discrimination Against Women, 1979

The vast majority of Commonwealth states are parties to the Women's Convention. The following Commonwealth member states are not: Brunei Darussalam, Kiribati, *Nauru, Solomon Islands, Swaziland, *Tonga, Western Samoa.

Note *Non-member state of the United Nations.

Appendix 2 *Equality clauses in Commonwealth constitutions*

Most Commonwealth states have a general guarantee of fundamental rights without discrimination, including non-discrimination on the grounds of sex or gender. Such guarantees are sometimes included in fundamental or guiding principles of state policy; sometimes under human rights, basic rights and fundamental freedoms; and sometimes both:

ANTIGUA AND BARBUDA: Chapter II, Fundamental rights and freedoms of the individual, Articles 3 and 4.

THE BAHAMAS: Chapter III, Fundamental rights and freedoms of the individual, Article 15. However, sex/gender not mentioned in Article 26 which deals specifically with discrimination.

BANGLADESH: Part II, Fundamentals of State policy, Articles 10 and 19; Part III, Fundamental rights, Articles 27 and 28. Article 29 also calls for non-discrimination in government employment or office.

BARBADOS: Chapter III, Fundamental rights and freedoms of the individual, Article 11. However, sex/gender not mentioned in Article 23 which deals specifically with discrimination.

BELIZE: Part II, Fundamental rights and freedoms, Articles 3 and 16.

BOTSWANA: Chapter II, Article 3.

BRUNEI DARUSSALAM: Fundamental rights and freedoms not mentioned.

CANADA: Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, Section 15 Section 28 which affirms that 'the rights and freedoms referred to in it [the Charter] are guaranteed equally to male and female persons'.

CYPRUS: Fundamental rights and liberties. Article 28: discrimination clause.

DOMINICA: Title II, Individual and social rights (section I), Article 15.

THE GAMBIA: Chapter IV, Article 17.

GHANA: 1992, Chapter V, Article 12 (2), 17, 27 (Women's rights to paid leave before and after childbirth; facilities for the care of below school age children, equal rights to training and promotion). Chapter VI, Article 35 (5).

GRENADE: Chapter 1, Protection of fundamental rights and freedoms, Articles 1 and 13.

GUYANA: Chapter II, Principles and bases of Political, Economic and Social system, Articles 22 and 29. Other articles includes equal access to academic, vocational and professional training, equal opportunities in employment, remuneration and promotion, and in social, political and cultural activity.

India: Part III, Fundamental rights, Articles 14, 15 and 16. Part IV, Directive principles of State policy, Article 39.

JAMAICA: Chapter III, Fundamental rights and freedoms, Articles 13 and 20.

KENYA: Chapter V, Article 70. But in specific discrimination provision, Chapter V, Article 82, gender not included: 'race, tribe, place of origin or residence or other local connection, political opinions, colour or creed'.

KIRIBATI: Chapter II, Fundamental rights and freedoms of the individual, Articles 3 and 15.

LESOTHO: Chapter II, Article 4 (1), especially (1) (n), 18, 26, 30 (just and favourable conditions of work).

MALAWI: Chapter III, Article 13 (a): Specific provision on gender equality including social issues such as domestic violence, security of the person, lack of maternity benefits, economic exploitation and property rights. Article 20: Propagation of such practices may be criminally punishable). Article 24: Rights of women, including (2) any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women, particularly practices such as: (a) sexual abuse, harassment and violence; (b) discrimination in work, business and public affairs; and (c) deprivation of property, including property obtained by inheritance.

MALAYSIA: Part II, Fundamental Liberties, Article 8 (but sex/gender not mentioned as grounds for discrimination).

MALDIVES: Article 5 states that 'Maldivians are equal before the law'.

MALTA: Chapter II, Declaration of Principles, Article 14 (re. promoting equal rights) and Chapter IV, Fundamental rights and freedoms of the individual, Articles 32 and 45.

MAURITIUS: Chapter II, Article 3. Article 16 (general discrimination clause) amended in 1995 to include sex.

MOZAMBIQUE: Chapter I Article 66: General non-discrimination clause. Also Article 6d (equality of citizens before the law); Article 57 (i) The State shall promote and support the emancipation of women, and shall provide incentives to increase the role of women in society . . . (3) The State recognises the value of, and shall encourage, the participation of women in the defence of the country and in all spheres of the country's political, economic, social and cultural activity; 67 (equality of men and women).

NAMIBIA: Chapter 3, Article 10.

NAURU: Part II, Fundamental rights and freedoms, Article 3. Also note 5 'In this Constitution, unless the context otherwise requires, words importing the masculine gender shall be taken to include females'.

NEW ZEALAND: Bill of Rights Act, Part I, Unlawful Discrimination, Article 19 and Part II, Civil and Political Rights Article 21: Prohibited grounds of discrimination.

NIGERIA: 1992, Chapter II, Article 16 (2), 41.

PAPUA NEW GUINEA: Basic Rights section refers to fundamental rights and freedoms of the individual 'whatever their race, tribe, places of origin, political opinion, colour, creed or sex'.

ST KITTS AND NEVIS: Chapter II, Protection of fundamental rights and freedoms, Articles 3 and 15.

ST LUCIA: Chapter I, Fundamental rights and freedoms, Articles 1 and 13.

ST VINCENT AND THE GRENADINES: Chapter I, Fundamental rights and freedoms, Articles 1 and 13.

SEYCHELLES: Chapter III, Article 27, 30 (right of working mothers – ‘unique status and natural maternal functions of women’).

SIERRA LEONE: Chapter II, Article 6(2) , Chapter III, Article 15, 27.

SINGAPORE: No provision for non-discrimination on the basis of sex. Article 12 (1): ‘All persons are equal before the law’; (2) ‘Except as expressly authorised by this Constitution, there shall be no discrimination against citizens of Singapore on the grounds only of religion, race, descent or place of birth’.

SOLOMON ISLANDS: Chapter II, Fundamental rights and freedoms, Articles 3 and 15.

SOUTH AFRICA: Chapter 3, Article 8 (No person shall be unfairly discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language. (Only one to be written in language of ‘his or her’). Schedule 4, Constitutional Principles, I (achieving equality between men and women). III (racial and gender equality). V (amelioration of the conditions of the disadvantaged, including on grounds of race, colour or gender). Other relevant provisions that might be of specific importance: right to hold property.

SRI LANKA: Chapter III, Article 12.

SWAZILAND: Chapter II, Article 3.

TANZANIA: Section Two, Article 9 (1) (g); Section Three, Article 13 (1) prohibits discrimination of any kind, but in the interpretation of discrimination in (5) sex is not listed, only nationality, tribe, origin, political affiliation, colour, religion, lifestyle.

TONGA: No provisions

TRINIDAD AND TOBAGO: Chapter I, Recognition and protection of fundamental rights and freedoms Part 1, Article 4.

TUVALU: Part 2, Bill of Rights, Article 11. No mention of sex/gender as grounds of discrimination in Article 27.

UGANDA: National objectives and directive principles of state policy. Chapter IV, Article 20: ‘a person shall not be discriminated against on the grounds of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability’. Part VI of the General Objectives states that “The state shall ensure gender balance and fair representation of marginalised groups on all constitutional and other bodies; Part XV states that ‘The state shall recognise the significant role that women play in society’. Other articles deal with the right to education (30); equality in and during marriage and at its dissolution (31); and the rights of women (33). Of particular interest is 33 (6): ‘Laws, customs or traditions

which are against the dignity, welfare or interest of women or which undermine their status are prohibited by this Constitution’.

VANUATU: Chapter II, Fundamental rights and freedoms, Part 1, Article 5.

WESTERN SAMOA: Article 15 (2): ‘Except as expressly authorised under the provisions of this Constitution, no law and no executive or administrative action of the State shall, either expressly or in its practical application, subject any person or persons to any disability or restriction or confer on any person or persons any privilege or advantage on grounds only of descent, sex, language, religion, political or other opinion, social origin, place of birth, family status, or any of them’.

ZAMBIA: 1991, Part III, Article 11, 23.

ZIMBABWE: 1980, chapter III, Article 11, 23 (but does not include sex – discrimination on grounds of race, tribe, place of origin, political opinions, colour or creed). Constitution amended in 1997 and now explicitly prohibits discrimination based on gender. Sex Discrimination Removal Act prohibits sex-based discrimination.

Appendix 3 *Glossary of terms*

Gender

Gender can be defined as the set of characteristics, roles and behaviour patterns that distinguish women from men. These characteristics are constructed not biologically but socially and culturally. The sex of an individual is biologically determined, whereas gender characteristics are socially constructed: a product of nurturing, conditioning and socio-cultural norms and expectations. These characteristics change over time and vary from one culture to another. Gender also refers to the web of cultural symbols, normative concepts, institutional structures and internalised self-images which, through a process of social construction, define masculine and feminine roles and articulate these roles within power relationships.

Gender analysis

Quantitative gender analysis is the collection and analysis of sex-disaggregated data which reveals the differential impact of development activities on women and men, and the effect gender roles and responsibilities have on development efforts. Qualitative gender analysis is the tracing of historical, political, economic, social and cultural forces in order to clarify how and why these differential impacts, roles and responsibilities have come about.

Gender-aware/redistributive/transformational policies

Gender-aware/redistributive/transformational policies seek to transform existing gender relations by changing the distribution of resources and responsibilities to make it more equitable. These policies involve altering the existing balance of power between men and women, addressing not only practical gender needs but strategic gender interests as well.

Gender-inclusive language

This is language which challenges the assumption/tradition that masculine nouns, pronouns and adjectives include both male and female. Examples of gender-inclusive language are 'staff-hours' (rather than 'man-hours'), 'chairperson' (rather than 'chairman') and 'he or she' (rather than 'he'). Gender-exclusive language, by subsuming the female in the male, acts as both a cause and an effect of the invisibility of women's contribution.

Gender mainstreaming

This term may be conceptualised in two different ways: on the one hand it is an integrationist strategy which implies that gender issues are addressed within the existing development policy, strategies and priorities. Hence, throughout a project cycle, gender concerns are integrated where applicable. On the other hand, mainstreaming also means agenda-setting, which implies the transformation of existing development agenda using a gendered perspective. These two concepts are not exclusive and actually work best in combination.

Gender-neutral policies

These are policies that are seen as having no significant gender dimension. However, government policies seldom if ever have the same effect on women as they do on men,

even if at first sight they may appear to exist in a context where gender is irrelevant. Thus, policies which may appear to be 'gender-neutral' are often in fact 'gender-blind', and are biased in favour of males because they presuppose that those involved in and affected by the policy are males, with male needs and interests. An example would be

Gender perspective

Gender perspective is a way of (a) analysing and interpreting situations from a viewpoint that takes into consideration the gender constructions in society (for women and men) and (b) searching for solutions to overcome the gaps.

Gender-sensitive indicators

An indicator is a statistical measurement that shows the change in a particular context over a given period of time. A gender-sensitive indicator is therefore a measurement of gender-related change over time. For example, a gender-sensitive indicator could show the change in the number of women studying agriculture, relative to men and over a period of, say, a decade. Gender-sensitive indicators can therefore be used to measure the effectiveness or success of a GMS.

Gender sensitivity

Gender sensitivity refers to perceptiveness and responsiveness concerning differences in gender roles, responsibilities, challenges and opportunities.

Gender-specific policies

These policies take into account gender differentials, and target women or men specifically, but leave the current distribution of resources and responsibilities intact.

Gender training

Gender training is a systematic approach to sharing information and experiences on gender issues and gender analysis, aimed at increasing understanding of the structures of inequality and the relative position of men and women in society. It goes beyond awareness-building to actually providing people with the knowledge and skills that they need in order to change personal behaviour and societal structures.

National Women's Machinery

This is a single body or complex organised system of bodies, often under different authorities, that is recognised by the government as the institution dealing with the promotion of the status of women.

Practical gender needs

These emanate from the actual conditions women and men experience due to the roles ascribed to them by society. Often, women's practical gender needs are related to their roles as mothers, home-makers and providers of basic needs. Meeting the practical gender needs of women and men does not necessarily change their relative position in society.

Sex-disaggregated data

This is data collected – via questionnaires, observation or other techniques – that reveal the different roles and responsibilities of men and women. Having data

disaggregated by sex is extremely important to being able to assess the impact of a project on women separately from its impact on men.

Strategic gender needs

These relate to women's empowerment and to what is required to overcome the subordinate position of women to men in society. Such needs vary according to the economic, political, social and cultural context. Most governments now acknowledge the need to create opportunities which enable women to address their strategic needs.

Women's triple roles

Analysis of the gender division of labour has revealed that women typically take on three types of roles in terms of paid and unpaid labour. These roles are: the *productive* role, i.e., market production and home/subsistence production undertaken by women which generates an income; the *reproductive* role, i.e., the child-bearing and child-rearing responsibilities borne by women, which are essential to the reproduction of the workforce; and the *community management* role, i.e. activities undertaken by women to ensure the provision of resources at the community level, as an extension of their reproductive role (Razavi and Miller, 1997: 14).

Gender Mainstreaming in Legal and Constitutional Affairs

A Reference Manual for Governments and Other Stakeholders

Gender mainstreaming is the current international approach to promoting equality between women and men.

It is based on the recognition that gender inequality operates at all levels and in all sectors of society, and thus needs to be addressed in the mainstream. It aims to ensure that women and men benefit equitably from all that society has to offer, and are equally empowered to affect its governance and decisions.

The Gender Management System (GMS) is a holistic and system-wide approach to gender mainstreaming developed by the Commonwealth for governments, in partnership with other stakeholders including civil society and the private sector. The GMS is a comprehensive network of structures, mechanisms and processes to enable governments and other organisations to contribute to gender equality through policy-making, planning and activities in all sectors.

This reference manual has been produced to assist governments and other stakeholders in mainstreaming gender in legal and constitutional affairs.

Other topics covered by publications in the Gender Management System Series include:

- Concept and methodology of the GMS
- Using gender-sensitive indicators
- Development planning
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