

7 Indigenous Peoples' Rights

Indigenous Peoples' Rights in the Commonwealth, with a Focus on Indigenous Women

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Introduction

Current estimates put the number of indigenous people world-wide at more than 300 million people (approximately 7,000 indigenous societies or cultures) – 5 per cent of the global population (CWIS, 1999). In the absence of reliable censuses, however, hard figures are difficult to come by. Half of the world's indigenous people, approximately 150 million, are living in the Commonwealth (Whall, 2003a). It can be estimated that half of these, i.e. some 75 million, are indigenous women.

The greatest concentration of indigenous people in the Commonwealth is found in the following countries: Bangladesh, India, Pakistan and Sri Lanka (South Asia); Botswana, Cameroon, Kenya, Namibia, Nigeria, South Africa, Tanzania and Uganda (Africa); Australia, Fiji, Malaysia, New Zealand and Papua New Guinea (Pacific and South-East Asia); and Belize, Canada, Dominica and Guyana (Caribbean and Americas).¹

Commonwealth Policy Studies Unit

Research conducted by the Commonwealth Policy Studies Unit's (CPSU) Indigenous Rights in the Commonwealth Project during 2001–2004 reveals the extraordinary similarity of experiences of indigenous peoples across the Commonwealth.² Wherever they may live – in an industrialised country or a developing one, in a rural or urban area, from the Aborigines and Torres Strait Islanders in Australia to the Twa in Uganda – indigenous peoples routinely suffer from social,

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economic and political marginalisation, discrimination and poverty (Whall, 2003b; Whall, 2003c).

CPSU research on the situation of indigenous peoples in 20 Commonwealth countries reveals a disturbing picture of serious socio-economic disparities between majority communities and indigenous peoples, including high levels of poverty; poor access to education, health services and employment opportunities; limited political participation and representation; racial discrimination; social and cultural assimilation; rapid loss of languages; environmental destruction and alienation of indigenous lands and resources; and abrogation of treaty rights and extinguishment of native title.

The CPSU urged Commonwealth Heads of Government to make a commitment to the promotion and protection of the rights of indigenous peoples by including a statement of support in the 2003 Commonwealth Abuja Declaration, taking note of recent developments at the United Nations and at other international and regional forums.

Commonwealth Expert Group on Development and Democracy

That indigenous peoples in the Commonwealth suffer discrimination, intolerance and prejudice was clearly recognised in the report of the Commonwealth Expert Group on Development and Democracy, 'Making Democracy Work for Pro-Poor Development', endorsed by Commonwealth Heads of Government at their summit in Abuja, 2003. The Expert Group notes:

Around half of the world's 300 million indigenous peoples live in the Commonwealth, and frequently suffer discrimination, intolerance and prejudice, and violation of their land rights. (Commonwealth Secretariat, 2003: para. 88)

The report also recognises that indigenous peoples in the Commonwealth frequently suffer "comparatively low life expectancy" (para. 89), and that there are "limits on the rights of indigenous peoples to own, develop, control and use their lands and territories" (para. 114). Significantly, the report acknowledges the importance of group rights (paras 25 and 64).

The report goes on to recognise the right of indigenous peoples “to establish and control their education systems and institutions in a manner appropriate to their cultural methods of teaching and learning” (para. 188). It stresses that parliaments “should take account of the interests” of indigenous peoples (para. 64) and recommends that member States adopt social and economic policies “directed at challenging discrimination against ... indigenous peoples even in developed Commonwealth countries” (para. 115).

The report made it clear that the realisation of the economic, social and cultural rights of indigenous peoples must be a particular concern to Commonwealth member States if the Millennium Development Goals are to be achieved. As a 2003 CPSU report revealed, indigenous peoples in the Commonwealth are among the poorest of the poor, and few countries will meet the MDGs if an improvement in their situation is not made an urgent priority (Bourne, 2003).

Indigenous women in the Commonwealth

As for indigenous peoples in general, there are very little statistical data on the status of indigenous women in the Commonwealth. However, a cursory examination of their situation reveals that they suffer from multiple discrimination, “as indigenous peoples, as citizens of colonised and neo-colonial countries, as women and as members of the poorer classes of society”³ and as members of a minority group.

Over the past two decades, the international community has increasingly recognised the discrimination faced by indigenous peoples, the need to promote and protect their distinct identities and their unique contribution to sustainable development (Vienna Declaration and Programme of Action, UN World Conference on Human Rights, 1993, para. 20;⁴ Durban Declaration and Plan of Action, UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (UNWCAR), Durban, 2001, para. 39; and Declaration on Sustainable Development, UN World Summit on Sustainable Development (WSSD), 2002, para. 25).

Moreover, the UN has acknowledged the distinct interests and concerns of indigenous women. At the 23rd special session of the UN General Assembly in June 2000 on ‘Women 2000:

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gender equality, development and peace for the twenty-first century' (Beijing +5), the Political Declaration and Outcome Document, entitled 'Further actions and initiatives to implement the Beijing Declaration and Platform for Action', identified indigenous women as one of the nine specific groups of women that the UN should target during 2000–2005.

Paragraph 27 of the Outcome Document, 'Human Rights of Women – Obstacles', states: "Some women and girls continue to encounter barriers to justice and the enjoyment of their human rights because of such factors as their race, language, ethnicity, culture, religion, disability or socio-economic class or because they are indigenous people ...".

Since 2000, however, there has been very little evidence to suggest that Commonwealth governments have risen to the challenges set by the UN at Beijing +5 to improve the lives of indigenous women. This is not surprising, given the fact that the Commonwealth has not yet formally recognised the rights of its indigenous peoples. The decision by the Commonwealth Secretariat to include indigenous women as one of the key issues to be addressed in its ten-year Plan of Action on Gender and Development is therefore to be welcomed.

Conceptual Framework

Who are indigenous peoples?

Indigenous peoples are generally referred to in the plural, because there are many different groups that make up the entire global tapestry of indigenous peoples. The use of the plural 'peoples' indicates the diversity of people within the group as a whole (Hughes, 2003).

There is no agreed definition of who is indigenous. Indigenous peoples claim the right to define who they are themselves. They argue that self-identification as indigenous is one of the basic rights. Nevertheless the term 'indigenous peoples' is generally used to describe a non-dominant group in a particular territory, with a more or less acknowledged claim to be 'aboriginal' – or the original inhabitants.

While the Aboriginal peoples of Australia and the Māori of New Zealand were undoubtedly there first, in some places the issue is not always so clear cut. For example, in Africa,

nomadic migrants from the north of the continent displaced other early peoples from territories further south that the incomers later claimed as their ancestral lands. Moreover, some would say all groups in Africa are indigenous. The Botswana Government, for instance, considers all Batswana as indigenous and does not see any need to make special arrangements for the San 'Bushmen'. In Asia, where successive waves of people moved here and there, displacing other populations, similar problems with the term 'first' also apply. The Indian Government refuses to recognise the Adivasis or Scheduled Tribes as indigenous, claiming that that the whole population of India is indigenous. It may be safer to say, therefore, that indigenous peoples are those who arrived in a territory before single nation States (as we know them today) were formed.

Indigenous peoples are also often defined as 'non-state' and can be distinguished according to their different ways of life – how they survive and produce. While many have now left their traditional rural life behind for urban areas and many others may work for wages, hundreds of thousands of indigenous peoples worldwide continue to be pastoralists, hunters and gatherers, and peasant farmers/shifting cultivators, whether full- or part-time. In most cases, the so-called subsistence economy remains the bedrock of how indigenous peoples make their living. These ways of life are highly sustainable, although this is fast changing as development projects encroach upon indigenous peoples' fragile habitats.

'Tribal peoples' can mean much the same thing. The major difference is that they do not or cannot always claim to be descended from the aboriginal inhabitants of a territory. Many minorities are also indigenous, but not necessarily so.

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Official definitions

The UN does not have an official definition of indigenous peoples. However, there are three main working definitions within the UN. The first was provided by the International Labour Organization's Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989).

This came into force in 1991, replacing the earlier 1957 Convention. The ILO distinguishes indigenous from tribal peoples in article 1, saying the Convention applies to:

Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural or political institutions.

Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the grounds to which the provisions of this Convention apply.

The other two widely used definitions were suggested by UN rapporteurs Dr Jose R Martinez Cobo and Mme Erica-Irene Daes. In his 1986 Report for the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Martinez Cobo wrote:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

He cited 'historical continuity' as meaning the continuation, for an extended period reaching into the present, of one or more of the following factors: "occupation of ancestral lands, or at least part of them; common ancestry with the original occupants of these lands; culture in general, or in specific manifestations; language; residence in certain parts of the country, or in certain regions or the world; other relevant factors".

Erica-Irene Daes, Chairperson of the UN Working Group on Indigenous Populations, while concluding in 1995 that “the concept of ‘indigenous’ is not capable of a precise definition which can be applied in the same manner to all regions of the world”, has nevertheless suggested this variation, designating certain peoples as indigenous:

Because they are descendants of groups which were in the territory of the country at the time when other groups of different cultures or ethnic origins arrived there;

because of their isolation from other segments of the country’s population they have preserved almost intact the customs and traditions of their ancestors which are similar to those characterised as indigenous; and

because they are, even if only formally, placed under a State structure which incorporates national, social and cultural characteristics alien to theirs.

Both Martinez Cobo and Daes emphasise self-identification as one of the main variables in any definition of indigenous peoples.

In order to give its staff policy guidance to ensure that indigenous peoples benefit from development projects and are not harmed by projects that affect their territories and communities, the World Bank formulated an Operational Directive in 1991 that provides another definition of indigenous and tribal peoples (World Bank, 1991).⁵

Indigenous Peoples’ Rights

Since the early 1980s, the situation of indigenous peoples and the enjoyment of their human rights has become a key issue in the international arena. This development is reflected in the various initiatives taken by inter-governmental and regional associations – such as the UN, the European Union, the African Union, the Caribbean Community (CARICOM) and the Organisation of American States – to address their concerns.

United Nations

In 1982, the UN set up a Working Group on Indigenous Populations (WGIP), whose main task was to set standards by

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drawing up a Draft Declaration on the Rights of Indigenous Peoples.⁶ The biggest challenge now is to get the Declaration adopted by the end of the UN's International Decade of the World's Indigenous Peoples (1995–2004).⁷ If and when the Draft Declaration is eventually adopted by the UN General Assembly, it will be a non-binding statement of aspiration.

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In 2001, the Commission on Human Rights appointed a Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people in response to the growing international concern regarding their marginalisation and discrimination against them.

European Union

The European Council passed a resolution on indigenous peoples within the framework of development co-operation of the community and the member States in 1998, and has mainstreamed indigenous peoples' issues in both its development and human rights strategies.

The working document from the European Commission, prepared at the time of the Council resolution, recognises the "economic, social and political marginalisation" of indigenous peoples, their unique contribution to the "sustainable use of resources" and the importance of "the participation and inclusion of indigenous peoples in decision-making processes". It also acknowledged the importance of self-determination to indigenous peoples "in relation to their own development, by which they want to regain control over their land, life and resources, often from a weak political position".

The European Parliament has been getting increasingly involved in the issue of indigenous peoples, passing a resolution in February 1994 calling for effective protection for indigenous peoples and another in January 1995 calling for support for the International Decade.

African Union

At the 34th Ordinary Session of the African Commission on Human and Peoples' Rights (ACHPR), Gambia, November 2003, the 'Report of the African Commission's Working Group on Indigenous Populations/Communities' was adopted. The report contains both an analysis of criteria for identifying indigenous peoples in Africa, an analysis of their human rights situation seen in the light of the provisions of the African Charter on Human and Peoples' Rights (1986), and an analysis of African Charter jurisprudence and its potential for promoting and protecting the human rights of indigenous peoples in Africa.

Caribbean Community (CARICOM)

Article XI of the CARICOM Charter of Civil Society (1997) provides that "[t]he States recognise the contribution of the indigenous peoples to the development process and undertake to continue to protect their historical rights and respect the culture and way of life of these peoples". The Charter was adopted unanimously by the Heads of State of CARICOM and has the status of a regional, inter-governmental human rights declaration.

Organization of American States (OAS)

Apart from the UN Draft Declaration, the OAS Proposed Declaration on the Rights of Indigenous Peoples in the Americas is one of the most important exercises currently underway to address the human rights of indigenous peoples. In some countries, the OAS instrument may accurately be described as a substantial and far-reaching leap forward relative to existing rights found in domestic law.

Indigenous Peoples and the Commonwealth

Inter-governmental Commonwealth

The Commonwealth, by contrast with other regional and inter-governmental associations, has no official position on the

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rights of indigenous peoples. The Human Rights Unit (HRU) at the Commonwealth Secretariat has stated informally that the Commonwealth has no consensus or policy on indigenous rights as such, and that it is left up to each government to respond to indigenous people's concerns in the context of their own national policies. It is expected, of course, that such policies would be consistent with the Commonwealth's fundamental political values and international human rights standards. While a number of countries have individually developed specific policies to recognise and protect their indigenous peoples (see below), in the absence of a Commonwealth-wide commitment to indigenous peoples their rights are routinely ignored and violated by many Commonwealth member States.

To date, there is no official Commonwealth publication descriptive of the social, economic, political and cultural status of indigenous peoples in member States (there has been no attempt on the part of any division within the Commonwealth Secretariat to collect and collate data on indigenous peoples), and there is no administrative mechanism within the Secretariat to channel specific enquiries, advocacy or support relating to indigenous peoples.

Commonwealth declarations

The key statement on indigenous issues by Heads of Government was made at the Lusaka Commonwealth Heads of Government Meeting (CHOGM), 1979. In the Declaration of the Commonwealth on Racism and Racial Prejudice, they stated:

We recognise that the history of the Commonwealth and its diversity require that special attention be paid to the problems of indigenous minorities ...

We agree that special measures may in particular circumstances be required to advance the development of disadvantaged groups in society. We recognise that the effects of colonialism or racism in the past may make desirable special provisions for the social and economic enhancement of indigenous populations.

Since 1979, however, Commonwealth Heads have not looked at the issue of indigenous rights at any of their biennial summits. The Harare Commonwealth Declaration, 1991, which

saw a commitment by member States to protecting and promoting human rights, made no reference to the rights of indigenous peoples.

While in the 1993 Cyprus CHOGM Communiqué, Commonwealth Heads “expressed their appreciation for the proclamation of 1993 as the International Year of the World’s Indigenous People”, there was no follow-up on this issue. Moreover, Commonwealth Heads gave no declaratory support to the International Decade at the 1995 Millbrook CHOGM. The Aso Rock Declaration, Abuja CHOGM, 2003, was also silent on the issue of indigenous peoples.

The Peoples' Commonwealth

The unofficial Commonwealth or the Peoples' Commonwealth, by contrast, has over the past decade increasingly placed the issue of the rights of indigenous peoples on its agenda. This is in part due to the extensive lobbying of Commonwealth civil society organisations (CSOs) by the Commonwealth Association of Indigenous Peoples (CAIP).⁹

The Civil Society Meeting Statement issued in Abuja, Nigeria, on 3 December, following the three-day meeting of representatives of CSOs from across the Commonwealth, included a paragraph on ‘The rights of Indigenous Peoples and the right to self-determination’, as follows:

In this, the penultimate year of the UN Decade for Indigenous Peoples, we ask the Commonwealth to acknowledge that many Indigenous Peoples in the Commonwealth continue to be significantly disadvantaged and that special measures should be encouraged to overcome the continuing effects of racism, colonialism or globalisation, with their full participation and consent. Further, we urge the establishment of mechanisms to guarantee the rights to self-determination of people in the overseas territories of member countries.

Domestic law

At the country level the position on indigenous rights in the Commonwealth is kaleidoscopic.

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No. 107 on Indigenous and Tribal Populations (1957). However, only Dominica and Fiji Islands among Commonwealth countries have signed the much stronger ILO Convention 169.¹⁰

A few countries in the Commonwealth have specific ministries or departments responsible for indigenous affairs. These include Australia, Bangladesh, Canada, Dominica, Fiji Islands, Guyana, India, Malaysia and New Zealand. While ministers usually find it useful to meet to share their experiences and to exchange best practices, there is no formal mechanism which enables ministers responsible for indigenous issues to meet. The Commonwealth should consider establishing such ministerial meetings in order to co-ordinate greater understanding of indigenous issues and responsibilities among member States. The Commonwealth should also consider establishing ministries or departments responsible for indigenous affairs in all member States where there is a significant indigenous population.

A few Commonwealth member States provide specific constitutional or legislative guarantees to promote and protect indigenous peoples, notably Australia, Aboriginal and Torres Strait Islanders Commission (ATSIC); Canada (section 35, which provides for Aboriginal Treaty Rights); Guyana, Amerindian Act, 1951; India, articles 15.4 and 46; Malaysia, article 8 and Aboriginal Peoples Act, 1974; and New Zealand, Treaty of Waitangi, 1840 and Waitangi Tribunal, 1975.

A small minority have provisions for land claims agreements with indigenous peoples, notably Australia, Native Title Act, 1993 and Native Title Amendment Act, 1998; Bangladesh, Land Commission, 1997; Canada, constitutional provisions for selective Provincial Aboriginal Title and Land Claims; Dominica, Carib Reserve Act, 1978; Fiji Islands, Native Land Trust Act, 1940; India, Panchayat Act, 1996 (article 244); South Africa, Restitution of Land Rights Act, 1994; and Uganda, Land Act (article 30);

In addition, only limited measures have been taken by Commonwealth member States to provide for indigenous participation and representation in national decision-making processes, notably Australia, Aboriginal and Torres Strait Islanders Commission (ATSIC), where there are currently no indigenous peoples in the House of Representatives and one in

the Senate; Bangladesh, Chittagong Hill Tracts Regional Council; Canada, self-government coupled with extinguishment of aboriginal title; Dominica, Carib Council and parliamentary representation in the House of Assembly; Fiji Islands, Council of Chiefs; India, Tribal Legislative Assembly; Namibia, Council of Traditional Leaders; New Zealand, where there are currently 19 Māori MPs, five of whom are on the Executive, representing 15.8 per cent of Parliament; and South Africa, where the Constitution recognises the status, functions and role of traditional chiefs (sections 211 and 212) and, notably, the right to self-determination (section 235).

Best practice

On 1 April 1999, a new and unconventional political entity called Nunavut came into being, according the Inuit the right of self-government as part of a land rights settlement between the Inuit and the Canadian government.¹¹ Canada's newest entity is carved out of the Northwest Territory and has its own government. This expression of indigenous self-government/internal self-determination represents a significant paradigm shift. Nunavut is a case of good practice from which many Commonwealth States could learn.¹²

Under the South African Restitution of Land Rights Act, 1994, the communal lands of the †Khomani San were returned to them in 2002. This action was made easier for the Government by the opportunity for wholesale change that came with the end of white majority rule in 1994. Nonetheless it has acted as a beacon for the indigenous movement in Africa and elsewhere, and makes possible a new future with a better socio-economic outlook for at least some of the extremely demoralised San peoples of Southern Africa.

While some member States are responding positively to indigenous claims for greater social, economic and political autonomy, other governments are rolling back legislative provisions made for their indigenous communities. For example, Australia's Native Title Amendment Act, 1998, has been found by the committee monitoring implementation of the Convention on the Elimination of all Forms of Racial Discrimination to be inconsistent with Australia's international legal obligations under the Convention.¹³ In the

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Secretary-General's report to the UN General Assembly, 2002, 'Measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance', the Special Rapporteur on this issue in his comments on Australia states, "The land question remains crucial and is the key to the Australian problem".¹⁴

Indigenous Women's Rights

Convention on the Elimination of All Forms of Discrimination against Women

While CEDAW (1979) does not specifically mention indigenous women, it is assumed that indigenous women are nevertheless protected by it. Unfortunately, between 1994 and 2000, indigenous women were mentioned in only 11 of the 97 country reports that were reviewed by the Committee on the Elimination of Discrimination against Women, the body charged with monitoring the Convention. Of these, five were Commonwealth countries, namely Australia, 1994 and 1997; Canada, 1997; Guyana, 1994; India, 2000; and New Zealand, 1994 and 1998 (Kambel, 2004:2). The Committee has traditionally shown little interest in or awareness of the specific concerns of indigenous women, although its 2003 annual report contained several concluding observations and recommendations on indigenous women (ibid:4).

UN Beijing Declaration, Fourth World Conference on Women, 1995

Since 1995, the UN has increasingly recognised the special needs of indigenous women, most notably in the Beijing Declaration, Fourth World Conference on Women, 1995, (para. 32), and in the Beijing Platform for Action, 'Strategic Objectives and Actions' (paras 8, 46, 32 and 34).

Beijing +5

Five years later, at Beijing +5, the UN placed an even greater focus on indigenous women. In the Introduction to the Outcome Document, 'Further actions and initiatives to imple-

ment the Beijing Declaration and Plan of Action', para. 5 states: "The Platform for Action recognises that women face barriers to full equality and advancement because of such factors as their race, age, language, ethnicity, culture, religion or disability, because they are indigenous women or of other status".

In the section on 'Actions to be taken' of the Outcome Document, governments were urged to assist indigenous women "in accessing and participating in politics and decision-making" (para. 66(b)); "to address the impact of violence on indigenous women" (para. 69 (h)); "to protect the knowledge, innovations and practices of women in indigenous and local communities" (para. 71 (a)); to "undertake appropriate data collection and research on indigenous women" (para. 93 (d)); "[to], with the full voluntary participation of indigenous women, develop and implement educational and training programmes ... and ensure their access to all levels of formal and non-formal education, including higher education" (para. 95 (e)); and "to give all women, particularly indigenous women, equal access to capacity-building and training programmes to enhance their participation in decision-making" (para. 95 (j)).

In the same section, governments are encouraged to: "Undertake appropriate data collection and research on indigenous women, with their full participation, in order to foster accessible, culturally and linguistically appropriate policies, programmes and services" (para. 93 (d)). This is crucial given the current paucity of statistical data on indigenous women.

However, indigenous women continue to remain largely invisible within the UN human rights system.

UN Working Group on Indigenous Populations

For example, a review of the annual reports of the UN Working Group on Indigenous Populations (WGIP) shows that from its inception in 1983 until 2000, indigenous women were only mentioned in 1991, at its 9th session. Since then "there has been little focused discussion with the WGIP on the human rights problems experienced by indigenous women" (Kambel, 2004).

UN Special Rapporteur on Indigenous Peoples

Furthermore, while the UN Special Rapporteur is explicitly mandated to pay special attention to discrimination against indigenous women and take into account a gender perspective, it is disappointing that in his first thematic report (January 2003), which focused on the impact of large-scale or major development projects on the human rights and fundamental freedoms of indigenous peoples, the Rapporteur only referred to indigenous women once (*ibid*).

Commonwealth

Despite having signed up to CEDAW, many Commonwealth States continue to ignore the rights of indigenous women. This is not surprising, given that neither the 1995 Commonwealth Plan of Action on Gender and Development nor its update make any reference to indigenous women. In the absence of a Commonwealth-wide policy on indigenous women, member States are left to devise their own policies.

5 Challenges Facing the Commonwealth

So what are the issues facing indigenous women in Commonwealth member States? And what are the challenges that lie ahead for the Commonwealth in addressing these concerns? Before answering these questions, it is important to examine how the thinking of indigenous women/feminists differs from that of Western women/feminists.

The perspective of indigenous women/feminists

While Western women/feminists see male domination as the foundation of women's discrimination and oppression, indigenous women/feminists see colonialism as the cornerstone of discrimination and oppression, with male domination as just one of the values subsequently imposed on and embedded in indigenous communities: their indigenous status, rather than their gender, is seen as the impediment to their enjoyment of human rights (Fox, 2002:1). According to many indigenous women/feminists, racism, national oppression, classism and

colonialism are the key targets for activism and change.

Indigenous women/feminists seek the return to cultural traditions that honoured and valued women. Traditionally, indigenous women were placed at the centre of communities and families, and of political and cultural practices, that emphasised the participation of all in achieving balance and consensus. Equality between indigenous men and women and equality between indigenous and non-indigenous communities is at the heart of the indigenous women's struggle.

This sentiment was clearly expressed in the Beijing Declaration of Indigenous Women, 1995, issued at the Fourth World Conference on Women. The Declaration comprehensively sets out the major global and national causes of the plight of indigenous women from their perspective and offers a critique of the Beijing Draft Platform for Action.¹⁵ It concludes with a section setting out 'Indigenous Women's Proposals and Demands'.

Traditionally, indigenous women and their concerns have been largely invisible to national women's machineries and women's non-governmental organisations (Mulenkei, 2002). Indigenous women have routinely been unrepresented or under-represented at local, national and international gender policy-making forums. While it is a welcome development that the UN and other inter-governmental associations, like the Commonwealth, are now trying to understand the issues facing indigenous women and to develop programmes of action to improve their circumstances, it is imperative that these initiatives are informed by the thinking of indigenous women themselves and that they involve indigenous women at every stage of the policy-making and implementation process.

While indigenous women will benefit from the increasing recognition of the rights of indigenous peoples in the international arena, they have specific needs and concerns which require special programmes of action. This paper considers four areas of concern in detail:

- 1 **Poverty** – indigenous women suffer from higher levels of poverty, largely due to their unequal opportunities with respect to land (they are often discriminated against by state practice and laws, as well as by customary and traditional practice and laws);

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- 2 **Education** – indigenous women have unequal access to social services, such as education, with girls experiencing particularly high drop-out rates;
- 3 **Health** – indigenous women have unequal access to social services, such as health care, and are particularly vulnerable to domestic and state violence; and
- 4 **Political participation and representation** – indigenous women have unequal participation and representation in decision-making processes, and are particularly under-represented at the formal/official level.

1 Poverty

It is very difficult to measure the poverty experienced by indigenous peoples, including indigenous women, since the basic US\$1 a day marker of extreme poverty does not adequately reflect the way of life of indigenous peoples who live partly outside a cash economy. Moreover, levels of poverty among indigenous peoples may not equate with levels of well-being. There are also not enough statistics on indigenous peoples to give accurate measurements. Nevertheless, it is important to try and compare the levels of poverty between indigenous peoples and the dominant society in order to get an approximate idea of their current poverty levels.

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In India, the percentage of Scheduled Tribes living below the poverty line in 1991 was 51.9 per cent. This compares with 37.3 per cent of rural Indians living below the poverty line in the same year.¹⁶

In a study of indigenous peoples in Southern Africa funded by the European Commission, James Suzman (2001) comments: “In both Namibia and Botswana ... the vast majority of San are poor or extremely poor”. The poverty of the San is related to high degrees of welfare dependency, insecure access to land, low status if not actual discrimination, sedentarisation, unemployment, casual labour, begging or dependence on charity (ibid).

In Guyana, poverty among Amerindians has been recognised as a significant element in overall poverty. The National Development Strategy of 2000 states: "... in 1999, 95 per cent of the population in Regions 8 and 9, who are predominantly Amerindian, was classified as being in a state of absolute poverty" (Government of Guyana, 2000:278). The Ministry of Amerindian Affairs is trying to redress this situation through its newly created Amerindian Development Fund and Amerindian Skills in Community Development project (Rodrigues, 2003).

According to the Department of Orang Asli Affairs, Malaysia, 80.8 per cent of Orang Asli were living below the poverty line in 1997, compared with only 8.5 per cent of the national population. By 1999, this figure had risen to 81.4 per cent (Nicholas, 2000:30).

Poverty among indigenous peoples is not restricted to developing countries: for example, serious disparities in socio-economic indicators between the Māori and non-Māori continue to exist in New Zealand. Although the median income for Māori adults in the year ending March 2001 was NZ\$14,800, Māori were still three times more likely to be unemployed than non-Māori, and the disparity was greater than in 1991.¹⁷ The Government is trying to respond to these disparities with a Reducing Social Inequalities strategy, which aims to build Māori capacity.

It is clear that indigenous poverty in the Commonwealth is widespread and substantial and is linked to many other factors, including racism, lack of empowerment, invisibility, education, health, levels of employment and access to/control of land.

In the preamble to CEDAW, governments were: "Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs". This is especially true for indigenous women, who in both developing and developed countries generally suffer from higher levels of poverty than indigenous men and their counterparts in the dominant society. Poverty often reduces an indigenous woman's access to health care and education and other opportunities. Women suffering from ill health, widows and the elderly are particularly vulnerable to poverty and are often the poorest of the poor, since they have far fewer avenues for earning a living.

Landlessness is one of the main causes of poverty amongst indigenous peoples, particularly indigenous women, making land rights critical to the alleviation of indigenous poverty.

Many indigenous women, while playing a significant role in the traditional economies of their communities, are not part of the cash economy. They are therefore dependent on their husbands, sons or male relatives for money. In times of economic hardship, indigenous women are particularly prone to poverty.

The importance of indigenous women's "non-economic activities" to the indigenous community as a whole was stressed in the Beijing Declaration of Indigenous Women, 1995:

The non-economic activities of indigenous women have been ignored and rendered invisible [by big industries and agribusiness corporations] although these sustain the existence of indigenous peoples. Our dispossession from our territorial land and water base, upon which our existence and identity depends, must be addressed as a key problem. para. 12

Poverty can often lead indigenous women into prostitution, with the attendant risk of being infected with HIV/AIDS.

While there are strong links between poverty among indigenous women and education and health (see below), there is an increasingly important link between poverty among indigenous women and landlessness.

Women and land

Landlessness is one of the main causes of poverty amongst indigenous peoples, particularly indigenous women, making land rights critical to the alleviation of indigenous poverty. Traditionally, many indigenous peoples subsisted on the land. However, with this land increasingly being designated part of conservation or protected areas, or being logged or mined, many indigenous peoples, including women, are becoming reliant on agricultural labour for their livelihoods.

Development projects are not the only cause of landlessness among indigenous peoples. Indigenous peoples have also been displaced from their traditional lands by conflict. For example, due to the conflict in Rwanda in 1994, many Twa now live as internal refugees and have been forced to enter the cash economy. Indigenous women were the most affected by the ethnic conflict in the country. The loss of husbands, sons and uncles to the fighting left many Twa women extremely vulnerable to poverty.

The most vulnerable Jumma women in the Chittagong Hill Tracts (CHT), Bangladesh, are the poorest, and the poorest Jumma women are the landless refugees, i.e. those who were displaced when the Kaptai hydro-electric dam was built, those who were forced off their lands by the military and Bengali settlers who migrated to the CHT between 1978 and 1983 and those hundreds of thousands of Jummas who fled to India for security due to the militarisation of the CHT.

Demilitarisation of the CHT would automatically increase security for Jumma women, and the return of land to the Jumma would reduce the overall poverty in the CHT, not just among the landless women.

Any measures to end discrimination against indigenous women with respect to land rights, such as issuing individual titles to women, must be considered in the light of indigenous strategies to gain recognition of their collective land rights as a necessary condition for the preservation and development of their identity and the social, economic and cultural survival of their communities.¹⁸ Moreover, indigenous peoples, including women, want to be involved in all stages of development projects in their traditional habitats – they want to decide how and when to develop and in the process they do not want to give up their indigenous identity.¹⁹

Wage labour

Indigenous peoples encounter two kinds of problems upon becoming wage labourers. Firstly, they are discriminated against in terms of wages. Indigenous peoples, including women, generally earn far less than their counterparts in the dominant society. For example, Twa women in Uganda are paid less than 50 cents a day, 50 per cent less than non-Twa women (Jackson, 2003). Similarly, research done among the Ogoni in Nigeria demonstrates that “the incidence of poverty in Ogoni is higher among female adults than among male adults ... women’s incomes, on average are about 50 per cent of men’s incomes” (Naanen, 2003).

While article 11 of CEDAW states that parties “shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in

Without land or collateral it is extremely difficult for indigenous peoples to get any kind of credit. Few indigenous people, particularly women, have access to micro credit schemes to assist them in times of difficulty.

particular: (d) The right to equal remuneration”, it is equally important that States take measures to eliminate discrimination against indigenous peoples in the field of employment in order to ensure equality of all peoples.

Secondly, where the cash economy and wage employment predominate among indigenous peoples, as in Australia, unemployment makes for poverty. In 2000, the unemployment rate for Aboriginals was 17.6 per cent, more than twice the 7.3 per cent rate for non-indigenous Australians (Jones, 2003). A similar scenario exists in New Zealand, where in 1995 the Māori unemployment rate was 15 per cent, significantly higher than that of the majority population (Ministry for Māori Development, 1998).

Credit and savings

Without land or collateral it is extremely difficult for indigenous peoples to get any kind of credit. Few indigenous people, particularly women, have access to micro credit schemes to assist them in times of difficulty.

Article 13 (b) of CEDAW, which urges States to give women equal rights to “bank loans, mortgages and other forms of financial credit”, and article 14, which addresses the “particular problems faced by rural women”, and which urges States to ensure they have equal access to “agricultural credit and loans”, have little meaning for indigenous women who are facing a financial crisis.

Trafficking

With the loss of land, and hence their ability to sustain themselves, some indigenous women are being sold as labourers to other continents. In Sri Lanka, young Wanniyala-Aetto (Veddha) women who have been removed from their traditional forests and who are now living in government rehabilitation villages are sold as contract domestic workers to employers in the Middle East for as little as SL Rupees 7,000 per woman. It goes without saying that once abroad, many of these women face sexual abuse from their employers or end up in brothels (Stegeborn, 2002:11–12).

Traditional knowledge

The loss of land is also often accompanied by a loss of traditional knowledge. This loss has impacted most on women, since indigenous women are the custodians of much of the traditional ecological knowledge (Sen, 2002).

In the section on 'Actions to be taken' of the Outcome Document, paragraph 71(a) urges States to: "Consider adopting, where appropriate, national legislation consistent with the Convention on Biological Diversity to protect the knowledge, innovations and practices of women in indigenous and local communities relating to traditional medicines, biodiversity and indigenous technologies".

It is critical that the traditional ecological knowledge of indigenous women is preserved and utilised in the management of natural resources and the preservation of biodiversity.

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Customary law

Article 14 of CEDAW, which addresses the "particular problems faced by rural women", urges States to ensure rural women have "equal treatment in land and agrarian reform as well as in land resettlement schemes".

While not all customary practices are favourable to indigenous women – in many developing countries in the Commonwealth, indigenous women are discriminated against by customary land tenure systems (e.g. the Maasai in Kenya) – on the whole, non-traditional land tenure systems are disadvantageous to indigenous peoples, in particular women, thus further threatening their land security.

In some traditional societies, such as the Twa of Uganda, women have access to resources in their own right and not as a consequence of their relationships with men. However, Twa women are increasingly losing opportunities for access to land, either because they have lost land due to the conflict in Rwanda or because the norms of the majority community (statutory land tenure practices) have influenced customary practice.

... indigenous women are not only routinely less educated than indigenous men, they are also less educated than their female counterparts in the dominant society.

Indigenous consent

It is now generally recognised that no decisions directly relating to indigenous peoples' land rights and interests should be taken without their "informed consent".²⁰ In 2000, the Committee on the Elimination of Racial Discrimination recognised indigenous peoples' right to "effective participation ... in decisions affecting their land rights, as required under article 5(c) of the Convention and General Recommendation XXIII of the Committee, which stresses the importance of ensuring the 'informed consent' of indigenous peoples".²¹ In 2001, the UN Committee on Economic, Social and Cultural Rights recommended that Colombia "ensure the participation of indigenous peoples in decisions affecting their lives. The Committee particularly urges the State party to consult and seek the consent of the indigenous peoples concerned ..."²²

2 Education

Article 10 of CEDAW states that parties "shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education ..."

The Outcome Document, Beijing +5, went further and stated in 'Actions to be taken', that governments should: "With the full voluntary participation of indigenous women, develop and implement educational and training programmes that respect their history, culture, spirituality, languages and aspirations and ensure their access to all levels of formal and non-formal education, including higher education" (para. 95 (e)).

There are two issues of concern to indigenous peoples with regard to education: firstly, are their children getting an education? And secondly, if so, is it an education that is culturally sympathetic and empowering, as well as assisting their survival in majority society? Of particular concern is the question: are indigenous girls getting an education and, if so, is it appropriate?

A cursory examination of the levels of education among indigenous women in a selection of Commonwealth member States shows that indigenous women are not only routinely less educated than indigenous men, they are also less educated than their female counterparts in the dominant society.

In India, the enrolment rate for Scheduled Tribal children in 1997–98 was only 66 per cent nationally, and only 53 per cent among girls (Sujatha, 2003). More seriously, there is a high rate of absenteeism (see next section). Despite a strong and quite successful national drive for girls' education in India since then, literacy rates among Adivasi girls over the age of seven remain extremely low. They averaged 18.2 per cent in 1991 and were as low as 4.4 per cent in Rajasthan in that year. In 2001 it was still reckoned that over three quarters of Scheduled Tribeswomen were illiterate (Ministry of Tribal Affairs, India, 2001).

In the Federally Administered Tribal Areas (FATA) of Pakistan, tribal Pushtun women suffer from the highest levels of poverty, illiteracy and poor health not only in Pakistan but in the whole of South Asia, with literacy rates as low as 1 per cent (Bibi, 2002: 1). This is one of the lowest literacy rates in the world. The overall literacy rate for tribals in FATA is 6.38 per cent (ibid: 19). The weight of religious and cultural tradition against women's education is so great in FATA that it will be some time before equity of educational achievement between the sexes is attained.

Drop-out rates

Article 10(f) of CEDAW urges States to ensure “the reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely”.

Traditionally, indigenous children, especially girls, have a high drop-out rate from school. In India, for example, the drop-out rate for Scheduled Tribal children in 1997–98 ranged from 47.7 per cent in Nagaland to 76.8 per cent in Orissa, with nine states seeing rates of over 60 per cent and figures normally worse for girls than boys (Sujatha, 2003: 40–41). There are multiple reasons for absenteeism among indigenous children on the whole (see below), but the main reason why girls so frequently drop out is because they are required to help their parents at home. In many Commonwealth African countries, indigenous parents continue to prefer to spend their limited resources on ensuring that boys get an education at the expense of girls, on the grounds that the girls will marry, have

In most Commonwealth member States, the public education that is being provided for indigenous peoples is unsuitable.

a family and be supported by their husband.

Generally, the proportion of indigenous girls at secondary school falls dramatically. In many Commonwealth African countries, there are very few indigenous girls in tertiary education.

Wider effects of education

As for all women, education is not just about learning, it is about creating opportunities and it is a major tool of empowerment for indigenous women. Moreover, indigenous women play a crucial role in the education of young children, including the transfer of traditional knowledge. Indigenous women are also responsible for educating their children in health issues, both traditional and modern.

As Richard Bourne, in his CPSU report 'Invisible Lives', writes:

It is impossible to overstate the significance of girls' education not only for their own rights, health and opportunities, but for their children and communities. Improved girls' education is associated with smaller family size, enhanced well being and reduced poverty, although it can be culturally disruptive.

2003:33

Culturally sensitive education

Going beyond school attendance is a debate about the type of education that is available to indigenous peoples and the degree of participation and empowerment it offers. Most indigenous parents are looking for a type of education that respects their own language, culture and traditions while assisting youngsters and the community to negotiate successfully with the majority society.

In most Commonwealth member States, the public education that is being provided for indigenous peoples is unsuitable. In Guyana, the National Development Strategy, 2000, concludes:

Despite the best intentions, the result has been that education has a non-traditional focus that may not be applicable to community development.

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It is increasingly being acknowledged that indigenous peoples require an education that is culturally sensitive to their specific needs and worldview, and that the current content of most national curricula poses multiple disadvantages for indigenous children.

For example, research undertaken in Botswana reveals that the failure of the education system to take into account the linguistic, cultural, social and economic barriers to learning for Basarwa (San) children is underpinning low enrolment rates and high drop-out rates. The children are being held back because they do not speak Setswana, the national language and language of the schools. Moreover, what they are being taught bears little relation to their own worldview (Pridmore, 1995).

Research done amongst First Nations in Canada has revealed that the national education system has had the effect of diminishing children's respect for their own cultures and identity and setting up psychological confusion and educational failure. A study in two Innu communities in Labrador shows that most Innu have had almost entirely negative experiences with schools and teachers (Samson, 2001). Many Innu children, of both sexes, have been physically and sexually abused by priests and teachers, and made to feel ashamed of their identity and language.

The very nature of most non-traditional education systems – conducted in school rooms, by designated teachers, at regular hours each day – is anathema to most indigenous traditions, where traditionally education was largely an informal process, undertaken by the parents and grandparents, that provided the young with specific skills, attitudes, knowledge and values required to function in everyday life. Inevitably, where formal education is strange and where indigenous children may find themselves and their traditions disparaged, there will be a huge drop-out rate.

3 Health

Article 12 (2) of CEDAW states: "States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis

... the health of indigenous peoples remains far lower than the majority population in both developed and developing countries.

of equality of men and women, access to health care services, including those related to family planning”.

In this context, the CEDAW Committee has advised States that “special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, [including] ... indigenous women”.²³

However, despite the suggestions of the Committee and the WHO declaration on the health and survival of indigenous peoples in 1999, the health of indigenous peoples remains far lower than the majority population in both developed and developing countries. It was noted in a statement to the UN Commission on Human Rights in April 2001 by Jacqueline Sims, WHO Focal Point on the Health of Indigenous Peoples, that:

... Indigenous everywhere have generally higher morbidity and mortality patterns than other population groups; lower life expectancy; and higher infant and child mortality rates. Basic services such as water, sanitation, transport and energy – all strongly linked to health status – tend to be less frequently available to indigenous communities.

In the same statement, WHO noted the “dearth of reliable data and information on indigenous peoples’ health”, impeding a national and global understanding of the range and extent of health issues affecting them. This information gap is obstructing regional and national efforts to improve the health of indigenous peoples’, as called for in WHO Resolution 53.10, May 2000.

The statement goes on to say that the “common denominators linking the types of ill-health experienced by indigenous peoples everywhere are poverty and marginalisation, exacerbated by a lack of access to culturally competent health services”.

According to indigenous peoples, however, the causes of poor health are more complex and interrelated. In May 2002, the Permanent Forum was told that the acute health needs of indigenous peoples cut across socio-economic boundaries and that the underlying causes of poor health were multiple, including colonisation, homelessness, poor housing, poverty, lack of reproductive health rights, domestic violence and addiction. The Forum was told that health care must be envis-

aged from an indigenous perspective, encompassing mental, physical and spiritual health, and that there was a direct relationship between land use and indigenous health. Moreover, it was emphasised that indigenous women and children had special needs, including expanding immunisation and combating domestic abuse and addiction.²⁴

A similar conclusion was reached by the Standing Committee on Health and Community Care in the legislative assembly of the Australian Capital Territory, which carried out an inquiry into indigenous health in Canberra in 2000–2001. It concluded that, while health was the focus of its investigations, the committee “could not help but see the extent of Indigenous people’s disadvantage; disadvantage which runs through all facets of their lives”. The Committee stated:

Health is tied in to homelessness, poor housing, high rates of incarceration, high rates of alcohol and drug abuse, domestic violence and dependency.²⁵

Similar conclusions were expressed in ‘The Health of Indigenous Peoples: The Kuching Statement for Action’, adopted at the 6th World Rural Health Congress, Spain, 2003.²⁶

While it is impossible to disaggregate the causes of ill health for indigenous peoples, it is nevertheless important to try and locate the causes of indigenous women’s ill health and their special needs in order to inform regional and national efforts to improve their health. In general, indigenous women suffer from worse health than indigenous men and their female counterparts in the dominant society. There are high levels of maternal mortality, high rates of HIV/AIDS, domestic and state violence, poor access to health care and health risks associated with some traditional cultural practices.

Maternal mortality

Maternal mortality rates among indigenous women in the Commonwealth are far higher than those among the dominant female population, in both developing and developed countries.

In Malaysia, 25 out of the 42 Malaysian mothers who died during delivery in 1994 were Orang Asli. This meant that an

Orang Asli mother was 119 times more likely to die in child-birth than another Malaysian (Nicholas, 2000).

The maternal mortality rate for indigenous women in Australia in 1994–1996 was 35 per 100,000 live births, more than three times higher than the rate of 10 per 100,000 for non-indigenous women. While this rate reflects the higher rate of confinements among indigenous women, according to the modelled estimates of the World Development Indicators the overall maternal mortality ratio in Australia in 1995 was 6 per 100,000 live births, nearly six times lower than the indigenous maternal mortality rate (Jones, 2003:85–86).

HIV/AIDS

In remote areas many indigenous women have little or no education about birth control or sex education, including information about HIV/AIDS. Rape also increases the risk of HIV/AIDS among indigenous women. Perpetrators of the armed conflict in Rwanda are reported to have sexually abused Twa women in Uganda, contributing to an increase in HIV/AIDS infection in the community.

Article 6 of CEDAW states: “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. Despite the Convention, prostitution amongst indigenous women is actually growing, increasing the risk of HIV/AIDS infection. Indigenous women are often reduced to prostitution due to poverty.

There is evidence that HIV/AIDS also spreads where development projects, bringing in male workers from elsewhere with cash resources, fuel prostitution among young indigenous women. This has happened on a significant scale in West and Southern Africa; there has been prostitution among Twa women with male workers working on the Chad-Cameroon oil pipeline in Cameroon, and among the Ogoni with oil workers in the Niger Delta, Nigeria. In Nigeria, HIV/AIDS infection rates are reportedly higher in the oil-producing areas than in the rest of the country.²⁷

Domestic and state violence

Paragraph 69 (h) of the Outcome Document, 'Actions to be taken' urged governments to: "Take concrete steps, as a priority and with their full and voluntary participation, to address the impact of violence on indigenous women ..."

Indigenous women across the Commonwealth experience two forms of sexual violence: domestic and state violence. Like their female counterparts in the dominant society, they experience sexual violence from members of their own community. The Toledo Maya women in Belize, for example, are reported to suffer high rates of domestic violence. There is little a Maya woman can do to rectify her situation. As one commentator writes: "Maya women who attempt to leave their abusers may find themselves completely isolated if they try to support a family as a single parent, and are culturally discriminated against by other families" (Teul, 2003).

The high rates of alcoholism among the indigenous male population in many Commonwealth countries (often explained as a response to the cultural collapse of their traditional communities) is partly responsible for the increase in incidents of domestic violence within indigenous communities.

Article 5 of CEDAW reads: "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".

Despite the Convention, indigenous women continue to suffer from traditional tribal practices that clearly denigrate them. Tribal Pushtun women in FATA, Pakistan, are perhaps the most vulnerable of all indigenous women in the Commonwealth to domestic violence as a result of traditional practices. Indeed, as one commentator writes: "Domestic violence is regarded as the main entertainment of village life, and women routinely display bruises and scars they have received at the hands of their husbands" (Bibi, 2002:22).

Though most tribal peoples in FATA are Muslim, the understanding and application of Islam is often overlaid by

Indigenous women across the Commonwealth experience two forms of sexual violence: domestic and state violence.

Indigenous women also face sexual violence from members of non-indigenous communities. This is often the case during times of ethnic conflict.

tribal norms and culture. For example, the 'honour' killings, for which FATA is infamous, have nothing to do with Islam. In tribal areas, a woman will be killed to save the family honour if she is suspected of contact with a man outside of her family, or upon refusal to marry a man chosen by her family.

Indigenous women also face sexual violence from members of non-indigenous communities. This is often the case during times of ethnic conflict. For example, as previously mentioned, during the ethnic conflict in Rwanda, Twa women in Uganda suffered sexual violence from the perpetrators of the conflict.

Indigenous women are also the victims of sexual violence by the State. This is often the case in countries or regions that are highly militarised. The Jumma women in the CHT, Bangladesh, which has been militarised since 1975 (in 1991, the ratio of security personnel to Jumma peoples was 1:10), are particularly vulnerable to sexual violence by the security forces (Chakma, 2002). Jumma women who have been raped by security personnel experience social stigma and are often ostracised by their community as a result, leaving many young women unmarried. This all too often leads to poverty.

It should be noted that both Jumma men and women face continuing human rights violations by the security forces and Bengali settlers in the CHT.²⁸

Poor access to health care

Remoteness is a serious factor inhibiting indigenous women's access to health care. For example, Amerindian women living in rural areas in the interior of Guyana live far away from any health facilities and transport is poor. Breast cancer is currently on the increase amongst them due to a lack of adequate cancer screening, caused in part by the remoteness of many Amerindian villages (Rodrigues, 2003:5).

Traditional cultural practices

There is a cultural conflict between scientific medicine and indigenous traditions, where illness is seen as a matter of the spirit, requiring holistic treatment. Indeed, indigenous peoples are still more likely to seek health assistance from traditional

healers than from those trained in scientific medicine. In Tanzania, for example, there were between 30,000 and 40,000 traditional medical practitioners in 1982, compared with only 600 trained doctors (Indigenous Information Network, 2001). In India, where people from Scheduled Tribes make use of shamans and healers, “medical personnel are contacted as a last resort” (Ministry of Tribal Affairs, India, 2001:95).

While most traditional practices are harmless, some are dangerous. This is the case with the practice of female genital mutilation among the Pokot and other indigenous communities in Kenya.

4 Political Participation and Representation

Article 7 of CEDAW reads: “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country ...” The Beijing +5 Outcome Document, ‘Actions to be taken’, urges governments to: “Address the barriers faced by women, particularly indigenous and other marginalised women, in accessing and participating in politics and decision-making ...” (para. 66(b)) and to: “Apply and support positive measures to give all women, particularly indigenous women, equal access to capacity-building and training programmes to enhance their participation in decision-making in all fields and at all levels” (para. 95(j)).

Traditionally, Commonwealth governments have not seen their accountability to indigenous peoples as of much importance. Few MPs in Commonwealth countries – with the exception of some Māori MPs in New Zealand, some Adivasi MPs in India and the rather special case of Fiji Islands (where the native Fijians are in the majority) – are statutorily or in reality accountable to indigenous electorates. Indigenous electors are generally outvoted by larger groups of constituents, while indigenous MPs also are comfortably outvoted in assemblies and parliaments (except where State governments have been defined to help indigenous groups, as in Nunavut in Canada).

Political representation is one way of measuring the public profile of disadvantaged groups. While there are an increasing number of indigenous elected representatives on local govern-

While there are an increasing number of indigenous elected representatives on local government bodies, relatively few indigenous peoples have been elected to regional or national government bodies.

ment bodies, relatively few indigenous peoples have been elected to regional or national government bodies. In Australia, for example, there are no indigenous politicians in Australia's House of Representatives, although there is one indigenous man in the Senate. There is currently one indigenous woman Commissioner serving on the ATSIC Board.

Generally, as with indigenous peoples on the whole, indigenous women have unequal opportunities to political participation and representation. While they traditionally play a critical role in decision-making processes at the informal/community level, they rarely participate in politics at the formal/national level. Indigenous feminists argue that this is the result of a patriarchal system imposed on indigenous communities which is inherently discriminatory towards women and which prevents women from taking up political leadership roles despite their traditional role in informal politics. Traditional governance is characterised by an emphasis on participation of all community members (including women) in achieving consensus and consulting members for their knowledge and leadership on specific issues (Fox, 2002:6).

Even in Canada, where indigenous women enjoy far greater participation in the political processes than in other Commonwealth countries, they still find it difficult to participate in formal or national decision-making processes (ibid).

Funding agencies have traditionally ignored indigenous governance practices. They have failed to appreciate the scope and extent of consultation required in indigenous communities (ibid:7). Emphasising the importance of formal talks over community participation specifically excludes the participation of indigenous women, which is highly concentrated outside formal talks.

In addition, indigenous women have difficulty accessing decision-making processes, not only because they are indigenous and because of their gender, but because they belong to a numerical minority. Their numerical status and the prejudice of the majority non-indigenous community often prevails against indigenous peoples getting elected to public bodies.

Moreover, given the poor statistical data on indigenous peoples in many Commonwealth countries, some indigenous peoples of both sexes are not included on the electoral roll and therefore cannot exercise their right to vote.

Traditionally, tribal Pushtun women in FATA, Pakistan, have not been allowed to vote or have been discouraged from doing so. Tribal self-government has therefore been disadvantageous to Pushtun women. There has never been a tribal woman from FATA represented in the National Assembly or Senate in Pakistan.

Conclusion

This paper demonstrates that the Commonwealth needs to come into line with current international thinking on the rights of indigenous peoples. It also reveals that the Commonwealth is lagging far behind current efforts by the UN to address the specific issues facing indigenous women. As such, it encourages Heads of Government to make a commitment to the promotion and protection of the rights of indigenous peoples by including a statement of support in the 2005 Commonwealth Declaration.

Land security and management over traditional resources must be at the heart of any national programmes designed to alleviate poverty amongst indigenous women. However, any measures to end discrimination against indigenous women with respect to land rights, such as issuing them with individual titles, must be considered in the light of indigenous strategies to gain recognition of their collective land rights (see above). In other words, all national programmes directed at redressing the poverty facing indigenous women must recognise the importance of collective land for indigenous women.

If indigenous rights to education are to be realised, national governments must show more respect to the peoples whose children are to be educated. The educational process must be more of a partnership with communities and parents, and indigenous teachers must do more of the teaching.²⁹ Indigenous peoples are also calling for an increased role in the provision and development of health care. Community controlled health organisations offer the best chance of improving the health of indigenous men, women and children. They would offer culturally appropriate services that indigenous peoples would want to use. Moreover, indigenous peoples want their health care to be holistic in outlook, taking into account

Land security and management over traditional resources have to be at the heart of any national programmes designed to alleviate poverty amongst indigenous women.

the intricate links between health and other issues they face. As with education, the first task in tackling health problems among indigenous peoples is to raise their visibility. This can only be done through the dedicated collection and collation of statistical data.³⁰

At the heart of the indigenous rights movement is the demand for recognition of the right of indigenous peoples to self-determination, including the right to freely determine their political status. For the majority of indigenous peoples in the Commonwealth, self-determination is not about separatism, but about autonomy or self-government.³¹ Indigenous self-determination is a pre-requisite for the exercise of their spiritual, social, cultural, economic and political rights, as well as their practical survival.³²

Notes

- 1 The largest concentration of indigenous peoples in the Commonwealth is in India, where there are approximately 85 million Adivasis or Scheduled Tribes.
- 2 This project is funded by the European Commission and the UK Department for International Development. For more information, see the CPSU website: www.cpsu.org.uk
- 3 Beijing Declaration of Indigenous Women, Fourth World Conference on Women.
- 4 1993 was declared the International Year of the World's Indigenous People.
- 5 The World Bank is currently in the process of revising this policy.
- 6 For the full text of the Draft Declaration see: <http://www.unhchr.ch/indigenous/groups-02.htm>
- 7 There are many arguments over the wording of the Draft Declaration (to date only two of the 45 articles have been accepted). The Commonwealth States of Australia, Canada and the UK are at the forefront in opposing, along with the United States, the inclusion of the term 'self-determination' in the Draft Declaration. For more information on the Commonwealth and the Draft Declaration see Whall, forthcoming 2005.
- 8 Two of the current members of the 16-member forum are from a Commonwealth country.
- 9 For more information on the Commonwealth Association of Indigenous Peoples see the CPSU website at: <http://www.cpsu.org.uk/projects/CAIP.HTM>
- 10 Sri Lanka is presently considering accession to ILO 169.
- 11 For more information on Nunavut, see Dahl, Hicks and Jull, 2000.
- 12 In 2002, when the UN Committee monitoring the Convention on the Elimination of Racial Discrimination considered Canada's periodic report regarding domestic implementation, aboriginal issues were placed high on the agenda and members expressed much concern about what was referred to as "Canada's most glaring human rights problem". Amongst the concerns raised, special attention was paid to Ottawa's continuing effort to extinguish Aboriginal Title, which violates both Canadian Supreme Court of Canada decisions and international human rights law.
- 13 See 'Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia', 19/04/2000, CERD/C/304/Add.101, 19 April 2000.
- 14 See Note by the Secretary General, 11 July 2002, A/57/204.
- 15 The Beijing Declaration of Indigenous Women was signed by 118 indigenous groups from 27 countries worldwide. See also the Declaration of the International Indigenous Women's Forum, adopted in New York at Beijing +5 in 2000.

- 16 National Planning Commission, India.
- 17 Ministry of Māori Development website, *Statistics New Zealand*.
- 18 In 1997, the Committee recommended to the Government of Australia that it “ensure women’s equal access to individual ownership of native land”. This recommendation was seen by many indigenous peoples as undermining rather than strengthening the human rights of indigenous women. See Kambel, 2004:3.
- 19 See Part VI, Land and Resources, of the Draft Declaration on the Rights of Indigenous Peoples.
- 20 General Recommendation XXIII (51) concerning Indigenous Peoples Adopted at the Committee’s 1235th meeting, on 18 August 1997. UN Doc. CERD/C/51/Misc.13/Rev.4, at para. 4(d).
- 21 Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia. 24/03/2000. CERD/C/56/Misc.42/rev. 3, at para. 9.
- 22 Concluding Observations of the Committee on Economic, Social and Cultural Rights: Colombia. 30/11/2001. E/C.12/Add. 1/74, at para. 33.
- 23 Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24, article 12 of the Convention on the Elimination of All Forms of Discrimination against Women – women and health (1999).
- 24 UN Press Release, HR/4597, 20 May 2002.
- 25 Aboriginal and Torres Strait Islander Health in the ACT, report no 10 of the Standing Committee on Health and Community Care, August 2001, p. 86.
- 26 For a copy of the Kuching Statement see:
http://www.cpsu.org.uk/projects/indigenous/indig_advoc.htm
- 27 Information supplied by Ledum Mitee, President, Movement for the Survival of the Ogoni People (MOSOP), at a CPSU Consultation on the ‘Socio-Economic Rights of Indigenous Peoples in the Commonwealth’, London, March 2003.
- 28 For a fuller account of the current issues facing the Jumma people of Bangladesh, see Roy, 2002.
- 29 See Part IV, article 15, Education, of the Draft Declaration on the Rights of Indigenous Peoples.
- 30 See Part V, article 24, Health, of the Draft Declaration on the Rights of Indigenous Peoples.
- 31 Of the many indigenous groups in the Commonwealth that are claiming the right to self-determination, only the Nagas in North-east India are claiming the right to secession, from India. For more information on the Nagas, see:
http://www.cpsu.org.uk/projects/DELHI_P2.HTM
- 32 See Part V, Participation and Development, and Part VII, Self-Government and Indigenous Laws, of the Draft Declaration on the Rights of Indigenous Peoples.

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