
Appendix 1

Pan-Commonwealth Expert Group Meeting on Gender and Human Rights

Introduction

This Appendix contains a ‘mini-report’ of a pan-Commonwealth Expert Group Meeting on Gender and Human Rights, held at Marlborough House (Commonwealth Secretariat Headquarters in London), 17–19 February 2004.

The commissioned and background papers contained in the main body of this publication were the basis of discussion during the two-and-a-half day meeting. Although the Expert Group is not a decision-making body of the Commonwealth Secretariat, its members were asked to comment in a personal and professional capacities on the seven critical issues before them. The issues had been identified by Commonwealth Heads of National Women’s Machineries at their meeting held in the wings of the United Nations Commission on the Status of Women in March 2003, as part of their brainstorming on the new Commonwealth Plan of Action for Gender Equality 2005–2015.

The format of the Expert Group meeting is reflected in the Agenda below, and a list of Experts who participated is also given. Discussants were asked to comment on the papers presented, and a general discussion followed – either in plenary or in small groups. There were seven critical areas to address and limited time allocated to each area, so discussion was focused on generating agreement on some of the critical issues relevant for Commonwealth action, with recommendations for the human rights section of the new Plan of Action for Gender Equality. All the key issues addressed were finally included in the Plan of Action, and this was adopted during the 7th Women’s Affairs Ministers Meeting held in Fiji in May–June 2004. The final text of the Human Rights section of the Plan of Action for Gender Equality 2005–2015 can be found in Appendix II of this book.

We have included below the Discussants’ comments, and have tried to capture the key recommendations made by Experts during the meeting. While the Commonwealth Plan of Action has not ‘adopted’ all of these recommendations, we include them as they may be useful for policy-makers and practitioners to draw upon in the course of their work.

Meeting Agenda

Day 1: Tuesday 17 February

- 08.30–09.30 Coffee and registration of participants
- 09.30–10.30 Welcome and opening remarks
Nancy Spence, *Director, Commonwealth Secretariat Social Transformation Programmes Division (STPD)*
Introductions of all participants
- 10.30–11.00 Overview on gender and human rights in the Commonwealth
The Plan of Action on Gender and Development to be agreed at the 7th Women's Ministerial Meeting in June.
'What have we achieved, where do we need to go?'
Rawwida Baksh, *Deputy Director, Head of Gender, STPD*

Expert Group Meeting: process, objectives and intended outcomes
Cindy Berman, *Gender and Human Rights Programme, STPD*
- 11.00–11.15 *Coffee break*

Session 1: CEDAW: Achievements and Challenges

- 11.15– 13.00 CEDAW: implementation of policies and legislation – progress, achievements, constraints and key priorities
Presentation: **Shanthi Dairiam**, *International Women's Rights Action Watch – Asia Pacific*
Discussant: **Betty Mould-Iddrisu**, *Director, Legal and Constitutional Affairs Division, COMSEC*

Plenary discussion
- 13.00–14.15 *Lunch in the Blenheim Saloon*

Session 2: Gender-based Violence

- 14.15 –15.15 Gender-based violence: overview of Commonwealth activities over the past decade; integrated approaches to gender-based violence; and recommendations for future action
Presentation: **Elsie Onubogu**, *Gender and Conflict Specialist, COMSEC*, on Tina Johnson's paper
Discussants: **Justice Athaliah Molokomme**, *High Court of Botswana*;
Professor Christine Chinkin, *London School of Economics (LSE), UK*
- 15.15–16.00 Working groups

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- 16.00–16.15 *Tea/coffee break*
- 16.15–17.30 Plenary report-back from Working Group Session 2
- 18.00–20.00 *Reception: Blenheim Saloon*
Participants and some Commonwealth Secretariat colleagues

Day 2: Wednesday 18 February

Session 3: Culture, the Law and Gender

- 09.00–10.30 Presentations:
- 1 Overview of key issues in culture, the law and gender
Catherine Muyeka Mumma, *Senior Counsel and Human Rights Commissioner, Kenya*
 - 2 Conceptual/theoretical framework
Lisa Fishbayn, *legal consultant, academic, Harvard University*
- Discussants: **Maiava Visekota Peteru**, *legal and human rights expert, Pacific region*; **Tracy Robinson**, *gender specialist, Caribbean region*
- 10.30–11.30 Working groups plenary report-backs
Coffee break included

Session 4: Trafficking and Migration

- 11.30– 13.00 Seeking rights: situating the trafficking in women – a human rights approach
Presentation: **Meena Shivdas**, *gender specialist and consultant, Asia region*
Discussants: **Lin Lean Lim**, *Director, Gender Promotion Programme, International Labour Organization*
Jarvis Matiya, *Chief Programme Officer, Human Rights Unit, COMSEC*
Plenary discussion
- 13.00 –14.15 *Lunch in the Blenheim Saloon*

Session 5: Indigenous Peoples' Rights

- 14.15–15.15 Indigenous peoples' rights in the Commonwealth – with a focus on indigenous women.
Presentation: **Dr Helena Whall**, *Commonwealth Policy Studies Unit (CPSU), UK*
Discussant: **Maryam Bibi**, *specialist and activist on Asian indigenous women*
- 15.15–15.30 *Tea/coffee break*
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Session 6: Land and Property Rights

- 15.30–16.30 Key gender issues in land and property rights
Presentation: Lucia Kiwala, *UN-HABITAT*
Discussant: Katalaina Sapolu, *Legal and Constitutional Affairs Division, COMSEC*
- 16.30–17.30 Working groups to discuss Session 5 and 6
- 17.30–18.00 Plenary report-back from working groups

Day 3: Thursday 19 February

Session 7: Gender and Human Rights in the Life Cycle

- 09.00–10.30 Gender issues in the life cycle
Presentation: Lin Lean Lim, *Director, Gender Promotion Programme, International Labour Organization*
Discussant: Fiona Clarke, *Help Age International*
Plenary discussion
- 10.30–10.45 *Coffee break*

Session 8: Brainstorming and Recommendations

Identifying 'Niche' Areas for the New Commonwealth Plan of Action

- 10.45–11.45 Working groups: Discussion to put forward recommendations on focus areas in gender and human rights for the Commonwealth Plan of Action on Gender and Development 2005–2015.
- 11.45–12.45 Plenary report backs from working groups Session 8 and general discussion
- 12.45–13.00 Closing remarks, thanks and farewell to participants
- 13.00–14.00 *Final lunch in the Blenheim Saloon*

Notes from the Discussion and Recommendations

Session 1: CEDAW: Achievements and Challenges

Notes from the discussion

CEDAW provides for substantive equality. Although it has been signed by 49 Commonwealth countries, there is still no single country that lives up to the standards set out in the Convention and where implementation is promoted. There is a lack of political will: in some countries this is for cultural reasons; in others it because of limited resources or lack of political mobilisation.

Although all constitutions guarantee equality, they are subject to interpretation and the 'equality' provisions are used in a 'protectionist' way. Women have a right to equality, and governments have an obligation to promote legislation and policies that are more than gender neutral and to remove discriminatory provisions.

The conflict of legal systems within countries has impeded implementation of CEDAW. Implementation has also been hampered by delays. This is so despite the fact that CEDAW provides for the adoption of a policy for the elimination of discrimination without delay.

There are debates about the relevance of CEDAW to the daily lives of women, and questions are sometimes raised about whether all the articles in CEDAW are relevant to all women.

Access to justice is important and in this regard the Optional Protocol to CEDAW is an important step. However, not enough action has been taken to comply with the proviso of having exhausted domestic remedies and hence use the Protocol.

The problem of multiple discrimination against women was also raised. Women are discriminated against because they are poor or of a different ethnic group, as well as because they are women.

Recommendations

Commonwealth Secretariat

- 1 Promote ratification of CEDAW by those countries that have not become States parties (with the Commonwealth Parliamentary Association (CPA));
- 2 Target countries with a view to eliminating reservations (could be shared with NGOs);
- 3 Develop and share model legislation to incorporate CEDAW principles;
- 4 Use the process of constitutional/legislative reform as a mechanism to integrate CEDAW principles:
 - a. include definition of discrimination, with explanatory recommendation for interpretation of discrimination to avoid misuse;
 - b. develop model legislation for the incorporation of CEDAW (Legal and Constitutional Affairs Division (LCAD));

- 5 Assist States by providing tools/guidelines on reporting on CEDAW;
- 6 Assist States in linking CEDAW reporting to reporting on other human rights instruments and treaties (such as ILO/migrant workers, etc.), as well as on achievement of the Millennium Development Goals;
- 7 Provide assistance to civil society organisations in preparing shadow reports on international human rights instruments, including CEDAW/MDGs/ILO, etc. (with the Commonwealth Foundation);
- 8 Assist with the development of a toolkit for legal advocates to speed up the process for exhausting domestic remedies under CEDAW's Optional Protocol (with Commonwealth Lawyers Association (CLA)/Commonwealth Magistrates and Judges Association (CMJA));
- 9 Provide NGOs with information that will enable reporting back – see (6) above;
- 10 Provide a toolkit for States on different aspects of implementation of CEDAW principles.

Governments

- 11 Commit to human rights by ratifying and implementing UN human rights treaties, especially CEDAW, where this has not already been done;
- 12 Consider removing any reservations to CEDAW;
- 13 See (5).
- 14 Use the general recommendations of CEDAW to assist in implementation.
- 15 Promote CEDAW in all democratic institutions, especially amongst :
 - a. parliamentarians
 - b. public service
 - c. justice system
 - d. private sector
 - e. legal advocates
- 16 Mobilise those at grassroots levels by informing them of their rights and how to take forward cases concerning discrimination (with NGOs);
- 17 Take special measures for affirmative action where required.

Non-governmental organisations

- 18 Undertake gender analysis of political processes, in particular those based on the Westminster process (CPA);

- 19 Women's NGOs to co-operate in a more cohesive way and with other human rights NGOs in reporting on international instruments – see (6);
- 20 Mobilise those at grassroots levels by informing them of their rights and how to take forward cases concerning discrimination (with governments);
- 21 Use reporting mechanisms more fully and also take into account regional instruments and the development of regional courts (with governments);
- 22 Look at new strategies and use the common law jurisprudence from other countries in advocacy work (CCA/CMJA).

Session 2: Gender-based Violence

Discussant comments

by **Christine Chinkin**

Gender-based violence is a cross-cutting theme that is relevant in different ways to all the other topics on the agenda of the meeting.

I have five brief points to make that arise from the excellent background paper. It is also important that the presenter has emphasised violence against women in armed conflict because of the continuum of violence that women experience in this situation, including post-conflict when domestic violence typically increases.

- 1 The definition of gender-based violence includes both violence that occurs exclusively to women and violence that affects women disproportionately. The latter includes disproportionate harm as well as the numbers of women affected by the particular form of violence. We should therefore bear in mind the gender-specific ways women are harmed by violence, including infection with HIV/AIDS and increased vulnerability to poverty (for example, through being unable to leave the home and work or becoming destitute on leaving an abusive relationship, and through prejudicial attitudes towards women being seen as the 'trouble maker' and thus being unable to return to their own families).
- 2 A number of the gender-based forms of violence listed in the paper relate to women's lack of access to property. Implicit also is the way women are perceived as property and are treated as commodities (trafficking) or as the possession of another person to be treated as that person wishes (for example, non-consensual sex in marriage). The linkage should also be made between violence, women as property and unequal access for women to economic and social rights, as enjoyment of economic and social rights militates against the treatment of women as property.
- 3 We should look not only at multiple discriminations but also at intersectional discrimination, that is, at the ways different forms of discrimination intersect and reinforce each other. Intersectionality covers the ways in which violence occurs and its forms (for

example, the targeting of minority or indigenous women for forced sterilisation) and the consequences of that violence (for example, an illegal immigrant woman who is subject to domestic violence is less likely to access the police or other agencies, including medical assistance, because of her vulnerability to deportation; a poorer woman in any society will be less likely to pursue legal remedies than one who has greater access to resources). The Committee on Racial Discrimination (CERD) produced an excellent report on the intersections between racial and gender discrimination before adopting its General Comment No. 25, and the same approach can be taken with respect to all other forms of discrimination such as ethnicity, age, disability, sexuality and class.

- 4 There have been a number of more recent developments with respect to international norms prohibiting violence against women and establishing redress for it. These include:
 - The work of the International Criminal Tribunals for the Former Yugoslavia and Rwanda (ICTY/R) with respect to definitions of sex-based crimes, criminal procedures and protective measures;
 - The inclusion of sex-based crimes of violence within the Statute of the International Criminal Court (ICC) and the potential work of the Court;
 - The jurisprudence of the European Court of Human Rights, in particular the decision in *MC v. Bulgaria* (Case No. 39272/98), 4 December 2003;
 - The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted July 2003, which mainstreams provisions on violence against women throughout.
- 5 In the current geo-political climate human rights are under challenge, for example, in the context of the war against terror. We have seen issues of violence against women manipulated by powerful Western governments for reasons not connected with guarantees of women's rights, for example in justifying the use of military force against the Taliban. The lack of genuine concern for reducing violence against women is shown by alliances with the Northern Alliance in Afghanistan and with other repressive groups/governments. The Commonwealth Secretariat should make a commitment to upholding the priority of reducing violence against women and of non-impunity of perpetrators (zero tolerance) as well as to the non-negotiability of crimes of violence against women in post-conflict peace processes and settlements.

Notes from the discussion

There is a need for a comprehensive definition of gender-based violence. This should refer to the fact that women are most affected, although men and boys are also victims. In addition, gender-based violence is most rampant in conflict and post-conflict situations. UN responses to violence relating to conflict situations are found in the ICTY, ICTR, ICC

and Special Court for Sierra Leone.

Current policies around gender-based violence are inconsistent. CEDAW did not make specific reference to violence, although the CEDAW Committee's recommendation has incorporated this as a form of discrimination.

The Commonwealth Plan of Action promotes work with regional organisations, e.g. the Southern African Development Community (SADC), the development of national plans of action, and the development of a trainer's manual and training of leaders.

Possible national policy measures include:

- 1 Gender-sensitive laws;
- 2 Access to courts and justice;
- 3 Handling of domestic violence cases by law enforcement officers (police, magistrates);
- 4 Focus on negative cultural practices;
- 5 Police responses;
- 6 Men's initiatives;
- 7 Monitoring and evaluation efforts.

Some of the challenges faced in addressing gender-based violence include national frameworks, legal frameworks, traditional practices and religious beliefs.

Other players – such as UN agencies, regional inter-state institutions (Asia-Pacific, Africa, Caribbean, Europe, America) and NGOs – are already undertaking work in a number of important areas, including research, advocacy, policy development, education, protection, legal reform, service delivery, health, monitoring and evaluation and data collection.

Gaps that remain, however, include lack of co-ordination leading to no coherent picture of what is happening and the need for this to be evaluated. There is a need for localisation of policies, for effective national and regional interventions, for an assessment of good and bad practices and for the trickle up and trickle down of good practices and policies.

Recommendations

Commonwealth Secretariat

- 1 Continue to encourage an understanding of and commitment to the Integrated Approach to Eliminating Gender-based Violence by facilitating regional networking among various stakeholders (including the directors of committees set up to implement countries' national plans on violence against women and senior staff of national women's machineries), e.g. through managed e-mail lists;
- 2 Commission research on road mapping (who is doing what on this issue);

- 3 Document and share model laws, national plans of action, effective policies and good practices, e.g. through supporting regional good practice fairs or clinics on advocacy, services and legal frameworks;
- 4 Prepare a study on legal arguments and precedent and compilation as an advocacy tool;
- 5 Support training for personnel at all levels of the justice system, including judges and police officers, and periodic regional meetings for the exchange of experiences;
- 6 Encourage the incorporation by States of zero tolerance for gender-based violence, including no trade-off during post-conflict negotiations;
- 7 Develop educational materials, adaptable to national circumstances, to promote non-violent conflict resolution, respect for others and positive relationships. Governments could be encouraged to make these part of the official school curriculum and of teacher training programmes;
- 8 Work with governments and NGOs in sending and receiving countries to develop strategies to prevent, suppress and punish trafficking in women and girls. This would include ensuring that national legislation addressing the issue protects the human rights of those trafficked.

Governments

- 9 Implement the Commonwealth Secretariat's Integrated Approach to Eliminating Gender-based Violence, endorsed by Ministers Responsible for Women's and Gender Affairs, and incorporate a policy of zero tolerance – see (6);
- 10 If there is no national action plan on violence against women, develop such a plan as soon as possible and set up a national commission or committee that includes senior officials who can influence policy and budget allocation;
- 11 Ratify and implement the relevant human rights treaties where this has not already been done, consider removing any reservations to CEDAW and implement regional agreements;
- 12 Review and revise legislation to incorporate international standards and ensure gender sensitivity, identifying and amending discriminatory or oppressive laws, and enforce national laws against gender-based violence;
- 13 Allocate adequate financial support to address the issue, including the provision of women-friendly services such as shelters and other support for girls and women subjected to violence, in urban and rural areas, as well as medical, psychological and other counselling services and free or low-cost legal aid;
- 14 Ensure women's access to and safety at work through the development of appropriate policies and codes of conduct to address sexual harassment in the workplace, and

create an enabling environment for women's employment – including maternity and paternity leave, child care and transport – through affirmation action;

- 15 Recognise and support the work of NGOs and strengthen their capacity to provide services to women;
- 16 Ensure that gender-sensitive approaches and the promotion of non-violent conflict resolution – see (5) – are incorporated into school curricula and textbooks and are part of non-formal, continuing, adult and community education programmes;
- 17 Support public education campaigns and advocacy to eliminate traditional and cultural practices that constitute gender-based violence;
- 18 Create and fund training programmes to sensitise judicial, legal, medical, social, educational and police and immigrant personnel to the issue, and ensure that there is a gender balance in the composition of the bench, at all levels, and in all other court personnel.

Session 3: Culture, the Law and Gender

Discussant comments

by Tracy Robinson

The language of universalism and cultural relativism cannot capture the complexity of the issues or help us meaningfully imagine solutions. The Commonwealth Secretariat can contribute to changing that discourse to more productive terms. Whatever language we use must apply to the entire Commonwealth and not just developing countries and black and brown peoples. 'Culture' must be visible in all communities.

De jure and de facto

We have often talked about the dissonance between gains in legislation and the *de facto* position of women. But we should never lose sight of how legislation provides and has provided us with opportunities for cultural change.

In the Caribbean, for example, the Caribbean Community (CARICOM) designed model legislation dealing with domestic violence. Caribbean countries considered the model legislation, drafted and debated their own legislation and brokered slightly different arrangements for addressing domestic violence in each country. In Trinidad and Tobago, for instance, the legislation allows the perpetrator to give an 'undertaking' to not commit any further acts of violence as a way of avoiding the more onerous protection order. This does not exist elsewhere in the region. The process of law reform in the Caribbean has therefore produced domestic violence laws that represent negotiations about culture and growing consensus on the need for cultural change.

Additionally, we must create ways of assessing our progress and recognise slow, incremental gains that form part of a larger strategy with many elements. For example, the

Trinidad and Tobago Domestic Violence Act was first enacted in 1991 and substantial revisions were made in 1999. Although the Government has expressed scepticism about lower rates of domestic violence, it is clear that they are significantly lower.

The Commonwealth Secretariat can play a role in providing examples of best practice showing the range of strategies and, importantly, helping to create mechanisms for measuring or evaluating success. Research to make an assessment of what has been accomplished can offer a more realistic impression of this debate about culture and rights.

Women's agency

There is often a fascination with seeing women most where we hear them least. The debate about culture and women's rights will be strengthened if women's agency from inside/within a culture or community is recognised.

All systems that provide openings for the expression of 'cultural dissent' must be encouraged, so access to justice is key. More practically, the Commonwealth Secretariat can contribute by helping to build the capacity of the women's movement. And research is needed to show the genealogy of feminism in all countries.

Cultural conflict

While encouraging cultural dissent, we should be aware of the connection being made between gender conflict and women's security. By that I mean, the research (from the Caribbean at least) increasingly tells us that women engaged in resisting entrenched cultural practices that undermine gender equality may face a greater risk of intra-family violence. There is a tremendous challenge to enable women and keep them safe at the same time.

Notes from the discussion

Arguments in response to the cultural objection to women's human rights include: the fact that patriarchy is a feature of all societies, and that human rights and values are consistent with a wide range of cultural values.

There is a need to combine the best of jurisprudences of the various treaties (no matter their weaknesses) and the best in culture, and take advantage of the momentous transformations taking place to debate and transform culture.

Other issues that were raised include:

- 1 The role of law and judicial precedent in implementing women's human rights;
- 2 The limits imposed on the enjoyment of human rights by low socio-economic status;
- 3 The idea that culture is not necessarily an antithesis or hindrance to human rights, but that there is a need to understand and work with 'cultural structures';
- 4 There are at least two notions of culture, one static, organic and fragile and the other dynamic and shifting.

- 5 Certain factors complicate debates on women, culture and human rights: women as defenders of culture, the colonial legacy and globalisation;
- 6 Though legislative reform and judicial cases are not enough to realise women's human rights, they remain useful strategies and do result in changes over time or in the long term;
- 7 A multiplicity of strategies is needed to make the achievement of women's human rights a reality.

Recommendations

Commonwealth Secretariat

- 1 Support the collection and dissemination of case studies where legislation and court cases have brought about changes;
- 2 Develop ways of measuring the achievements that are being made.

Governments

- 3 Abolish cultural exceptions to laws protecting women's human rights and pass laws that eradicate traditional practices that violate women's human rights. Where there are conflicting law regimes, women must be given the option of opting out of private or customary law into general civil law;
 - 4 Review and revise legislation to incorporate international human rights standards and ensure gender sensitivity, identifying and amending discriminatory or oppressive laws, including discriminatory provisions that take culture into account;
 - 5 Supplement legislative change with educational programmes and use the law reform process to engage cultural communities in the process of reformulating traditional practices to conform to gender equality;
 - 6 Identify cultural leaders and engage with them constructively on gender and human rights. Train local experts within the community, such as health practitioners and midwives, to engage community members in discussion about the cultural legitimacy of practices that negatively affect women;
 - 7 Educate women and provide them with economic options to enable them to make their own choices about traditional practices and cultural norms;
 - 8 Support efforts to build the capacity of the women's movement to advocate for better access to justice;
 - 9 Facilitate community participation in the formulation and implementation of pro-rights policies that can enhance the enjoyment of economic, social and cultural rights.
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Non-governmental organisations

10 NGOs, national human rights institutions together with civil society should develop tools to track gender and cultural issues in policy and public expenditure documents.

Session 4: Trafficking and Migration**Notes from the discussion**

In considering what the Commonwealth can do on trafficking, it is important to bear in mind the following points:

- 1 Commonwealth Ministries of Women Affairs have urged governments to adopt and implement the 1996 Stockholm Declaration of the World Congress Against Sexual Exploitation of Children;
- 2 The Commonwealth Law Ministers Meeting in 1999 noted that the UN was preparing an international convention to combat transnational organised crime, with a protocol to prevent, suppress and punish trafficking in women and children. They encouraged the Secretariat to support this work and recommended the preparation of guidelines on measures to tackle the issues relating to trafficking of women and children in the Commonwealth;
- 3 One of the main problems is that trafficking has been regarded as an immigration/criminal issue as opposed to being a human rights issue. Current interventions remain largely gender blind and are often incompatible with a rights-based perspective. There is a need for a gender-responsive and rights-based approach to the problem, paying particular attention to the distinction between the individual and structural dimension of human rights of women and children;
- 4 Definitions of trafficking focus on the criminalisation of processes of movement rather than on remedies for women after they have been trafficked. It is preferable to use the Thai model of the “continuum of trafficking” – which includes coercion and trickery about conditions or hazards of work – as opposed to the definition in Sweden, which excludes those who come willingly but are deceived about expectations;
- 5 The issue of treatment of victims of trafficking in general, and children in particular, is a serious one. There is a need to change the perception that trafficking victims are criminals or offenders of the law. Strategies must be developed involving the community as well. This should be applicable both in countries of destination and of return;
- 6 Administrative procedures need to be more sensitive in handling victims in destination countries and in home countries, where women/girls sent back may be rejected by their family because they are seen as ‘polluted’. Such repatriation to ostracism may result in vulnerability to re-trafficking to escape abuse in the home village;

- 7 The idea of women as 'property' is important as it is supported by women's lack of independent legal identity, e.g. independent rights of nationality that are not dependent upon their husbands;
- 8 The particular vulnerability of particular groups, such as indigenous peoples, should be given special consideration;
- 9 Trafficking also has class implications. For example, women's freedom from domestic work in developing countries is predicated on transferring that work to other women.

Recommendations

Commonwealth Secretariat

- 1 Undertake an assessment of who is doing what and to what extent in order to determine the added value that the Commonwealth could bring to existing initiatives. Many groups are active and there are already international standards in operation. It is suggested that the Secretariat should focus on prevention and treatment, and leave employment issues for the ILO;
- 2 Help to promote advocacy for the idea that trafficking should be addressed as a labour market and employment problem in both origin and destination countries;
- 3 Play a facilitating role in strengthening national capacity to ensure cohesiveness among countries' laws and policies, e.g. migrancy/AIDS policies;
- 4 Collect and share information about best practices.

Governments

- 5 Ensure that policies are guided by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000, the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking 2002, CEDAW and other international instruments;
 - 6 Ensure that there is legislation in place that covers trafficking not only for the purpose of sexual exploitation but also for forced labour, slavery or servitude;
 - 7 Prosecute traffickers and ensure that those who have been trafficked have access to justice and are treated in a gender-sensitive manner;
 - 8 Address the root causes of trafficking, including the feminisation of poverty and the gender discrimination that makes women and girls desperate, vulnerable and undervalued. Programmes need to have a broad anti-discrimination agenda;
 - 9 Mainstream interventions at all levels of government in the development of policies and programmes and develop integrated and multisectoral programmes to address trafficking as a development issue at the national level.
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- 10 Stress the importance of co-operation between ministries at all levels, since trafficking concerns not only the ministries of national security and law enforcement but also those of labour and other sectors and the national women's machinery.
- 11 Emphasise national level co-ordination to ensure cohesiveness among laws and policies within countries, e.g. migrancy/AIDS policies – see (3).
- 12 Ensure that labour legislation also covers domestic service and strengthen labour market institutions.
- 13 Follow the model of South Africa and Canada, which grant the same rights to aliens as nationals.
- 14 Co-operate to address the issue of trafficking at regional and international levels.

Session 5: Indigenous Peoples' Rights

Discussant Comments

by **Maryam Bibi**

The paper on Indigenous Peoples' Rights was very revealing and instructive for me as a tribal woman coming from Pakistan because I thought we were the only indigenous people and women facing discrimination, marginalisation and poverty. Now I realise that all indigenous women in the Commonwealth face similar issues, for example, poverty, poor health, low literacy rates and loss of language. Women suffer more as a result of continuing colonialism and as members of a poor class, though each situation can have unique problems.

I would like to endorse the definitions of indigenous peoples in the paper. I am very privileged to be here participating in this meeting today. However, I realise that I belong to a very small minority of indigenous women. The majority of indigenous women still live very traditional and hard lives in villages. Nevertheless, I share the same feelings, aspiration, belonging and kinship.

Indigenous peoples are perceived by others as on the one hand essential to sustainable development and the protectors of natural resources, while on the other hand their traditional practices are seen as conflicting with women's rights.

In the Federally Administered Tribal Areas (FATA) of Pakistan's North-West Frontier Province, development is mainly for political purposes and rarely for empowerment of ordinary indigenous peoples, especially women. Also funders of development projects, such as the World Bank, often involve indigenous peoples not only for empowerment purposes but for their self-interested reasons of cost-sharing.

Indigenous peoples are questioning the entire development process. For example, who is benefiting at the cost of whom?

Recommendations

Commonwealth Secretariat

- 1 Ensure that the rights of indigenous peoples, in particular indigenous women and girls, are addressed in the new ten-year Plan of Action on Gender and Development;
- 2 Encourage member States to allocate the necessary resources for social sector development for indigenous peoples;
- 3 Ensure that all Commonwealth Ministries Responsible for Women's Affairs recognise and protect the rights of indigenous women;
- 4 Ensure that all Commonwealth Ministries Responsible for Women's Affairs involve indigenous women in all stages of their decision-making processes;
- 5 Strengthen co-operation between Commonwealth Ministries Responsible for Women's Affairs and ministries or departments responsible for indigenous affairs, in order to co-ordinate greater understanding of issues facing indigenous women and responsibilities among member States;
- 6 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;
- 7 Create partnerships with indigenous women's organisations in Commonwealth countries and recognise the Commonwealth Association of Indigenous Peoples (CAIP) as a representative and special partner body;
- 8 Facilitate networking of indigenous women to develop support mechanisms and social capital;
- 9 Establish an Indigenous Women's Advocacy Unit to channel specific enquiry, advocacy or support;
- 10 Encourage States parties to CEDAW to report on the status of indigenous women in their reports to the Committee;
- 11 Assist indigenous NGOs to write and present 'shadow reports' to the Committee.

Governments

- 12 Consider establishing ministries or departments responsible for indigenous affairs in any States where there is a significant indigenous population;
 - 13 Ensure that policy-making for indigenous peoples and women is sensitive to their unique situation, and is holistic and long term;
 - 14 Recognise indigenous peoples' right of self-determination, including the right to freely determine their political status;
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- 15 Take measures to end discrimination against indigenous women with respect to land rights (while recognising the importance of collective land for indigenous women);
- 16 Give indigenous people an increased role in the educational process, including as teachers, and in the provision and development of health care;
- 17 Collect and collate statistical data on the situation of indigenous peoples, especially women, and do more research on indigenous women particularly related to health issues, including HIV/AIDS.

Session 5: Indigenous Peoples' Rights

Notes from the discussion

Land rights are fundamental. There are different rights related to land and property: rights of ownership, of access and of use. Despite constitutional and/or legal guarantees prohibiting discrimination, this persists when it comes to interpretation and application.

It is not possible to talk about land without talking about issues of:

- 1 Culture;
- 2 Property rights;
- 3 Lack of credit, collateral and economic power;
- 4 Obstacles to women's rights to inherit land;
- 5 The registration of land (which is mostly ineffective in developing countries).

Land policies were inherited from the colonial period and agrarian reforms discriminated against women. We need to look at the different land tenure systems to understand the appropriate legal processes and mechanisms for land administration and land management. Much research is ongoing in the area of land and property, and there is a need to document positive experiences.

Women are not a homogeneous group. There are differences between single, married, divorced, rural, urban and indigenous/tribal women. Complicating the issue of land ownership is the fact that women are often seen as property themselves, and when people are property, they cannot own property. There are also problems of non-registered marriages and complications of occupational rights after a marriage breaks up.

Strong land policies will decrease poverty. If women have access to land and their use of land is increased, there will be greater economic empowerment, and this will also assist in achieving the Millennium Development Goals. At the same time, it is important to note the reality that urban populations will number more than 4 billion people by 2020 as rural populations are moving to cities in significant numbers.

The Legal and Constitutional Affairs Division (LCAD) of the Commonwealth Secretariat

has been running workshops since the Kingston Declaration,¹ supporting Commonwealth countries to develop land policies and take forward recommendations of the Declaration.

Recommendations

Commonwealth Secretariat

- 1 Document existing examples and practices in land reform;
- 2 Identify NGOs working in the areas of land, property and housing rights for women and facilitate the establishment of Pan-Commonwealth or regional networks for advocacy and sharing of experiences;
- 3 Analyse, document and disseminate models of good practices, illustrating policies, legislation, successful strategies and processes for improving women's rights to land, property and housing.
- 4 Promote and set out processes for effective land registration systems, land acquisition processes and land valuation systems – looking at traditional systems and good practice to enhance security of tenure (also taking into account corporate takeovers of small landholdings).

Governments

- 5 Prioritise land, housing and property rights during the review of the Beijing Platform for Action and the preparation of the plans of action for women for the next decade. National women's machineries should lobby other government ministries and departments to ensure this is on the agenda (e.g. for Law Ministers);
- 6 Integrate land and property into poverty reduction strategy papers, national development plans, etc., which will lead to reformulation of land policy;
- 7 Develop and execute national policies that address gender discrimination and the feminisation of poverty, with a particular emphasis on women's rights to land and property;
- 8 National women's machineries should have legal officers/legal departments to train/sensitise officers on land management issues;
- 9 Improve registration in other areas such as marriage to assist in securing women's rights to land;
- 10 Review the legal and regulatory mechanisms governing land, land markets and land acquisition in order to facilitate poor women and men to access land and acquire property;

1 The Commonwealth Kingston Declaration on Land and Development was issued by Commonwealth Law Ministers meeting in St Vincent and the Grenadines in November 2002. This noted the strong link between the use, access to and ownership of land, and development and poverty reduction.

- 11 Collaborate with women's organisations and other NGOs to provide tools and information to help women and men understand their rights, policies and processes;
- 12 Take into account indigenous peoples' rights to land, particularly where land may not be registered formally but where security of tenure has been granted.

Non-governmental organisations

- 13 Conduct a national campaign to make existing inheritance laws gender equal and to ensure that there is gender equal distribution of all land, houses or other assets given by the government under resettlement schemes;
- 14 Enhance legal awareness about women's property rights, especially rights in inheritance laws, among women themselves as well as among NGO workers and the constituencies within which they work;
- 15 Ensure that the inheritance claims of women to family land are honoured and that their shares (as daughters or widows) are registered by the officials concerned.

Session 7: Gender and Human Rights in the Life Cycle

Recommendations

Commonwealth Secretariat

- 1 Collate information and promote understanding of the intergenerational nature of poverty, livelihoods and survival, and the need to support mutually supportive relationships between generations.

Governments

- 2 Undertake to adopt a life cycle approach to development, and gender and human rights, through the fulfilment of commitments made in the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the UN principles for older people and the Madrid International Plan of Action on Ageing, and related regional plans of action and implementation strategies;
- 3 Fulfil commitments to the Millennium Declaration and Millennium Development Goals and other human rights and development instruments in an inclusive and inter-generational way that promotes a society for all ages and ensures the benefits of development are reaching the very poorest and most marginalised;
- 4 Ensure that policies and programmes designed to promote development and human rights are inclusive of all age groups ('from cradle to grave') and address the specific needs of people at different stages of the life course, including those of older people;
- 5 Disaggregate data and research by age and into all age groups, as well as by gender and other variables, for better information and understanding of the implications of policy

or programme interventions on people of all ages and at all stages of their life cycle;

- 6 Actively seek the involvement of both young and old people in consultations and the design, implementation and monitoring of policies and programmes.

General Recommendations by Experts on Gender and Human Rights in the Commonwealth

Commonwealth Secretariat

- 1 Carry out an assessment of who is doing what and to what extent in order to determine the added value that the Commonwealth could bring to existing initiatives;
- 2 Use its comparative advantage in advocacy to promote gender-sensitive policy-making;
- 3 Document and share national plans of action, effective policies and best practices;
- 4 Facilitate regional networking among various stakeholders and assist governments in strengthening regional human rights instruments;
- 5 Develop ways of measuring the achievements that are being made.

Governments

- 6 Prepare reports to the human rights treaty bodies as required in a timely manner;
 - 7 Strengthen and implement regional agreements and instruments that address human rights and gender equality;
 - 8 Ensure that laws are enforced, and support gender-awareness training for the police and judiciary;
 - 9 Place legal officers/legal departments in national women's machineries to deal with legal issues;
 - 10 Ensure that ministries co-operate at all levels when addressing issues that cut across portfolios, such as trafficking, gender-based violence and HIV/AIDS,
 - 11 Ensure that, when mainstreaming diversity, gender does not take a back seat;
 - 12 Collect and collate sex-disaggregated data that includes indicators that will reveal the situation of women and identify obstacles to gender equality;
 - 13 Form partnerships with NGOs for needs identification, data sharing and identification of obstacles to gender equality;
 - 14 Collaborate with women's organisations and other NGOs to provide tools and information to help women and men understand their rights, given the importance of legal literacy for the implementation of human rights instruments.
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