
Appendix 2

Extract from the Commonwealth Plan of Action on Gender Equality 2005–2015

3 Critical Areas for Human Rights Action

II Gender, human rights and law

3.15 The Commonwealth asserts its commitment to promoting a rights-based approach in all areas of its work. In issues related to gender equality and human rights, national constitutions and international human rights instruments such as the Universal Declaration of Human Rights and CEDAW [the Convention on the Elimination of All Forms of Violence against Women] are the primary instruments by which States parties have a duty to guarantee equality of rights between women and men. This framework is reinforced by provisions in national statutes, as well as regional treaties and instruments. In addition, other critical international or regional human rights instruments and monitoring bodies, which embed and extend these rights,¹ must also be recognised as key instruments for moving forward the gender-based rights agenda and integrating it into policies and programmes at all levels.

3.16 Although 49 Commonwealth countries have ratified CEDAW and 15 have ratified its Optional Protocol, there are still significant gaps in implementation. Many countries have ratified with reservations. Commonwealth countries should be encouraged to ratify CEDAW and other instruments such as the Convention on the Rights of the Child. The lack of a gender perspective in the administration of the law has stymied gains made in international and regional treaties and conventions. Even where sound legislation exists, application and interpretation of these laws are inadequate for many reasons: lack of political will, jurisdictional issues, lack of awareness in the public service and justice systems at all levels, lack of enforcement capacity, traditional or customary systems of law that discriminate against women, women's inadequate awareness or legal literacy concerning their rights and recourse to justice, limited human and financial resources for monitoring and enforcement at national, local and community levels, and inadequate evidence-based data collection. It is in this context that violations of human rights of women and girls, including elderly women and women with disabilities, occur and actions to redress these issues, such as human rights education, remain urgent priorities.

3.17 Women and girls, including women with disabilities and elderly women, experience different forms of discrimination and disadvantage at different stages in the life cycle. Even before birth, genetic selection may be used to reduce the proportion of girls being born; as children, they may be denied the right to an education. As girls mature, their sexuality and sexual identity may conflict with their society's legal, social or religious views about sex,

marriage and child-bearing. In the labour market, women's work often has lower value, status and remuneration than men's; women and girls are more vulnerable to exploitation; and, together with men, women experience particular discrimination as they age. In order to ensure that progress and gains made at one stage in the life cycle are not negated by adverse experiences and discrimination later, adequate support needs to be given to enable transitions throughout the life cycle from one phase of life to another.

3.18 Customary and religious laws, practices and traditions often have greater significance and value for people in their daily lives than the established statutory and constitutional laws in a country. In addressing gender equality and human rights issues, it is critical to recognise the complex ways in which identity, values and behaviour are formed and regulated at household and community level, often being shaped by elders, traditional leaders or religious institutions.

3.19 It is therefore critical to promote active dialogue and engagement among members of judicial, religious, cultural, traditional and civil institutions and communities to address women's human rights in all cultures. It is critical that harmful practices that violate the rights of women and girls, such as female genital mutilation (FGM), early marriage and widow inheritance,¹⁰¹ are eliminated as a matter of urgency. Where multiple legal systems and practices exist – including constitutional, religious and customary – full consideration should be given to the human rights of women, men, boys and girls and, where violations occur, effective recourse and consequences need to be established.

3.20 Gender-based violence remains one of the most intransigent forms of human rights violation because of its complex and varied causes, forms and contributing factors. The right to freedom from gender-based violence will only be effectively realised in the context of increased social, political and economic freedoms and rights for both women and men. There are clear links between gender-based violence and many other factors, such as poverty, HIV/AIDS, property and land rights, race/ethnicity, age and sexual orientation, and effective strategies to address gender-based violence need to recognise the full range of discrimination and prejudice in which it is perpetrated. Approaches to gender-based violence have often failed to recognise the special predicament of widows and older women who may be especially vulnerable due to their economic and social circumstances. There is evidence that widows of all ages are abused through traditional practices, which include discrimination in inheritance and property ownership. This situation is immeasurably compounded by conflict, which has not only increased the number of widows worldwide but renders them and their children more vulnerable to violations of their rights. Integrated approaches undertaken by all relevant agencies are required, underpinned by comprehensive laws and policies, monitoring and enforcement systems, and mechanisms to ensure accountability for implementation.

3.21 The rapid growth of trafficking in persons is causing increasing global concern. Many of those most exploited and subjected to slavery-like situations are women and girls. It is

widely acknowledged that the root causes of trafficking include the feminisation of poverty, displacement as a result of natural and human made catastrophes, gendered cultural practices, gender discrimination and gender-based violence in families and communities. However, it is important to recognise clearly the distinctions between trafficking, smuggling and regular and irregular migration, and to ensure that solutions and strategies appropriate to each context are found. Anti-trafficking legislation must embrace a human rights approach and protect the rights of those most vulnerable to abuse.

3.22 In countries where indigenous peoples, particularly women, continue to be marginalised and disadvantaged in comparison to other groups in society, and face significantly greater poverty, social exclusion and discrimination, there has been a lack of recognition of their rights, despite acknowledgement of the history of colonialism and its role in the marginalisation of indigenous peoples in the CHOGM Lusaka Declaration of 1979.

3.23 Respect for land and property rights is fundamental to the realisation of human rights and gender equality. Despite constitutional and legal guarantees in many Commonwealth countries prohibiting discrimination against women with regard to ownership of, access to or inheritance of land and property, *de facto* discrimination persists.

3.24 Consequently, activities in this critical area will focus on:

- i. Legislative and constitutional reform, judicial capacity building and strengthening of mechanisms for implementation, monitoring and accountability of gender equality commitments.
- ii. Culture, violence against women, the law and human rights, including rights regarding access to and ownership of land and property.
- iii. Gender-based violence, integrated with work on trafficking in persons (especially women and girls), conflict resolution, peace-building and post-conflict reconstruction.
- iv. Indigenous peoples' rights, with a focus on indigenous women and girls.
- v. Gender and human rights throughout the life cycle, addressing discrimination and opportunities at all stages of life and ensuring the maintenance of rights from one stage to another, linked with the achievement of the MDGs and poverty reduction strategies.

3.25 Governments are encouraged to take action to:

- i. Recognise, ratify and implement international and regional human rights instruments that promote gender equality.
 - ii. Promote legal and, where appropriate, constitutional reform in accordance with the universal standards of human rights including CEDAW in support of gender equality
-

- and strengthen the knowledge and capacity of the justice system, parliament and local authorities on gender equality and rights issues through appropriate and ongoing gender training.
- iii. Promote active dialogue and engagement between the justice system and religious, cultural, traditional and civil institutions and communities, to address women's human rights at all levels.
 - iv. Adopt an integrated, zero-tolerance approach to gender-based violence, including strengthening of the law, appropriate public education, provision of adequate institutional and financial support to address the needs of victims and witnesses, and rehabilitation of perpetrators.
 - v. Promote the implementation and enforcement of appropriate laws and policies against trafficking and the commercial sexual exploitation of women and children, including the UN Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, and develop plans and strategies to give effect to this protocol at the national level.
 - vi. Foster and develop national, local and regional programmes of action with indigenous peoples, particularly women, in accordance with international human rights standards and Commonwealth values on development, democracy and good governance, where required.
 - vii. Promote the maintenance of gender-related rights throughout the life cycle, through the fulfilment of commitments made in the Convention on the Rights of the Child and CEDAW, as well as other agreements such as the Madrid International Plan of Action on Ageing and related regional plans of action and implementation strategies.
 - viii. Ensure that women's rights to land, housing, property and inheritance are promoted and protected, having recourse to relevant international and national instruments on human rights and poverty reduction.
 - ix. Codify positive customary laws that protect women as a process of reviewing the existing laws to ensure that all laws are in conformity with both international and domestic human rights obligations.

3.26 The Secretariat will support member countries by:

- i. Working with governments and in collaboration with CSOs [civil society organisations] to develop appropriate laws and policies for the promotion and protection of women's human rights.
 - ii. Documenting and disseminating case studies of good practice that address customary laws and practices that promote the rights of women and girls; examples of dialogue and synergy between customary systems and constitutional and statutory institutions;
-

- and good practices in land reform processes that take into account gender equality.
- iii. Providing training on the elimination of gender-based violence, using integrated approaches, and promoting the sharing of good practice at all levels.
 - iv. Supporting governments in the development of national plans and strategies to implement the UN Protocol to Prevent, Suppress and Punish Trafficking in Women and Children.
 - v. Promoting the rights of indigenous peoples, especially women, in political, social, economic and cultural spheres.

Notes

- 1 For example, the International Covenant on Economic, Social and Cultural Rights; the Additional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; the Convention on the Rights of the Child; and the four key gender-related ILO Conventions (C100 on equal remuneration, C111 on freedom from discrimination at work, C156 on workers with family responsibilities and C183 on maternity protection).
- 2 Widow inheritance refers to the passing of a widow from one male relative to another in some societies.