

1. Introduction

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The Commonwealth, with its broadly shared legal heritage – reflected in a political, geographical and culturally diverse landscape – presents both opportunities and challenges for the advancement of women’s rights in judicial and quasi-judicial realms.

CEDAW – the UN Convention on the Elimination of All Forms of Discrimination against Women – is a powerful international human rights instrument that reflects a global determination to achieve gender equality through advancing women’s rights. To date, all Commonwealth member states in Africa, Europe and the Caribbean, along with 82 per cent of member states in the Pacific, have ratified CEDAW.¹

In almost all Commonwealth constitutions that make provision for the protection and promotion of fundamental human rights and freedoms, the following elements are generally to be found:

- The right to life, liberty, security of the person, equality before the law and the protection of the law,
- Freedom of conscience, expression, assembly and association,
- The right to privacy in personal and family life, and
- In nearly all cases, the right to property.

All these rights and freedoms are guaranteed regardless of race, place of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest. However, turning aspiration into reality presents many challenges, particularly in relation to the process of adjudicating on women’s rights in both legal and cultural contexts. The need for addressing cultural and gender stereotyping in the course of judicial and quasi-judicial processes to enable a fair determination of women’s rights is widely recognised.

The Commonwealth Secretariat, through the mandate received under the Plan of Action for Gender Equality 2005–2015, has embarked on a programme to address the fair determination of women’s rights in the context of gender, culture and the law. In order to reconcile customary norms and religious perspectives with more formal judicial processes, national laws and CEDAW, the Secretariat engages in dialogues and

1. Dr Purna Sen (ed.) (2008) *Human Rights in the Commonwealth: A Status Report*. London: Commonwealth Secretariat.

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projects with ministries of gender affairs/women's affairs and justice/law, judges, magistrates, traditional chiefs, religious leaders and women's legal networks.

This publication forms part of the effort to promote dialogue and share information within the Commonwealth and beyond. It identifies the approaches adopted in various Commonwealth jurisdictions to meet the range of cultural and legal challenges relating to the implementation of CEDAW. Also included are Commonwealth declarations in support of CEDAW and information on key initiatives under the gender, culture and the law project.

This practical guide will inform and assist judges, adjudicators, lawyers and activists to advance the implementation of the principles of CEDAW within jurisdictions connected historically by the application of the common law.