

GENDER AND HUMAN RIGHTS IN THE COMMONWEALTH: CRITICAL ISSUES FOR ACTION IN THE PLAN OF ACTION FOR GENDER EQUALITY 2005-2015

Paper by the Commonwealth Secretariat

BACKGROUND

1. The Gender Section of the Social Transformation Programmes Division (STPD), Commonwealth Secretariat, assists Commonwealth Ministers Responsible for Women's Affairs to advance gender equality through the realisation of women's rights and the promotion of gender justice. A new Commonwealth Plan of Action for Gender Equality 2005-2015 was agreed at the 7th Women's Affairs Ministers Meeting (7WAMM) in Fiji Islands in May-June 2004. It positions the Commonwealth at the centre of global agenda setting on gender equality, as the only intergovernmental organisation to have developed a new Plan of Action (PoA) at the end of the Beijing+10 decade.

2. The 2005-2015 Plan of Action identifies four critical areas for Commonwealth action over the next ten years:

- gender, democracy, peace and conflict;
- gender, human rights and law;
- gender, poverty eradication and economic empowerment;
- gender and HIV/AIDS.

3. The Secretariat works to realise women's rights and gender equality in these four action areas by:

- providing policy and technical advice to Ministries of Women's Affairs and other key sector ministries, to strengthen institutional capacity for gender mainstreaming;
- playing a strong advocacy role for policy change and reform;
- holding capacity-building workshops for policy makers and practitioners to develop effective approaches to addressing critical gender issues; and
- documenting and sharing Commonwealth best practices in the four critical areas. Through more effective participation by key partners, gender issues are recognised and advanced in democratic processes and political decision making, constitutional and legal reforms, national budgets, multilateral and national trade policies and programmes, HIV/AIDS policies and strategies, and in social programmes for education and health.

4. A special meeting of Women's Affairs Ministers in New York in February 2005 sent messages to the UN Beijing +10 Review and to the forthcoming 2005 Commonwealth Heads of Government Meeting (CHOGM) in Malta. In presenting their message to CHOGM, Ministers Responsible for Women's Affairs, reiterated the Denarau Statement issued at the Fiji meeting, which noted the progress made by member countries in the development of national action plans on gender. The Denarau Statement further noted the actions taken by member countries in advancing *de jure* equality through the institutionalisation of constitutional or legislative reforms for claiming women's rights. The message also reaffirmed the Commonwealth's commitment to the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), the Beijing Platform for Action, the Millennium Development Goals, and UN Security Council Resolution 1325. It also called for the endorsement by Commonwealth leaders of the 2005-2015 Plan of Action and the

allocation of necessary resources for its implementation. The meeting established a Gender Plan of Action Monitoring Group, comprising 20 representatives of governments and civil society across all regions of the Commonwealth.

5. The following section highlights the Gender Section's work on human rights to lead into substantive points on gender and human rights as outlined in the Commonwealth Plan of Action for Gender Equality 2005-2015. The paper also identifies some challenges faced by the Commonwealth in advancing women's rights and achieving gender equality.

ADVANCING WOMEN'S RIGHTS: THE WORK OF THE SECRETARIAT

6. The right to gender equality is enshrined in the Commonwealth Plan of Action (PoA) for Gender Equality (2005-2015) and guides all aspects of the work of the Gender Section. The PoA recognises that the achievement of gender equality is crucial to the enhancing of democracy and peace, poverty eradication and violence against women, and ensuring access to education and health for all. The PoA also recognises that international human rights instruments impose a duty on States Parties to guarantee equality of rights between women and men. The PoA therefore provides the framework within which the Commonwealth will advance its commitment to achieving women's rights and gender equality.

7. A pan-Commonwealth Expert Group Meeting on Gender and Human Rights was convened by the Gender Section in London in February 2004. The papers presented at the meeting together with the outcomes from the discussions have resulted in a book. The book, entitled, *Gender and Human Rights in the Commonwealth: Some critical issues for action in the decade 2005-2015*, was launched at the UN in New York during the Beijing+10 review, March 2005.

8. Key issues flagged by the Expert Group Meeting include: legislative and constitutional reform, and judicial capacity building; gender, culture and the law; women's access to land and property rights; gender, youth and indigenous peoples; and gender-based violence, linked to work on trafficking in women and children, and situations of post-conflict reconstruction and peace-building. The Gender Section's work on human rights and the law is complemented by the work of the Legal and Constitutional Affairs Division and the Human Rights Unit.

9. The Gender Section's programme on Human Rights and the Law has its antecedents in its work on gender-based violence. The programme has provided technical assistance to governments on developing national action plans to address gender-based violence in East and Southern Africa. The programme has also developed model legislation on women's human rights and violence against women in the Caribbean. A case law book on women and human rights has been published and offers legal practitioners, academics and civil society groups' critical information on case laws, and other useful information and resources to address the realisation of women's human rights from the standpoint of legal provisions. Key rights of women in relation to marriage, family, inheritance, employment, reproductive health, socio-economic access, citizenship and migration issues are addressed. The compilation arises from a series of judicial colloquia and presents over 50 significant cases from international and national courts.

10. As part of the ongoing work on gender and human rights at the international level, the Gender Section is a member of the task force on indigenous women under the UN Inter-Agency Network on Women and Gender Equality. The Gender Section was represented at the 61st session of the UN Human Rights Commission and the 4th Session of the UN Permanent Forum on Indigenous Issues.

11. The Section addresses the realisation of women's rights to gender equality through focusing on the four critical areas of concern in the PoA outlined earlier and by offering technical assistance

to national women's machineries and other government offices, raising awareness on key issues and forging a Commonwealth strategy for the achievement of gender equality goals.

KEY GENDER AND HUMAN RIGHTS ISSUES FOR ACTION IN THE POA

12. The PoA notes that a number of Commonwealth countries have made legislative and procedural provisions to combat domestic and other forms of gender-based violence. Some 11 Caribbean countries have specific laws to combat gender-based violence that are drawn from the Secretariat's model legislation. Twelve SADC and East African countries have developed national action plans. Despite these achievements, the PoA registers the need to accelerate implementation by member countries of key international conventions and treaties, national gender policies, and national laws for the realisation of women's rights and the achievement of gender equality.

13. The PoA acknowledges the challenges presented by persistent gender inequalities and inequities. These include the widespread prevalence of gender-based violence and violations of women's human rights, the exacerbation of feminisation of poverty, lack of women's full participation in leadership and decision making, and women's continued unequal access to economic and social resources and justice. Among the current and emerging challenges, the PoA identifies significant social, economic and political changes, particularly in relation to conflict, globalisation, poverty and HIV/AIDS as those having serious implications for the achievement of gender equality.

14. With regard to the specific area of human rights and the law, the PoA states:

'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 illiteracy 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.'

15. In highlighting the structural, systemic, cultural and ideological barriers to the realisation of women's rights, the PoA underscores the fact that women and girls experience different forms of discrimination and disadvantage at different stages in the life cycle which are evident in the institutions of the State, the market and the household/community. The PoA therefore calls for adequate support for women and girls during their life-cycle transitions in order that progress made at one stage in the life cycle is not negated by adverse experiences and discrimination at a later stage.

16. In speaking to the meanings and values that cultural and religious practices have for women's lives, the PoA acknowledges the important role played by customary and religious laws and traditions. While the PoA notes the value of established statutory and constitutional laws, in also according importance to customary and religious laws, the PoA goes beyond addressing women's *de jure* claims to rights. The PoA positions culture and religion as significant factors in mediations within the community for the claiming of rights by women. Consequently, the PoA calls for the promotion of active dialogue and engagement among members of the justice system, religious, cultural, traditional and civil institutions and communities to address women's human rights in all cultures. Particular issues identified include widow inheritance, female genital mutilation (FGM), and land and property rights for women.

17. Other gender and human rights issues for action include legislative and constitutional reform, focus on anti-trafficking measures to protect the rights of women and children, enhancement of women's role in conflict-resolution and peace-building, and improvement of marginalised women's lives including those from indigenous communities.

CONCLUSION

18. In ensuring that women's rights move from aspirations to entitlements, the Commonwealth Secretariat endeavours to work with governments and their institutions, civil society partners, the women's movements at national, regional and international levels and other stakeholders to enhance women's capabilities to claim their rights. The PoA offers the template to move from plans to actions given the commitments made by Commonwealth governments.