

## COMBATING VIOLENCE AGAINST WOMEN: THE COMMONWEALTH SECRETARIAT EXPERIENCE

**Paper by the Commonwealth Secretariat**

### **Introduction**

Eliminating violence against women continues to be a major challenge in the Commonwealth's efforts to promote and protect the human rights of women and children. In spite of international, regional, national and local efforts to address gender-based violence, many women and children are still being physically, psychologically and sexually abused in both the private and public spheres (in the family and at school, on the streets and at places of work, and in refugees and displaced persons' camps). To date domestic violence, sexual assault, sexual harassment and traditional and dowry-related violence continue to occur in varying degrees in many countries.

2. Gender based violence was recognised as a violation of the human rights of women at the World Human Rights Conference in Vienna in 1993. The Vienna Declaration on Human Rights emphasises the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice, and the eradication of all conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.<sup>1</sup> Prior to the World Conference on Human Rights, the United Nations Committee on the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) had adopted General Recommendation 19 to specifically address violence against women. CEDAW

<sup>1</sup> Vienna Declaration and Programme for Action, 25 June 1993, para. 3, p.23.

General Recommendation 19<sup>2</sup> and the United Nations Declaration on Elimination of Violence Against Women<sup>3</sup> adopted by the United Nations General Assembly in December 1993, stress due diligence of state parties to prevent, prosecute and punish perpetrations of violence against women, whether those acts are perpetrated by the state or private individuals.

3. Strategic objective D<sup>4</sup> of the Beijing Platform for Action urges governments to take integrated measures to prevent and eliminate violence against women; to study the causes and consequences of violence against women and the effectiveness of the preventative measures; and to eliminate trafficking in women and assist victims of violence due to prostitution and trafficking. The Beijing Platform for Action emphasises that developing a holistic and multi-disciplinary approach to the challenging task of promoting families, communities and states free of violence against women is necessary and achievable.

4. This paper focuses on the work of the Commonwealth Secretariat on violence against women. It presents the 1995 Commonwealth Plan of Action on Gender

<sup>2</sup> General Recommendation No. 19 (Eleventh session, 1992), para. 9 contained in document A/47/38

<sup>3</sup> 48/104 Declaration on the Elimination of Violence Against Women, Article 4 (c), Resolution adopted by the General Assembly, United Nations on report of the Third Committee (A/48/629). Forty-eighth session. Agenda item 111

<sup>4</sup> UN Fourth World Conference on Women, Beijing, China, 1995, Platform for Action and the Beijing Declaration, p.73-81.

and Development as a framework which identifies violence against women as a priority area for action by Commonwealth governments. The paper then goes on to discuss a number of activities/approaches implemented by the Commonwealth Secretariat based on the mandate of the Plan of Action. Finally the paper makes a number of recommendations for consideration by Law Ministers.

### **The 1995 Commonwealth Plan of Action on Gender and Development<sup>5</sup>**

5. The promotion and protection of women's rights as human rights and as an integral part of the Commonwealth's fundamental values is one of the key issues being addressed by the Commonwealth Secretariat. The 1995 Commonwealth Plan of Action on Gender and Development identifies the promotion of women's human rights as one of the 15 critical areas for action by Commonwealth governments, and promotes the elimination of violence against women, protection of the girl-child and outlawing all forms of trafficking in women and children. The Plan of Action encourages all member governments to ratify and implement CEDAW, the Convention on the Rights of the Child (CRC), and the United Nations Declaration on the Elimination of Violence Against Women.

### **Meetings of Commonwealth Ministers Responsible for Women's Affairs**

6. Violence against women has been an area of critical concern for Commonwealth Ministers Responsible for Women's Affairs since their first meeting in 1985. Ministers have discussed violence against women as a matter of the gravest concern at each of their five meetings held to date. At their fourth meeting in 1993, Ministers demonstrated their concern for violence against women by requesting that the Commonwealth Secretary-General write to the United

Nations Secretary-General supporting the United Nations Declaration on Violence against Women which was adopted by the United Nations General Assembly in the same year.

7. At their Meeting in Edinburgh in October 1997, Commonwealth Heads of Government endorsed the recommendations made by Ministers Responsible for Women's Affairs at their meeting in Trinidad and Tobago in 1996. The Ministers' recommendations<sup>6</sup> urged member governments to effectively implement the CEDAW and General Recommendation 19 on violence against women, and to develop an integrated approach towards the elimination of violence against women. Governments were encouraged to adopt and promote effective implementation of the Declaration and Programme for Action of the World Congress on the Commercial Sexual Exploitation of Children, Sweden, August 1996. Furthermore, governments (working with the Secretariat) were encouraged to strengthen the capacity of the judiciary and other legal professionals and the police to respond to violence against women and girls, and to protect the human rights of women and girls.

8. The Gender and Youth Affairs Division (GYAD) in response to the Ministers' recommendations has developed a model framework for an integrated approach to combat violence against women using a Gender Management Systems methodology. The objective of a model framework is to promote the design and implementation of holistic/multidisciplinary programmes and projects on violence against women by member governments. This will involve the creation of an enabling environment and the setting up of structures and mechanisms which will promote as far as possible the collaboration of various organisations working on the different

---

<sup>5</sup> Commonwealth Secretariat, The 1995 Commonwealth Plan of Action on Gender and Development, p.19.

---

<sup>6</sup> Commonwealth Secretariat, 5th Meeting of Commonwealth Ministers Responsible for Women's Affairs, Trinidad and Tobago, 25-28 November 1996: Conclusions and Recommendation, p. 22-23

aspects of gender-based violence including governmental, intergovernmental and non-governmental organisations. The first Commonwealth country in which the model framework will be piloted is Mauritius.

9. Violence against women will also be discussed at the sixth meeting of Commonwealth Ministers Responsible for Women's Affairs which will take place in India in August 1999. Discussions will focus on appropriate policies, legislation and administrative processes to promote the human rights of women and to eliminate violence against women.

### Gender Equality and the Judiciary

10. Four regional Judicial Colloquia on the domestic application of international human rights norms of particular relevance to the human rights of women and the girl child, were organised between 1994 and 1997 by GYAD in collaboration with the Legal and Constitutional Affairs Division (LCAD), the Commonwealth Magistrates and Judges Association (CMJA), and the Commonwealth Foundation. The colloquia also focused on violence against women and the girl-child. The Victoria Falls Declaration of Principles for the Promotion of the Human Rights of Women, the Hong Kong Conclusions and the Guyana Recommendations and Strategies for the Promotion of the Human Rights of Women and the Girl-Child, outcomes of these judicial colloquia, contain principles relating to eradication of violence against women in the Commonwealth. These are annexed to this paper.

11. Judges expressed their deep concern at the large scale violence against women and the girl-child taking place in various forms in most countries of the Commonwealth. They expressed particular concern at the many forms of violence against women in the family<sup>7</sup>. Judges urged all Commonwealth countries to subscribe to

---

<sup>7</sup> Hong Kong Conclusions 1996, para, 2 and 3.

the principles contained in the Declaration on Violence against Women.<sup>8</sup> They identified a need for gender-sensitive training and information about women's human rights to be provided to the judiciary, lawyers, law enforcement agencies, court personnel, law students and community leaders.<sup>9</sup>

12. Another significant outcome of the colloquia was the establishment of a Commonwealth Reference Group on the Promotion of the Human Rights of Women through the Judiciary comprising Chief Justices and Senior Judges from all the regions to monitor the implementation of the recommendations and strategies adopted by participants at the judicial colloquia. In addition, a publication entitled *Advancing the Human Rights of Women: Using International Standards in Domestic Litigation, 1997*, comprising papers presented and statements made at the Asian/South Pacific colloquium held in Hong Kong in May 1996 has been produced and has been so in demand that it is now being sold. It was widely disseminated to Ministers of Law, Ministers Responsible for Women's Affairs, Attorneys-General, Chief Justices, Human Rights Commissions, Law Reform Commissions, NGOs and other regional and international agencies working in the area of women's human rights. Additionally the following publications are being finalised: *Gender Equality and the Judiciary* consisting of papers presented and statements made at the Caribbean Regional Judicial Colloquium; and *Gender Equality and the Judiciary: Case Materials*. The case laws which were compiled as resource materials for the colloquia demonstrate how international human rights norms relevant to the human rights of women have been used in national courts.

---

<sup>8</sup> Victoria Falls Declaration of Principles for Promoting the Human Rights of Women, 1994, para. 13.

<sup>9</sup> The Georgetown Recommendations and Strategies for Action on the Human Rights of Women and the Girl-Child, 1997, para. 23.

13. Overall these colloquia have increased awareness of this vital issue and have allowed for useful exchange of information and sharing of experiences. As follow-up to the regional judicial colloquia organised by the Commonwealth Secretariat some participants have since held national and regional colloquia for judges and magistrates. These include: a national colloquium for judges and magistrates in Namibia which was organised by the Commonwealth Judicial Education Institute in 1995; a South Pacific colloquium for judges organised by the Human Resource Training Team of the British Department for International Development in 1997; and two workshops for judges in the Eastern Caribbean States held in St Lucia in 1997.

#### **Development of Training and Resource Materials**

14. Since 1985, when Commonwealth Ministers Responsible for Women's Affairs identified a need for the Secretariat to initiate programmes on confronting violence against women, the Gender Affairs Department has developed training materials on a range of issues and also organised training programmes on promoting the human rights of women for officials from Ministries of Foreign Affairs and Women's Affairs, the judiciary, police, academics, lawyers, health and media professionals and other officials from governments and NGOs. Through these programmes the Commonwealth Secretariat has provided support for governments, trainers and NGOs as they implement principles adopted in major international human rights instruments which address the human rights of women and children. The main focus has been on relevant articles in CEDAW, the United Nations Declaration on Elimination of Violence against Women, and the CRC, particularly the commercial sexual exploitation and abuse of children.

15. The following training/resource materials on violence against women have been published and disseminated throughout the Commonwealth:

- *Confronting Violence - A Manual for Commonwealth Action*, focuses on domestic violence, sexual assault, sexual harassment and child sexual abuse, violence related to custom, tradition and the media. It provides definitions of the various types of violence, examines the legal approaches operating in the Commonwealth, and explores positive mechanisms which provide support for victims or which can be used to bring about changes in public attitudes.
- *Violence Against Women - Curriculum Materials for Legal Studies* comprises two seminar packages on domestic violence and sexual assault. The packages themselves comprise a combination of legislation, case law and other relevant materials. The materials are readily adaptable for teaching about violence against women in different countries and cultural contexts.
- *Guidelines for Police Training on Violence Against Women and Child Sexual Abuse*. This manual which has been revised in 1999, addresses six issues relating to violence against women and child sexual abuse namely: police attitudes and sensitisation; perspectives on offender profiling; evidence and investigation techniques; medical and forensic evidence procedures; liaison with non-police organisations and referral agencies; statistics, data collection and case management. It is based on the recommendations of a workshop attended by senior police officers from Commonwealth countries. This extensive revision of the first edition introduces two new chapters, one on gender, human rights and the law, and the other on crime prevention approaches to repeated victimisation. It also includes a new overview on violence against women, and contains new training modules and country reports.

- A *Commonwealth Annotated Bibliography on Violence Against Women* provides information on books, articles and journals on violence against women. It is presented in three parts. Part one deals with private violence against women and girl children including domestic violence; female foeticide and infanticide; dowry assault and *sati*. Part two deals with public violence against women and children, whilst Part three deals with strategies employed by governmental, intergovernmental and non-governmental organisations to combat violence against women.

16. The Economic and Legal Affairs Services Division in collaboration with GYAD and the CARICOM Secretariat developed *CARICOM Model Legislation* on eight areas of women's human rights and violence against women namely: domestic violence, sexual offences, sexual harassment, equal pay, inheritance, equality for women in employment, citizenship, and maintenance and maintenance orders. The model legislation on domestic violence, sexual offences, and sexual harassment has been adapted to suit national circumstances by a number of countries in the Caribbean region.

### **The Convention on the Elimination of All Forms of Discrimination Against Women**

17. GYAD has also addressed the problem of violence against women including the sexual exploitation of women and children by working with governments in their implementation of the CEDAW and General Recommendations 12 and 19 on violence against women. The Gender Affairs Department developed a training manual on *The Convention on Elimination of All Forms of Discrimination against Women: The Reporting Process - A Manual for Commonwealth Jurisdictions* in order to assist governments and women's bureaux in implementing, monitoring and reporting on CEDAW. The second edition of the manual,

*Assessing the Status of Women: A Guide to Reporting under the Convention on the Elimination of All Forms of Discrimination Against Women* was published in 1995 by GYAD in collaboration with the International Women's Rights Action Watch. This edition is designed to serve as a framework for monitoring implementation of CEDAW. It makes suggestions about possible measures to implement CEDAW, and gives guidance to governments and NGOs with regard to the reporting process. The Gender Affairs Department has used the CEDAW training manual and other resources at training workshops for officials from Ministries of Justice, Foreign Affairs and Women's Affairs in the African and Caribbean regions. The manual together with other training resources has provided useful guidelines on reporting on and implementing CEDAW. It has also promoted co-ordination and co-operation among relevant ministries involved in the preparation of country reports on implementation of this convention.

### **The Commercial Sexual Exploitation and Abuse of Children**

18. The Gender Affairs Department in 1996 added another dimension to its work by commissioning two regional studies on the Commercial Sexual Exploitation of the Girl-Child in Africa and Asia. The findings of these studies revealed the magnitude of the problem as well as the sensitivities associated with commercial sexual exploitation of children. These findings pointed to a need for urgent action to be undertaken by the relevant authorities. Six in-depth country studies on the commercial sexual exploitation of children were therefore undertaken in the following countries: India, Jamaica, Kenya, Sri Lanka, South Africa and Trinidad and Tobago, and will be available in July 1999. Further, GYAD in collaboration with the LCAD is developing an administrative and legislative guide on the commercial sexual exploitation and abuse of children.

## **Conclusion**

19. Violence against women is a complex and multidimensional issue which cannot be resolved by a single organisation or institution. It therefore calls for collaboration and the building of workable partnerships between government departments and institutions, NGOs, regional and international organisations working on this issue. There is a strong need to promote an integrated approach and create effective mechanisms to address violence against women in Commonwealth countries. This approach might lead to the strengthening of current efforts and implementation of coherent and comprehensive programmes to eliminate violence against women.

## **Recommendations**

20. Law Ministers may wish to endorse the holistic framework provided by the Gender Management System methodology applied to violence against women in an effort to provide a systematic approach to addressing this issue at national level.

21. Law Ministers may wish to consider the value of other regions developing model legislation for Commonwealth countries on women's human rights and violence against

women, taking into account the CARICOM Model Legislation.

22. Law Ministers may wish to discuss practical strategies for promoting the human rights of women through national human rights institutions, justice institutes and the criminal justice system. They may wish particularly to consider organising training and awareness-raising programmes for national prosecutors on the human rights of women including violence against women, building on the Commonwealth judicial colloquia experience.

23. Law Ministers may wish to recommend how best to target and disseminate the above-described materials on violence against women so as to maximise impact in "sharing of experience". They may wish to consider bringing to the attention of other partners in the criminal justice system the availability of these resource materials.

March 1999

## Judicial Colloquia Declarations and Strategies for Action on the Promotion of the Human Rights of Women and the Girl-Child through the Judiciary

### Introduction

In 1988, the Commonwealth Secretariat initiated a series of Judicial Colloquia to promote the domestic application of internationally and regionally agreed human rights norms. Judges at the first Colloquium in Bangalore in 1988, adopted the Bangalore Principles which call for the creative and consistent development of human rights jurisprudence throughout the Commonwealth. The Principles emphasise the need for practical measures to ensure that international and regional human rights norms, to which many member countries are state parties, are given full effect in national courts. The Bangalore Principles were reaffirmed at six subsequent Judicial Colloquia which focused on different aspects of the issue. Although these colloquia have been effective, domestic application of international human rights norms from a gender perspective still requires exploration. Additionally, little attention had, to-date been paid to the advancement of the rights of children through these colloquia.

Since 1994, the Gender and Youth Affairs Division in collaboration with the Legal and Constitutional Affairs Division, the Commonwealth Magistrates and Judges Association and the Commonwealth Foundation, have organised three Regional Judicial Colloquia focusing specifically on the promotion of the human rights of women and the girl-child through the judiciary. These were held in Zimbabwe in 1994, for Africa; Hong Kong in 1996, for Asia and the South Pacific; and Guyana in 1997, for the Caribbean region. Another colloquium was held at the NGO Forum during the United Nations Fourth World Conference on Women in Beijing in 1995. The colloquia were attended by male and female Chief Justices, Judges of the Supreme Courts, Courts of Appeal, High Courts and District

Courts; judicial officers; lawyers; academics; researchers; representatives of United Nations agencies and regional organisations; and NGOs. These colloquia have encouraged the wider recognition and application of international and regional human rights norms relevant to the human rights of women and the girl-child by member countries.

The Africa colloquium issued the Victoria Falls Declaration of Principles for Promoting the Human Rights of Women. Subsequently, the Declaration was endorsed by the Commonwealth Magistrates and Judges Association, and it was reaffirmed by judges at the second, third and fourth judicial colloquia on the human rights of women and the girl-child. The Asia and South Pacific Judicial Colloquium issued the Hong Kong Conclusions. The Colloquium in the Caribbean region adopted the Georgetown Recommendations and Strategies for Action on the Human Rights of Women and the Girl-Child. Participants in this colloquium came from the Caribbean as well as the African, Asian and the South Pacific regions. A significant outcome of the colloquium was the setting up of a Commonwealth Reference Group comprising of Chief Justices and senior judges from the four regions of Africa, Asia, the Caribbean and the South Pacific to follow-up on the implementation of the Georgetown Recommendations.

### The Victoria Falls Declaration of Principles for the Promotion of the Human Rights of Women, 1994.<sup>10</sup>

1. The participants reaffirmed the principles stated in Bangalore, amplified in Harare, affirmed in Banjul, confirmed in

<sup>10</sup> Agreed by senior judges at the African Regional Judicial Colloquium held in Victoria Falls, Zimbabwe, 19-20 August, 1994

Abuja, reaffirmed at Balliol, Oxford and reinforced at Bloemfontein. These principles reflect the universality of human rights - inherent in men and women - and the vital duties of an independent judiciary in interpreting and applying national constitutions and laws in the light of those principles. These general principles are applicable in all countries, but the means by which they become applicable may differ.

2. The participants noted that all too often universal human rights are wrongly perceived as confined to civil and political rights and not extending to economic and social rights, which may be of more importance to women. They stressed that civil and political rights and economic and social rights are integral and complementary parts of one coherent system of global human rights.

3. The participants were aware that universal human rights, are usually interpreted as applying to regulate the public sphere. Violations of human rights in the private sphere, including the family - the site of much of women's experience of violations - are usually perceived to be outside the reach of the human rights. The participants noted that although the state does not usually directly violate women's rights in the private sphere, it often supports or condones an exploitative family structure through various laws and rules of behaviour which legitimised the authority of male members over the lives of female members of the family and, in any event, often fails to act to protect women from private violations or tolerates or, indeed, encourages, a structure wherein private violations occur all too frequently.

4. The participants recognised that many of the existing international and regional human rights standards were formulated within a primarily male perspective and with insufficient gender sensitivity and sometimes failed to provide protection for the gender specific interests of women. The participants emphasised the urgent need for the formulation of further

specific rights for women, particularly in the economic and social field. The participants stressed the vital need for women to be centrally involved in decision making at all levels.

5. The participants recognised that discrimination against women can be direct or indirect. They noted that indirect discrimination required particular scrutiny by the judiciary. The participants, further, emphasised the need to ensure not only formal, but also substantive equality for women and, for that purposes, affirmative action may be adopted if necessary.

6. The participants noted that although international human rights were inherent in all human kind, very often such rights were perceived to be owned, only or largely, by men. The participants emphasised, as did the 1993 United Nations World Conference on Human Rights, that the human rights of women are as valuable as the human rights of men.

7. The participants recognised that international human rights instruments, both generally and particularly with reference to women, and their developing jurisprudence enshrine values and principles long recognised as essential to the happiness of humankind. These international instruments have inspired many of the constitutional guarantees of fundamental rights and freedoms within and beyond the Commonwealth. These constitutional guarantees should be interpreted with the generosity appropriate to charters of freedom. Particularly the known discrimination guarantee should be construed purposively and with a special measure of generosity.

8. The participants agreed that it is essential to promote a culture of respect for internationally and regionally stated human rights norms and particularly those affecting women. Such norms should be applied in the domestic courts of all nations and given full effect. They ought not to be considered as alien to domestic law in national courts.

9. All Commonwealth governments should be encouraged to ratify the Convention on the Elimination of All Forms of Discrimination Against Women before the Fourth United Nations World Conference on Women to be held in Beijing in 1995. Those governments which have ratified the Convention with reservations, should examine the content of those reservations, with a view to their withdrawal.

10. All Commonwealth governments should ensure that domestic laws are enacted or adjusted to conform with the international and regional human rights standards.

11. The judicial officers in Commonwealth jurisdictions should be guided by the Convention on the Elimination of All Forms of Discrimination Against Women when interpreting and applying the provisions of national constitutions and laws, including the common law and customary law, when making decisions.

12. The participants agreed with the views expressed in the Vienna Declaration and Programme of Action encouraging the speedy preparation of an optional protocol to enable individual petition under the Convention on the Elimination of All Forms of Discrimination Against Women.

13. All Commonwealth governments should subscribe to the principles contained in the Declaration on Violence Against Women, adopted by the United Nations General Assembly in December 1993. The participants agreed with the Declaration's classification of violence against women as a form of discrimination and violation of human rights.

14. All Commonwealth governments should offer appropriate assistance to the United Nations special rapporteur on violence against women.

15. There is a particular need to ensure that judges, lawyers, litigants and others are made aware of applicable human rights norms as stated in international and regional

instruments and national constitutions and laws. It is crucially important for them to be aware of the provisions of those instruments which particularly pertain to women.

16. The participants recognised and recommended that gender sensitised new initiatives in legal education, provision of material for libraries, programmes of continuing judicial discussion and professional training to lawyers and other interest groups in the protection of the human rights of women and better dissemination of information about developments in this field to judges and lawyers should be undertaken for effective implementation of these principles.

17. The participants emphasised the need to translate the international human rights instruments and the African Charter of Human and Peoples' Rights into local languages, in a form accessible to the people and urged governments to undertake or support that task.

18. The participants were of the view that governments should mount extensive awareness campaigns through diverse means to disseminate and impart human rights education and encourage and support efforts by non-governmental organisations in this context.

19. The participants acknowledged the important contribution of non-governmental organisations in the dissemination of information about women's human rights and making women aware of those rights. The participants called upon governments to acknowledge and support the work of non-governmental organisations in the promotion of the human rights of women.

20. The participants emphasised the need to enable non-governmental organisations to provide *amicus curae* briefs and other legal advice, assistance and representation to women in cases involving human rights issues. The participants also stressed the need to provide free legal aid

and advice to women at state cost for enforcement of their human rights.

21. Public interest litigation and other means of access to justice for litigants, especially women, who wish to complain of violations of their rights should be developed. Non-governmental organisations involved in women's issues should also be permitted to bring violations of human rights of women before the courts for redress.

22. Judges and lawyers have a duty to familiarise themselves with the growing international jurisprudence of human rights and particularly with the expanding material on the protection and promotion of the human rights of women.

23. Closer links and co-operation across national frontiers by the judiciary on the interpretation and application of human rights law should be encouraged.

24. Law schools should be encouraged to develop courses in human rights, which must include a module on the human rights of women.

#### **The Hong Kong Conclusions, 1996<sup>11</sup>**

1. Having regard to the central place of the Victoria Falls Declaration in the recognition and enforcement of the human rights of women, the participants in the Hong Kong colloquium of judges, lawyers and law academics from Commonwealth countries of the Asia/Pacific region, reaffirmed the principles of the Victoria Falls Declaration and expressed their commitment to uphold and implement those principles.

2. Recalling the Declaration on the Elimination of Violence against Women, the

---

<sup>11</sup> Issued by Senior Judges in the Asia and South Pacific region at their Judicial Colloquium on the Domestic Application of International Human Rights Norms relevant to the Human Rights of Women, Hong Kong, 20-22 May, 1996.

discussions at the Commonwealth Heads of Government Meeting in New Zealand in 1995, the Beijing Declaration and Platform for Action and the conclusions of the meeting of Commonwealth Law Ministers in April 1996, the participants expressed their deep concern at the large scale violence against women and the girl-child which is taking place in various forms in most countries of the Commonwealth. Violence against women is a manifestation of historical unequal power relations between women and men which have led to domination over and discrimination against women and is a social mechanism by which the subordinate position of women is sought to be perpetuated. All Commonwealth governments should condemn violence against women and girls as a violation of fundamental human rights, including the right to personal security and the right to be free from discrimination on the basis of sex. No law, custom, tradition, culture or religious consideration should be invoked to excuse violence against women. Judges and judicial officers at all levels should be gender-sensitive and aware of the need to protect women against violence through a proactive interpretation of the law.

3. The participants expressed particular concern at the many forms of violence against women in the family. This violence is widespread, but frequently goes unnoticed and unrestrained because of oppressive social, cultural or religious traditions and values. These factors have led to the subordination of women and continue to dominate social attitudes because of lack of awareness of the basic human rights of women, as well as their economic dependence on men. It is incumbent on law enforcement agencies, the legal profession and the courts to intervene appropriately in relation to violence in the family and not to allow its perpetuation through indifference or inadequate response.

4. Participants recognised the importance of custom, tradition, culture and religion as a part of individual and group identity. They recognised that these concepts

were sometimes interpreted so as to be oppressive to women. They stressed the need to preserve and enhance worthy customs, while at the same time discouraging those that have an adverse impact on women and girls.

5. Participants recognised that a majority of the world's refugees and internally displaced persons are women and children and that these persons are an especially vulnerable group who are frequently denied their basic human rights and subjected to violence and sexual exploitation. The importance of judicial sensitivity to gender specific violations of human rights in dealing with cases relating to physical or mental abuse and/or claims to refugee status was underlined.

6. Recalling that the 1995 Meeting of Commonwealth Heads of Government at Auckland urged all Commonwealth governments to ratify the Convention on the Elimination of All Forms of Discrimination against Women and underlining the importance of accession, ratification and implementation of this Convention and other human rights treaties to the advancement at the national level of the human rights of women and the girl child, the participants noted that it would be desirable if all states in the region became parties to and implemented the Convention.

7. The participants noted that many opportunities exist for judges and other judicial officers to draw on the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments so as to interpret and apply creatively constitutional provisions, legislation, the common law and customary law. In so doing, they drew attention to the wealth of decisions from countries with shared jurisprudential traditions where judges had engaged in such creative interpretation and application. The importance of educating the judiciary and the legal profession with respect to international human rights standards and principles relevant to gender issues was stressed, as well as the need for

national judiciaries to carry out studies on gender bias in the judicial process.

8. Participants noted that it was important that the judiciary reflect the population it serves. Accordingly, it encouraged the exploration of ways to ensure a gender balance in the judicial system.

9. Participants identified a number of areas where there are clear violations of the human rights of women which might be addressed by the utilisation of international norms in domestic decision making. These included, in particular, discrimination in matters of nationality, citizenship, property and inheritance, which has serious implications for the exercise and enjoyment by women of other fundamental human rights. Participants also encouraged the review of legislation to ensure its consistency with international human rights obligations undertaken by individual countries.

10. Noting the complementarity between the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, participants drew attention to the special vulnerability of the girl-child to violations of human rights and identified this as a matter requiring particular judicial attention. They noted that the principle of the best interests of the child could be used to promote the full enjoyment by the girl-child of her rights.

11. Participants noted that litigation to advance the human rights of women was limited at both the national and international levels. They emphasised women's limited access to the judicial process to enforce their rights and they proposed the further development of a number of measures to increase women's access to justice, including legal literacy programmes and assisted legal advice and representation. Participants drew attention to the important role that the media could play in creating an awareness of the human rights of women. They suggested that consideration might also be given to encouragement of representative actions and relaxing traditional limitations on *locus*

*standi*. They also supported the adoption of an optional complaints mechanism for the Women's Convention.

### **The Georgetown Recommendations and Strategies for Action on the Human Rights of Women and the Girl-Child, 1997<sup>12</sup>**

1. The participants reaffirmed the Victoria Falls Declaration of Principles for the promotion of the Human Rights of Women (1994) and the Hong Kong Conclusions (1996) and commended these to states for acceptance and implementation.

2. The Colloquium welcomed the adoption of the Charter of Civil Society for the Caribbean Community by the Conference of Heads of Government at its 8th inter-sessional meeting in Antigua and Barbuda in February 1997.

3. The Colloquium underlined the fact that the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights, and they must be taken as forming part of mainstream human rights.

4. The Colloquium expressed concern that civil and political rights have received extensive attention within the mainstream human rights discourse while economic, social and cultural rights have been neglected. This has adversely affected women's concerns.

5. Traditional human rights theory primarily focuses on violations perpetrated

---

<sup>12</sup> Issued by Commonwealth judges at the Judicial Colloquium on the Promotion of the Human Rights of Women and the Girl-Child through the Judiciary, Georgetown, Guyana, 14-17 April, 1997. The Commonwealth Strategies for Action for advancing the human rights of women and the girl-child through the judiciary provides the basis for setting up a Commonwealth Reference Group to follow-up their implementation.

by the state. This distinction between state responsibility in relation to public and private acts has contributed to a failure to recognise many violations of women's rights as human rights violations.

6. The Colloquium recognised that the fundamental duty of judges to ensure the fair and due administration of justice requires judges to be alert to manifestations of gender discrimination in the law and in the administration of justice, and to take such measures as lay within their power to redress or eliminate any such discrimination. The Colloquium also recognised that the community's understandings of fairness and equality may evolve over time and that judges had both the power and responsibility to adapt the common law or interpretations of constitutional provisions to meet the changing circumstances of society. The full enjoyment by women of their human rights could only be realised through the creative interpretation and effective enforcement of these rights by the courts. This can only occur if there is an independent and competent judiciary which enjoys the confidence of the people it serves.

7. The Colloquium noted with concern that some states in the Commonwealth support or condone an exploitative family structure through various laws and rules of behaviour which legitimise the authority of the male over the female and fail to protect women from private violations of their rights.

8. The Colloquium emphasised that culture, customary and traditional practices or religion should not be invoked as justification for violations of the fundamental rights and freedoms of women.

9. The Colloquium emphasised the goal of universal ratification of international human rights instruments and relevant international labour conventions, in particular the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It underlined the obligation of

states parties fully and effectively to implement their treaty obligations by bringing their Constitutions and domestic law and practice into conformity with these human rights commitments. It also urged those states parties which had entered reservations to conventions to consider their withdrawal.

10. The Colloquium emphasised the utility of international human rights norms to domestic litigation, noting that in general there was no constitutional or other bar to referring to international human rights treaties. Among other uses, these norms might in appropriate cases provide a standard that could be used in order to elucidate the meaning of constitutional guarantees.

11. Both the United Nations Declaration on the Elimination of Violence against Women and General recommendation 19 of the Committee on the Elimination of Discrimination against Women recognised that violence against women takes many forms. These include domestic violence, rape (including rape within marriage), exploitation of girl children (including the disadvantaged), trafficking in women and girls, violence associated with prostitution and with pornography, dowry deaths, violence in the work place and sexual harassment. The personal, economic and social costs of this violence are enormous. States must take effective measures in accordance with the Convention on the Elimination of All Forms of Discrimination The against Women, the Declaration on the Elimination of Violence Against Women, and, where applicable, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence. States parties should fulfil their obligations to prevent and eradicate these and other forms of violence against women, as an indispensable part of the process of eliminating gender discrimination.

12. The Colloquium noted with satisfaction that some countries had enacted legislation addressing domestic violence and

other forms of violence against women. The Colloquium recommended that other states in the Commonwealth consider the enactment of similar legislation, and stressed the need for such legislation to be regularly monitored and updated as appropriate.

13. The Colloquium expressed its concern in regard to the commercial sexual exploitation of women and girls, including trafficking for the purposes of prostitution. The Colloquium urged states throughout the Commonwealth to take effective measures to eradicate this phenomenon. These measures could include the enactment of legislation (including appropriate penal provisions), and administrative and other measures such as efforts to rehabilitate and reintegrate into society those subjected to these violations.

14. The Colloquium acknowledged the work that the Commonwealth Secretariat has done in developing publications and training materials relating to human rights, including the human rights of women, and urged the organisation to continue this work.

15. Judges participating in the Colloquium expressed their appreciation for the informative and constructive contribution made to the discussions by representatives of non-governmental organisations and noted the recommendations proposed by them.

### **Recommendations and Strategies for Action**

Colloquium adopted the following recommendations and strategies for action:

#### **Information and publicity activities**

16. States that become parties to international human rights treaties should publicise that fact widely among their community and ensure that copies of the treaties, reports of the country under the treaty and other relevant documentation (where possible in local languages) are made widely available.

17. The Gender and Youth Affairs Division of the Commonwealth Secretariat should ensure that copies of the Convention on the Elimination of All Forms of Discrimination against Women and *Assessing the Status of Women: A Guide to Reporting under the Convention on the Elimination of All Forms of Discrimination against Women* (2nd ed. 1996) are made available to the judiciary and to the Bar Association in each state of the Commonwealth.

#### **Access to information and exchange of information**

18. The Commonwealth Secretariat, the United Nations and its agencies, and other bodies should explore ways of making available to judges, judicial officers and practitioners access to electronic sources of information on human rights, in particular relating to the human rights of women, and should ensure the availability of basic international and comparative materials in libraries accessible to the judiciary and the profession.

19. Judges in Caribbean and other Commonwealth countries who render decisions in constitutional human rights cases, in cases in which international instruments are invoked or which significantly advance the rights of women under domestic legislation should, as far as possible, send copies of those decisions to:

- ◆ the Commonwealth Secretariat, for inclusion in the *Commonwealth Law Bulletin*
- ◆ Interights, for inclusion, as appropriate, in the *Commonwealth Human Rights Law Digest*
- ◆ in the Caribbean, to the CARICOM Secretariat and universities in the region for appropriate publication.

20. The Commonwealth Secretariat and the CARICOM Secretariat should endeavour to ensure that all judges in the Caribbean as well as in other regions are provided with

access, either in electronic or hard copy format, to the *Commonwealth Human Rights Law Digest*, the *Commonwealth Judicial Journal*, the *Commonwealth Law Bulletin*, and the *Law Reports of the Commonwealth* and regional publications.

21. Judges, practitioners and academics should be encouraged to submit articles and other material for publication in the *Commonwealth Law Bulletin* and *Commonwealth Judicial Journal* and regional publications.

22. The Commonwealth Secretariat and the CARICOM Secretariat should explore ways of developing, either on their own or in conjunction with other suitable bodies or NGOs, a world wide web (www) site which would contain human rights and related materials, including material on the gender dimensions of human rights, and which would complement the existing work in this area of bodies such as the United Nations, the ILO and the United Nations High Commissioner for Human Rights.

#### **Judicial studies programmes and continuing legal education on gender issues**

23. Gender-sensitive training and information about women's human rights should be provided to the judiciary, lawyers, law-enforcement agencies, court personnel, law students and community leaders. Legal literacy programmes to raise public awareness should also be undertaken.

24. Those bodies involved in judicial education seminars at the international, regional and national level should co-operate in and co-ordinate their activities in order to make best use of limited resources.

25. The Commonwealth Secretariat should explore ways in which the experiences of the two series of Judicial Colloquia on human rights which it had organised might be drawn on in order to ensure that gender issues are fully integrated

in any future judicial training in which the Secretariat was involved.

26. The Commonwealth Secretariat, in liaison with the CMJA and other organisations with expertise in the area, should explore the need for the development of further training materials on international human rights, generally and as they relate specifically to women.

### **The operation of the legal system and reform of the law**

27. The language used in human rights instruments, national legislation and in court proceedings and judgements should be non-sexist, and, as appropriate, gender-neutral language should be employed.

28. Where general or specific reviews of the law are undertaken by Law Reform Commissions or other bodies, the terms of reference of such reviews should ensure that the impact of existing and proposed laws on the human rights of women is fully taken into account in the process of review and reform of the law.

### **Operation of the courts and the court system**

29. States should, where possible, put in place information systems for the production of gender disaggregated data on the operation of the courts for research, policy formulation and for planning timely interventions.

30. Notwithstanding the obligation to ensure a fair trial for all, judges and prosecutors are encouraged to be vigilant about the withdrawal of cases in order to ensure that the legal system fully protects the rights of women and girls.

### **Support services and programmes**

31. States should, where possible, establish a comprehensive legal aid programme to ensure the availability of legal aid or *pro bono* legal assistance for court and administrative proceedings in which redress

for violations of human rights, including those suffered by women and girls, is sought. States should also establish programmes for counselling of women and girls who have suffered violations of rights, as well as special programmes for offenders.

32. States should establish specially trained units in the police force for the investigation of offences by and against women and girls, the functions of which should include counselling for those who have been subject to abuse.

### **The use of international and regional human rights procedures**

33. Lawyers should consider whether more effective use could be made of applicable international and regional complaint procedures to advance women's human rights, in cases in which a remedy was not available within the domestic system. These procedures included the procedures of the Organisation of American States, including those of the Inter-American Commission under the American Declaration of the Rights of Man, the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), the procedures of the Council of Europe under the European Convention on Human Rights, and the procedure under the First Optional Protocol to the International Covenant on Civil and Political Rights, as well as applicable complaints procedures relating to the implementation of international labour conventions.

### **Enhancement of regional co-operation and exchange of information**

34. The Commonwealth Secretariat, the CMJA, and other responsible international, regional or sub-regional agencies, should explore, in close collaboration with the judges of each region and taking into account existing institutions and programmes, the desirability of the establishment of a regional

judicial studies institute or programme to facilitate continuing judicial education and the exchange of legal material among the judges of the region.

#### **Follow up**

35. The Colloquium recommended that a Reference Group be constituted for follow-up of the recommendations contained in this document, as well as assessing the impact of previous Judicial Colloquia on the domestic enforcement of international human rights norms through national courts.

36. The Colloquium recommended broad dissemination of the Victoria Falls Declaration, the Hong Kong Conclusions and the Georgetown Recommendations and

Strategies for Action, as well as the reports of those Judicial Colloquia.

37. The Colloquium requested the Commonwealth Secretariat to transmit the Georgetown Recommendations and Strategies for Action to:

- ◆ the Commonwealth Heads of Government Meeting to be held in Edinburgh in October 1997
- ◆ the triennial meeting of the CMJA to be held in Capetown in October 1997
- ◆ and the next meeting of Commonwealth Law Ministers.