

FOREWORD

The majority of Commonwealth countries are parties to general international and regional human rights standards, and to the specific international norms on the human rights of women and the girl-child. Judges are well placed to provide leadership in advancing gender interests, and to translate the commitments of governments into reality by referring to these international standards. These human rights standards can inform decision-making in litigation at all levels whether or not they have been incorporated into domestic legislation.

Commonwealth and international meetings have emphasised that the human rights of women are an inalienable, integral and indivisible part of universal human rights. The Harare Declaration (1991) identifies human rights as one of the priorities for Commonwealth Action, and urges all member countries to work towards the promotion of fundamental Commonwealth values which include the promotion of equal rights and opportunities for all citizens regardless of gender. The 1995 Commonwealth Plan of Action on Gender and Development identifies the promotion of women's human rights as one of the fifteen critical areas for action by governments and advocates the elimination of violence against women, protection of the girl-child and outlawing of all forms of trafficking in women and children. Commonwealth Heads of Government at their meeting in Auckland in 1995, pledged that all governments should ratify and implement the Convention on the Elimination of All Forms of Discrimination against Women (the Women's Convention), the Convention on the Rights of the Child, and the Declaration on the Elimination of Violence against Women. At their 1993 and 1996 meetings, Ministers Responsible for Women's Affairs requested the Commonwealth Secretariat to provide training programmes to sensitise government officials and legal professionals to the value of using the Women's Convention as a major human rights instrument in the development of jurisprudence, new constitutions and strengthening democratic institutions. The Beijing Platform for Action called for universal ratification of the Convention by the year 2000 and the elimination of violence against women.

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, has organised four judicial colloquia focusing specifically on the promotion of the human rights of women and the girl-child through the judiciary. The first colloquium, for the African region, was held in Zimbabwe in 1994. It was followed by another colloquium at the NGO Forum during the United Nations Fourth World Conference on Women in Beijing in 1995. The third colloquium, for the Asia/South Pacific region, was held in Hong Kong in 1996. The fourth and last in the series was held in the Caribbean region in Guyana in 1997. These

colloquia were attended by female and male Chief Justices, judges of the Supreme Courts, Courts of Appeal, High Courts and District Courts; judicial officers; lawyers; academics; researchers; representatives of UN agencies and regional organisations; and NGOs. The African colloquium issued the *Victoria Falls Declaration of Principles for Promoting the Human Rights of Women*. It was endorsed by the Commonwealth Magistrates' and Judges' Association, and reaffirmed by judges at subsequent colloquia. The Asia and South Pacific Judicial Colloquium issued the *Hong Kong Conclusions*. The Caribbean Colloquium adopted the *Georgetown Recommendations and Strategies for Action on the Human Rights of Women and the Girl-Child* and also set up a Commonwealth Reference Group comprising of Chief Justices and senior judges from the four regions of Africa, Asia, Caribbean and the South Pacific to follow-up the implementation of the *Georgetown Recommendations*.

Other work of the Gender and Youth Affairs Division has focused on producing resource and training materials for use by member countries in eradicating violence against women, promoting the increased use of CEDAW as well as facilitating member governments as they prepare their national reports on CEDAW. The following manuals have been published: *Confronting Violence — A Manual for Commonwealth Action*; *Violence against Women — Curriculum Materials for Legal Studies*; *Guidelines for Police Training on Violence against Women and Child Sexual Abuse*; *A Commonwealth Annotated Bibliography on Violence 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*. Two regional studies on the commercial sexual exploitation of the girl-child in Asia and Africa have been completed. The case law collection which demonstrates how international human rights norms relevant to the human rights of women have been used in national courts; a resource book on actions taken by Commonwealth Countries to combat Violence against Women, and a handbook on good practices for the implementation of the Convention on the Elimination of All Forms of Discrimination against Women by Commonwealth countries are being finalised for publication.

This publication presents the statements made and papers submitted for the Asia/South Pacific regional judicial colloquium, as well as the texts of the *Victoria Falls Declaration of Principles for Promoting the Human Rights of Women* and the *Hong Kong Conclusions* which were adopted at the colloquium. It is hoped that it will contribute to the wider recognition and application of international and regional human rights norms relevant to the human rights of women and the girl-child by the judiciary.

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**Victoria Falls Declaration of Principles
for Promoting the Human Rights of Women**

Zimbabwe, 19–20 August 1994

1. The participants reaffirmed the principles stated in Bangalore, amplified in Harare, affirmed in Banjul, confirmed in 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. 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. Civil and political rights and economic and social rights are integral and complementary parts of one coherent system of global human rights.
3. 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 human rights. 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 legitimate the authority of male members over the lives of female members of the family and fails to act to protect women from private violations or tolerates or, indeed, encourages, a structure wherein private violations occur all too frequently.
4. Many of the existing international and regional human rights standards were formulated within a primarily male perspective and with insufficient gender sensitivity and therefore sometimes fail to provide protection for the gender specific interests of women. There is an urgent need for the formulation of further specific rights for women, particularly in the economic and social field. It is vital for women to be centrally involved in decision making at all levels.
5. Discrimination against women can be direct or indirect. Indirect discrimination requires particular scrutiny by the judiciary. There is a need to ensure not only formal, but also substantive equality for women and, for that purpose, affirmative action may be adopted if necessary.
6. Although international human rights are inherent in all humankind, very often such rights are perceived to be owned, only or largely,

by men. Participants emphasised that the human rights of women are as valuable as the human rights of men.

7. 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. 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 the national constitutions and laws, including the common law and customary law, when making decisions.
12. The speedy preparation of an optional protocol to enable individual petition under the Convention on the Elimination of All Forms of Discrimination against Women should be encouraged.
13. All Commonwealth governments should subscribe to the principles contained in the Declaration on Violence against Women, adopted by the UN General Assembly in December 1993. Violence against women is a form of discrimination and violation of human rights as stated in the Declaration.
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. New gender sensitised 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. There is a 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 governments should therefore undertake or support that task.
 18. 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. Non-governmental organisations play an important role in the dissemination of information about women's human rights and making women aware of those rights. Governments should therefore acknowledge and support the work of non-governmental organisations in promoting the human rights of women.
 20. Non-governmental organisations should be enabled to provide *amicus curae* briefs and other legal advice, assistance and representation to women in cases involving human rights issues. Free legal aid and advice should be provided to women at state cost for enforcement of their human rights.
 21. Public interest litigation and other means of access to justice to 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 the 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 cooperation 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 Conclusions of the Asia/South Pacific Regional
Judicial Colloquium
for Senior Judges on the Domestic Application of
International Human Rights Norms Relevant to Women's
Human Rights**

Hong Kong, 20–22 May 1996

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 the Commonwealth countries of the Asia/South Pacific region, reaffirmed the principles of the Victoria Falls Declaration and expressed their commitment to uphold and implement those principles.

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

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 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.

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.

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.

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.

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.

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.

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.

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.

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 Convention on the Elimination of All Forms of Discrimination against Women.