

## Gender, human rights and the law

*Section 3 provides an overview of the links between gender, human rights and the law. It presents the relevance of gender analysis to the administration of justice in general and the policing of violence against women and child sexual abuse in particular. The section begins with the efforts of the United Nations to articulate the principles of equality to govern the relationships within and between nation states, and moves on to how these are being furthered by Commonwealth ministerial meetings and specialist colloquia on law and judicial undertakings. It concludes with the mandate of the Commonwealth Secretariat to assist in achieving implementation of agreed policy documents.*

### Responsible policing

The police have a crucial role to play in ensuring that policies on human rights adopted by the United Nations and agreed by member states are achieved. Regarding policies on women's human rights, a gender perspective is required for the police to be able to successfully undertake this socially necessary activity. While the violation of the human rights of women may take the same form as the violation of the human rights of men, they are often family based and require police action in new areas of work. The subordinate position of women in society and family life should not be interpreted to mean that the police have no responsibility for responding pro-actively to violent and sexual crimes against women and their children. Police forces are encouraged to review their methods of work and to seriously consider whether, consciously or unconsciously, inaction is allowing men to behave in abusive ways towards women. One telling sign that this is occurring is widespread victim blaming, that is blaming the woman for the violence she suffers rather than taking action against the man.

### The United Nations and equal rights

When the United Nations was established in 1948, human rights were enshrined in its Charter. The Universal Declaration of Human Rights affirms the dignity and worth of the human person and the equal rights of women and men. However, given that substantial inequalities and life threatening harm to women and children continued, particularly to the girl child, women's movements and organisations worldwide began to demand that the recognition of women's rights as human rights be reaffirmed by the United Nations. Major milestones in achieving this reaffirmation are the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, the Convention on the Rights of the Child (CRC) in 1990, and the UN Declaration on Elimination of Violence Against Women in 1993. These call on national states to enact legislation and to develop integrated national plans of action to create the infrastructure necessary to implement law and policy based on these international human rights instruments.

CEDAW calls on all nations to take appropriate measures to modify social and cultural patterns of conduct of men and women with a view to the elimination of prejudice and customary and other practices based on the idea of the inferiority or superiority of either sex or stereotypical roles. Trafficking in women and exploitation through prostitution are specifically mentioned. CEDAW has an elected committee to oversee progress in achieving its aims, as does CRC. CRC requires all states to abolish traditional practices prejudicial to the health of children and to protect children from all forms of sexual exploitation and sexual abuse, including their use in prostitution and pornography. These instruments seek to ensure that the rights of women and children to personal security and well-being are no different from those that pertain to men. These instruments clarify that the

original Charter of the United Nations enshrined general human rights principles to be honoured by member states and applied to all without distinctions based on factors such as sex, 'race', ethnicity, religion, political or other opinion, national or social origin, property, birth or other status.

General Recommendation 19 of CEDAW (included in 13. Documents), recommends that states take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act. CEDAW requires reports by states to be made on actions taken to implement the Convention. Reports are to include the extent of problems and the effectiveness of penal, preventive and rehabilitation measures, complaint procedures and remedies, including compensation. Information is required on sexual exploitation, sexual harassment, support services for victims of family and other gender-based violence, female circumcision, risks experienced by specific groups such as rural women, and coercion with regard to fertility and reproduction. The nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of violence that result are to be reported. Reports are to include all available data on incidence of each form of violence and the effects of such violence on women who are victims.

The Convention requires its state signatories to act with due diligence in order to prevent violations of rights, and to investigate, punish, and provide compensation for acts of violence. States are required to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise. Under general international law and specific human rights covenants, states may be responsible for private acts if they fail to act with due diligence. The police have a frontline role in ensuring that states met the requirement of due diligence.

States are to provide:

- effective protection of women against gender-based violence through the law and its enforcement, both penal and civil
- prevention through public information and education programmes to change attitudes regarding the roles and status of men and women, and
- protection to victims and those at risk through the provision of community resources of refuges, counselling, rehabilitation and other support services.

The purpose of the Declaration on the Elimination of Violence Against Women (included in 13. Documents) was to strengthen and complement the implementation of CEDAW as the equality, security, liberty, integrity and dignity of women are nullified by violence. The Declaration defines violence to mean any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, either occurring in public or in private life. Specifically named acts of family violence are battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other such harmful traditional practices, non-spousal violence and violence related to exploitation. Community or public violence is named as rape, sexual abuse, sexual harassment and intimidation at work, in education and elsewhere, trafficking in women and forced prostitution. National plans of action are called for in order to promote the protection of women, to prevent violence, to provide health and welfare services to women and their children who are victimised, including cooperation with non-governmental organisations, particularly those concerned with violence against women. Training to sensitise law enforcement officers to the needs of women is among the recommendations for action.

Women's organisations have led the demand for action on violence against women at all levels of government and world organisation. There have been four UN conferences on women, in Mexico (1975), in Denmark (1980), in Nairobi (1985), and in Beijing (1995), which have resulted in United Nations agreed Platforms for Action. Other international meetings have led to the creation of further social infrastructure to respond to the social inequality experienced by women. The World

Conference on Human Rights in 1993, for example, led to the appointment of a Special Rapporteur on Violence Against Women. Her responsibilities are to report to the Human Rights Commission on the problem of violence against women, to visit countries on specific issues of violence against women, and to raise issues with governments on behalf of individual women victims of violence.

CEDAW, CRC and the UN Declaration on Elimination of Violence Against Women, adopted by the United Nations General Assembly, draw attention to the specific nature of the violation of women's human rights. While these are multiple, violence against women and children is pervasive throughout the countries of the world. Nation states share similar forms of violence, particularly violence against women and children in their homes, but there are differences. Trafficking in women and children for purposes of sexual exploitation differs between nations, some of which send and others receive. Also, specific cultural practices, such as sexual mutilation through cliterodectomy or infibulation, to which girl children are particularly vulnerable, vary from country to country. For adult women, cultural forms such as marriage arrangements and widowhood practices may create vulnerabilities to violence for adult women. National plans are required to respond to the specific needs of each situation.

Universal human rights are not confined to civil and political spheres, but also include the social and economic spheres. These latter areas are of particular importance as the site of much of the human rights violations of women and girls take place in the so-called private sphere. Violence against girls and women establishes, reflects and reinforces their lesser position in society, furthering male dominance in family and public life. As a result, nation states pay both an economic and social price in allowing these abuses to continue. The personal cost to women and girls may be expressed, for example, through poorer nutritional and health outcomes and more generally to society through the corruption of family life and the reduction in the ability of women to fully contribute to economic development and civil society. Violence to women and children results in a poorer quality of life for females than males in many parts of the world, but this can remain unacknowledged and even invisible to societies.

The principle of universal human rights is one no nation has yet fully met. It remains an ideal to be obtained and should be approached in this way when considering the role of policing and the criminal justice system.

## **The Fifth Meeting of Commonwealth Ministers Responsible for Women's Affairs, 1996**

The Commonwealth recognises that there is a connection between gender inequality, gender discrimination and violence against women and children. This inter-relationship was highlighted by the Fifth Meeting of Commonwealth Ministers Responsible for Women's Affairs in 1996 through their recognition that the elimination of violence against women is an indispensable part of the process of eliminating gender discrimination and inequality. Ratification of the United Nations Conventions and acceptance of the recommendations of the Declaration, without reservations, is yet to be fully achieved in all Commonwealth countries. Commitment to the principle embodied in these instruments that women's rights are human rights is a first step in effectively confronting violence against women and girls.

The forms taken by these acts of violence are not only endemic, but they also alter their forms, increasing and decreasing as a result of other factors. At their most extreme, these violations of the human rights of women and children permit very limited resistance. This may be because of the age of the child, for example, who may be sexually mutilated as a young girl, or social circumstances which intensify vulnerability to all forms of violence, in particular, armed conflict through war or civil disturbance. The commercial sexual exploitation of women and girls has become an

international trade in which force or trickery induct women and girls into sexual servitude best expressed through the term, slavery. Men in Commonwealth countries, as elsewhere, are involved as suppliers and sexual abusers of unfree women and children, particularly the girl child. Pornography is an aspect of this trade, and information technology a further vehicle for the intensification of exploitation. The World Congress Against Commercial Sexual Exploitation of Children held in 1996, produced a Declaration and a Programme for Action for governments to adopt and implement.

The Fifth Meeting of Commonwealth Ministers Responsible for Women's Affairs recognised these issues while drawing attention to positive measures introduced by many member governments in the Commonwealth and to what remains to be done. Integrated and holistic responses to violence against women and children remain to be introduced in almost all jurisdictions. Law reform on its own is insufficient as delivery of justice to women and children does not automatically flow from legislation, however sound. Securing the human rights of women and children to personal safety and security requires adequate resource allocation for policing and the criminal justice system and social and welfare agencies, including the voluntary sector providing direct services to women and children. The Ministers recognised that the lack of adequate resources is a major impediment to achieving effective intervention of current strategies.

## **Meeting of Commonwealth Law Ministers, 1996**

In 1996, the Commonwealth Law Ministers introduced a proposal that outlined a number of practical measures to help eliminate violence against women. These measures included:

- a comprehensive review of the criminal justice system
- gender sensitive training for the judiciary and law enforcement officers, health workers, law and medical students and community leaders
- legal literacy programmes to raise awareness amongst the public.

Civil society too, is a vital element in eliminating violence against women and attention needs to be directed to altering gender discriminatory attitudes and practices. Community strategies are required as well as the institutional. This includes attending to the negative portrayal of women and girls in the media, as this may either reinforce or further promote a culture of violence against women and girls. It also requires education of both boys and girls in their families and formal schooling to achieve equality. The Ministers particularly drew attention to formally conveying the concepts of peace, conflict management and gender concerns.

## **Commonwealth Judicial Colloquia on Women's Human Rights**

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 four judicial colloquia focusing specifically on the promotion of the human rights of women and the girl-child through the judiciary. The first, for the Africa region was held in Zimbabwe in 1994. This was followed by another colloquium organised at the NGO Forum during the Fourth UN World Conference on Women in Beijing in 1995. The third colloquium, for the Asia/South Pacific region, took place in Hong Kong in 1996. The fourth and final in the series, for the Caribbean region, was held in Guyana in 1997. These colloquia were attended by 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 NGOs. Each colloquium has built on the work of the last, resulting in three major outcomes: the Victoria Falls Declaration of Principles for Promoting the Human Rights of Women; the Hong Kong Conclusions; and the Georgetown Recommendations and Strategies for Action on the Human Rights of Women and the Girl-Child. A Commonwealth Reference Group was set up comprising chief justices and

senior judges from the four regions of Africa, Asia, Caribbean and the South Pacific in order to follow-up the implementation of the Georgetown Recommendations. The principles that have been articulated are rooted in a recognition of the universality of human rights and the duty of an independent judiciary to interpret and apply national constitutions and laws with this in mind. This formulation permits the means by which these principles become applicable to differ between countries.

Commonwealth judicial colloquia noted that oppressive social, cultural or religious traditions and values led to many forms of violence against women and children being unnoticed and unrestrained. The subordination of women and girls continues to dominate social attitudes and behaviour because there is a lack of awareness of human rights as women's rights as well as economic dependence on men. Law enforcement has a particularly important role to play in securing justice for women in these cultural circumstances. Law enforcement and judicial sensitivity are called for in response to violations of women's human rights and to claims for asylum or refugee status. Violations of women's human rights frequently centre around nationality, citizenship, property and inheritance. Discriminatory practices in these areas increase women's vulnerability to violence.

Discrimination against women and girls can be direct or indirect and the Commonwealth Judicial colloquia noted that indirect discrimination requires particular scrutiny by the judiciary. The issue is not only formal, but substantive equality for women. This may require affirmative action. The 1993 United Nations World Conference on Human Rights also came to the conclusion that the human rights of women are as valuable as the human rights of men. Further, international instruments that seek to obtain human rights for women and girls result in constitutional guarantees of fundamental rights and freedoms that benefit all citizens. The judicial colloquia drew attention to the importance of domestic courts as a venue for promoting a culture of respect for human rights, and particularly those affecting women, and to the need to facilitate easier access to courts for women and non-governmental organisations when raising issues of human rights. The Convention on the Rights of the Child drew attention to the special vulnerability of the girl-child and the importance of the principle, the best interests of the child, to judicial promotion of her rights.

The judicial colloquia called on judicial officers in the Commonwealth to be guided by CEDAW when interpreting and applying the provisions of the national constitution and laws, including the common law and customary law when making decisions.

## The Commonwealth Secretariat

The Commonwealth Secretariat was mandated by Commonwealth Ministers to undertake a range of activities to promote women's human rights. A major focus of their recommendations is the issue of violence against women and children. The Commonwealth Secretariat provides information to assist Commonwealth jurisdictions in implementing international instruments. With regard to CEDAW, the Gender and Youth Affairs Division produce resource and training materials for use by member countries to promote its increased use and to assist member governments in preparing their national reports. For example, *Assessing the Status of Women: A Guide of Reporting under the Convention on the Elimination of All Forms of Discrimination against Women* provides practical guidelines on reporting and implementation of the women's convention. The Gender and Youth Affairs Division has produced the following manuals to assist member countries in eradicating violence against women: *Confronting Violence: A Manual for Commonwealth Action*; *Curriculum Materials for Legal Studies*; and *A Commonwealth Annotated Bibliography on Violence against Women*. These materials lay the foundations for increasing understanding that violence against women is a human rights violation while also providing specific information to promote good practice.

This companion volume, the second edition of the *Guidelines for Police Training on Violence Against Women and Child Sexual Abuse*, aims to accomplish a similar task in relation to policing. Ensuring the rights of women and children require pro-active policing of violence, but to achieve this requires strategic planning based on gendered statistical data on violence against women and children. If few women and girls are reporting human rights violations to the police, then this information must be obtained from other sources, for example, the women and girls themselves through non-governmental organisations, statutory health and welfare services. Policing then becomes the means by which the criminal justice system can begin to fulfil the requirements of strategic plans to respond appropriately to violence as a violation of basic human rights against women and children of both sexes.