Research on the Potential Impact of CEDAW on Cayman Islands Legislation

July 2011

By the Caymanian Bar Association Student Members

1 Foreword

The Student Members of the Caymanian Bar Association (the "Student Members"), for the second consecutive year, held interest in undertaking some form of activity that would be of benefit to the community as well as encourage the development of their burgeoning legal skills. An opportunity arose when the Human Rights Commission of the Cayman Islands ("HRC") indicated a need for research to be conducted to enhance the resources available and potentially assist their role. The Cayman Islands Government is currently in the final stages of implementing legislation that would enable the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") to be extended to the Cayman Islands. The HRC expressed interest in exploring how each article of CEDAW will impact Cayman Islands legislation and invited the Student Members to investigate this. The Student Members would like to convey their appreciation to the HRC for being given such an opportunity and have prepared this document to record their findings.

2 Important Qualifications

The research conducted and this document reflect work undertaken by the Student Members in a voluntary capacity and only with the intent to be a useful resource for the HRC.

Any information contained in this document does not reflect the views of the Caymanian Bar Association, the Human Rights Commission of the Cayman Islands nor any organisation that is the employer of a Student Member.

This document does not purport to render legal advice.

3 Parameters of the Research

- 3.1 The starting position was to review CEDAW to ascertain the considerations required in approaching this research. It was noted that the relevant articles that required examination against our legislation were Articles 2 through to 16. Article 1 relates to a definition of discrimination and articles 17 through to 30 relate to the administrative provisions of CEDAW itself.
- 3.2 Regard was given to current Cayman Islands legislation and it was found that there were over 800 individual documents pertaining to its orders, laws and regulations. Schedule 1 lists the initial legislation that was addressed and following consideration of each document and its applicability to CEDAW a narrowed down list of legislation that was possibly engaged was finalised and this can be found at Schedule 2.
- 3.3 The Student Members reviewed the legislation in Schedule 2 carefully alongside CEDAW and compiled the results set out in [section 5] below.
- 3.4 The Gender Equality Bill, 2011 (the "Bill") is in the final stages of review and implementation by the Cayman Islands Government. As the scope of the research requested only involved current Cayman Islands legislation and the Bill was already being considered by Government, the Student Members did not address the Bill in their research. It was noted that the Bill had been drafted with comparable clauses to CEDAW and so once law it might satisfy CEDAW requirements.
- 3.5 Certain provisions of The Interpretation Law (1995 Revision) are relevant when reviewing the Cayman Islands legislation. In particular, section 4 states "In this Law and in all Laws and other instruments of a public character relating to the islands now in force or hereafter to be made, unless there is something in the subject or context inconsistent with such construction, or unless it is therein otherwise expressly provided- (a) words importing the masculine gender include females" and this has application to all laws enacted before or after The Interpretation Law (1995 Revision) pursuant to section 2.

4 Introduction to the Research

- 4.1 A table was found to be the ideal format for compiling the results of the research as the detail of each article could be included for ease of cross referencing next to the legislation found to be applicable.
- 4.2 All the legislation that was found to have any direct significance to CEDAW has been included. It is noted that the majority of Cayman Islands legislation contains no determination between the genders.
- 4.3 There are a couple of points to note when reviewing the table of research:
 - (a) Many of the issues highlighted in the CEDAW articles are addressed in the forthcoming Bill of Rights¹ however there are a few matters to note with regard to this:
 - (i) The Bill of Rights is not current and is scheduled to come into force 6 November 2012 (save for s. 6(2) and 6(3) which shall come into force 6 November 2013).
 - (ii) There are limits of the applicability of the Bill of Rights in that it pertains only to the treatment by Government (and certain public bodies) towards its citizens. It does not provide protection of rights between individuals or companies.
 - (iii) There is also a limitation in s. 24 of the Bill of Rights whereby the duty of public officials to act in a way that is incompatible to the Bill of Rights is unlawful unless the public official is authorised to do so in another law.
 - (b) There are differing rights for persons based on whether or not they possess Caymanian status and this might mean that women without Caymanian status have lesser rights than those with it.

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¹ The Cayman Islands Constitution Order 2009 Part 1

Research on Cayman Islands' legislation potentially engaged or affected by the Cayman Islands adopting CEDAW^2

CEDAW ARTICLE	CAYMAN LEGISLATION AND COMMENTS
Article 2 – Policy Measures	The Cayman Islands Constitution Order 2009 ³
States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:	Although not yet in force, the Bill of Rights will provide for non-discrimination with s. 16 (1) stating that government shall not treat any person in a discriminatory manner in respect of the rights under the Bill of Rights and "discriminatory" includes
(a) To embody the principle of the equality of men and women in their national	affording different treatment on grounds of sex.
constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;	Also note that the legislation commented on below can also be included in this section.
(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;	
(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;	
(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;	
(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;	
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;	
(g) To repeal all national penal provisions which constitute discrimination against	

 $^{^{2}}$ Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979

³ The Bill of Rights (being sections 1 − 28 of The Cayman Islands Constitution Order) is due to come into force 6 November 2012 (save for s. 6(2) and 6(3) which shall come into force 6 November 2013).

CEDAW ARTICLE		CAYMAN LEGISLATION AND COMMENTS
women.		
Article 3 – Guarantee of Basic Human Rights and Fundamental Freedoms States Parties shall take in all fields, in particular in the political, social, economic		European Convention of Human Rights ⁴ This is a treaty extended to the Cayman Islands by the UK, being responsible for the Cayman Islands' external relations, defence and internal security. It
and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and		is not domestic legislation and has historically been used in court as mere guidance and been trumped by domestic legislation. It appears to be engaged in the European Court of Human Rights once all domestic avenues have been extinguished.
fundamental freedoms on a basis of equality with men.		Universal Declaration of Human Rights ⁵
with men.		The Cayman Islands are also a signatory to the Universal Declaration but like the European Convention the Universal Declaration has not yet been incorporated into local legislation.
		The Cayman Islands Constitution Order 2009 ⁶
		Part I relates to all peoples and provides the same human rights and fundamental freedoms for men and women
		Genocide Law (1997 Revision)
		Applicable to both men and women
Article 4 – Special Measures		[The Gender Equality Bill 2011 ⁷]
1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.		
2. Adoption by States Parties of special		

 $^{^{\}rm 4}$ Not part of the Cayman Islands domestic legislation.

⁵ Not part of the Cayman Islands domestic legislation.

 $^{^6}$ The Bill of Rights (being sections 1 – 28 of The Cayman Islands Constitution Order) is due to come into force 6 November 2012 (save for s. 6(2) and 6(3) which shall come into force 6 November 2013).

⁷ This Bill has not been reviewed.

CEDAW ARTICLE	CAYMAN LEGISLATION AND COMMENTS
measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.	
Article 5 – Sex Role Stereotyping and	Customs Law (2010 Revision)
Prejudice States Parties shall take all appropriate measures:	s. 9 provides that an officer's power of search is required to be conducted by a person of the same sex.
(a) To modify the social and cultural patterns	Police Law (2010 Revision)
of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the	s. 41. (11), s. 75. (10) The search of a person under this section shall be carried out by a police officer of the same gender as that person.
superiority of either of the sexes or on stereotyped roles for men and women;	Matrimonial Causes Rules (2003 Revision). Matrimonial Causes Law (2005 Revision)
(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest	Rule 9 might foster discrimination against women in respect to grounds of adultery or improper association where a co-respondent must be named as the stigma is often seen as worse for women. Yet s. 17 provides for this to be dispensed with but does not indicate the grounds for this.
of the children is the primordial consideration in all cases.	Rules 17-18 and s. 21 provide that the interests of the children are paramount.
	Births and Deaths Registration Law (2007 Revision)
	s. 34 (1) (c) references giving the father's name first unless the mother is unmarried in respect of a deceased child to be buried with another body.
	Defamation Law (1995 Revision)
	s. 5. specifically relates to women and states that "Words spoken and published which impute unchastity or adultery to any woman or girl do not require special damage to render them actionable: Provided that in any action for words spoken and made actionable by this section, a plaintiff shall not recover more costs than damages, unless the Court certifies that there was reasonable grounds for bringing this action."
Article 6 - Prostitution	Trafficking in Persons (Prevention and Suppression) Law, 2007
States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation	This law is gender neutral and the trafficking of any person is an offence (s.3(1)). This includes anyone

CEDAW ARTICLE	CAYMAN LEGISLATION AND COMMENTS
of prostitution of women.	profiting from the trafficking (s. 3(8)).
	Penal Code (2010 Revision)
	Sections 127 – 148 relate to rape and associated offences, in particular:
	s. 130 provides protection from a woman being forced into marriage or sexual relations against her will.
	s. 136. protects women from being forced into prostitution
	s.138 prevents women being forced into brothels
	s.139 relates to men earning money from prostitutes or soliciting
	s. 140 prevents persons from having brothels.
	s.146 prevents incest by male persons against female family members.
	s. 149 prevents a man from pretending he is married to a women.
Article 7 – Political and Public Life	Elections Law (2009 Revision)
States Parties shall take all appropriate	This law applies equally to men and women.
measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:	s.29(5) candidates for election are required to be nominated by at least 2 registered electors for their electoral district.
(a) To vote in all elections and public	The Cayman Islands Constitution Order 2009
referenda and to be eligible for election to all publicly elected bodies;	ss. 90 and 91 a male or female is entitled to be registered to vote on the same criteria
(b) To participate in the formulation of government policy and the implementation	s. 92 provides that any person registered as an elector can vote (regardless of gender).
thereof and to hold public office and perform all public functions at all levels of government;	The Sex Disqualification (Removal) Law (1998 Revision)
(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.	s. 3 states that a person shall not be disqualified by sex or marriage from the exercise of any public function nor be exempt by sex or marriage from liability to serve as a juror or pay tax.
Article 8 - Representation	Public Service Management Law (2010 Revision)
States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any	s. 4 includes values that refer to the public service being an employer that cares, is non-discriminatory, makes employment decisions on the basis of merit

CEDAW ARTICLE	CAYMAN LEGISLATION AND COMMENTS
discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.	and recognises the aims and aspirations of its employees, regardless of gender or physical disabilities.
Article 9 - Nationality	Immigration Law (2010 Revision)
1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in	Generally, gender neutral. Potential areas of discrimination might be:
particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change	s. 20(5) requires a Caymanian father of a child born out of wedlock to prove his paternity in respect to his child being Caymanian.
the nationality of the wife, render her stateless or force upon her the nationality of the husband.	s. 67(7) where a child is born out of wedlock without Caymanian citizenship then Immigration will only regard the mother's nationality
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.	s. 27(1) where the marriage of a spouse married to a Caymanian has irretrievably broken down within 3 years it is possible to lose citizenship
	Immigration Regulations (2010 Revision)
	The legal requirements for obtaining key employee, permanent residency etc are the same for either gender. Potential discriminatory issues may be that 1) men are more likely to hold positions that are considered key employee roles; 2) the points system does not take into account factors that would bias an application (such as men generally earn more than women, hold higher positions within organisations, are more likely to own land etc).
Article 10 - Education	
States Parties shall take all appropriate	Education Law (2010 Revision)
measures to eliminate discrimination against women in order to ensure to them equal	The legislation is generally gender neutral.
rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:	s. 30 relates to corporal punishment and whilst it does not single out a particular gender corporal punishment might be more discriminatory to girls
(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;	rather than boys.
(b) Access to the same curricula, the same	

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examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;	
(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;	
(d) The same opportunities to benefit from scholarships and other study grants;	
(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;	
(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;	
(g) The same Opportunities to participate actively in sports and physical education;	
(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.	
Article 11 - Employment	Labour Law (2007 Revision)
States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and	The definition of an employee under the law is gender neutral and so all the provisions of the law are the same regardless of gender other than:
women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings;	s.19 provides the maternity provisions which are 12 weeks leave in any 12 month period (pro-rated if employed less than 12 months) with the first 20 days full pay and the next 20 days half pay.
(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;	s. 19 Female employees are unable to work where a doctor certifies that by reason of pregnancy it would be deleterious to her health however female employees have the same sick leave as their male

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- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave:
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
- 2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances:
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

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counterparts.

- s.19 also contains the adoption provisions which are 9 weeks within any 26 months with the first 15 days paid.
- s. 80 makes it an offence to discriminate on the basis of sex (inter alia) with respect to hire, promotion, dismissal, tenure, wages, hours or other conditions of employment.

Public Service Management Law (2010 Revision)

s. 4 includes values that refer to the public service being an employer that cares, is non-discriminatory, makes employment decisions on the basis of merit and recognises the aims and aspirations of its employees, regardless of gender or physical disabilities.

National Pensions Law (2010 Revision)

s. 25 (2)(b) provides that employers do not have to provide pension plans for those employed to do housework in private residences. As such persons are usually women this seems discriminatory.

The Personnel Regulations, 2006

Relates to persons working for the civil service.

- s. 7(a)(i) female employees are entitled to 90 working days of maternity or adoption leave, of which 30 are on normal pay, once completed 12 months continuous service.
- s.52(4)(b) In connection with the promotion of Caymanians in the civil service account is required to be taken to provide opportunities for the enhancement of the abilities of all individual employees and to recognise the employment requirements of women and persons with disabilities. Here is positive recognition of the requirement for additional promotion of women.

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3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.	
Article 12 - Health	Health Insurance Law (2005 Revision)
States Parties shall take all appropriate	The law is gender neutral.
measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.	s.5 Every person is required to have health insurance either through an employer or employed spouse, parent or other. Where Caymanian and without insurance the Government will attend to payment of health services fees.
2. Notwithstanding the provisions of paragraph I of this article, States Parties	Health Insurance Regulations (2005 Revision)
shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free	Certain health benefits may be excluded under a standard health contract and these may be seen to be discriminatory:
services where necessary, as well as adequate nutrition during pregnancy and	Part 3, First Schedule includes:
lactation.	2. infertility treatment
	4. contraceptive drugs or sterilisation
	Health Services (Fees) Law (2002 Revision)
	There are provisions to provide free health care and this is not gender specific but may be reliant on being Caymanian. Where no insurance plan is in place:
	s.5 Children are not required to pay health services fees.
	s.6 Ante-natal services are free for Caymanians or their spouses.
	s.7 Contraceptive services are free for Caymanians or their spouses.
	s.8 Where patient is unable to pay fees may be waived.
	Penal Code (2010 Revision)
	ss. 140-143 Abortion is illegal unless for the health of the mother. This may be seen as discriminatory as the mother has no choice in carrying the child.

CEDAW ARTICLE	CAYMAN LEGISLATION AND COMMENTS
Article 13 – Economic and Social Benefits States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits; (b) The right to bank loans, mortgages and other forms of financial credit; (c) The right to participate in recreational activities, sports and all aspects of cultural life.	Poor Persons (Relief) Law (1997 Revision) Applicable to both genders. National Pensions Law (2010 Revision) Applicable to both genders. Married Women's Property Law (1997 Revision) In particular: ss 2 and 3 a married woman is capable of holding property, being liable in respect of any tort, contract, debt or obligation, being capable of being sued and be bankrupt. ss 6 and 7 mean married women have their own rights with regards to transfer of stock and other financial products.
1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the nonmonetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas. 2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (a) To participate in the elaboration and implementation of development planning at all levels; (b) To have access to adequate health care facilities, including information, counselling and services in family planning; (c) To benefit directly from social security programmes; (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their	There are various laws that allow for reduced costs/fees for those resident in Cayman Brac and Little Cayman. These are not gender specific. For example: Health Services (Fees) Law (2002 Revision) Where no insurance plan is in place: s. 4 Caymanians resident in Cayman Brac and Little Cayman are liable to 50% of the usual health services fees. Immigration Regulations (2010 Revision) Part 2, First Schedule. Work permit fees are reduced for the sister islands. s.4(2) The Work Permit Boards may waive the requirement to advertise in respect to work permit applications for positions in the Sister Islands.

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technical proficiency;	
(e) To organize self-help groups and co- operatives in order to obtain equal access to economic opportunities through employment or self employment;	
(f) To participate in all community activities;	
(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;	
(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.	
Article 15 – Equality before the Law	The Cayman Islands Constitution Order 2009 ⁸
States Parties shall accord to women equality with men before the law.	s. 16 (1) states that government shall not treat any person in a discriminatory manner in respect of the
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to	rights under the Bill of Rights and "discriminatory" includes affording different treatment on grounds of sex.
exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and	s. 15 relates to the government not interfering with peaceful enjoyment of one's property and includes either gender.
shall treat them equally in all stages of procedure in courts and tribunals.	s. 13 relates to freedom of movement and provides the same protection for both men and women.
3. States Parties agree that all contracts and all other private instruments of any kind with	Married Women's Property Law (1997 Revision)
a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.	In particular ss 2-3 a married woman is capable of holding property, being liable in respect of any tort, contract, debt or obligation, being capable of being
4. States Parties shall accord to men and	sued and be bankrupt.
women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and	s. 3 protects a woman in similar manner to a man over any instrument that might restrict her enjoyment of her property.
domicile.	s. 10 expressly makes civil and criminal remedies available to women for the protection and security of their property.
	s. 12 a wife is liable to criminal proceedings in the same manner as her husband.

⁸ The Bill of Rights (being sections 1 – 28 of The Cayman Islands Constitution Order) is due to come into force 6 November 2012 (save for s. 6(2) and 6(3) which shall come into force 6 November 2013).

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	Evidence (Amendment) Law, 2010
	s. 1(c) allows witnesses to violent or sexual offences with leave of the court to give evidence in court by way of a live television link.
	The Police Law, 2010
	Legislation relates to both genders.
	Police Regulations (1996 Revision)
	The height requirements restrict general enlistment in the police force for women unless the Commissioner waives such requirements. (s. 2.(b))
	Penal Code (2010 Revision)
	Provisions relating to kidnapping and unlawful compulsory labour are gender neutral (s. 218 – 223)
	The Criminal Evidence (Witness Anonymity) Law, 2010
	s.4(2) lists the categories of crime where witnesses can take advantage of witness anonymity. Categories include "rape" but should probably include other related crimes that might affect women's lives like attempted rape, domestic violence etc. albeit the Governor does have the power to amend the categories.
	Sale of Goods Act (1997 Revision)
	The capacity to buy and sell is gender neutral.
	Settled Land Law (1998 Revision)
	s. 66 confirms that the provisions of the law apply to a married woman saying she, without her husband, may exercise the applicable powers.
	The Sex Disqualification (Removal) Law (1998 Revision)
	s. 4(1) allows a Judge/Magistrate to exempt a woman from service on a jury by reason of the nature of the evidence to be given or issues to be tried.
	s. 4(2) the Chief Justice can prescribe proportion of female jurors and exempt women who are medically unfit from attendance as jurors.
	The Alternative Sentencing Law, 2006
	s. 4 requires the Court to increase or reduce a sentence to take into account any evidence that the

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	offence was motivated by bias, prejudice or hate based on, inter alia, sex.

Article 16 - Marriage and Family Life

- 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
- 2. The betrothal and the marriage of a child shall have no legal effect, and all necessary

The Cayman Islands Constitution Order 20099

- s. 9 Government shall respect every person's private and family life regardless of gender.
- s. 14(1) provides that the Government shall respect the right of either gender to freely marry (the opposite sex) and have a family.
- s. 14(2) provides that no one shall be compelled to marry
- s. 14(3) no law or under the authority of any law shall be allowed to contravenes 14(1) and 14(2) unless on certain grounds
- s. 14(4) Spouses shall be entitled to equal rights and shall be subject to equal responsibilities as between themselves and their children.
- s.17 provides that the legislature shall enact laws to provide rights for children.
- s. 20 Government shall seek to provide every child with education.

Marriage Law (2010 Revision)

Defines marriage as between a man and a woman. Contains same right for either sex to enter a marriage (i.e. must be with person of opposite sex).

- s.3(2) a marriage to someone under 16 years old is void.
- s. 24. (2) in respect to under age (less than 18) persons intending to marry require consent of their father initially and the power to give consent only rests with the mother where there is no father.
- s. 31 A marriage is required to be registered.
- s. 31 Marriage Register requires only the father's name to be listed of each marriage participant. Lack of recognition of the mother of each spouse might be discriminatory.

Matrimonial Causes Law (2005 Revision)

Spouse is defined as either male or female.

s.5 provides that a female can file a suit where she has been ordinarily resident in the Islands for at

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action, including legislation, shall be taken to specify a minimum age for marriage and to	least two years immediately preceding the presentation of the petition.
make the registration of marriages in an official registry compulsory.	s. 8 (1)(c) parties must consent to the marriage otherwise it is void.
	s.8(3)(f) might be seen as discriminatory as a decree of nullity may be pronounced where a marriage has taken place and the respondent was at the time pregnant. The section does not account for a situation where the respondent had fathered a child at the time of the marriage.
	Penal Code (2010 Revision)
	s. 130 provides protection from a woman being forced into marriage or sexual relations against her will.
	Maintenance Law (1996 Revision)
	s.3 and 4 require the parents of a child to maintain said child. The assumption here is that where the father fails to do this then it falls to the mother. Also note that s. 4 provides the requirement that every woman must maintain the legitimate children of any child she has in the event the parents of such children fail to thus providing grandmothers with a burden and not grandfathers.
	s.8 Children are required to be maintained until age 14 yet there is nothing to provide maintenance here should the child wish to stay in education.
	ss.11 and 12 are pro-women as every husband is required to maintain his wife irrespective of her means.
	s.24 Process under this law is free.
	Affiliation Law (1995 Revision)
	S3.(1) It is possible for single women to obtain an affiliation order in respect to the confirmation of the paternity of her child and for the maintenance and education of a child by the father.
	Guardianship and Custody of Children Law (1996 Revision)
	s. 6 The mother of a child has the like powers to apply to the Court in respect of any matter affecting the child as are possessed by the father.
	Adoption of Children Law (2003 Revision)
	s. 3(2) provides special protection for the adoption of girls, preventing them being adopted by a sole

CEDAW ARTICLE	CAYMAN LEGISLATION AND COMMENTS
	male unless there are special circumstances.
	Protection from Domestic Violence Law, 2010
	This law is gender neutral however as the victims of domestic violence are often women the protection it affords is of more significance to women.
	Caribbean Territories (Criminal Law) Order 2000
	This law relates to same gender sexual relationships and applies to both women and men.
	Status of Children Law, 2003
	s. 3. the status of a child is independent of whether he is born inside or outside of marriage.
	Freedom of Information Law, 2007
	ss. 23 and 24 relate to the release of personal information and although this is the same for either gender the effect of the provisions may be of more significance to women where certain personal information might be more damaging to a woman's reputation than a man's due to society's prejudices. Access can not be granted where it involves an unreasonable disclosure and the determination of what is reasonable may be open to discrimination. The definition of 'personal information' includes individual's age, sex, marital status, family status or sexual orientation.
	The Freedom of Information (General) Regulations, 2008
	s. 11(1) within 14 days of receipt of an application for information that might be personal notice is to be given to the third party whose information is being sought.

July 2011

6 Significant Observations

- 6.1 As a broad observation, most laws are gender neutral and so there is prima facie no discrimination as such between men and women.
- 6.2 From reviewing the research above it is apparent that some legislation specifically refers to women and this includes:
 - (a) the Penal Code provisions relating to rape and associated offences and forced marriages;
 - (b) the Labour Law and the Personnel Regulations contain maternity/adoption provisions;
 - (c) the Personnel Regulations specifically require recognition of the requirements of women;
 - (d) the Defamation Law contains a provision specifically relating to the defamation of a woman or girl imputing unchastity or adultery;
 - (e) the Married Women's Property Law expressly states that women can hold property; and
 - (f) the Sex Disqualification (Removal) Law allows women to be exempted from jury service in certain circumstances.
- 6.3 There are some instances where discrimination is evident:
 - (a) Cayman Islands legislation maintains instances where the father of a person is the default contact and this should be both parents. For example s. 34(1)(c) Births and Deaths Registration Law.
 - (b) The Marriage Law contains certain provisions that are discriminatory such under age persons intending to marry require father's permission initially. The Register only shows the father's name.
 - (c) The Maintenance Law places a greater burden on women with regards to the provision of care to their children and grandchildren.
 - (d) The Matrimonial Causes Law allows a decree of nullity where the respondent was pregnant at the time of marriage but not where the respondent had fathered a child at the same time.

SCHEDULE 1

CAYMAN ISLANDS LEGISLATION

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Memorandum of Understanding between the Cayman Islands Monetary Authority ("CIMA") and the Bermuda Monetary Authority ("BMA") on the Exchange of Information for Cooperation and Consultation

Memorandum of Understanding between the Cayman Islands Monetary Authority (CIMA) and the Isle of Man Financial Supervision Commission (IOMFSC) on Exchange of Information for Co-operation and Consultation

Memorandum of Understanding between the Cayman Islands Monetary Authority (CIMA) and the Superintendency of Banks of the Republic of Panama (SBP) on the Exchange of Information for Co-operation and Consultation

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SCHEDULE 2

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