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Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 6th October 1999 (2131 UNTS 83), OXIO 22

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Gender — Human rights remedies — Women, rights

Core Issues

The procedures established by the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in order to ensure the elimination of discrimination against women.

This headnote pertains to: Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, an instrument the text of which has been prepared by and/or adopted in the framework of an international organization. [Jump to full text](#)

Background

This headnote concerns the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women ('Protocol'), which was adopted on 6 October 1999 and entered into force on 22 December 2000. The Protocol extends the competences of the Committee on the Elimination of All Forms of Discrimination against Women ('Committee'), providing for a system of individual communications and for an inquiry procedure concerning grave or systematic violations of the rights enshrined in Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW').

The issue of international measures of implementation and enforcement with regard to an international convention on the rights of women was already discussed during the negotiations that preceded the adoption of the CEDAW. For example, at the twenty-third session of the Commission on the Status of Women ('CSW'), it was argued that the CEDAW should include measures of implementation similar to those provided by the Convention on the Elimination of All Forms of Racial Discrimination—ie reporting, inter-state complaints, and on an optional basis individual communications (see International Instruments and National Standards Relating to the Status of Women, para 236). However, the draft of the CEDAW that was proposed during the twenty-sixth session of the CSW only provided for the establishment of an ad hoc group, whose competence was limited to the consideration of States Parties' reports. The ad hoc group should have been established by the CSW.

The final text of the CEDAW confirmed the trend that had emerged during negotiations. Under Article 18 CEDAW, the Committee, which is now composed of twenty-three experts elected by the States Parties, can only examine the reports submitted by States Parties within one year after the entry into force of the CEDAW for the state concerned, and then at least every four years and/or upon the Committee's request.

Nonetheless, in the Vienna Declaration and Programme of Action adopted at the 1993 World Conference on Human Rights ('Conference'), it was stressed that new procedures should have been adopted to strengthen implementation of the commitment to women's equality and the human rights of women—including the right to petition—through the preparation of an optional protocol to the CEDAW (para 40). Negotiations started within the CSW and the Committee. The Protocol was adopted six years after the Conference at the fifty-fourth session of the United Nations (UN) General Assembly. It now counts 107 States Parties. The CEDAW has been ratified by 189 states.

Summary

States Parties to the Protocol recognise the competence of the Committee to receive and consider communications for violations of the provisions of the CEDAW.

According to Article 2 of the Protocol, communications may be 'submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the [CEDAW] by that State Party. Where a communication

is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent'. [Article 2]

Only written and non-anonymous communications concerning a State Party to the Protocol can be accepted. [Article 3] Admissibility requirements are: all domestic remedies must be exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief; the same matter must not have been examined, or be under examination under another procedure or international investigation or settlement; the communication must be in conformity with the CEDAW; the communication must not be manifestly ill-founded or insufficiently substantiated; and the facts that are the subject of the communication must have occurred after the entry into force of the Protocol for the State Party concerned. [Article 4]

Where necessary, the Committee may request the State Party to take interim measures that are necessary in order to avoid irreparable damage to the victim. [Article 5]

The Committee considers communications on their merits, in light of all the information made available by the applicant(s) and by the State Party concerned. Communications are examined by the Committee during closed meetings. The outcomes of the procedure are 'views', which are transmitted to the State Party concerned. Within six months, the State Party is then asked to submit a written response to the Committee, including information on any action taken in light of the views of the Committee. [Article 7]

The Committee also has competence under the Protocol—although the state can append reservation and refuse that competence—to start an inquiry procedure based on reliable information indicating grave or systematic violations by a State Party of the rights enshrined in the CEDAW. The Committee invites the State Party concerned to cooperate in the examination of the information and submit observations, and the Committee may then designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory. The outcomes of the inquiry are comments and recommendations.

Analysis

The mandate of the Committee is similar to that of other treaty-based UN bodies, such as the Committee on the Rights of Persons with Disabilities, the Committee on Enforced Disappearances, the Committee on Economic, Social and Cultural rights, and the Committee on the Rights of the Child. It includes examination of reports submitted by States Parties, assessment of inter-state complaints, adoption of general comments, and inquiry procedures. The examination of individual complaints and inquiries are the most salient novelties introduced by the Protocol.

Despite the importance of the inquiry procedure, which is common to other UN treaty bodies, the Committee has activated that mechanism only with regards to Canada, Mexico, and the Philippines.

The Committee has played a major role in interpreting the CEDAW, both through the adoption of general recommendations and the examination of individual communications. It has provided authoritative interpretation of the provisions of the CEDAW, and has adopted views which have contributed to the evolution of international (mainly regional) jurisprudence and quasi-jurisprudence of the various human rights treaty bodies related to women's rights.

Concerning the interpretation of the CEDAW, the Committee provided its own definition of gender, which refers to 'socially constructed identities, attributes and roles for women and men ... resulting in hierarchical relationships between women and men and in the distribution of powers and rights favouring men and disadvantaging women' (Committee on the Elimination of Discrimination Against Women General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para 5 ('General

Recommendation No. 28')). Its major contribution, however, has been to expand the scope of application of the CEDAW, considering that violence against women—which is absent in the text,—is a form of discrimination against women (Committee on the Elimination of Discrimination Against Women General Recommendation No. 19: Violence against Women ('General Recommendation No. 19'). The Committee also recommended that states 'take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act' (General Recommendation No. 19, para 24(a)). General Recommendation No. 19 is under revision at the time of writing; open to submissions by stakeholders, the Draft General Recommendation No. 19 (1992): accelerating elimination of gender based violence against women has received several comments.

Impact

As reported by the Committee itself, this UN body has 'contributed to the clarification and understanding of the substantive content of the CEDAW's articles, the specific nature of discrimination against women, and the various instruments required for combating such discrimination' (General Recommendation No. 28, para 2).

The quasi-jurisprudence of the CEDAW has played a major role in eradicating discrimination against women. Among the most relevant individual cases are those on violence against women, where the Committee identified due diligence obligations which states must comply with to guarantee women's rights (eg *Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice (on the application of Akbak and ors) (on behalf of Yildirim) v Austria* and *Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice (on behalf of Goecke) v Austria*). The Committee has also rendered important decisions on reproductive health (see *AS v Hungary* on forced sterilisation and the right to informed consent), and on gender stereotyping (see *TPF (on behalf of LC) v Peru*). It has only recently been able to consider intersectional discrimination against women, where it is necessary to take into account discrimination on the basis of sex along with other forms of discrimination (see *da Silva Pimentel (on behalf of da Silva Pimentel Teixeira) v Brazil*).

Further Analysis and Relevant Materials

Leading Comments

M A Freeman, B Rudolf, and C Chinkin (eds) *The UN Convention on the Elimination of All Forms of Discrimination against Women* (OUP 2012)

M Bustelo 'The Committee on the Elimination of Discrimination against Women at the Crossroads' in P Alston and J Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press 2000) 79–112

A Ngwena 'Through the Eyes of Women? The Jurisprudence of the CEDAW Committee' (2014) 30 *Outskirts: feminisms along the edge* 2

Cases Cited

Committee on the Elimination of Discrimination Against Women (CEDAW)

TPF (on behalf of LC) v Peru, Merits, 17 October 2011, Communication No 22/2009; UN Doc CEDAW/C/50/D/22/2009

da Silva Pimentel (on behalf of da Silva Pimentel Teixeira) v Brazil, Merits, 25 July 2011, Communication No. 17/2008; UN Doc CEDAW/C/49/D/17/2008

Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice (on the application of Akbak and ors) (on behalf of Yildirim) v Austria, Merits, 6 August 2007, Communication No. 6/2005; UN Doc CEDAW/C/39/D/6/2005
Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice (on behalf of Goekce) v Austria, Merits, 6 August 2007, Communication No. 5/2005; UN Doc CEDAW/C/39/D/5/2005
AS v Hungary, Merits, 14 August 2006, Communication No. 4/2004; UN Doc CEDAW/C/36/D/4/2004)

Materials Cited

Committee for the Eradication of Discrimination Against Women (CEDAW)

Draft General Recommendation No. 19 (1992): accelerating elimination of gender based violence against women (28 July 2016) UN Doc CEDAW/C/GC/19/Add.1
Committee on the Elimination of Discrimination Against Women General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (19 Oct 2010) UN Doc CEDAW/C/2010/47/GC.2
Committee on the Elimination of Discrimination Against Women General Recommendation No. 19: Violence against Women (29 Jan 1992) UN Doc A/47/38, 1; UN Doc HRI/GEN/1/Rev.6, 243

Office of High Commissioner for Human Rights

Vienna Declaration and Programme of Action (25 June 1993) UN Doc A/CONF.157/23

United Nations (UN)

Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13
International Covenant on Civil and Political Rights (signed 16 December 1966, entered into force 23 March 1976) 999 UNTS 171
International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195
Universal Declaration of Human Rights (10 December 1948) UN Doc A/RES/217(III) A
Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI

Related Materials

Economic and Social Council (ECOSOC)

Commission on the Status of Women: Report on the forty-eighth session - Economic and Social Council Official Records, Supplement No. 7 (1-12 March 2004) UN Doc E/2004/27; UN Doc E/CN.6/2004/14
Commission on the Status of Women: Report on the 26th and Resumed 26th Sessions (13 September–1 October and 6–17 December 1976) Official Records, 62nd Session, Supplement No. 3; UN Doc E/CN.6/608
International Instruments and National Standards Relating to the Status of Women: Study of provisions in existing conventions that relate to the status of women (21 January 1972) UN Doc E/CN.6/552

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The States Parties to the present Protocol,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Also noting that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Recalling that the International Covenants on Human Rights Resolution 2200 A (XXI), annex. and other international human rights instruments prohibit discrimination on the basis of sex,

Also recalling the Convention on the Elimination of All Forms of Discrimination against Women⁴ ("the Convention"), in which the States Parties thereto condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,

Reaffirming their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms,

Have agreed as follows:

Article 1

A State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Elimination of Discrimination against Women ("the Committee") to receive and consider communications submitted in accordance with article 2.

Article 2

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 3

Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 4

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

2. The Committee shall declare a communication inadmissible where:

- (a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- (b) It is incompatible with the provisions of the Convention;
- (c) It is manifestly ill-founded or not sufficiently substantiated;
- (d) It is an abuse of the right to submit a communication;
- (e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 5

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.

2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7

1. The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications under the present Protocol.

3. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the

Convention.

Article 8

- 1.** If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
- 2.** Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.
- 3.** After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.
- 4.** The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
- 5.** Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 9

- 1.** The Committee may invite the State Party concerned to include in its report under article 18 of the Convention details of any measures taken in response to an inquiry conducted under article 8 of the present Protocol.
- 2.** The Committee may, if necessary, after the end of the period of six months referred to in article 8.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 10

- 1.** Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9.
- 2.** Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 11

A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 12

The Committee shall include in its annual report under article 21 of the Convention a summary of its activities under the present Protocol.

Article 13

Each State Party undertakes to make widely known and to give publicity to the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party.

Article 14

The Committee shall develop its own rules of procedure to be followed when exercising the functions conferred on it by the present Protocol.

Article 15

- 1.** The present Protocol shall be open for signature by any State that has signed, ratified or acceded to the Convention.
- 2.** The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
- 3.** The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
- 4.** Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 16

- 1.** The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
- 2.** For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 17

No reservations to the present Protocol shall be permitted.

Article 18

- 1.** Any State Party may propose an amendment to the present Protocol and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify her or him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
- 2.** Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 19

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2.

Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 or any inquiry initiated under article 8 before the effective date of denunciation.

Article 20

The Secretary-General of the United Nations shall inform all States of:

- (a) Signatures, ratifications and accessions under the present Protocol;
- (b) The date of entry into force of the present Protocol and of any amendment under article 18;
- (c) Any denunciation under article 19.

Article 21

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 25 of the Convention.