

A Resource Guide

our Rights ARE NOT OPTIONAL

Advocating for the implementation of the Convention on the
Elimination of All Forms of Discrimination against Women (CEDAW)
through its Optional Protocol

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International Women's Rights Action Watch Asia Pacific



International Women’s Rights Action Watch Asia Pacific (IWRAP Asia Pacific) is an independent, non-profit NGO in Special consultative status with the Economic and Social Council of the United Nations (registered as IWRAP). It contributes to the progressive interpretation and realisation of the human rights of women through the lens of CEDAW and other international human rights treaties.

Our Rights Are Not Optional!

Advocating for the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) through its Optional Protocol.
A Resource Guide

This publication is part of the Global Campaign for the Ratification and Use of the Optional Protocol to the CEDAW, an initiative by IWRAP Asia Pacific to trigger social change; provide redress for victims of discrimination against women; improve the understanding of rights and obligations provided in the CEDAW Convention; and contribute to the progressive interpretation of non-discrimination and equality standards.

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Foreword

Women’s rights advocates began activism around the possibility of an Optional Protocol to the CEDAW Convention (OP-CEDAW) in the early nineties. As a result, clear articulations of the need for a complaints mechanism to the CEDAW Convention were made during the 1993 UN Conference on Human Rights in Vienna and the 1995 World Conference on Women in Beijing. Subsequently, women’s rights advocates contributed to the drafting process of the OP-CEDAW and have since led efforts at the national level to ensure the wide ratification of this instrument. Hence, it cannot be denied that the women’s rights movement has played a key role in regard to all stages related to the OP-CEDAW process.

This publication aims to strengthen existing efforts around the ratification and effective use of the OP-CEDAW at the national level. We dedicate it to the women and men who have actively advocated for an Optional Protocol to the CEDAW Convention. It contains practical information and tools that can be used by individuals, government officials, institutions and NGOs committed to the promotion of women’s human rights. Another aim of this publication is to provide enough information to promote a holistic approach to research, training, action and advocacy around the CEDAW Convention and its Optional Protocol. As we gather more knowledge and expertise, we hope to continue to producing other materials such as this.

We would like to thank UNICEF for making this publication possible. We also take the opportunity to thank the Ministry of Foreign of Affairs of the Netherlands and UNIFEM for supporting other initiatives of the ‘Global Campaign for the Ratification and Use of the OP-CEDAW’.

We hope women all over the world find this publication of use in their on-going efforts to claim and realise their rights.

Shanthi Dairiam
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(1993-2004)
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Contents

Foreword *v*
Acknowledgements *xi*
Abbreviations *xii*
Introduction *xiii*

Section A: Understanding the CEDAW Convention and its Optional Protocol as tools to strengthen women’s human rights

The CEDAW Convention *2*

Text of the CEDAW Convention *2*

General recommendations *3*

Guiding principles *4*

Substantive equality *4*

Non-discrimination *5*

State obligation *6*

The CEDAW Committee’s dialogue with governments and the role of NGOs *8*

The CEDAW Convention as a tool for change: Opportunities and challenges *9*

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW) *12*

Background *12*

The communications and inquiry procedures *13*

The communications procedure *14*

The inquiry procedure *17*

Remedies and recommendations *20*

Under the communications procedure *20*

Under the inquiry procedure *21*

Impact *21*

Administration *22*

Frequently Asked Questions *23*

The communications procedure *23*

The inquiry procedure *29*

General questions *30*

Our rights are not optional! Advocating for the implementation of CEDAW through its Optional Protocol . A resource guide

vii

Handouts

- Handout 1: Understanding discrimination – Article 1 of the CEDAW Convention 33*
- Handout 2: 10 things you should know about the CEDAW Convention 35*
- Handout 3: 10 things you should know about the CEDAW Committee 37*
- Handout 4: The Optional Protocol to CEDAW 39*
- Handout 5: Analysing women’s human rights violations through the framework of the CEDAW Convention 41*
- Handout 6: Communications procedure – Chart 43*
- Handout 7: Inquiry procedure – Chart 45*
- Handout 8: Sample case studies 47*

Supplementary Materials

- Annex 1: Glossary of key human rights terms 88
- Annex 2: Convention on the Elimination of All Forms of Discrimination against Women 93
- Annex 3: Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women 105
- Annex 4: Rules of Procedure of the OP-CEDAW 111
- Annex 5: Signatories and States Parties to the OP-CEDAW 123
- Annex 6: Other materials and resources on the OP-CEDAW 127

Section B: Governments and the OP-CEDAW ratification process

The benefits of ratification 52

Addressing misconceptions around ratification 54

Becoming a State Party to the OP-CEDAW 59

Examples of ratification processes 61

The role of government officials and parliamentarians 63

Handout

Handout 9: Why governments should ratify or accede to the OP-CEDAW? 65

Section C: Enhancing advocacy and use of the OP-CEDAW

Overall considerations 68

Tips for NGOs on the ratification of the OP-CEDAW 69

Beyond ratification: Using the OP-CEDAW strategically 71

Pros and cons of using an international mechanism 72

Tips for NGOs on using the OP-CEDAW 73

Addressing ethical issues: Guidelines for NGOs 74

‘Our Rights Are Not Optional!’ The global campaign for the ratification and use of the OP-CEDAW 78

Handouts

- Handout 10: Tips for submitting complaints under the communications and inquiry procedures of the OP-CEDAW 81*
- Handout 11: Guidelines for submissions – The communications procedure 83*
- Handout 12: Guidelines for submissions – The inquiry procedure 85*

Acknowledgements

This publication is the product of collaboration between IRAW Asia Pacific and the main partners of its Global Campaign on the Ratification and Use of the OP-CEDAW (the OP-CEDAW Campaign).

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Abbreviations

CEDAW Convention

Convention on the Elimination of All Forms of Discrimination against Women

CEDAW Committee

Committee on the Elimination of All Forms of Discrimination against Women

DAW

Division for the Advancement of Women

INGO

International Non-Governmental Organisation

NGO

Non-Governmental Organisation

OHCHR

Office of the UN High Commissioner for Human Rights

OP-CEDAW

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

UN

United Nations

Introduction

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention) is an international human rights treaty. It is a comprehensive bill of rights for women, which guarantees women's equality and freedom from discrimination in public and private life. It also addresses the interrelationship of women's worlds: their family, their work, their culture, their religion, etc. and acknowledges that women are sometimes differently placed in society because of their gender identity, race, ethnicity, class, occupation, age and other status. Another important aspect of the CEDAW Convention is that it establishes that the realisation of the human rights of women is the responsibility of their respective States. Most important of all, as human rights treaties provide guarantees, the CEDAW Convention can become a useful tool for women, a roadmap for all of us to mobilise around and claim our rights.

Despite its importance, it cannot be denied that the implementation of the CEDAW Convention has been an on-going challenge for advocates. Notwithstanding continuous efforts to advance principles of equality and non-discrimination, violations of the human rights of women remain widespread in all societies and cultures. Moreover, there are still instances where the human rights of women are not acknowledged in national policies, laws and social practices. Because of this, there is a need to balance advocacy around emerging women's rights issues with the pressing need to make women aware of their human rights. Women who know their human rights are able to claim them and access remedies whenever they experience discrimination.

In this regard, the Optional Protocol to CEDAW (OP-CEDAW) can be used as a tool for social transformation and provide opportunities for women to make further contributions to the development of human rights standards and their application.

The OP-CEDAW is a separate treaty that allows women who have been denied access to justice at the national level to have their claims reviewed at the international level. This instrument enables the international Committee of independent experts that monitors compliance with the CEDAW Convention – the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) – to review individual complaints and to conduct inquiries into grave or systematic violations of women's human rights.

The OP-CEDAW has the potential to become an effective means of securing the full implementation of the CEDAW Convention. Since this protocol does not create new substantive rights but rather creates a mechanism to enforce the rights provided under the CEDAW Convention, it ensures that States will be accountable for the effective implementation of the Convention at the national level. Hence it is important to have a clear understanding of the principles and rights set forth in the CEDAW Convention.

The OP-CEDAW changes the dynamics of human rights treaty law because it creates a space for women to seek remedies and justice at the international level when they themselves have experienced any kind of discrimination. It can be said that the reporting process of the CEDAW Committee provides women with the possibility to influence an international

monitoring process by drawing the attention of the Committee to discriminatory situations that need to be addressed in certain ways. However, in comparison, through access to the OP-CEDAW procedures, women become more active participants in the progressive interpretation of rights contained in the CEDAW Convention. This in turn enables the Committee to articulate more specific directives to States regarding their obligations, and to clarify the meaning of specific provisions more precisely. NGOs then have additional tools to use in seeking fulfilment of rights while States are provided with clearer guidance on their obligations. Thus, the OP-CEDAW can help bridge the gap between the promise of the CEDAW Convention and actual law, policy and practice.

This resource guide aims to contribute to processes leading to the ratification and effective use of the OP-CEDAW. It will be of use to women's rights advocates (e.g. NGOs, academic institutions, individuals, etc) as well as governments seeking to fulfil their obligations to women under the CEDAW Convention. It has been specially designed to provide information and materials that can be employed to strengthen efforts led by governments and women's rights advocates to promote the effective implementation of the CEDAW Convention at the national level. Spanish and English versions of this publication will also be available online at <www.iwraw-ap.org>.

- Section A provides a general overview of the CEDAW Convention and the OP-CEDAW. It highlights and explains provisions, guiding principles, and processes for the utilisation of these two instruments as tools for social change.
- Section B provides detailed information on the legal, political and strategic dimensions to promote the ratification of the OP-CEDAW.
- Section C focuses on enhancing advocacy and use of the OP-CEDAW. It provides practical information and raises political and ethical issues that NGOs working with this protocol should consider. An overview of the Global Campaign for the Ratification and Use of the OP-CEDAW is also included here.
- A series of handouts are available at the end of every section.

A

Section

Understanding the CEDAW Convention and its Optional Protocol as tools to strengthen women's human rights

The CEDAW Convention¹

The CEDAW Convention² was adopted by the United Nations (UN) General Assembly on 19th December 1979. This Convention is one of the most highly ratified international human rights treaties with 180 States Parties³ as of March 2005. By ratifying the Convention, States are committing themselves to implementing its standards at the national level. This is one of the many benefits of the CEDAW Convention: It can stand as a treaty that has achieved global consensus and thus reflects the normative standards applicable to women’s human rights in every part of the world.

The provisions of the CEDAW Convention encompass all dimensions of women’s lives and draw on principles of equality, non-discrimination and State obligation. It outlines approaches to removing obstacles to women’s equality, and points to the need to create enabling conditions for the advancement of women. The CEDAW Convention bridges the traditional divisions between civil and political and socio-economic rights, and mandates legal and policy measures to guarantee women’s human rights.

A body of 23 independent experts known as the CEDAW Committee is responsible for overseeing the effective implementation of the Convention.

Text of the CEDAW Convention

The CEDAW Convention defines discrimination against women and outlines measures which States are required to take in both the public and private spheres to end such discrimination. The broad structure of the Convention is as follows:

- Article 1: Gives a definition of discrimination as direct or intentional and indirect and unintentional. It highlights how women’s experiences of discrimination are linked to constructed ideas of gender subordination and inequality.
- Articles 2-4: Outline States Parties’ obligations to take legal and policy measures to eliminate discrimination, including temporary special measures and other forms of affirmative action.
- Article 5: Recognises the negative impact of social, customary and cultural practices which are based on ideas of ‘inferiority or the superiority’ of either sex or stereotypical gender roles nuanced with its intersection relating to ethnicity, social descent, indigenous status, disability etc.
- Articles 6-16: Specify the different areas in which discrimination must be eliminated through specific measures that relate to the general obligations described in Articles 2-4.
- Articles 17-22: Detail the establishment and functions of the CEDAW Committee.

¹ The information in this section has been adapted from the IRAW Asia Pacific training manual on the CEDAW Convention, *Building Capacity for Change (updated version, forthcoming)* and the IRAW Asia Pacific website <www.iwraw-ap.org>.

² The term ‘the CEDAW Convention’ and ‘the Convention’ are used interchangeably here.

³ The terms ‘State Party’ and ‘State’, and ‘States Parties’ and ‘States’ are used interchangeably here.

Areas covered by the CEDAW Convention include:

- Article 6: Trafficking in women and prostitution
- Article 7: Political and public life
- Article 8: Participation at the international level
- Article 9: Nationality
- Article 10: Education
- Article 11: Employment
- Article 12: Health care and family planning
- Article 13: Economic and social benefits
- Article 14: Rural women
- Article 15: Equality before the law
- Article 16: Marriage and family relations

- Articles 23-30: Deal largely with the administration and other procedural aspects related to the CEDAW Convention.

General recommendations

General recommendations are authoritative statements by the CEDAW Committee on the meaning of the provisions in the Convention with respect to the rights of women and the obligations of the State Party. They also describe what kind of information should be included in periodic reports on the status of implementation of the Convention. To date, there are 25 general recommendations under the CEDAW Convention. General recommendations deal with issues related to specific articles and areas contained in the CEDAW Convention. It is important to note that these are useful in analysing how the meaning and extent of the provisions of the Convention have expanded over time. Therefore, the text of the CEDAW Convention and the general recommendations must be read together.

The CEDAW Committee’s general recommendations have interpreted rights progressively and developed new standards. For example, although gender-based violence against women is not explicitly addressed in the Convention, in General Recommendation No. 19 on gender-based violence against women, the CEDAW Committee has made clear that freedom from violence is a fundamental right. It has noted that ‘[g]ender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men’.⁴ Consequently, States Parties are required to include information relating to all forms of violence against women in their periodic reports, which includes domestic violence, sexual violence, honour killings and other discriminatory practices. This is an example of how, through interpretation, the rights encompassed in the Convention have been expanded upon, and can continue to be so.

⁴ CEDAW. General Recommendation No. 19 (1992). The text of CEDAW general recommendations are available at <<http://www.iwraw-ap.org/convention/summary.htm>>.

Guiding principles⁵

The CEDAW Convention is based on a framework that draws on three core principles:

The principle of ‘substantive equality’

The CEDAW Convention promotes a model of ‘substantive equality’ that encompasses:

- Equality of opportunity
- Equality to access of opportunity, and
- Equality of results

The conceptual framework underpinning this is the recognition that formal equality, often manifested in a gender-neutral framing or policy or law, may not be sufficient to ensure that women enjoy the same rights as men. Thus, the CEDAW Convention provides standards based on the notion that differences between men and women – whether based on biological (sex) differences and/or socially created (gender) differences – results in women’s disproportionate experience of disparity and disadvantage.

First, the Convention stresses the importance of ‘equality of opportunity’ in terms of women’s entitlements on equal terms with men to the resources of a country. This has to be secured by a framework of laws and policies, and supported by institutions and mechanisms for their operation. Secondly, even if equal protection and respect for all the human rights of women are guaranteed by policies and laws, States must ensure that there are no obstacles barring women from enjoying and fulfilling their rights. Thus, ‘access to equality of opportunity’ is another important element of equality. Thirdly, the CEDAW Convention goes even beyond this, emphasising that the measure of a State’s action to secure the human rights of women and men needs to ensure ‘equality of results’. The indicators of a State’s progress in effective implementation of the Convention, does not just lie in what the State does, but in what the State achieves in terms of actual change for women.

The framework of the CEDAW Convention is based on a corrective or substantive approach to equality. It recognises that to redistribute benefits equally between women and men, approaches to promoting women’s human rights must, in the process, transform the unequal power relations between women and men. In this regard, the State must create enabling conditions so that obstacles which prevent women from achieving equality, solely on the basis that they are women, are removed. Hence, the Convention also recognises that for equality of results to occur, women and men may need to be treated differently. Moreover, as equality must be ensured to *all* women, the disadvantaged position of different groups of women based on other status such as race, ethnicity, caste, nationality, religion, etc. encompasses another layer to equality that the CEDAW Convention takes into account.

⁵For more detailed information on the guiding principles of the CEDAW Convention, go to <<http://www.iwraw-ap.org/convention/principles.htm>>.

The principle of ‘non-discrimination’

The CEDAW Convention requires us to understand discrimination in its broadest sense. It seeks recognition for those types of discrimination that are not so obvious or direct. It points out, for instance, that in areas where women are significantly disadvantaged, applying a neutral rule providing for equality of access for women and men may result in discrimination. According to the spirit of the Convention, the elimination of all forms of discrimination against women is necessary to ensure substantive (real) equality between men and women.

CEDAW Article 1:

For the purposes of the present Convention ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

When the definition of discrimination against women provided in Article 1 is broken down to show its intent, one can clearly distinguish the following meanings:

- *Any distinction* (e.g. a regulation according to which women need to obtain higher grades than men to enter engineering school)
Any exclusion (e.g. a law establishing women cannot apply to university)
Any restriction (e.g. a policy stating that to prevent rape, women are not allowed to be on the streets alone after 6pm)
- *in the law* (known as *de jure* discrimination) or in practice (known as *de facto* discrimination)
- *made on the basis of sex* and gender stereotypes that often times intersect with discrimination by other status (e.g. race, ethnicity, age, religion, class, etc.)
- *with the effect or purpose*, whether intended or unintended, meaning that the CEDAW Convention is mainly concerned with establishing whether discrimination has occurred, without giving importance to whether it was intended or unintended.
- *of impairing or nullifying the recognition*, enjoyment or exercise of human rights by women, thus making it necessary to prove that there are barriers accessing a right or that it is being denied and to show the ways in which obstacles can be removed to ensure fulfilment of all rights contained in the CEDAW Convention.

Other important points that can be derived from Article 1 are:

- In accordance with the CEDAW Convention, all women should be protected from discrimination: there is no distinction between individual women or groups of women. Also, women cannot be discriminated on other grounds (e.g. marital status, race, caste, age, religion, nationality, health and economic status).

- The Convention seeks the realisation of all human rights on the basis of equality among men and women. As noted earlier, equality standards as encompassed by the CEDAW Convention make up the principle of substantive equality.
- The Convention seeks to promote the realisation of all human and fundamental freedoms in all fields. There is no separation of women’s civil and political rights from women’s economic, social and cultural rights.

The principle of ‘State obligation’

When a country becomes a State Party to the CEDAW Convention, it voluntarily accepts a range of legally binding obligations to eliminate all forms of discrimination against women and ensure equality between men and women at the domestic level. By doing this, a State Party is committing to abide by norms and standards of the CEDAW Convention and is offering itself to scrutiny by the CEDAW Committee. This way, international accountability supports efforts at the national level to encourage the State to promote and effectively implement women’s human rights contained in the CEDAW Convention through legal and political processes.

An analysis of CEDAW Articles 2-4 points to principles related to State obligation embodied in the Convention, including:

a) Obligations of means and results

In ratifying the CEDAW Convention, the State undertakes obligations of means and obligations of results. The subsections of Article 2 illustrate that the State is required to take specified means to ensure compliance with the Convention. The State’s obligations, however, do not stop with the establishment or adoption of these measures or means. It can go beyond those recommendations set out in Article 2. In fact the State is required to take whatever measures may be needed to eliminate all forms of discrimination against women and bring about equality between women and men. The State, therefore, has to closely examine each prevalent context and take effective action specific to that situation to achieve results, the practical realisation of women’s right to equality. This is the obligation of results.

This two-fold obligation is a guarantee not just of rights but also of their realisation. It guarantees that women are given not just equality of means and resources nor only equality of access; it further ensures that equality, both at the *de jure* and *de facto* level, results from the State’s interventions.

b) Duties to respect, protect and fulfil

The obligations of means and results have to be further elaborated as the obligations of the State to respect, protect and fulfil rights of women.

Article 2 places States under an obligation to enact a policy of non-discrimination through which principle of the equality will be incorporated into national constitutions or legislation.

Connections between the provisions and principles of the CEDAW Convention

Building on the principles of indivisibility, interrelatedness and interdependence of all human rights (civil, cultural, economic, social and political), all provisions contained in the CEDAW Convention can be used comprehensively. For example, when focusing on women’s reproductive health in country X, although Article 12 and CEDAW General Recommendation No. 24⁶ are directly linked to women’s right to health and equal access to healthcare, it is also important to analyse the interrelatedness of issues such as rights of women in the family (Article 16); the need for education or information (Article 10); and the obstacles rural women face when accessing services (Article 14). In all cases, Articles 1 and 4 should be considered as the overarching principles of the CEDAW Convention.

It is also important to point out that interpretations of the gender dimensions of human rights have expanded as a result of women’s active role in bringing forward their own experiences of discrimination. Women’s activism has been crucial in the development of frameworks for understanding the various violations of women’s human rights. For this reason, advocates will continue to point to new dimensions of rights and emerging issues that can be addressed by comprehensive application of the CEDAW Convention.

- The obligation to *respect* requires States Parties to refrain from interfering with the enjoyment of the rights enshrined in the CEDAW Convention (Article 2(d)). That is, States Parties must not act in a way which violates women’s human rights. Women’s human rights should be respected through the State (and any public authority or institution) abstaining from any act that could amount to discrimination against women. The State should therefore repeal all discriminatory laws and policies (Articles 2 (f) and (g)) and all its agents should refrain from any discriminatory action or practice.
- The obligation to *protect* requires States Parties to prevent the violation of the Convention by third parties. In this regard, the State has a responsibility to regulate non-State actors so that they abide by the principles of the CEDAW Convention. Towards this end, rights of women should be protected through effective laws and policies prohibiting discrimination (e.g. anti-sex discrimination laws) and by imposing sanctions against discriminatory acts, and through effective mechanisms by means of which women can obtain redress for rights violations (Articles 2(b), (c) and (e)).
- The obligation to *fulfil* encompasses the State’s obligation to facilitate access to and/or to provide for the full realisation of women’s human rights. Women’s human rights should be fulfilled by the promotion of equality through all appropriate means

⁶ CEDAW. General Recommendation 24. (Article 12 on women’s health) (1999).

including the promulgation of national policies embodying the principle of equality and its practical realisation (Article 2(a)), proactive measures and enabling conditions required to ensure the full development and advancement of women (Article 3), and affirmative action to accelerate *de facto* equality (Article 4(1)). Thus, the CEDAW Convention stresses the need to bring about systematic change of norms that are premised in women’s inequality to prevent future violations of women’s rights.

The notion of State obligation has to be fully exploited. By ratifying the CEDAW Convention, States are saying that they recognise inequality and discrimination; that they recognise the need for State action; that they commit themselves to do certain things but not others, and that they are willing to be held accountable at the national and international levels.

The CEDAW Committee’s dialogue with governments and the role of NGOs

As mentioned earlier, the CEDAW Committee is the expert body that monitors implementation of the CEDAW Convention. Members of the Committee are nominated by States Parties to the Convention, and they work as independent experts. Two annual sessions are held in New York, during which the CEDAW Committee reviews reports submitted by States Parties on their implementation and compliance with the convention. Under Article 18 of the CEDAW Convention, a State Party is obligated to present an initial report to the CEDAW Committee one year after ratification, and periodically every four years thereafter on the legislative, administrative and other measures which they have to take to implement their obligations under this treaty and to give effect to the Convention. Through the reporting process, States are also encouraged to acknowledge obstacles encountered in the full implementation of the CEDAW Convention, and specify actions it intends to take in this regard. These reports can be useful in assessing how each State understands and implements obligations under the CEDAW Convention.⁷

The reporting mechanism emphasises the State’s accountability to ensure that those under its jurisdiction enjoy guaranteed rights, and that it is responsible for violations of those rights. Thus, it provides a process and forum where States are required to answer to their responsibilities and where different ways can be used to ensure that they do this. It allows the CEDAW Committee to encourage States to fulfil their obligations under the CEDAW Convention. At the same time, it provides a forum where civil society groups within countries can monitor the progress of their States and question this since often opportunities to do so are not readily available through local processes.

The CEDAW Committee has adopted a two-stage process to review States Parties reports. In the first stage – the pre-session – a smaller group of experts (called the pre-session working group) meet for an initial consideration of a State Party report, during which time they identify issues which require further information or clarification. The list of questions is sent to the reporting country and they have six months to prepare to present the report to the next full session of the CEDAW Committee. When the CEDAW Committee as a whole considers the report, States Parties are invited to send a delegation to engage in a ‘constructive dialogue’ with the Committee on elements of the report.

⁷ State Parties reports and concluding comments are available at the CEDAW website maintained by the Division for the Advancement of Women < <http://www.un.org/womenwatch/daw/cedaw/>>. See also <www.iwraw-ap.org> and <<http://www.bayefsky.com/>> for supplementary information.

Additionally, the CEDAW Committee receives shadow or alternative reports from NGOs as well as from UN specialised agencies (e.g. UNIFEM, ILO, UNFPA, UNHCR, FAO, UNICEF and others) which provide additional information on the status of implementation of the CEDAW Convention in the country under review. The involvement of women’s organisations in the shadow reporting process has increased the effectiveness of the reporting process. The CEDAW Committee has used information contained in shadow reports to develop and raise questions to the State Party during their constructive dialogue.

Following this, the Committee adopts its Concluding Comments, which identify positive aspects, factors and difficulties affecting the implementation of the Convention, principal areas of concern and recommendations. The State Party should distribute these Concluding Comments widely in its country. Identifying outcomes of the reporting process at a domestic level and advocating for effective implementation of the CEDAW Committee’s Concluding Comments to States Parties is one way NGOs can have a role in the advancement of all human rights of women in every country.

The Concluding Comments are a useful source of information in discerning how the CEDAW Committee understands obligations under a particular article.

Reservations to CEDAW

According to Article 28, States can ratify and make formal declarations to not accept as binding, certain part or parts of the treaty. These are called reservations to the Convention. However, there are limits to this process in so much as a reservation may not be incompatible with the object and purpose of the Convention.

A significant number of States Parties to the CEDAW Convention have limited the scope of their obligations by entering reservations to specific provisions contained therein. Many of their reservations address key aspects of the Convention, including the nature of steps to be taken to eliminate discrimination⁸ and the primacy of existing family law codes⁹. The CEDAW Committee has encouraged States Parties to withdraw reservations that limit their obligations to implement the Convention fully.¹⁰

The CEDAW Convention as a tool for change: Opportunities and challenges

To adequately use the CEDAW Convention, it is important to understand the possibilities and obstacles that may emerge when promoting the domestic implementation of women’s human rights. It is also important for advocates to explore ways to exploit the transformative potential of the CEDAW Convention to the fullest.

⁸ Article 2 in particular identifies the breadth of measures to be taken to eliminate discrimination.
⁹ See Article 16 on marital relations
¹⁰ CEDAW. General Recommendation No. 4 (on reservations to the CEDAW Convention) (1987). Additionally, the CEDAW Committee has made many references to this in its Concluding Comments.

Positive aspects of the CEDAW Convention and its framework

- It identifies women’s rights within the international human rights framework.
- It compels governments to promote, protect and provide redress for violations of women’s rights in the private and public spheres, and gives a comprehensive framework that recognises the indivisibility of civil, cultural, economical, political and social rights.
- It helps in understanding the merits of many approaches to equality.
- It recognises the impact of the social construction of gender and requires States to ensure that women are not disadvantaged by these roles or by negative stereotypes.
- It enables women to challenge discriminatory social and cultural practices. Article 5 for instance, requires States to act to eliminate cultural stereotyping.
- It emphasises that maternity is a social function performed by women and cannot be used to discriminate against them. This function must be facilitated by society at large and by the government in particular by ensuring that there are adequate welfare benefits and support services for women so that their ability to take on different roles in society is not compromised.
- A better understanding of the standards and rights provided in the CEDAW Convention can be useful when mapping out the gender dimensions of rights contained in other human rights treaties.
- It is important to understand the transformative nature of the CEDAW Convention. While ensuring the advancement of women, the long-term objective of the Convention is to transform values.
- The CEDAW Convention can be used to frame and monitor the implementation of models for the advancement of women such as the one presented in the Beijing Platform for Action. Since the Convention has legal force, it can be used to advance principles in documents and platforms of action that otherwise only have declarative value.
- The CEDAW Convention’s framework is flexible enough to be promoted and implemented within institutions, at the community level, nationally, regionally and internationally.
- After ratification or accession, international human rights treaties can become a source of domestic law. Thus, the CEDAW Convention has the potential of being used in domestic courts.
- The rights contained in the CEDAW Convention can be expanded. The Convention opens up possibilities to advance the progressive interpretation of the human rights of women, and to strengthen further understanding of the interlocking dimensions of all human rights.

Challenges when working with the CEDAW Convention

- Women’s groups have still to fully explore the CEDAW Convention’s potential for contributing to change.

- International human rights law is often seen as inaccessible and irrelevant to women’s groups working at the local level. Much work still needs to be done to make international law a practical tool that can be used to improve women’s lives in concrete ways.
- In most societies, there remains a lack of awareness of the content of the CEDAW Convention and the role of the CEDAW Committee. All branches and agencies at the government level, human rights and women’s rights NGOs as well as the media and the private sector, need to put more efforts into building greater awareness on the human rights of women and their realisation. For this to be possible, greater human and financial resources need to be committed to carry out such efforts.
- Even when awareness is raised on the CEDAW Convention, it is often instrumental to raising issues on a particular area (e.g. women’s political participation). This is useful from a programmatic aspect but limits further understanding of the interrelations of all the provisions of the Convention and its overall framework. Thus, the transformative nature of the CEDAW Convention and possibilities of progressive interpretations of new rights are often lost in education campaigns.
- The lack of data within national systems makes it difficult for civil society to monitor the implementation of the CEDAW Convention. Yet, it is also important to note that many groups have developed methods of data gathering and analyses. In particular, women’s organisations have been successful in bringing to light the importance of taking into account women’s narratives and specific case studies that illustrate systemic problems or patterns of human rights violations.
- Monitoring the failure of States to implement the CEDAW Committee’s views and recommendations requires sustained action by the international community, States and women’s groups. Many States have failed to comply with reporting obligations under the CEDAW Convention. Even so, through mobilisation of constituencies and with the OP-CEDAW in existence, States can now be held further accountable for not implementing human rights standards by which they have agreed to be bound.
- Legitimising international human rights norms as a source of values requires consensus-building among women, the community and the State. In this regard, we must build women’s capacity to negotiate their own interests and build consensus.
- The lack of interest by States Parties to submit comprehensive information on implementation of all articles of the CEDAW Convention during the reporting process to the CEDAW Committee points to the fact that the human rights of women, and in particular their economic, social and cultural rights, are still considered as a low priority in many countries.
- Much work still needs to be done to encourage lawyers and the judiciary to utilise the CEDAW Convention at the domestic level.
- Further standards need to be developed to strengthen the understanding of non discrimination and equality on the basis of gender discrimination when it intersects with other forms of discrimination such as race, ethnicity, caste, nationality and other status. The CEDAW Convention has the potential to be interpreted in ways that advance the promotion of the human rights of *all* women.

- Some experts feel that the nature of reservations entered by some States Parties to the CEDAW Convention limits commitments to the point where the Convention’s main objectives are weakened. However, it is also important to note that a number of States Parties have removed reservations.
- At the national level, there is misconception regarding the responsibility of all government agencies and local level government in regard to the implementation of the CEDAW Convention. Often, it is only perceived to be the responsibility of the national machineries for women.

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW)

The human rights guarantees established by the CEDAW Convention are far-reaching. However, the gap between the promise of the Convention and the reality of women’s lives remains significant. The OP-CEDAW goes a long way towards bridging this gap. It is a separate treaty that must be independently ratified or acceded to by States that are already parties to the CEDAW Convention. It does not create any new substantive rights but provides procedures by which rights given in the CEDAW Convention can be claimed by women. These violations of women’s rights are reviewed by the CEDAW Committee. As of March 2005, there are 71 States Parties to the OP-CEDAW. This means that the remaining 109 States Parties to the CEDAW Convention are not bound by this protocol.

The OP-CEDAW is of tremendous importance because of its capacity to ensure and enhance the realisation of women’s rights. Based on its use, it has the potential to provide a heightened understanding of the full scope of the CEDAW Convention. It can therefore help to strengthen the implementation of the Convention itself, develop women’s rights jurisprudence by sharpening the understanding of standards and creating precedence that will ensure the long-term promotion and evolution of women’s human rights. It also encourages States Parties to identify and repeal existing discriminatory laws and policies, and to fully implement the provisions of the CEDAW Convention. Finally, the OP-CEDAW contributes to greater public awareness of human rights standards relating to discrimination against women.

Background

Over a decade after the CEDAW Convention had come into force, the 1993 UN World Conference on Human Rights held in Vienna established that women’s rights are human rights, and addressed the need for an optional complaints procedure under the Convention. At that point, it became clear that more proactive steps were needed to ensure the advancement of the status of women through the realisation of all their human rights. Work towards an Optional Protocol to the CEDAW Convention then began and continued until 1995 when the UN World Conference on Women recommended that the international community engage in efforts to adopt of an additional complaints procedure under the CEDAW Convention.

From 1996 until 1999, an open-ended working group of the Commission on the Status of Women discussed and drafted the text that was finally adopted by the UN General Assembly and open for endorsement by individual States on 10th December 1999. The success in attaining the adoption of the OP-CEDAW was due to joint efforts by

government officials, NGOs and scholars. It is the result of alliances formed to ensure the establishment of the first specialised human rights mechanism on women at the international level.

Interconnections between CEDAW and the OP-CEDAW¹¹

- The CEDAW Convention and the OP-CEDAW are part of a larger strategy to strengthen and promote women’s human rights. Seen merely from a legal perspective, these instruments may seem to have limited means to ensure enforcement. Indeed, implementation of decisions and views of the CEDAW Committee is limited to the willingness of the State to collaborate with citizens and the international community to realise women’s human rights. Unless larger constituencies are active in claiming and mobilising around women’s human rights, the OP-CEDAW will not result in major change since it is only a procedure that can be used as a ‘last resort’.
- Even so, the advantages of using the CEDAW Convention and the OP-CEDAW need to be kept in mind as these tools can make valuable contributions to the development of standards in relation to women’s human rights. The jurisprudence developed by the CEDAW Committee can be used to advance claims and interpret rights progressively in national, regional and international human rights courts.
- States that ratify the OP-CEDAW are likely to improve their performance, meeting the obligations set forth in the CEDAW Convention. Over a period of time this will also strengthen the acceptance of treaty obligations as legal duties that are not negotiable. It will help clarify the range of actions that may enable States to meet the obligation even though the obligation itself is non-negotiable.

The communications and inquiry procedures¹²

The OP-CEDAW establishes two procedures:

- A communications procedure through which the CEDAW Committee can review complaints to decide if rights guaranteed by the CEDAW Convention have been violated, and identify remedies for victims; and

¹¹ Some of these issues were raised in discussions at the “Workshop on the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women”, jointly organised by the LAW Project of Equality Now with the University of Michigan Law School and in collaboration with the UN Division for the Advancement of Women, in November 2001.

¹² The information in this section is drawn from Donna J. Sullivan, “Commentary on the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women”. In *Optional Protocol. Convention on the Elimination of All Forms of Discrimination against Women*. Inter-American Institute of Human Rights. San José, Costa Rica (2000). pp31-108. It outlines the steps involved when using either the communications or inquiry procedures. For further elaboration of the concepts introduced here, see the section on Frequently Asked Questions.

- An inquiry procedure through which the CEDAW Committee can launch an inquiry into a grave or systematic violation on its own initiative.

Both the communications and inquiry procedures allow the CEDAW Committee to issue its views and recommendations for addressing women’s human rights violations in particular contexts or situations as means to further promote the implementation of the CEDAW Convention at the national level.

The communications procedure

The communications procedure is a mechanism through which an individual or a group of individuals from within the jurisdiction of a State Party to the OP-CEDAW can bring to the CEDAW Committee’s attention, an alleged violation of a woman’s right enshrined by the CEDAW Convention. It is a mechanism designed for use by an individual or a group of individuals seeking redress for a specific violation(s) resulting from an act or omission by the State Party. By ratifying or acceding to the OP-CEDAW, a State acknowledges the competence of the CEDAW Committee to provide views and recommendations regarding written communications alleging violations of rights set out in the CEDAW Convention.

The communications procedure differs from other CEDAW procedures (such as the consideration of States Parties reports or the inquiry procedure) in that, rather than addressing the overall advancement of women within a country, it applies to particular violations of individual rights. In this way, it reflects similar communications procedures of the Convention against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of Racial Discrimination (CERD).

How to use the communications procedure

Articles 2 to 7 of the OP-CEDAW set out the conditions and procedures by which an individual complaint may be lodged and considered by the CEDAW Committee. The proceedings for consideration of communications can be found in Section XVI of the Rules of Procedure (Rules 56 to 75).¹³ For a communication to be considered, it must meet a series of procedural requirements. Only then will the CEDAW Committee consider its substantive issues. At the final stage, the CEDAW Committee will issue its views, along with recommended actions to address any violations of the rights contained in the Convention.¹⁴

Step 1: *Individual or group submits a communication*

The first step in lodging a complaint is to submit a formal communication. Articles 2 and 3 set out the pre-admissibility requirements for who may submit a communication and in which format the communication must be submitted.

- Who may submit a communication?
Article 2 says that communications may be submitted ‘by or on behalf’ of ‘individuals or groups of individuals’ who are within the jurisdiction¹⁵ of a State Party, and who claim to be victims of violation of the obligations of the CEDAW Convention by that State Party.

¹³ For an explanation on the Rules of Procedure, see the section on Administration. See also Annex 4 for the text of the Rules of Procedure of the OP-CEDAW.

¹⁴ For a diagrammatic overview, see Handout 6: Communications procedure – Chart.

¹⁵ Also those who were under the jurisdiction of the State Party when the violation occurred.

- Format of the communication
Article 3 establishes that a communication must be in writing, shall not be anonymous, and must concern a State Party to the CEDAW Convention that is also a party to the OP-CEDAW.¹⁶

Step 2: *The Committee determines the admissibility of the communication*

The admissibility criteria are non-negotiable and the CEDAW Committee has no discretion in overriding its requirements. If the communication satisfies the requirements of submission, the Committee must go on to decide whether the communication is admissible. The two main criteria by which the CEDAW Committee determines the admissibility of a communication are set out in Article 4. While these mandate concrete conditions that must be established before the complaint can go on to be heard on its merits, the CEDAW Committee is allowed some degree of flexibility in its determination of whether domestic remedies have been exhausted. The two criteria are:

- Exhaustion of domestic remedies
Article 4(1) requires that a complainant must first attempt to seek a remedy for the violation(s) within a State Party’s own judicial system.States are expected to ensure that domestic remedies for women who experience violations of their human rights are put in place, either in law, policy and/or practice. The complainant will be allowed to submit a complaint to the Committee only when these remedies have been exhausted, and she has not received an adequate remedy for the alleged violation(s). However, Article 4(1) also allows the CEDAW Committee to make an *exception* to the requirement of exhaustion of domestic remedies if ‘the application of such remedies is unreasonably prolonged or unlikely to bring effective relief’.
- Inadmissibility criteria
Article 4(2) set-out the five points by which a complaint may be deemed inadmissible by the CEDAW Committee. These criteria have been framed in a negative construction to quickly identify those complaints that should be excluded from consideration by the Committee. Criteria (i) and (v) provide limited scope for the CEDAW Committee’s discretion as these relate to matters of truth or fact. Criteria (ii) to (iv) allow for varying amounts of discretion by the CEDAW Committee given the nature and circumstances that complaints may take. Grounds for inadmissibility of a communication are as follows:
 - The same matter has already been examined by the CEDAW Committee, or it has been or is being examined under another procedure of international investigation or settlement (Article 4(2)(i));
 - It is incompatible with the provisions of the CEDAW Convention (Article 4(2)(ii));
 - It is manifestly ill-founded or not sufficiently substantiated (Article 4(2)(iii));
 - It is an abuse of the right to submit a communication (Article 4(2)(iv)); or
 - The facts that are the subject of the communication occurred prior to the entry into force of this Protocol for the State Party concerned unless the facts continued after that date (Article 4(2)(v)).

¹⁶ See Handout 11 for guidelines on submissions under the communications procedure.

Step 3 (Discretionary): *The Committee requests the State Party to take ‘interim measures’ regarding the alleged violation(s)*

Upon receiving a complaint, Article 5 allows the CEDAW Committee, at its discretion, to urge the relevant State Party to take interim measures to ‘avoid irreparable damage to the victim or victims of the alleged violation’.

- When are interim measures applicable?
Article 5(1) notes that interim measures can be requested any time after the receipt of a communication and before the CEDAW Committee has determined the merits of the complaint.
- Implications of interim measures
Article 5(2) notes that the request by the CEDAW Committee for a State to take interim measures shall have no bearing on the determination of admissibility or merits of the communication.

Step 4: *The Committee submits the communication to the State Party*

Once a communication is deemed admissible, Article 6(1) mandates the CEDAW Committee to confidentially submit the communication to the relevant State Party. The identity of the complainant will also be submitted to the State Party, provided she has given consent to disclose her identity.

Step 5: *The State Party provides explanation or clarification of the alleged violation(s)*

Once the State Party has received the complaint, Article 6(2) allows it, within six months, to provide a written explanation or clarification of the complaint. The State Party may also report on any remedies, if any, that have been granted in relation to the complaint for the CEDAW Committee’s consideration.

Step 6: *The Committee considers the merits of the communication*

Once it has received all of the relevant information about the communication, the CEDAW Committee shall proceed to deliberate on its merits. The Committee relies on ‘all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned’ to inform its deliberations (Article 7(1)).

- All information transmitted to concerned parties
Article 7(1) mandates that any information submitted to the CEDAW Committee for consideration in relation to the complaint must also be made available to all concerned parties. This allows each party a fair chance to respond to the information presented.
- Closed meetings by the Committee
Article 7(2) mandates that the CEDAW Committee shall deliberate on communications in closed sessions, without the influence or participation of either the State Party or the complainant.

Step 7: *The Committee arrives at its views and recommendations on the communication*

Once the CEDAW Committee has had a chance to deliberate on the communication, it will arrive at its final views on the communication. If it finds that the State Party had engaged in the violation(s) alleged in the communication, the CEDAW Committee will make recommendations to the relevant State Party regarding its obligations to remedy the violation(s). The kinds of recommendations that the CEDAW Committee may make, include:

- Restitution, compensation, rehabilitation, or any other remedies for the victim(s);
- Steps to end ongoing violations against the victim(s);
- Law reform and changes in policies, programmes and policies that are in violation of the Convention; and/or
- Steps to prevent the repetition of the violation(s). Article 7(3) mandates the Committee to transmit its views and recommendations to the concerned parties to the communication.

Step 8: *The State Party responds to the views and recommendations of the Committee*

Once the CEDAW Committee’s views and recommendations have been transmitted to the State Party, Article 7(4) mandates that the State Party must take these into ‘due consideration’. In addition, within six months the State Party must submit to the Committee a written response to these views and recommendations, including any relevant action taken in response to them.

Step 9 (Discretionary): *The Committee requests follow-up response to its views and recommendations by the State Party*

Besides the State Party’s written response to its views and recommendations regarding a communication, Article 7(5) allows the CEDAW Committee, at its discretion, to request the State Party to submit further information about measures taken in response to these views and recommendations. This may take the form of an update in the State Party’s subsequent reporting obligation under Article 18 of the CEDAW Convention.

The inquiry procedure

The inquiry procedure is a mechanism through which the CEDAW Committee can issue comments and recommendations on a ‘grave or systematic’ violation(s) of rights in the CEDAW Convention. Alternatively, the Committee can decide to initiate an inquiry that addresses ‘grave or systematic’ violations resulting from acts or omission by the State Party concerned. The inquiry procedure is thus a mechanism which enables the CEDAW Committee to initiate and conduct investigations on a large-scale and/or into widespread violations of women’s human rights occurring within the jurisdiction of a State Party.

A ‘grave’ violation refers to severe abuse (e.g. discrimination against women linked to violations of their right to life, physical and mental integrity, and security). A single violation can be grave in nature and a single act can violate more than one right. The CEDAW Committee may determine that an inquiry into a single ‘grave’ violation is appropriate on the basis of the facts of a particular situation (e.g. two hundred single mothers and their children being forcibly evicted from a public housing building).

The term ‘systematic’ refers to the scale or prevalence of a violation, or to the existence of a scheme or policy directing a violation(s). A violation not rising to the level of severity implied by ‘grave’ may still be the focus of inquiry if there is a pattern, or if abuses are committed pursuant to a scheme or policy. A violation may be systematic in character without resulting from the direct intention of a State Party (e.g. a government policy promoting population control in rural areas resulting in the sterilisation of a large group of indigenous women without their consent).

The inquiry procedure permits the CEDAW Committee to respond in a timely manner to a serious violation(s) that is in progress under the jurisdiction of a State Party (e.g. the mass rape of women during riots or the disappearance and assassination of women human rights defenders). It offers a means to address situations where individual communications do not adequately reflect the systematic nature of widespread violations of women’s human rights, or where individuals or groups are unable to submit communications due to practical constraints or fear of reprisals.

Unlike the CEDAW Convention, the OP-CEDAW does not allow for reservations to any of its articles. It does, however, have a provision (Article 10), allowing States Parties to ‘opt-out’ of the inquiry procedure, upon signature, ratification or accession to the OP-CEDAW. This means that at the time of ratification or accession, States Parties can declare that they do not recognise the competence of the CEDAW Committee to conduct an inquiry procedure into ‘grave or systematic’ violations of women’s human rights within their jurisdiction. This is known as the ‘opting-out’ clause. Such a declaration may be subsequently withdrawn at any time by giving notice to the UN Secretary-General.

In sum, through the inquiry procedure, the CEDAW Committee can:

- Address systematic and widespread violations;
- Recommend measures to combat structural causes of discrimination against women; and
- Set out a broad range of recommendations to achieve equality between women and men.

How to use the inquiry procedure

Articles 8 and 9 of the OP-CEDAW set out the steps by which the CEDAW Committee may engage in an inquiry into ‘grave or systematic’ violations by a State Party with regard to its obligations under the CEDAW Convention. These steps are found in Section XVII of the Rules of Procedure (Rules 76 to 91). While the inquiry procedure is less formal than the communications procedure, it also involves a defined set of protocols, which govern how the Committee conducted inquiries.¹⁷

Step 1: *The Committee receives reliable information regarding a ‘grave or systematic’ violation(s) affecting women under the jurisdiction of the State Party*

There is no requirement that the information submitted to the CEDAW Committee regarding an alleged violation by a State Party should be in a specific format (i.e. it can be oral or written, submitted by any individual or group regardless of the relationship to the violation(s) or the State Party concerned). The only substantive requirement for the

¹⁷ For a diagrammatic overview, see Handout 7: Inquiry procedure – Chart.

relevant information, as noted in Article 8(1), is that it be ‘reliable’ as per discretion of the CEDAW Committee.

Step 2: *The Committee invites the State Party to examine the information and to respond to this*

Upon receiving information of an alleged violation, the CEDAW Committee requests the State Party concerned to participate in an evaluation of the information, and to provide the Committee with its own observations regarding the alleged violation (Article 8(1)).

Step 3: *The Committee deliberates on the ‘reliability’ of the information*

The CEDAW Committee deliberates on the reliability of the information regarding the alleged violation(s) based on the observations of the State Party along with any other available information (Article 8(2)).

Step 4: *The Committee initiates the inquiry*

If the CEDAW Committee finds that the information is reliable, Article 8(2) allows the Committee, at its discretion, to designate one or more of its members to conduct an inquiry into the alleged violation, and to report back to the Committee on its findings. With the consent of the State Party, the inquiry may include a visit to the State Party if necessary.

- Confidentiality
Article 8(5) emphasises that the inquiry will be conducted confidentially.
- Cooperation of the State Party
Article 8(5) also emphasises that cooperation from the State Party will be solicited at all stages of the inquiry proceedings.

Step 5: *The Committee transmits its findings to the State Party*

Upon completing its inquiry into the alleged violation(s), Article 8(3) mandates the CEDAW Committee to transmit its findings, comments and recommendations, to the State Party. The Committee will make findings and recommendations based on all ‘available information’.

Step 6: *The State Party submits its observations to the Committee’s findings*

Article 8(4) mandates the State Party to submit its observations to the findings, comments and recommendations of the Committee.

Step 7 (Discretionary): *The State Party is requested to report on measures it has taken in response to the Committee’s findings*

The CEDAW Committee may, at its discretion, require the State Party to report on measures taken in response to its findings. Reporting by the State Party on such measures may take the following forms:

- States Parties’ reports to the Committee
The CEDAW Committee may invite the State Party to report on measures taken in

response to the inquiry in its subsequent reporting obligation under Article 18 of the CEDAW Convention (Article 9(1)).

- Follow-up response
After a six-month period in which the State Party must submit its observations to the CEDAW Committee's findings, the Committee may request the State Party to inform it of any measures the State has taken in response to the Committee's inquiry (Article 9(2)).

Remedies and recommendations

One of the ultimate aims of bringing any case under the mechanisms of the OP-CEDAW is to obtain the CEDAW Committee's recommendations as to what remedies ought to be made available to the victim(s) at the national level. Further, given that one of the purposes of the OP-CEDAW is to make substantive rights of the CEDAW Convention available to women in practice, the remedies envisaged by a particular communication or inquiry should be considered at the outset. Essentially, there should be a balance between the likely impact of the recommendation for the woman or women concerned, and the likelihood of securing lasting impact for women's human rights in general.

Under the communications procedure

If the CEDAW Committee concludes that a violation(s) of the CEDAW Convention has occurred, it will issue recommendations that the State Party should take to remedy this situation.

Remedies available to a victim(s) include:

- Interim guidelines, instructions and steps to end continuing violations or prevent repetition of these in the future;
- Restitution or actions necessary to restore the victim(s) to the conditions she/they would have been in had the violation not occurred (e.g. release from prison);
- Settlement, compensation and/or rehabilitation for the victim(s);
- Retrial;
- Enforcement of domestic court judgments establishing conditions to enable the victim(s) to exercise a right (e.g. women's inheritance rights, visitation rights); and
- Review of laws, administrative decisions and/or policies which are disputed in the case.

Remedies available to a victim(s) but with a public interest component include:

- Development of directives, guidelines or policies to prevent similar violations in the future;
- Adoption of measures and remedies to effectively address similar violations;
- Action and measures to ensure the full recognition, enjoyment and exercise of rights contained in the CEDAW Convention;
- General review or amendment of laws inconsistent with provisions of the CEDAW Convention (e.g. repeal of legislation and/or a review of relevant legislation to ensure that neither the law itself, nor its application, is discriminatory);
- Adoption of temporary special measures in a particular field (e.g. quota system in parliament);

- Recognition of the 'justiciability' of specific rights enshrined in the CEDAW Convention as a whole;
- Enactment of new legislation – if this was not available previously – to recognise the right(s) alleged to have been violated;
- Take steps to condemn, sanction or regulate discrimination by private and public actors; and
- The creation of appropriate support services for victims of abuse such as shelters, counselling services, legal aid etc.

Under the inquiry procedure

Remedies available to a victim(s) with a public interest component include:

- Developing directives, guidelines or policies to monitor, provide early warning and address grave and/or systematic violations of women's human rights;
- Steps to stop on-going violations and prevent the repetition of similar violations in the future. These may include legal and administrative measures addressing a wide range of issues, including building capacity of the authorities concerned and budgetary allocations;
- General review or amendment of laws inconsistent with the provisions of the CEDAW Convention;
- Enactment of new laws if appropriate;
- Improving the effectiveness of investigative methods including strengthening of gender perspectives within this;
- Regular inspections of public facilities (e.g. prisons and detention centres where immigrants are housed);
- Creation of a national machinery for women or a human rights commission;
- Adoption of temporary special measures in a particular field;
- Establishment of programmes or centres to assist women (e.g. legal aid);
- Recognition of the 'justiciability' of specific rights in the CEDAW Convention as a whole;
- Taking steps to condemn and sanction discrimination by private and public actors;
- Provision of legal and other support for victims to access the justice system;
- Developing a plan of action to implement recommendations of the Committee and strengthen relationships with civil society organisations to carry out the plan; and
- Setting of a timeframe for the government to give feedback to the CEDAW Committee on steps taken to implement its recommendations.

Impact

When States agree to be bound by the CEDAW Convention and the OP-CEDAW, they assume legal obligations to remedy violations of rights enshrined in the Convention. However, it must be noted that the CEDAW Committee is not a judicial body and its views are of a recommendatory character. That said, although not legally enforceable within the jurisdiction of States Parties, international legal scholars and UN human rights experts agree that recommendations of this nature are nonetheless authoritative and highly persuasive in character and hence impose on States, the obligation to implement them.

Enforcement of remedies and recommendations by States Parties will, in many ways rely on on-going dialogue and persuasion rather than firm instructions regarding compliance. States also have a 'good faith' obligation to implement the recommendations stemming from their overall obligations under the Convention itself.

As increasing cases of violations of women's human rights are brought before the CEDAW Committee, more precise definitions of what constitute a violation of rights as enshrined in the CEDAW Convention will emerge. Given that violations may be based on one or more of these rights, it may be assumed that as cases are brought, recommendations will touch on many, if not all areas, of the Convention. Therefore, although most States will have constitutional or legislative provisions that prohibit discrimination on the basis of sex, the concept of discrimination – how it should be recognised and interpreted, and how it might be remedied – will be investigated and documented through this process. In turn, this documentation will be vital in influencing the enactment, execution and interpretation of laws within States Parties.

At one level, a recommendation by the CEDAW Committee is recognition by an international forum that a State Party has been unable to fulfil its obligations under international human rights law. As such, it may be very persuasively used in national courts and mechanisms. At another level, public acknowledgement – both internationally and nationally – of women's human rights violations that take place within the jurisdiction of a State Party can often be a useful means to raise awareness and mobilise civil society to demand, from the domestic platform, those rights that the State has pledged to uphold. The domestic implementation of the CEDAW Convention can make important contributions to the advancement of women at the local and national levels.

At all times it is essential to keep in mind that States Parties have an obligation to carry out their duties under the Convention, and that the Committee's interpretation of the treaty is authoritative. If the Committee's recommendations are employed for lobbying and awareness-raising by civil society, they can be important tools to achieve maximum results from States trying to fulfil their obligations under the Convention. Further, it is important to note that the impact of recommendations should not be viewed as unique to the individual(s) subject of the communication. Rather, they must be viewed as having far-reaching impact that extends beyond the complaint of a particular violation(s). If used effectively, the OP-CEDAW procedures can influence and encourage change.

Administration

The administration of the communications and inquiry procedures is the responsibility of the CEDAW Committee and its secretariat (the Division for the Advancement of Women). To effectively carry out quasi-judicial roles regarding the consideration of communications and inquiries, the Committee may assign tasks to designated members of as well as to its secretariat.

In all instances, proper administration of the OP-CEDAW is ensured by a system of regular reporting between designated members of the CEDAW Committee and its secretariat. Moreover, the Committee follows a detailed set of official guidelines on the administration of communications and inquiries under the OP-CEDAW. These guidelines are known as the Rules of Procedure.¹⁸

¹⁸ See Annex IV for details of the Rules of Procedure.

Frequently Asked Questions¹⁹

The communications procedure

Q: Who can submit a communication?

A: An individual or group of individuals who claim to be a victim(s) of a violation(s) can submit a communication. This includes:

- A single individual whose rights under the CEDAW Convention have been violated;
- A group of named individuals whose rights have been violated by the same acts (or failure to act);
- A group of individuals who have all suffered the same violation(s) but who may not all be identified by name because their safety might be threatened or because the group is so large that it would be impractical to get the consent of all victims; and
- Those that have suffered violations as a group (e.g. women's NGOs that have been prohibited by the State from organising activities to promote women's rights under CEDAW).

Q: Is it possible to submit a communication 'on behalf of' the victim(s)?

A: A representative designated by the victim(s) can submit a communication on her or their behalf. Representatives may include lawyers, family members, a national or international NGO or any other representative designated by the victim(s).

Q: What are the requirements to submit a communication 'on behalf of' the victim(s)?

A: The victim(s)' consent is normally required to submit a communication on her or their behalf. Evidence of consent can be offered in the form of an agreement to legal representation, power of attorney, or other documentation indicating that the victim(s) has authorised the representative to act on her or their behalf.

Q: When can a communication be submitted without the victim(s)' consent?

A: A communication can be brought without the consent of the victim(s) if the individual or group submitting it can justify acting on her or their behalf. For instance, an activist or an organisation seeking to bring a communication on behalf of a very large group of individuals – a 'class' of victims – might argue that:

- It is impractical to get consent from each victim;
- The victim(s) faces a risk of ill-treatment or other forms of retaliation, including physical injury or economic loss, if she consents to the communication on her behalf;
- The victim(s) is unable to give her or their consent for any reason, including detention or other confinement, serious ill health, or the lack of legal authority to consent; or
- Any other circumstance in which it would be unreasonable to require consent by the victim(s).

Q: Is a victim(s) or their representative required to be in the State Party's territory to submit a communication?

A: No. However, the victim(s) must have been under the 'jurisdiction' of the State Party at the time the violation(s) occurred. Circumstances in which the victim(s) is not in a State Party's territory but would still be under its 'jurisdiction' include violations by a

¹⁹ This section is partly drawn from an article by Donna J. Sullivan, "Commentary on the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women". In *Optional Protocol. Convention on the Elimination of All Forms of Discrimination against Women*. Inter-American Institute of Human Rights. San José, Costa Rica (2000). pp31-108.

State Party against its citizens residing in another country, or violations by immigration officials against a woman who is not legally admitted to the territory of a State Party but is under the control of those immigration officials. International law recognises that a State's 'jurisdiction' is not limited to its territory meaning that a violation(s) does not have to have been committed within the territory of the State Party. Further, representatives of the victim(s) are not required to be under the jurisdiction of the State Party concerned either.

Q: Can an undocumented worker be considered under the 'jurisdiction' of a country different from her nationality?

A: Yes as in the case of immigrants or refugees where their rights are violated by the State or private actors in the country where they are working or living.

Q: What are the criteria for establishing that an individual is a 'victim' of a violation(s)?

A: She must make reasonable efforts to show that:

- An act or failure to act (an 'omission') by a State Party has already adversely affected her enjoyment of a right under the CEDAW Convention; or
- That there is a real threat of such harm. The violation(s) may take the form of an act or omission by the State Party.

Q: How is a 'violation through omission' identified?

A: To find that the State Party has committed a 'violation through omission', the Committee would analyse whether it has an obligation under the CEDAW Convention to take a general and/or specific action. The State Party has two types of obligations:

- Duties to take a specific measure (e.g. granting women equal rights to administer property); and
- Duties to achieve a result by using measures that the State Party chooses (e.g. eliminating discrimination against women in the field of health care).

If the Committee decides that such an obligation exists under one or more articles of the CEDAW Convention, it would then consider if the facts of the case show that the State Party has failed to take that action.

Q: How will the Committee decide if the State Party has a duty to take action?

A: It will analyse the language of specific articles and then consider any interpretations of that language or similar language in other human rights instruments. The Committee could refer to its own general recommendations, established interpretations of other human rights instruments that have provisions similar to those in CEDAW, and other sources of international law, such as the opinions of scholars and consensus regarding best practice as reflected in commitments made in plans of action adopted at various UN world conferences.

Q: What are the criteria to determine that the harm to the victim(s) is due to a violation by the State Party?

A: The harm must be shown to be causally linked to an act by the State Party, or failure by the State Party to take action required under the CEDAW Convention.

Q: Can the communications procedure be used to deal with violations by private individuals, groups or enterprises?

A: Yes. The OP-CEDAW allows individuals to seek remedies for violations by non-State parties – individuals, groups or enterprises – because the CEDAW Convention itself applies to such violations. For instance, if a private employer is violating the rights of

women workers, a case may be brought against the State for failing to take steps to prevent or respond to the employer's actions.

Q: What is 'subject matter jurisdiction'?

A: A violation is within the 'subject matter jurisdiction' of the OP-CEDAW if it concerns a right recognised in Articles 2-16 of the CEDAW Convention. Even if a right is not explicitly spelled out in the Convention, it is within the 'subject matter jurisdiction' of the OP-CEDAW if it can be:

- Derived from one or more rights that are explicitly recognised (e.g. in the case of violence against women, which the Committee has found violates multiple rights in the CEDAW Convention);
- Interpreted as a precondition for the enjoyment of an explicitly detailed right (e.g. in the case of freedom of movement which is necessary to exercise the right to participation in political life); or
- Defined as a specific aspect of a right that is recognised in more general terms (e.g. the right to be informed of health hazards in the workplace as an aspect of the right safe and healthy working conditions).

Q: What requirements must be met for a communication to be received by the UN and sent to the Committee?

A: A communication must be: (a) in writing; and (b) not anonymous. However, although a communication cannot be anonymous, it may not be necessary to reveal the victim's name in the initial submission if the author (the representative or others acting on behalf of the victim) explains that the victim faces a threat of retaliation and asks the Committee to recommend 'interim measures' of protection at the same time the name is revealed to the State Party. The Committee may also request the State Party to not disclose the victim's name publicly.

Q: Can the victim(s) submit a communication under the OP-CEDAW instead of seeking a remedy through the national courts or other national procedures?

A: The Committee will not consider a communication unless it has determined that all 'domestic remedies' (remedies available at the national level) have been 'exhausted' (taken through all stages). However, the OP-CEDAW and established human rights law provide exceptions to this rule. The exhaustion requirement should encourage States Parties to ensure that effective remedies for violations of the CEDAW Convention are available.

Q: What are the exceptions to the rule requiring 'exhaustion' of domestic remedies?

A: It is not necessary to 'exhaust' domestic remedies if:

- No remedies for the violation are available;
 - Remedies available are 'unreasonably prolonged' (unreasonably time-consuming); or
 - Remedies available are 'unlikely to bring effective relief'.
- These exceptions allow the Committee to interpret the 'exhaustion' requirement in light of the obstacles that women face when seeking redress.

Q: How is the 'effectiveness' of domestic remedies determined?

A: The 'effectiveness' of a domestic remedy can be evaluated by considering whether:

- The remedy provides adequate relief in light of the nature of the violation (e.g. the relief is comprehensive enough to cover restitution, compensation or rehabilitation for the victim(s) and/or action to prevent the violation from happening again); or

- The remedy is futile or inaccessible to the victim. Legal and practical barriers that would make a remedy futile or inaccessible include widespread discrimination in the courts; refusal of officials to investigate violations; lack of financial resources to bring a claim through all stages of the legal procedure; intimidation or threats by officials, family members or members of the community; lack of legal capacity, lack of due process or if there is no law on which to base the claim directly or indirectly hence the right concerned is not legally recognised at the national level but is provided for in the CEDAW Convention.

Q: What if the case is being, or has been, examined under another ‘procedure of international investigation or settlement’?

A: A communication will be declared inadmissible if it concerns the ‘same matter’. To determine whether it is ‘same matter’, the Committee will consider both the facts underlying the claim and the content of the rights in question. If it finds that the facts have changed significantly, or that the claims raised through other international procedures concerned different rights or obligations – even though the facts were the same – the Committee may decide that the communication is admissible.

Q: What is considered a ‘procedure of international investigation or settlement’?

A: Such a procedure must provide for:

- Consideration of the facts of the specific case;
- An opportunity for both the victim(s) and the State Party to submit their arguments;
- A finding that the State Party has (or has not) violated specific legal obligations; and
- The identification of remedies for the victim.

For instance, you can submit a communication under the OP-CEDAW about a case that has already been sent to the Special Rapporteur on Violence against Women because a reporting procedure of the latter is not another ‘procedure of international investigation or settlement’. If a claim can be raised under more than one treaty, you should compare the strategic and substantive advantages of the OP-CEDAW to the other procedures.

Q: When will a communication be declared inadmissible on the grounds that it is ‘incompatible’ with provisions of the CEDAW Convention?

A: A communication may be considered ‘incompatible’ if it raises claims beyond the scope of the CEDAW Convention (e.g. a claim that a State Party has violated a group’s right to self-determination) or if it seeks a result that conflicts with the objectives of the Convention (e.g. a claim that woman’s parental responsibilities will be undermined by affirmative action measures to increase the number of women candidates for political office).

Q: When will a communication be declared inadmissible on the grounds that it is ‘manifestly ill-founded’?

A: A communication will be considered ‘manifestly ill-founded’ if, assuming all the facts stated to be true, it:

- Alleges violations of rights that are not guaranteed by the CEDAW Convention;
- Relies on an incorrect interpretation of the Convention; or
- Alleges facts that unquestionably indicate that the State Party’s act or omission is consistent with its obligations under the CEDAW Convention.

Q: What is required for a communication to be considered ‘sufficiently substantiated’?

A: To meet the requirement of ‘sufficient substantiation’, details should be provided concerning the specific situation of the victim(s). It is not sufficient to make broad claims about the general situation, such as ‘the police do not enforce the domestic violence

law’ or ‘the health care system fails to address the needs of older women’ or to merely present statistics (e.g. the rate of illiteracy among women, differences in pay, etc.). The Committee will declare such communications inadmissible. The facts about the general situation must be related to the specific harm (or threat of harm) to the victim(s). If a communication meets this test, additional information can be submitted later either to further substantiate the claim or if new relevant information becomes attainable.

Q: What constitutes ‘abuse of the right’ to submit a communication?

A: It will be considered an ‘abuse of the right’ to submit a communication if:

- The author’s purpose is to harass or defame an individual;
- There is some other malicious intent; or
- The claim has been previously found by the Committee to be unfounded.

Q: Can a communication deal with a violation that took place before the State ratified the OP-CEDAW?

A: The Committee will declare a communication inadmissible if it deals with a violation that occurred before the State Party’s ratification became effective, unless the violation is still ongoing. The Committee can also admit a communication if the State Party has failed to remedy ongoing consequences of a past violation. In the case of the latter, the State’s inaction can be viewed as an affirmation of its previous violation.

Q: What are ‘interim measures’?

A: If the Committee believes that there is potential for ‘irreparable damage’ (damage which cannot be adequately remedied after it occurs), it can request the State Party to take measures to prevent the harm before the stage where the merits of the claim are considered. ‘Interim measures’ are usually requested only if necessary to protect against physical or mental harm to the victim or against action having an irreversible impact on the victim’s rights. For example, if a complainant is in custody and under threat of torture or risks losing her life, the Committee could instruct the authorities to provide adequate protection for her. Another example where ‘interim measures’ are justified is the provision of maintenance to a woman from her spouse or partner where this issue is under review, and where receiving such resources immediately is a matter of survival for her and her children.

Q: What happens if the Committee declares a communication inadmissible?

A: It will not be sent to the State Party for a response and the procedure will be terminated. A communication rejected as inadmissible at this stage could be resubmitted at a later stage if there is additional information that would lead the Committee to reverse its finding of inadmissibility.

Q: What happens if the Committee declares a communication admissible?

A: It will be sent to the State Party named in the communication. Within six months, the State must submit a written response. The response can address both the admissibility of the communication and the substance of the claim (the merits), and should provide information about any remedy that may have been provided to the victim.

Q: What happens if the state fails to answer within six months?

A: If the State does not reply within six months, the Committee will consider the communication on the basis of the information before it.

Q: What sources of information can the Committee consider in reviewing a communication?

A: In addition to the information provided by the author of the communication and the State Party, the Rules of Procedure provide that the Committee can request (through its Secretariat) “any documentation from organisations in the United Nations system or other bodies” that may assist in its consideration of the facts or law. It can request this information at any time during the process of considering a communication. NGOs and regional human rights bodies are among the ‘other bodies’ from which information can be requested.

Q: What happens after the Committee reviews the merits of a communication?

A: The Committee will transmit its ‘views and recommendations’ to all parties. Its ‘views’ indicate whether a violation of CEDAW has occurred. This might include both the Committee’s findings regarding the facts, and its analysis applying the law to the facts (i.e. explaining why the act or failure to act does or does not constitute a violation). If the Committee concludes that a violation has occurred, it will issue recommendations of action the State Party should take to remedy the violation. These may identify specific measures of restitution, compensation and/or rehabilitation for the victim(s) or action to prevent the violation from happening again.

Q: Are the ‘views and recommendations’ by the Committee binding?

A: The Committee’s ‘views and recommendations’ are not legally binding, but it will use its follow-up procedures to persuade the State Party to implement its recommendations. NGOs have a central role in promoting compliance through activism at the national level. Recommendations that are specific and detailed rather than general will be of greater assistance both to women whose rights have been violated, and States Parties that are attempting to implement their obligations under the CEDAW Convention.

Q: What is the obligation of a State Party once the Committee transmits its views and recommendations?

A: Within six months the State Party must inform the Committee about any action taken in response to the Committee’s views and recommendations. Article 2 of the CEDAW Convention creates general obligations to implement provisions of the Convention. This implies a duty to eliminate laws, policies and practices that the Committee has found to be discriminatory, and a duty to take steps to prevent similar violations in the future.

Q: After this initial response from the State Party, can the Committee continue to monitor action taken in response to its recommendations?

A: Yes, the OP-CEDAW and the Committee’s Rules of Procedure provide for follow-up measures that will enable the Committee to monitor steps taken to implement its views and recommendations. It may request the State Party to provide additional information in its periodic reports under the CEDAW Convention or it may appoint a special rapporteur or working group to follow-up. The Rules of Procedure authorise the special rapporteur or working group to make “contacts and take such action” as appropriate.

Q: What would be ‘appropriate’ follow-up measures that the Committee could be urged to take?

A: Examples of ‘appropriate’ follow-up measures include:

- Publicising the Committee’s follow-up activities through the media;
- Having a separate chapter on follow-up activities under the OP-CEDAW in the Committee’s annual report, with detailed information about action and inaction by States Parties;

- Establishing direct contacts with national officials;
- Inviting NGOs to submit information; or
- Conducting on-site follow-up missions by the special rapporteur or working group at the invitation of the State Party).

The inquiry procedure

Q: What kinds of violations can be addressed through the inquiry procedure?

A: The Committee can initiate an inquiry into ‘grave or systematic’ violations. The term ‘grave’ implies a severe violation closely related to the integrity and security of person, such as torture, forced disappearances, or killings. A single violation can be grave and a single act can violate more than one right. The term ‘systematic’ implies that the violations are part of a consistent pattern, are widespread, or committed as part of a scheme or policy.

Q: What is necessary to trigger the inquiry procedure?

A: The Committee must receive ‘reliable’ information that ‘grave or systematic’ violations are taking place. The term ‘reliable’ means that the Committee must find the information to be credible. The Committee can assess the reliability of information in light of factors such as: its specificity; whether it is internally consistent and consistent with information from other sources; whether there is corroborating evidence; whether the source has a credible record in fact-finding and reporting; and, in the case of media sources of information, whether they are independent and non-partisan. There are no restrictions regarding the sources of such information or the format in which it may be received.

Q: Is the Special Rapporteur on Violence against Women permitted to share information with the Committee to trigger an inquiry?

A: Yes. Neither the OP-CEDAW (Article 8) nor the Rules of Procedure limit the sources of information. Potential sources include women’s groups and other NGOs; other UN bodies or experts, regional human rights bodies or experts; press accounts; or agencies and organisations working with refugees and internally displaced persons. The Committee’s Rules of Procedure provide that it may request additional information to substantiate the facts received.

Q: After the Committee determines that the information it has received is reliable and indicates that ‘grave or systematic’ violations are occurring, what happens next?

A: The Committee may appoint a working group (one or more of its members) to carry out the inquiry and the State Party is invited to submit relevant information. The Committee may request additional information from representatives of the State Party concerned, governmental organisations, NGOs, and individuals. Taking into account all reliable information before it, the Committee (through the working group) conducts a confidential inquiry. The working group reports the results of its investigation to the Committee as a whole. Based on that report, the Committee makes findings and issues comments and recommendations on the situation. Its findings, comments and recommendations are transmitted to the State Party concerned, which must reply within six months.

Q: What does the working group do during an on-site visit?

A: During an on-site visit the working group may conduct hearings to review the facts and in which victims, witnesses and others can testify. It can meet with government officials, NGOs representatives, victims, and witnesses, and it can visit specific institutions or locations.

Q: Does the Committee need the consent of the State Party to initiate an inquiry?
A: No, the Committee can conduct an inquiry without the consent of the State Party. However, the Committee must have the State’s consent in order to make an on-site visit or hold hearings during an on-site visit.

Q: What is the outcome of an inquiry procedure?
A: The Committee issues findings and recommendations. The findings analyse whether the facts point to violations of the CEDAW Convention. The recommendations identify actions to be taken by the State Party to stop ongoing violations and prevent similar occurrences in the future. These may include legal, administrative or educational measures, and related budgetary allocations.

Q: What follow-up measures does the Committee take after it makes recommendations?
A: The Committee can ask the State Party for specific information about steps taken in response to the inquiry, presented either in its periodic CEDAW report or separately, six months after the Committee has transmitted its findings and recommendations.

Q: What is the ‘opt-out’ clause?
A: This clause allows a State Party to declare, at the time it signs, ratifies or accedes to the OP-CEDAW, that it does not recognise the authority of the Committee to carry out the inquiry procedure. A State Party cannot ‘opt-out’ of the communications procedure.

General questions

Q: How does one decide which international or regional procedure is the best means of seeking redress for a violation?
A: One should consider all available procedures in deciding where to bring a case. All human rights standards prohibit discrimination on the basis of sex. Therefore, they should all protect against such discrimination, and be able to provide effective remedies where such violations occur. Apart from CEDAW, other human rights treaties with complaints procedures are the International Covenant on Civil and Political Rights (ICCPR), International Covenant on the Elimination of Racial Discrimination (ICERD), and the Convention against Torture (CAT). CAT also has its own inquiry procedure. You can only file one complaint on the same matter with one treaty body at a time. Therefore, you must decide which is most strategic for your purposes. For this, you should consider and weigh different factors: the specialisations of each treaty, past treatment of your issue by the treaty bodies, the fields of expertise of individual Committee members, etc. For instance, for a State Party to the ICCPR, the Human Rights Committee (HRC) – the body that monitors implementation of the ICCPR – would be a good forum for cases involving formal equality and clear violations of women’s civil or political rights (e.g. the denial of women’s right to vote, discriminatory nationality and inheritance laws). The case law of the HRC can be influential because its members have included well-known legal scholars and judges.

Q: How is a conflict between the provisions of the CEDAW Convention and national law decided if national law does not give international obligations priority?
A: The Committee’s views and recommendations are based on the CEDAW Convention. At the national level, courts or legislatures determine how to resolve a conflict between domestic law and CEDAW, by referring to national law, doctrine or constitutional provisions governing such conflicts.

Q: Can communications be brought for violations by transnational enterprises? Can violations by transnational enterprises be the subject of an inquiry?
A: A communication concerning violations by transnational enterprises can be brought against the State Party to the OP-CEDAW that granted these enterprises legal recognition as a juridical entity (through registration or incorporation). It can also be brought against the State Party which entered into an agreement that authorised the enterprise to operate in its territory. In either case, the Committee would first determine whether the State Party had a duty to regulate the conduct of the transnational enterprise to prevent the violation(s), and to investigate and respond to violations. It would then determine the scope of that duty and whether the facts indicate that the State has failed to meet its obligations. A similar analysis could be used to trigger an inquiry if the violations are grave or systematic in nature.

Q: Can the Committee concurrently consider a communication and conduct an inquiry based on the same set of facts?
A: Yes, provided the victim is seeking remedies for a specific violation of her rights (considered under the communications procedure) that occurred in the context of systematic violations (considered under the inquiry procedure). For example, the Committee could initiate an inquiry into systematic trafficking in women, and admit a communication from an individual woman seeking compensation for violations committed against her when she was trafficked. NGO’s could investigate and document systematic violations to submit information to the Committee that will trigger an inquiry as well as file communications on behalf of individual victims whose cases they document while investigating the broader situation. The Committee would not consider a communication that concerns a violation against a woman whose case is being investigated under the inquiry procedure as a single ‘grave’ violation, as this would amount to the ‘same matter’ and be an inappropriate use of the Committee’s resources.

Q: Can a State Party withdraw from the OP-CEDAW while a communication against it is being considered or ‘opt-out’ of the inquiry procedure after the Committee has begun an inquiry into violations it is reportedly committing?
A: States Parties can ‘denounce’ (withdraw from) the OP-CEDAW, but it takes six months for the denunciation to take effect. Denunciation will not affect an inquiry or complaint already in process before the effective date of denunciation.

HANDOUT 1
Understanding discrimination – Article 1 of the CEDAW Convention

The provisions of the CEDAW Convention can broadly be divided into two groups:

- Provisions which set the principles through which the Convention should be applied (Articles 1-4); and
- Provisions which enshrine actual rights and prohibit violations of those rights (Articles 5-16).

For instance, to understand how the provisions relating to health, education or political participation ought to be applied, it is necessary to recall the spirit of the Convention, as well as how it defines discrimination and provides for the realisation of women's equality.

The CEDAW Convention requires us to understand the concept of discrimination in its broadest sense. It seeks recognition for those types of discrimination that are not so obvious or direct. It points out for example, that in areas where women face disadvantages not applicable to men, applying a neutral, narrow rule providing for equality of access for women and men may still constitute discrimination. According to the spirit of the CEDAW Convention, the elimination of all forms of discrimination against women is necessary to ensure substantive (real) equality between men and women. Therefore, understanding the framework of discrimination is a starting point for applying provisions of the Convention to address actual situations comprehensively.

1. How does the Convention define discrimination against women?

CEDAW Article 1 reads:

For the purposes of [CEDAW], ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

When working with the CEDAW Convention as an advocacy tool or as basis of legal claims in national courts or before the CEDAW Committee, it is helpful to consider the elements of Article 1 of the CEDAW Convention. Bear in mind that each word in this definition is crucial in identifying different manifestations of gender-based discrimination.

Specifically, the following forms of discrimination are covered under the CEDAW Convention.

a) Direct and indirect discrimination

The CEDAW Convention includes both direct (intended) and indirect (unintended) discrimination. From the outset, Article 1 states that discrimination occurs when the distinction, exclusion or restriction made on the basis of sex has the ‘intention’ or ‘effect’ of nullifying or impairing the recognition, enjoyment or exercise by women of their rights. The Convention only focuses on whether or not discrimination has occurred. Consequently, intention does not need to be proven to establish discrimination.

Compared to men, women face many obstacles sanctioned by culture and religious practice, and by entrenched male interests in key institutions such as political parties, trade unions, religious institutions and the courts. As such, neutral rules or laws may disadvantage them. Not putting in place enabling conditions or not altering rules to enable women to access their rights and opportunities is considered discrimination under the CEDAW Convention because these result in discriminatory effects even if they were not intended.

b) *De jure* and *de facto* discrimination

Discrimination can stem from both law (*de jure*) or from practice (*de facto*). The CEDAW Convention recognises and addresses both forms of discrimination, whether contained in laws, policies, procedures or practices.

c) Past and present discrimination

The Convention recognises not only current discrimination, but also historic or past discrimination, its variations and results. This is commonly referred to as structural discrimination. Where a previous policy or practice has resulted in entrenched, accepted or structured discrimination against women, it is recognised that measures must be taken to address the inherent disadvantage that results. In such situations, corrective measures to address the effect of past discrimination that places women at a disadvantage must be enacted and implemented. This is why an understanding Article 4 of the CEDAW Convention, especially on temporary special measures, is also important.

d) Cross-cutting discrimination

Discrimination that women experience in one field may affect their rights and opportunities in another. For example, discrimination in access to education and training might result in lack of access to decision-making in the area of public policy. Discrimination in access to credit opportunities may be directly related to discrimination in civil laws on ownership of property, inheritance and ability to enter into contracts.

2. Permitted distinctions: When is it not discrimination?

The definition of discrimination also provides a guide for assessing when different treatment for women is permissible. The Convention requires both equality of opportunity (*de jure* equality) and equality of results (*de facto* equality). To bridge the gap between the two, the issue of access to and ability to benefit from an opportunity is critical (equality of access). Barriers to equality of access to opportunities and equality of benefits may lie in ideological, material and institutional causes and need to be identified on the basis of their discriminatory implications. Therefore, enabling conditions and temporary special measures for women are not discriminatory, and in fact assist in the achievement and acceleration of *de facto* equality. In this regard, it is very useful to refer to CEDAW General Recommendation No. 25 on temporary special measures (See <<http://www.iwraw-ap.org/convention/details25.htm>>).

For more detailed information on this topic, go to <<http://www.iwraw-ap.org/protocol/practical.htm>>.

HANDOUT 2
10 things you should know about the CEDAW Convention

1. As of March 2005, there are 180 countries – known as States Parties – bound by the CEDAW Convention. It is one of the most widely ratified human rights treaties.
2. The CEDAW Convention is a comprehensive bill of rights for women. It is based on the principle of equality between men and women and on the notion that women experience particular forms of discrimination because of their gender.
3. The CEDAW Convention provides a comprehensive framework for the advancement of women and sets forth a framework for understanding the concept of equality: equality of opportunity and equality of results.
4. The CEDAW Convention recognises that despite legal rights being granted to women in many countries, discrimination persists. It acknowledges that women’s access to legal rights is often curtailed by the denial of women’s human rights to economic and social development. Hence, the Convention bridges the traditional division between civil and political rights, and social and economic rights, and mandates both legal and policy measures to guarantee the human rights of women.
5. The CEDAW Convention is an international mandate that legitimises the basis for demands of equality and non-discrimination for women at the national level. It obligates conformity of domestic legislation with the principles of the Convention.
6. The CEDAW Convention focuses on systems, ideologies and institutions that perpetuate discrimination. It acknowledges that public actors such as the State and its institutions, as well as private actors such as communities and corporations, can violate women’s human rights and deny women’s access to opportunities.
7. The CEDAW Convention recognises that inequalities women face are socially constructed, and that social, customary and cultural practices which are based on the idea of the “inferiority or the superiority” of either sex, have a negative impact.
8. States Parties undertake to implement the CEDAW Convention at the national level and to extend the human rights guarantees set forth in the Convention to all women within their jurisdiction. In accordance with the Convention, States are accountable for the respect, protection, promotion and realisation of women’s human rights.
9. The meaning and extent of the provisions of the Convention has expanded over time. The general recommendations by the CEDAW Committee have interpreted rights progressively and developed new standards. For example, although domestic violence is not mentioned in the text of the Convention, CEDAW General Recommendation No. 19 clearly establishes that all forms of violence against women are prohibited.
10. When governments become States Parties to a convention, they can identify that they will not be bound by particular elements of that treaty. This is known as ‘entering a reservation’. With respect to the substantive provisions of the CEDAW Convention, reservations are permitted. Sometimes, States Parties can also make declarations. These have the same effect as reservations.

Source: Adapted from the IWRAW Asia Pacific training manual on the CEDAW Convention, Building Capacity for Change (updated version, forthcoming)

HANDOUT 3
10 things you should know about the CEDAW Committee and its work

1. The CEDAW Committee is the UN body that monitors the implementation of the CEDAW Convention.
2. The CEDAW Committee comprises 23 independent experts who represent the main range of fields covered by the CEDAW Convention, as well as reflect equitable geographical distribution and principal legal systems.
3. The primary function of the CEDAW Committee is to monitor State implementation of the CEDAW Convention. It does this through the consideration of reports submitted by State Parties. These can take the form of either initial or periodic reports, or a combination of the two. After the review of the country concerned, the CEDAW Committee prepares a set of recommendations called the Concluding Comments.
4. The CEDAW Committee plays a critical role in the expansive interpretation of the provisions contained in the Convention. The Committee has also developed a detailed set of recommendations that can be used to monitor the effective implementation of the CEDAW Convention.
5. With the adoption of the OP-CEDAW in December 2000, the CEDAW Committee has the power to receive complaints by women or on behalf of groups of women, through the communications procedure.
6. The OP-CEDAW also gives the Committee the power to launch, on its own initiative, an inquiry into grave and systematic violations of women's human rights.
7. The CEDAW Committee also formulates General Recommendations, which are interpretative comments on specific articles of the CEDAW Convention. These General Recommendations are one means by which the CEDAW Committee addresses contemporary issues which the CEDAW Convention does not expressly mention. There are, to date, 25 general recommendations.
8. The Committee meets twice a year (January and June), each time for 3 weeks. Its sessions are held at the UN headquarters in New York.
9. The secretariat of the Committee is the Division for the Advancement of Women based in New York (e-mail: <daw@un.org>).
10. The Committee carries out its administrative functions, including those related to the procedures established by the OP-CEDAW, by adhering to a set of guidelines known as the Rules of Procedure.

Source: Adapted from the IWRAW Asia Pacific training manual on the CEDAW Convention, Building Capacity for Change (updated version, forthcoming)

HANDOUT 4
The Optional Protocol to CEDAW (OP-CEDAW)

1. Why did the UN adopt the OP-CEDAW?

The Convention on the Elimination on All Forms of Discrimination against Women (the CEDAW Convention) establishes the need to promote substantive equality among men and women in all fields (civil, cultural, economic, political and social) as means to eliminate discrimination against women. However, despite these far-reaching human rights guarantees, in many countries of the world, discrimination against women and girl-children in law and practice remains endemic.

The Optional Protocol to the CEDAW (OP-CEDAW) was adopted in an effort to ensure and further the implementation of the CEDAW Convention in the 180 countries that ratified this treaty, and hence are bound by it (States Parties). The OP-CEDAW is a human rights instrument that complements the CEDAW Convention by establishing two additional procedures that aim to contribute to the domestic implementation of the CEDAW Convention: The inquiry procedure and the communications procedure.

These procedures enable the CEDAW Committee – a body of independent experts that monitors the implementation of the CEDAW Convention – to review violations of women’s human rights in specific circumstances. The OP-CEDAW creates access to justice for women at the international level, in particular, for women who have been denied access to justice in their own countries.

The Optional Protocol to CEDAW
Date of adoption in the UN General Assembly 6th October 1999
Date of coming into force 22nd December 2000

As of March 2005, there are 71 States Parties to the OP-CEDAW. The remaining 109 States Parties to the CEDAW Convention are not bound by the OP-CEDAW.

2. What is the OP-CEDAW?

- The OP-CEDAW is a separate treaty that supplements the CEDAW Convention.
- The OP-CEDAW does not create new substantive rights. It creates procedures for addressing and redressing violations of rights established in the CEDAW Convention.
- Only States Parties to the CEDAW Convention can become parties to the OP-CEDAW.
- States Parties have to ratify the OP-CEDAW to become bound by it.
- By becoming a State Party to the OP-CEDAW, a State recognises the mandate and jurisdiction of the CEDAW Committee to review cases and situations in which alleged violations of women’s human rights have occurred.
- The OP-CEDAW creates access to justice for women at the international level. It is a treaty that establishes two additional procedures — the communications and inquiry procedures — aimed at addressing violations of women’s human rights. It provides a mechanism through which the rights contained in the CEDAW Convention can be interpreted and applied.

- Both the communications and inquiry procedures allow the CEDAW Committee to issue its views and recommendations for addressing women’s human rights violations in particular contexts or situations as a means to further promote the implementation of the CEDAW Convention at the national level.
- The OP-CEDAW will only be available as means of ‘last resort’ once all effective remedies available at the national level have been exhausted.
- States have the possibility to ‘opt-out’ of the inquiry procedure.
- From the moment the Committee receives a communication or initiates an inquiry, it works within a set of Rules of Procedure.

3. What is the communications procedure?

The individual communications procedure enables individuals and groups of individuals to file complaints before the CEDAW Committee for specific breaches of the rights guaranteed in the CEDAW Convention. It also allows them to seek redress for women’s human rights violations. Communications can also be lodged on behalf of individuals provided their consent has been obtained.

4. What is the inquiry procedure?

This procedure enables the CEDAW Committee to launch, on its own initiative, on the basis of reliable information, inquiries into ‘grave or systematic’ violations of the rights of women as contained in the CEDAW Convention. The CEDAW Committee can consider information from credible sources, including information provided by NGOs, when initiating an inquiry.

- ‘Grave’ violations comprise severe abuses. For example, discrimination against women linked to violations of their right to life, physical and mental integrity, and security (as in the case of forced disappearance of women’s human rights defenders in one city).
- ‘Systematic’ refers to the scale or prevalence of violations, or to the existence of a scheme or policy directing violations. Violations not amounting to the level of severity implied by ‘grave’ may still be the focus of inquiry if there is a pattern of violations or abuses, committed pursuant to a scheme or policy. For example, forced sterilisation of indigenous women in public hospitals.

At the time of ratification or accession to the OP-CEDAW, a State can declare that it does not recognise the competence of the CEDAW Committee to conduct inquiries. This is known as the ‘opt-out’ clause, and applies only to inquiries and not to the communications procedure.

For the text of the OP-CEDAW and its Rules of Procedure see Annex III and IV of this publication. Additional information is available at <www.iwraw-ap.org>.

To verify if your country is a State Party to the OP-CEDAW go to:
<<http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm>>

HANDOUT 5
Analysing women’s human rights violations
through the framework of the CEDAW Convention

Encouraging a thorough analysis of the violation(s) that take place through the lens of the CEDAW Convention is necessary to build capacity and expertise on the Convention and the potential uses of the OP-CEDAW. Towards this end, the following steps should be taken.

Step 1: Analysing the violation(s) in light of the Convention’s principles

Compile basic information on the violation(s) that has taken place. Identify:

- Violation(s) of one or more of the rights enshrined in the Convention
- How are the alleged violation(s) linked to Article 1 of the Convention?
- Who has committed the violation(s)?
- What action or inaction resulted in the violation(s)?
- Why should the State be held responsible?
- How has the violation(s) impacted on other rights enshrined in the Convention?
- What are the initial recommendations to address the violation(s)?

Step 2: Applying the provisions of the CEDAW Convention

Having established the foundations of the violation(s), the provisions of the CEDAW Convention – i.e. its articles – relevant to the violation(s) should be analysed. Since these are interrelated, most can be broadly allocated to one theme or another. For example, when analysing a potential complaint on behalf of a group of pregnant women workers sacked from factories as a result of recent government policy, one might find that the violation(s) can potentially be linked to:

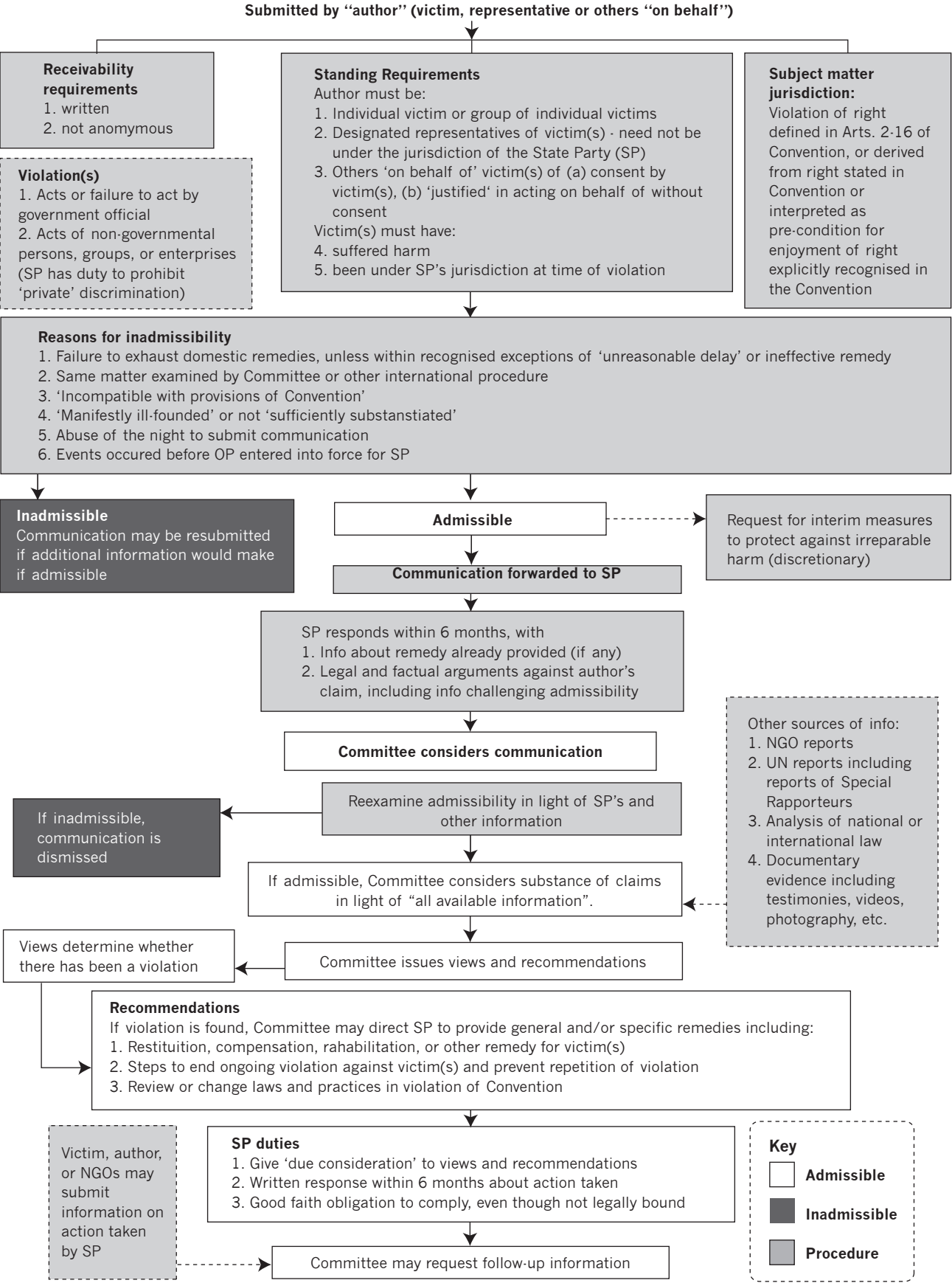
- Article 1 on the definition of discrimination;
- Articles 2(a), (d), and (f), on the adoption of laws and policies that embody the principle of equality and the obligation to repeal discriminatory laws, and abolish discriminatory practices and inconsistency in State practices that affect both women generally as well as different groups of women;
- Article 4(2) on adoption of measures aimed at protecting maternity;
- Article 11 on employment;
- Article 5 on the modification of social and cultural patterns of conduct and gender roles;
- Article 13 on the elimination of discrimination in other areas of economic and social rights; and
- Article 15 on equal protection.

Step 3: Applying jurisprudence of the CEDAW Committee

The analysis of the violations should not be confined to the rights set-out in the articles of the CEDAW Convention. The interpretation of the Convention is evolving and thus, the rights enshrined in this treaty are more expansive than those included in its text. For this reason, it is important to consider the provisions of the Convention and the jurisprudence of the CEDAW Committee. By jurisprudence of the CEDAW Committee, we refer to general recommendations and concluding comments and decisions of the CEDAW Committee under the Optional Protocol aimed at improving the situation of

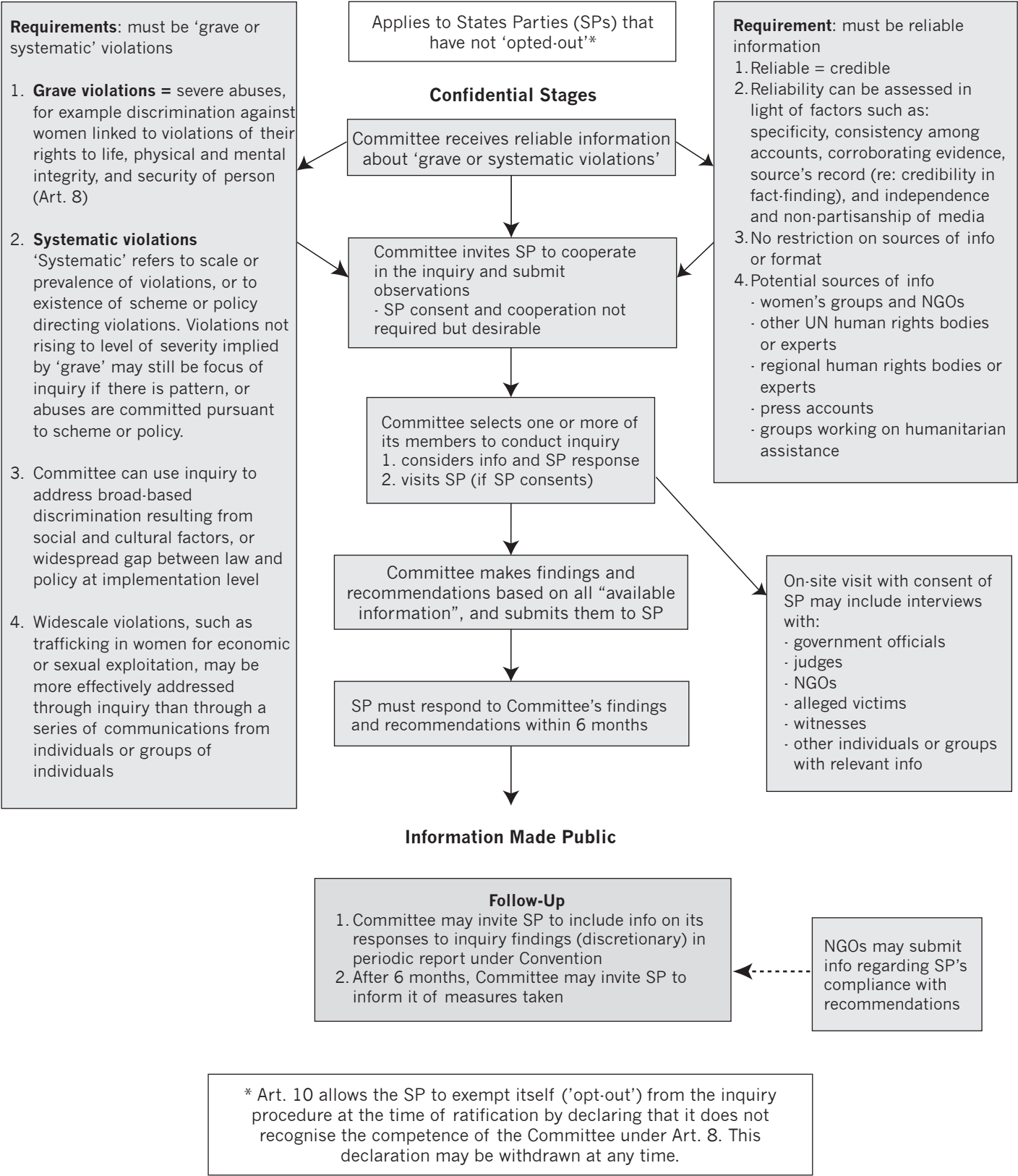
women within individual States Parties. When the Committee starts adopting views and recommendations on communications and inquiries, it is useful to refer to these as well. Analysis should also take into account other international and regional human rights jurisprudence for interpretative guidance and established international law which the Committee can – and should – consider.

HANDOUT 6
Communications procedure – Chart



Produced for IRAW Asia Pacific by students at the International Human Rights Law Clinic, New York University School of Law (2000/2001)

HANDOUT 7
Inquiry procedure – Chart



HANDOUT 8

Sample case studies

Cases can be brought to the CEDAW Committee for consideration under the communications procedure:

- If you live in or if the violation occurred in a country which has ratified both the CEDAW Convention and the OP-CEDAW;
- If you have a case which concerns a violation of one or more of the rights enumerated in the CEDAW Convention;
- If you have used all existing domestic remedies for justice or if you can demonstrate that there aren't any such remedies available or if the delay in the domestic process is unreasonably prolonged; or
- If you can and are prepared to lodge a written complaint to the CEDAW Committee.

Case 1: *'Honour killing' is a practice where husbands, brothers or fathers kill their wives, sisters or daughters purportedly to defend the honour of the family. 'Honour killings' usually happen when a woman refuses to agree to an arranged marriage or if she has or is perceived to have a sexual or any other form of relationship with a male her family deems unacceptable. Police and communities are often complicit, as are courts, which either do not punish these men or give them reduced penalties because of the 'mitigating factor' of defence of family honour.*

In country X, a woman is killed after contacting a women's shelter to say that her brother had threatened her on the grounds that her 'behaviour' has dishonoured the family and that she needed urgent assistance. The women's shelter compiles her written declaration and other proof, and lodges a complaint with the police. Despite mass mobilisation and media campaigns at the local and national levels, neither the police nor other authorities initiate a formal investigation, and the case is considered closed. The women's shelter believes that this case is not the only one, and that the evidence to support the claims of State inaction and failure to punish 'honour killings' is well substantiated.

Analysis

- In this case, since the victim has been killed, another party – i.e. the social worker who was providing support to the victim, the victim's mother, or the women's shelter that assisted her – could bring a communication to the CEDAW Committee on her behalf.
- This is also an example where the State (legislature, judiciary, police) can be held accountable for the violation committed by a private individual (a family member) The State has failed to adequately protect women who are victims of threats and murders and/or punish those responsible for such violations.
- If this is found to be a systematic practice, it may be suitable for an inquiry procedure. Advocates would have to weigh this option against that of using the complaints procedure where specific remedies may be sought.

Case 2: In a country Y, there is a law which establishes that when a woman is suspected of having had an abortion, authorities have the power to force her to undergo a physical examination. If she is found guilty, she is charged with homicide without any chance to appeal.

Analysis

- A communication could be brought by a group of individual women forced to undergo such an examination on the grounds that their right to physical integrity, privacy and reproductive rights have been violated. An organisation can bring the communication ‘on behalf’ of the women if they risk reprisal by being identified.

Case 3: The Constitution of country Z sets the minimum age of marriage at 18. However, common practice in one of its rural states sees young girls coerced into dropping out of school, marrying against their will, and expected to have children within a year. A 13-year old girl runs away from home and turns to her teacher for help to avoid being forced to marry. Lawyers assisting the child have filed a case claiming a violation of her rights to education and to freely choose marriage. They are also seeking for guardianship rights to be given to her school teacher. After three years of investigation and hearings, no decision has been reached. The girl’s life is believed to be in danger.

Analysis

- A communication can be brought by this girl and/or on her behalf, or by of a group of young women who find themselves in similar circumstances in violation of their human rights.
- This case involves violations to a range of rights covered under the CEDAW Convention, for example the right to education, the right to mental and social well being, the right not to be discriminated against because of negative gender stereotypes, and the right to choose if, when and whom to marry, among others.

Case 4: Despite sustained advocacy by human rights lawyers in country A, various Supreme Court decisions have considered as constitutional, a citizenship law which establishes that local women who marry foreigners may lose their right to own land and pass their nationality on to their children.

Analysis

- When such cases have already been decided in the Supreme Court and there is no option for appeal, a communication may be brought under the OP-CEDAW since all domestic remedies have been exhausted.

Case 5: All the women in a village were prevented from voting at a local election after a religious leader publicly said that if they voted, a calamity would strike the village. No one contradicted the leader and the day of the elections women were told by their families and communities not to step out of their homes. Several women complained to various NGOs, which in turn filed administrative and legal complaints. Two have been resolved negatively, while all other claims and appeals have been pending for two years. New elections have been scheduled to take place in six months.

Analysis

- There is sufficient basis to show that the case is unlikely to be decided within six months. Since the results of the violation are ongoing and further violations are likely to occur in the upcoming elections, it is necessary to show that the delay in decisions and remedies has been unreasonably prolonged. Additionally, it is necessary to request for some interim measures to be put in place to allow the women to exercise their right to political participation as soon as the case is deemed admissible.

B

Section

Governments and the OP-CEDAW ratification process

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW) is the first gender-specific international procedure for reviewing claims about women's human rights violations, and for investigating such grave or systematic violations. It has the potential of bridging the gap between the promise of the CEDAW Convention and its actual implementation in law, policy and practice. The procedures of the OP-CEDAW, however, are only available to women from countries that have already become States Parties to both the CEDAW Convention and OP-CEDAW. For this reason, it is important to create a knowledge base, mobilise support and formulate strategies to create awareness and encourage governments to ratify or accede to the OP-CEDAW without further delay.

This section provides information that may support the work of advocates and government officials seeking to strengthen national-level efforts for the ratification or accession to the OP-CEDAW. It includes arguments that emphasise the benefits of ratification as well as arguments that can be used to address misconceptions and concerns regarding the OP-CEDAW.

The benefits of ratification

When advocating for the ratification or accession to the OP-CEDAW, it is important to be aware of all the benefits that this may bring to the implementation of women's human rights standards, at the international and national level. Some of the potential benefits are as follows:²⁰

- Ratification or accession can give a government greater incentive to make changes in national law and policy proactively — including the creation of domestic remedies for women — to avoid international scrutiny and being brought before the international community through the OP-CEDAW procedures.
- Existing mechanisms for implementing the CEDAW Convention are insufficient. Article 18 establishes a reporting procedure through which State compliance with its obligations under the Convention can be monitored but not enforced. The procedure established by Article 29 – where States can submit a dispute concerning the interpretation or implementation of the Convention for arbitration to the International Court of Justice – has never been used and is subject to many reservations. Given this, the OP-CEDAW improves and adds to existing enforcement mechanisms for women's human rights within the UN system.
- Although the CEDAW Convention may become part of national law after ratification or accession by a State Party, in most countries it has not been fully integrated or used in national litigation strategies to advance the human rights of women. Since domestic remedies have to be first exhausted before the OP-CEDAW can be used, it might encourage national courts to cite and use the CEDAW Convention. It

²⁰ The arguments below have been taken from various sources. See, for example, the paper prepared by Donna Sullivan and submitted by the Center for Women's Global Leadership at the Commission on the Status of Women's session in 1997; *Confronting discrimination: The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol – Handbook for parliamentarians*, United Nations (2003), p41; and Laboni Amena Hoq, "Understanding the Optional Protocol to the Women's Convention: A guide to adoption", unpublished paper written for IWRAW Asia Pacific (1999).

will encourage States to develop mechanisms at the national level for redress, remedies and the removal of barriers to access to justice in ways that encompass the realities of women. It can lead to, for instance, the establishment of an independent Equality Commission to monitor violations of women's human rights, and provide advice, information and support in litigation.

Furthermore, the OP-CEDAW will encourage greater coherence in government policy and action. By supporting the implementation of the CEDAW Committee's recommendations, all government bodies will be expressing their commitment and political will to promote women's human rights. This in turn can contribute to better coordination of concerted action at all levels of government.

- A procedure like the OP-CEDAW is necessary to allow for the interpretation and practical application of the CEDAW Convention in specific factual circumstances. The communications procedure allows the Committee to analyse special circumstances in detail, putting it in a better position to assess national laws or policies, and recommend changes in national legislation or practices (e.g. recommending amendments or enactment of new laws to prohibit discrimination against women, and fulfil equality rights of individual women or groups of women in specific contexts or circumstances.)
- The OP-CEDAW will improve the understanding of the CEDAW Convention through the development of further jurisprudence on the human rights of women. The provisions of the Convention are open to on-going interpretation and expansion. New elements not mentioned in its text can be gathered from women's experiences as well as declarations such as the Beijing Platform for Action and the World Conference against Racism's Plan of Action, and then linked to the Convention's framework. The definition of discrimination in Article 1 makes progressive interpretation possible. It enables the identification of additional elements and forms of discrimination that may not be explicitly contained in the text of the Convention. By bringing such cases before the CEDAW Committee, the jurisprudence of the CEDAW Committee so developed could be cited and used nationally in similar cases. This jurisprudence can also be used by other UN human rights bodies to better understand the nature and scope of gender discrimination, thereby contributing to the integration of women's human rights into the overall human rights programmes of the UN.
- The OP-CEDAW can contribute to the awareness and dissemination of the CEDAW Convention among civil society and government officials. It will create greater public awareness of human rights standards relating to discrimination against women.

The ratification of the OP-CEDAW will consolidate these achievements and ensure that women enjoy *de facto* realisation of their rights under existing laws and policies, at the same time encourage discussions on further amendments to these and create more enabling conditions for the advancement of women.

Addressing misconceptions around ratification²¹

The OP-CEDAW was drafted by an open-ended working group of the UN Commission on the Status of Women. This means that States Parties to CEDAW and other member states of the UN led the drafting process. Members of the CEDAW Committee, other independent experts, and NGOs also provided input into the process. During this time, many governments’ concerns were raised and given due consideration. All these are reflected in the final text of the OP-CEDAW. As such, its elements should not be seen as ‘alien’ to governments. What’s more, the text of the OP-CEDAW was adopted by the UN General Assembly, a body in which all member states are represented.

The following summarises some of the concerns that governments raised during the drafting process of the OP-CEDAW.²²

Concern 1: The OP-CEDAW undermines State sovereignty

The CEDAW Committee should not have the competence to review actions of a State’s executive, legislature or judiciary as this undermines the principle of State sovereignty. Also, the recommendations of the CEDAW Committee may undermine the notion of national interest.

Response:

The OP-CEDAW procedures enable the CEDAW Committee to look into specific situations to issue recommendations and engage in a constructive dialogue with the State Party concerned on better ways to address violations applying the norms and standards of the CEDAW Convention. In principle, all parties to this treaty have accepted these norms and standards. By ratifying the Convention, States have legally committed themselves to incorporate the principles of the treaty into domestic law and policy. In this sense they have voluntarily agreed to be held accountable by the international community for implementing (or failing to implement) the obligations in the treaty. The Committee will propose better ways for the State Party to address violations of women’s rights, and provide assistance into ways and means to implement the Convention more effectively. The actual implementation of recommendations has to be discussed and carried out by the different branches of the State Party. The CEDAW Committee cannot adjudicate, legislate or take political control over a country. Its purpose is to assist States to improve national mechanisms for the implementation of the CEDAW Convention.

²¹ Some of the considerations about the legal aspects of the OP-CEDAW are taken from a paper by Amnesty International. International Secretariat. “Making a reality of women’s rights: Bringing into force the Optional Protocol to the Women’s Convention”. IOR 51/04/99. Distr: SC/IGO/PG. London. United Kingdom (October 1999).
²² See Laboni Amena Hoq, “Understanding the Optional Protocol to the Women’s Convention: A guide to adoption”, unpublished paper written for IWRAW Asia Pacific (1999).

Concern 2: The OP-CEDAW encourages frivolous complaints

The OP-CEDAW is potentially a tool that can be used by individuals and groups to embarrass and harass States Parties by lodging inquiries with primarily frivolous and vexatious motives.

Response:

The concern that the OP-CEDAW would provide an avenue for individuals to initiate frivolous and trying complaints against a State Party is an issue that was deliberated at length over the course of discussions of the open-ended working group which drafted the Optional Protocol. By having clear criteria for the admissibility of complaints, the OP-CEDAW contains provisions that could minimise the potential for such abuse. Complaints that are not adequately substantiated will not be declared admissible. In practice, several complaints filed under UN individual complaints mechanisms are declared inadmissible.²³ It is worth noting too that the first decision by the CEDAW Committee under the communications procedure of the OP-CEDAW was on the inadmissibility of a complaint.²⁴

The open-ended working group drew on the experience of existing human rights communications procedures, and its own innovations to overcome potential abuse of the OP-CEDAW. The result was a protocol with concrete mechanisms and procedures by which a complaint can be lodged or by which the inquiry procedure can be initiated.

The communications procedure:

- a) Admissibility criteria: After a communication is submitted to a treaty body, the first stage is determining its admissibility. There are formal criteria which must be fulfilled for the expert body to receive and consider a communication.²⁵ If any of these is not met or remedied, a communication is declared inadmissible on procedural grounds, and no consideration of the merits occurs. This will prevent the OP-CEDAW from being used to embarrass the State Party concerned.
- b) Proceeding on the merits of the claim: The decision declaring a communication admissible is confidentially relayed to the State Party and to the author of the complaint. This provision was adopted out of respect for the integrity of both the State Party and the complainant. The confidentiality provisions are an important concession to States Parties that may be hurt by negative publicity regarding their compliance with the CEDAW Convention, especially if the alleged violations are untrue. In all cases, the State will be provided opportunities to respond and submit information on the alleged violations.

²³ See Table 2 in the Report of the UN Secretary-General, “Comparative summary of existing communications and inquiry procedures and practices under international human rights instruments under the United Nations system” (E/CN.4/2005/WG23/2) for statistics as of November 2004.
²⁴ This decision is available at <<http://www.un.org/womenwatch/daw/cedaw/protocol/dec-views.htm>>.
²⁵ Articles 2 to 4 of the OP-CEDAW set-out the criteria for admissibility. See also Annex III for the full text of the OP-CEDAW.

The inquiry procedure:

The inquiry procedure operates much like the communications procedure in its respect for the confidentiality, cooperation and input of the State Party. However, there are fewer procedural requirements involved. In effect, the inquiry procedure is initiated at the discretion of the CEDAW Committee given ‘reliable information indicating grave or systematic violations’ (Article 8(1)).

During discussions by the open-ended working group, there were initially concerns by some delegates that granting such independence to the Committee could potentially lead to the launching of politically biased inquiries. Another concern was that they might be perceived as biased by others since resource limitations would only allow them to undertake a limited number of inquiries. However, these concerns were laid to rest when it was pointed out that that the Committee comprised experts from different legal and cultural systems, nominated and elected by States Parties themselves. There has to be confidence that collectively the Committee will remain objective and professional.

At the open-ended working group, it was also argued that although the Convention against Torture (CAT) had a similar procedure, the proposed inquiry procedure under the Optional Protocol to CEDAW was much broader. For one, it would allow the CEDAW Committee to launch an inquiry when they deemed a violation to be grave or systematic. For another, the scope of rights in the CEDAW Convention is broader than those provided in CAT, thus expanding the scope of rights that could be investigated under its inquiry procedure. Many had therefore wanted to limit what rights the Committee would be able to address through the OP-CEDAW. Moreover, there was concern by some delegations about the Committee’s potential powers to initiate an inquiry, rather than only doing so upon receipt of a complaint. Finally, from a tactical perspective, it was argued that the inclusion of a mandatory inquiry procedure would deter many States Parties – who would otherwise adopt the communications procedure – from adopting the OP-CEDAW.

In response to these sentiments, the Chairperson of the open-ended working group introduced a provision which would allow States Parties, upon signature, ratification or accession to the OP-CEDAW, to declare that they do not recognise the competence of the Committee under Articles 8 and 9 of the OP-CEDAW. Article 10 ultimately became the ‘opt-out’ clause for the inquiry procedure, allowing the inquiry procedure to be non-binding for States Parties that so desired. This was the trade-off for not limiting the rights that the Committee would be able to review under the communications procedure. It is important to note, however, that States Parties which decide, upon ratification or accession, to ‘opt-out’ of the inquiry procedure have the possibility to ‘opt-back’ into this in the future.

Concern 3: The rights in the CEDAW Convention are not ‘justiciable’

Many obligations of States Parties to the CEDAW Convention – mainly those related to economic, social and cultural rights – are not capable of determination by a judicial or quasi-judicial body like the CEDAW Committee. A large number of these obligations are programmatic in nature and there is no meaningful way to assess whether a State has violated or failed to fulfil these obligations.

Response:

This concern is generally known as the ‘justiciability’ issue and has roots in a larger discussion on the nature of economic, social and cultural rights protected under the ICESCR. ‘Justiciability’ refers to the competence of judicial bodies to adjudicate on matters regarding economic, social and cultural rights – for instance, can a court decide on issues that relate to the right to food or on women’s enjoyment of the right to housing – which in some jurisdictions are regarded as policy and not rights considerations. The issue of ‘justiciability’ is in specific reference to what are sometimes superficially understood to be vague State obligation provisions of Article 2(1) of the ICESCR²⁶ as well as to obligations under the CEDAW Convention which require change in cultural patterns of life, traditions and customs, and the elimination of gender stereotypes. The underlying question here is the suitability of judicial versus political processes for determining not only allocation of resources and but also matters of broad social policy. The latter includes the provisions of CEDAW that refer to gender roles. In reality, such rights have been subject to extensive interpretive and jurisprudential analysis over the past decade,²⁷ yielding sufficient clarity to make them amenable to external scrutiny.

Despite this, opponents have also argued that obligations under CEDAW are programmatic and thus related to resourcing. It is well known that all human rights treaties oblige states to design policies and programmes for their enforcement. Supporters of the OP-CEDAW point out that even in cases of civil and political rights, such as the right to be free of torture and the right to vote, substantial economic investment is required. These rights are never described as programmatic despite the need for States to allocate resources to ensure that they are realised.

Because the CEDAW Convention contains economic, social and cultural rights, governments were reluctant to agree to a procedure that would identify violations and specify remedies. However, supporters of a strong protocol argued that the obligations under the Convention involved duties to eliminate discrimination, and that discrimination was always suitable for review by judicial bodies. Further, with respect to the similar economic, social and cultural rights protected by the CEDAW Convention and its related protocol, these rights have their own specific grounds for ‘justiciability’. All rights in the CEDAW Convention are potentially ‘justiciable’ since ‘justiciability’ must be determined in reference to a specific set of facts related to a particular right. This means that the CEDAW Committee will determine in the context of the cases that come before it,

²⁶ Article 2(1) of the ICESCR obligates the State to take steps through its own efforts and through mobilising international cooperation, as well as utilising the maximum available resources, to achieve ‘progressively’ the full realisation of the rights recognised in the this Covenant.

²⁷ Regarding this question of ‘justiciability’ of economic, social and cultural rights, there have been many developments in recent decades that show that these rights are indeed ‘justiciable’. These developments can be found in domestic and regional jurisprudence, and in the interpretive general comments of the Committee of the Economic, Social and Cultural Rights. Domestic and regional jurisprudence in several instances have successfully adjudicated on issues such as the right to food, health, shelter and education. Countries that have adjudicated on these issues include South Africa, Finland, Argentina, Mauritius, Canada, Latvia, France, India, Bangladesh, Nigeria, and most nations in Central and Eastern Europe; while regional bodies that have done the same are the African Charter of Human and Peoples’ Rights and Duties, the Collective Complaints Procedure under the European Social Charter, and the Inter-American San Salvador Protocol. Examples of CESCER general comments that help interpret and define, and ultimately adjudicate economic, social and cultural rights are general comments 4, 5, 6, 7, 9, 11, 12, 13, 14. (“Advocacy Kit. Activities targeting the open-ended working group to consider options for an OP-ICESCR in January 2006”. The Coalition for an Optional Protocol to the ICESCR.)

whether a claim is suitable for ‘judicial’ resolution. Overall, bringing cases to the CEDAW Committee will facilitate jurisprudence that establish better understanding of the levels of ‘justiciability’ of all the rights under the Convention.

Concern 4: The CEDAW Committee has no competence to adjudicate complaints

Members of the CEDAW Committee have neither the expertise nor the representative authority to adjudicate claims against States Parties with respect to communications brought through the OP-CEDAW.

Response:
Currently, the CEDAW Committee’s main responsibility is to review reports submitted by States Parties, and make recommendations on how they can effectively implement the CEDAW Convention at the national level. The Committee’s new role with regard to the OP-CEDAW is an extension of this function. The OP-CEDAW does not impose any new substantive obligations on States Parties. Rather, it simply allows for a more effective mechanism to ensure State Party compliance to their obligations under the CEDAW Convention.

While a certain amount of discretion in deciding on such issues will be left up to members of the CEDAW Committee, these members have proven to be both competent and capable of handling such discretion. The criteria for choosing members of the Committee – such as relevant area of expertise – facilitates the creation of a body that is both knowledgeable and aware of the nature and effects of violations to women’s human rights in general. As well, they are sensitive to the specific needs of particular constituencies of women and the societies they represent around the globe. The fact that CEDAW Committee members are chosen by their respective States Parties, and the Committee is organised in a way which reflects diversity of expertise, experience and geographical location, shows its inherently representative nature. Furthermore, governments should not question the legitimacy of a Committee that was put in place by them.

Concern 5: The Committee will take over the role of judges

The views and recommendations of the Committee will contradict decisions made by national Courts, including the Supreme Court, thus making the role of judicial bodies redundant.

Response:
The CEDAW Committee will not substitute their interpretation of national law (legislative or constitutional) for the interpretation of national judges but it will assess and determine the compatibility of national laws and systems with the Convention. Only in that sense could it be said to be ‘contradicting’ decisions by national courts.

Concern 6: Ratifying the OP-CEDAW will nullify reservations by States Parties to the CEDAW Convention

The OP-CEDAW will be used to undermine substantive reservations lodged by States Parties with regard to the CEDAW Convention.

Response:
Under the OP-CEDAW, the issue of the CEDAW Committee’s powers in relation to reservations to the CEDAW Convention is not explicitly addressed. Thus, it does not provide any guidance as to whether the Committee can proceed to hear a case falling within the substantive scope of a reservation if it considers the reservation invalid on grounds of incompatibility with the object and purpose of the CEDAW Convention. While the CEDAW Committee itself has expressed clear views on the incompatibility of some types of reservations with the object and purpose of the Convention, it might likely be guided by the experience of the Human Rights Committee in dealing with such cases. That is, where a reservation is deemed compatible with the object and purpose of the Convention, the CEDAW Committee would first consider whether it applied to the subject matter of the communication. If it did, the Committee cannot proceed further with its consideration of the communication.

On the other hand, if the Committee found that the reservation did conflict with the object and purpose of the CEDAW Convention, and that the communication fell within the scope of an incompatible reservation, it could proceed on the merits of the complaint because the reservation would be considered ineffective. In short, although not explicitly addressed, it is most likely that if the original reservation is valid, the Committee will not review complaints falling under the subject matter of that reservation.

Becoming a State Party to the OP-CEDAW

The formal requirements for States Parties to CEDAW to become bound by the procedures of the OP-CEDAW are set out in Article 15. According to this provision:

“1.The Optional Protocol shall be open for signature by any State that has signed, ratified or acceded the CEDAW Convention.”

What happens when a government signs the OP-CEDAW?

In most cases, the Head of the State, Head of Government, or Minister of Foreign Affairs are empowered to sign treaties on behalf of the State. By signing the OP-CEDAW, governments express their intention to move in the direction of consenting to be bound by the procedures established by this treaty. However, signatories of the OP-CEDAW are not yet States Parties to the treaty.

The signature is important because it is evidence of the intention of a government to take steps towards ratification of the OP-CEDAW. Between signature and ratification or accession, governments are effectively being given time to seek ratification or accession to the treaty and/or make changes to laws and policies which may be necessary to implement the OP-CEDAW. In addition, according to Article 18 of the Vienna Convention

on the Law of Treaties, signature creates the obligation to refrain in good faith from acts that would defeat the object and purpose of an Optional Protocol in the period between signature and ratification.

“2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention.”

What happens when a government ratifies the OP-CEDAW?

A government demonstrates its willingness to undertake the legal rights and obligations under a treaty by agreeing to be bound by it. Ratification is one of the ways in which a government becomes bound by a treaty. Only countries that have first signed the OP-CEDAW can ratify it. The process of ratification varies from country to country. In general, however, after signing the OP-CEDAW, a government will have to go through the following stages to become a State Party:

- First, constitutional provisions may require a process of ratification to be undertaken at the national level. This is usually the responsibility of Parliament (Legislature), the body that, upon advise by the Executive (e.g. President or Ministry of Foreign Affairs), expresses acceptance of the State to be bound by the OP-CEDAW.
- After Parliament passes the bill or motion accepting the OP-CEDAW, the Executive authorises the instrument of ratification to be deposited with the UN Secretary-General.
- Three months after depositing the instrument of ratification with the UN Secretary-General, the government becomes a State Party to the OP-CEDAW.
- Once a government has ratified a treaty at the international level, it is obligated to give it legal effect at the national level. The procedures of this treaty will also be in effect and thus available, regardless of any changes in government.

“3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.”

What happens when a government accedes to the OP-CEDAW?

Accession is another means by which governments consent to be bound by a treaty such as the OP-CEDAW. Accession has the same legal effect as ratification: a government becomes a State Party to the OP-CEDAW and is legally bound to it. However, unlike ratification, accession is not preceded by signature.

“4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.”

When does a treaty come into effect?

Governments become States Parties to the OP-CEDAW three months after the deposit of the instrument of accession with the UN Secretary-General. The same applies in the case of ratification (Article 16).

How should I become more familiar with the process by which my country would consent to be bound to the OP-CEDAW?

Usually, constitutional provisions will describe the process by which a State becomes bound by international treaties. If you have any doubts, you should contact the legal department of the Ministry of Foreign Affairs.

Has my country signed, ratified or acceded to the OP-CEDAW?

See Annex V for a list of signatories and States parties to the OP-CEDAW as of January 2005. For an updated list, go to: <<http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm>>.

Examples of ratification processes

This section shows the range of processes by which States ratify international treaties, such as the OP-CEDAW, and thus agree to be bound by them. Since the rules and process for ratification vary from country to country and can change over time, the information here is meant to be illustrative of what happens at the national level, rather than being exhaustive.

Argentina

First, the Ministry of Foreign Affairs and other representatives of government bodies analyse the treaty and recommend the Legislature to discuss and approve its ratification. In both the Senate and the Congress, a simple majority vote is needed for ratification of a treaty. After votes of approval, the treaty is sent for the signature of the President, and then to the Foreign Affairs Ministry which deposits it with the UN. The act of ratification must be published in the official gazette of the government in order to make an international treaty part of domestic law. The implementation of legislation follows ratification.

Bangladesh

The Constitution does not provide for the ratification procedure of an international treaty. However, there is also no constitutional obligation to obtain approval from Parliament to ratify any international treaty. In general, the UN Desk at the Ministry of Foreign Affairs makes the proposal for signature or ratification of an international treaty. After taking a decision in the Ministry, a formal proposal is sent to the inter-ministerial bodies. The Law Commission of Bangladesh is responsible for scrutinising the treaty from the domestic legal perspective. The Finance Ministry must also examine potential financial implications. The government may form an inter-ministerial committee to comment on the impact of the instrument at the national level as well on foreign policy, or other concerned ministries may be asked to send comments. After the relevant ministry makes a concrete proposal, the issue is raised before the Cabinet. Chaired by the Prime Minister, the Cabinet makes the final decision regarding signature or ratification of the concerned instrument. Generally, the Minister of Foreign Affairs is responsible for signing the instrument of ratification.

Canada

Implementing legislation has to be submitted with the ratification bill and both have to be passed through the House of Commons (Parliament) and the Senate. The key

government agencies, which have been involved throughout such processes, are the ministries of justice, foreign affairs, and defence.

Egypt

In practical terms, the decision of whether or not a treaty should be ratified is taken at the level of the President's office. In procedural terms, the Foreign Ministry signs international treaties but ratification requires the consent of the Council of Ministers (the *Maglis al-Wuzara*, or in more familiar terms, the Cabinet), and, following this, the consent of the People's Assembly (the *Maglis al-Shaab*). Before promulgation, laws are subject to review by the Constitutional Court. Once the Court determines that there are no constitutional barriers, the treaty is published in the official gazette and then takes effect.

Netherlands

Civil servants of the relevant ministries (Council of Ministers) prepare the explanatory report on the relevant treaty and the draft ratification bill, and send it to the Council of State. Following advice by the Council of State, these documents are put before the Second Chamber of Parliament for a written and subsequently an oral procedure, after which the First Chamber of Parliament presents a written and an oral procedure of approval. These proceedings usually take up to one and a half years. In this case, before the treaty enters into force at the national level, the required implementation legislation will be submitted for a similar procedure.

Sweden

Ratification requires the Parliament (Riksdag) to pass a bill of ratification and in most cases, additional implementation legislation. In general, very thorough preparations are made before a bill is presented to Parliament, and the parliamentary process is relatively swift. A draft bill is usually submitted with extensive commentaries, including the negotiating history, an account of the content of the Statute, and a proposal for legislation with commentary. After initial inter-ministerial preparations, this draft bill is then submitted for comments to a number of institutions such as the Parliamentary Ombudsman, courts, the Prosecutor-General, the National Prison Administration, the Defence Headquarters, universities, NGO, and so on. Once their comments are received and incorporated, this draft bill is then re-circulated among the ministries and then submitted to a panel of Supreme Court judges known as the Legislative Council. The views of the Legislative Council are incorporated into the draft bill and finally transformed into a government bill to be presented to the Riksdag. In the Riksdag, the bill can be presented as a motion by a private member. Both the bill and the motion are then sent to the appropriate committees for consideration. Their formal report is then discussed in the Plenary where a decision is taken. This is communicated to the government which enacts the legislation and deposits the instrument of ratification. As a general rule, human rights treaties in Sweden are accorded special status in cases where there is conflict with domestic legislation.

The role of government officials and parliamentarians

As legislators, overseers of government action, political leaders and representatives of the people, parliamentarians have a role to play to ensure ratification of or accession to the OP-CEDAW. [In the same way, government officials committed to upholding women's human rights should promote ratification of the OP-CEDAW.]

Ratification of the OP-CEDAW

If your State has not yet taken any steps to ratify or accede to the OP-CEDAW, even though it may have signed it, you can consider:

- Determining whether the relevant government bodies intend to initiate action to become party to this treaty, and, if not, to inquire as to why;
- Taking action, including in the form of an oral or a written question, to ascertain whether the responsible government [body] has already initiated action with a view to ratification or accession, or is intending to do so;
- Submitting a private member's bill on the matter;
- Encouraging a parliamentary debate on the OP-CEDAW; and
- Mobilising public opinion.

The 'opt-out' clause

If your government has sent your Parliament a request for ratification of or accession to the OP-CEDAW, subject to a declaration of 'opting-out' of the inquiry procedure, you can:

- Request for detailed information on the reasons;
- Initiate a parliamentary debate on the question;
- Mobilise public opinion to encourage your government to reconsider; and
- Propose ratification or accession without 'opting-out' of the procedure.

Public awareness about the OP-CEDAW

Public awareness about the OP-CEDAW is crucial to secure full implementation of the CEDAW Convention. Government officials and parliamentarians can ensure that information on the OP-CEDAW is widely publicised by:

- Ensuring that the text of the OP-CEDAW is translated into national language(s) and widely distributed;
- Encouraging parliamentary debate on the matter;
- Organising campaigns to mobilise public opinion on the OP-CEDAW or taking part in public debates about this treaty, on television, radio or in meetings;
- Writing articles on the OP-CEDAW for newspapers, magazines, other print media as well as the internet;
- Liaising with NGOs, in particular those working on women's human rights;
- Organising or contributing to workshops or information seminars on the OP-CEDAW for MPs, government officials, and civil society;
- Using International Women's Day [and other such opportunities] to focus attention on the CEDAW Convention and the OP-CEDAW.

This section is taken from Confronting discrimination: The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol – Handbook for parliamentarians. United Nations (2003). pp84-85.

HANDOUT 9

Why governments should ratify or accede to the OP-CEDAW

1. The OP-CEDAW is the first international gender-specific human rights instrument with an individual complaints procedure as well as an inquiry procedure.
 - By ratifying the OP-CEDAW, governments will fulfil the international commitment made during the Fourth World Conference on Women, and demonstrate its commitment to promoting women's human rights.
 - The final text of the OP-CEDAW was adopted as the result of political compromises. Governments already have had their objections addressed during the drafting process and should be assured that the text reflects their concerns. It should also be noted that all UN member states adopted the final text by consensus.
2. The OP-CEDAW will strengthen national mechanisms for the advancement of women and the promotion of human rights:
 - The OP-CEDAW will help strengthen national-level capacity to deal with discrimination against women. Its communication and inquiry procedures are available as a 'last resort'. Meaning, they should only be used when domestic protection processes have failed to address gaps in national laws and policies. The recommendations of the CEDAW Committee, made through these procedures, are meant to complement national-level efforts to implement the CEDAW Convention effectively.
 - The ratification of the OP-CEDAW is likely to give momentum to debates on women's access to justice. In turn, these are likely to trigger changes in national laws, policies and procedures.
 - Discussions on the ratification of or accession to the OP-CEDAW give government bodies an opportunity to evaluate the adequacy of available resources for the promotion of women's human rights. In this light, it is also important that special attention be paid to making financial and human resources available to ensure the effective implementation of the CEDAW Convention.
3. The OP-CEDAW will encourage greater coherence in government policy and action.
 - By supporting the ratification of the OP-CEDAW and promoting the implementation of the CEDAW Committee's recommendations, all government bodies will be expressing their commitment and political will to promote women's human rights. This in turn can contribute to better coordination of concerted action at all levels of government.
4. The OP-CEDAW ratification process provides an opportunity to generate greater awareness of the CEDAW Convention at the national level.
 - This process should contribute to better implementation and greater ownership of the CEDAW Convention by government officials and civil society.

- Women will be reassured that their government is committed to realising women's human rights and that the provision of remedies and redress of violations experienced by women is a priority.
- This process also provides opportunities to add new elements to information that is disseminated on human rights.

C

Section

Enhancing advocacy and use of the OP-CEDAW

The information in this section complements that of the earlier sections by focussing and reflecting on strategic issues to strengthen advocacy around the ratification of the OP-CEDAW and its effective use. Because the OP-CEDAW provides women with a means to better understand and exercise their rights as claimants, it is important for all, including NGOs, to consider maximising the potentials of this protocol. This should be done in ways that will promote women’s roles in the human rights arena, in particular, by providing them with opportunities to actively initiate and advocate for their own rights in systematic and credible ways.

Overall considerations

- The development of women’s human rights, as contained in the CEDAW Convention and further ensured by the procedures of the OP-CEDAW, is part of a political process. Efforts to use the OP-CEDAW will only be successful if, through its procedures, States begin to further legitimise the CEDAW Committee’s work and authority. It is therefore important for advocates to bring forward cases that are well substantiated with fully developed legal arguments. It is also important to mobilise groups at the national level to demand the implementation of the CEDAW Committee’s decisions and recommendations. This is because if States fail to implement the Committee’s decisions – and are not held accountable for such actions – there could be a backlash to the overall implementation of the Convention and support for the work of the Committee.
- The provisions of the CEDAW Convention and the OP-CEDAW need to be fully understood and used in a complementary manner. Advocates should be familiar with States Parties’ reports, shadow reports, concluding comments, general recommendations and other tools that may assist them to gain a better understanding of how rights under the Convention have been progressively interpreted. Moreover, as the application of the Rules of Procedure and the Committee’s decisions or views in relation to the communications and inquiry procedures develop further, those actively seeking to explore the use of the OP-CEDAW should strategise accordingly.
- NGOs should be aware of certain issues to ensure strategic use of the OP-CEDAW. For example:
 - a) The need to develop normative standards of rights in the CEDAW Convention not yet considered ‘justiciable’.²⁸ There is a need for standards to assess discrimination in the context of rights (mainly economic, social and cultural rights) that have so far been interpreted as obligations which are programmatic in nature. It is argued that there is no meaningful way of assessing whether a State has violated or failed to fulfil these obligations. However, through the communications and inquiry procedures, advocates can provide recommendations on ways to establish criteria by which violations of women’s economic, social and cultural rights can be readily identified and redressed.
 - b) The need to create better understanding of specific remedies and mechanisms which States should design and establish to redress women’s human rights violations. The criteria for a communication to be admissible at the international

²⁸ See footnote 27 for an elaboration of the concept of ‘justiciability’.

level as a ‘last resort’ – i.e. by demonstrating that domestic remedies have been exhausted – can encourage governments to ensure that there are channels for women to seek redress and remedies for the violations of their human rights.

c) The need to create spaces for NGOs or advocates to dialogue. It is important for NGOs or advocates to strategise internationally on the potential uses of the OP-CEDAW. If these efforts are coordinated, the initial experiences of victims with the OP-CEDAW can be used as a learning process to strengthen future actions under its procedures.

- NGOs interested in using the OP-CEDAW will be more likely to succeed if their strategies are part of a larger plan to build women’s capacity on their human rights, and encouraging them to claim this at the national level. Here building the capacity of NGOs themselves – including skills for documentation, reporting, legal analysis – is essential. NGOs can also help by identifying cases that have failed to receive adequate remedies in domestic courts, and submit these under the communications or inquiry procedures of the OP-CEDAW.

Can the OP-CEDAW be used as a tool to challenge the nature of reservations a State has made in regard to the CEDAW Convention?

The CEDAW Convention is subject to a large number of reservations, many of which are substantive and broad in scope. Some of these reservations appear to be incompatible with the object and purpose of the Convention, and therefore impermissible under Article 28(2). Currently, there is no direct mechanism to challenge the legitimacy of a State Party’s reservations that are incompatible with the object and purpose of the CEDAW Convention. Theoretically, however, it is possible that through the communications procedure an individual or group of individuals can challenge the validity of a State Party’s reservation that is incompatible with the Convention.

Tips for NGOs on the ratification of the OP-CEDAW

The first step in making the OP-CEDAW an effective tool for advancing women’s human rights in your country is to persuade your government to sign, ratify or accede to it. NGOs can catalyse this process through public information campaigns, advocacy and supporting government officials who are working to secure ratification. Advocacy for ratification means building a working knowledge of the OP-CEDAW and the CEDAW Convention, in particular, how the OP-CEDAW can benefit women’s human rights and how it can help States Parties to fulfil their obligations under the Convention. This understanding will equip you to advocate persuasively for ratification.

Some suggestions for national-level advocacy on signature, ratification or accession to the OP-CEDAW are provided below.²⁹

²⁹ The information here was produced for IRAW Asia Pacific by students at the International Human Rights Law Clinic, New York University School of Law (2000/2001).

Awareness-raising and information dissemination

- Develop educational materials on the OP-CEDAW for other key stakeholders, including the general public, to build widespread support for it.
- Hold public and community meetings.
- Create a street theatre production with a mock trial on violations of women's human rights.
- Use the media to educate people, mobilise support for the OP-CEDAW, and make your voices heard. Get media coverage of the ratification process, e.g. through writing letters to the editor or articles for newspapers, holding press conferences, and conducting a radio education campaign.
- Conduct letter-writing campaigns, organise street theatre and other creative public events or demonstrations.
- Develop brochures, flyers for mass distribution, or make visible statements using inexpensive means, like mural painting.
- Create a video for international campaigns that includes interviews with:
 - NGO representatives talking about why the OP-CEDAW is important and how it will effect their constituents;
 - Delegates from countries that have signed the OP-CEDAW talking about why they think their country should ratify it; or
 - Local women who support the OP-CEDAW to discuss how it may impact their lives and why they think an international instrument for women's human rights is important.

Lobbying and advocacy

- Identify the legal process for ratification or accession in your country and map possible obstacles to ratification/accession. As noted earlier, your national law determines the legal steps that must be taken to ratify or accede to the OP-CEDAW.
- Identify any country-specific 'political' or policy arguments against ratification and try to counter them. You can develop informative fact sheets on the OP-CEDAW that address misconceptions and concerns that government representatives may have. (See section on Addressing Misconceptions Around Ratification for arguments you can use.)
- Approach government representatives and share information on the need to ratify the OP-CEDAW and its potential benefits. Emphasise that ratification is a key element of follow-up to the Beijing Conference, and a tangible sign of their commitment to ensuring women's human rights.
- Identify the individuals from your government who are responsible for formulating the government's position on the OP-CEDAW. These may be officials from your Women's Ministry, Foreign Affairs Ministry, and other governmental agencies. Share information with them and craft a ratification strategy that takes their concerns into consideration.
- Identify members of parliament interested in promoting the OP-CEDAW, and work with them.
- Demonstrate to your government that civil society representatives in your country strongly support an effective OP-CEDAW. Have face-to-face meetings with government officials responsible for deciding on ratification, government officials or political leaders known to be supportive of women's human rights issues, as well as prominent opponents of women's human rights.

- Broaden the campaign for ratification. Communicate with NGOs in your country and region about your lobbying efforts, and invite their participation in the campaign. The more voices that urge ratification of the OP-CEDAW, the more motivated governments will be to act.

After ratification

- Build the capacity of key partners to document and bring cases to international human rights bodies such as the CEDAW Committee. To make this possible, encourage human rights experts at the national level to assist in:
 - Developing criteria for choosing cases that may be brought to the international level;
 - Choosing a forum; and
 - Submitting information in accordance with the appropriate format.
- Hold workshops and meetings on the political risks of losing or winning a women's human rights case brought to the international level.
- Build the capacity of interested NGOs and individual advocates on how to use the OP-CEDAW effectively, through trainings and distribution of accessible information. It may be necessary to build coalitions as the process of bringing communications and inquiries can be time-consuming. Identify and collect cases that failed to receive adequate remedies in domestic courts, which can potentially be lodged as communications under the OP-CEDAW.
- Identify sources of funding available to strengthen your efforts.
- Link up with regional and international efforts for the effective use of the OP-CEDAW.
- Organise a national consultation with universities, human rights organisations and women's organisations that may be providing legal aid to women.

Beyond ratification: Using the OP-CEDAW strategically

There are many factors to take into account before bringing allegations of violations of women's human rights forward at the international level. The ultimate aim of 'going international' is to mobilise support and promote changes that will enable the State to address violations of women's human rights effectively while creating appropriate conditions to facilitate the attainment of women's equality. Given this, resorting to international human rights procedures should be viewed in the context of a multi-pronged approach towards realising women's human rights. Specifically, while each communication and inquiry should ultimately result in national-level laws and policies that promote women's advancement and contribute to the elimination of all forms of discrimination against women, it is also necessary to remember that the OP-CEDAW is meant to be a 'backup' for domestic laws and policies. Meaning, its procedures should not be treated as the first – and only – course of action to address women's human rights issues.

Pros and cons of using an international mechanism³⁰

Before taking action, one should spend some time reflecting on the impact of using an international procedure or mechanism. Another important consideration is which mechanism is most appropriate, in terms of being able to provide redress for specific kinds of women’s human rights violations. The following questions serve as guidelines to decide whether or not the procedures of the OP-CEDAW should be used in a particular circumstance.

National-level

- Can a positive international precedent be used to give ‘momentum’ to related women’s human rights claims and demands taking place at the national level?
- What would be the consequences of the CEDAW Committee finding any of the alleged violations to be illegitimate or not well founded?
- Can the findings and recommendations of the CEDAW Committee be used to strengthen advocacy efforts taking place at the national level?
- Are human rights organisations and institutions at the national level willing to support the author(s) of the communication or inquiry? Are there any allies? If not, why?
- How would the State, the media and the general public perceive strong recommendations of the Committee in favour of the victims? How would ‘public opinion’ add or take away from potential success?
- Are there likely to be additional political or legal barriers to implementation of recommendations aimed at tackling particular issues?
- Would the State’s resistance to implementing the views of the Committee affect the further implementation of the CEDAW Convention at the national level? Would the State be hesitant to continue engaging in a periodic dialogue with the Committee?

International-level

- How will successful implementation of recommendations stemming from the OP-CEDAW procedures strengthen the work of the CEDAW Committee? Conversely, how will the CEDAW Committee be affected by lack of implementation of its recommendations?
- How will the communication or inquiry contribute to developing further expertise of the CEDAW Committee on a particular issue? How will the case fit into larger advocacy strategies of women’s groups regionally and internationally?

³⁰ This section is based on the work of Professors Anne Bayefsky, Catherine Mackinnon and Andrew Byrnes. See Anne Bayefsky, *How to Complain to the UN Human Rights Treaty System*, Chapter IX, Transnational Publishers (2002), and the “Report of the Workshop on Using the Optional Protocol to CEDAW”, Lawyers’ Alliance for Women-Equality Now (2001).

Tips for NGOs on using the OP-CEDAW

Once the OP-CEDAW comes into force at the national level, one can start developing strategies to use it to add new dimensions and/or strengthen existing initiatives for the promotion of women’s human rights. The OP-CEDAW can be used, for instance, to support and inform government action, NGO advocacy efforts, and serve as a litigation tool. Strategies to consider after ratification or accession include the following.

Mobilising support and generating awareness

- Promote public awareness about the CEDAW Convention and its Optional Protocol and what these have to offer. This process should continue after ratification of the OP-CEDAW so that individuals, government bodies and NGOs learn how to use it as a tool to promote women’s human rights.
- Ensure groups interested in using the OP-CEDAW participate in the preparation of State and NGO reports to the CEDAW Committee.
- Monitor the implementation of the CEDAW Committee’s concluding comments.
- Suggest ways parliamentarians and government officials can create awareness of the OP-CEDAW and the views of the CEDAW Committee.³¹
- If the State has ‘opted-out’ of the inquiry procedure at the time of ratification or accession, mobilise parliamentarians, government officials and members of civil society to formulate strategies to ‘opt-back’ into the inquiry procedure. Such action can benefit from:
 - The development of a media strategy and education materials on the benefits of inquiries by the CEDAW Committee;
 - Continuing discussions on the validity and rationale for the State’s position on the inquiry procedure;
 - Encouraging parliamentarians, judges and other government officials to lend their support to persuade the government to reconsider its ‘opt-out’ position; and
 - Maintaining the momentum of discussions on the inquiry procedure.

Exploring litigation strategies and legal initiatives

- Develop strategies to promote use of the CEDAW Convention as an interpretative tool that can be used by legal practitioners and the judiciary.
- Organise workshops for lawyers and judges on women’s human rights.
- Identify priority issues for women and build alliances to promote law reform campaigns, and explore possibilities for public interest litigation.
- Hold a national consultation and invite key stakeholders to share their views on opportunities to use the OP-CEDAW effectively, and from this, build a collective plan of action.

³¹ Article 13 of the OP-CEDAW reads, ‘Each State Party undertakes to make widely known and give publicity to the Convention and this Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular on matters involving the State Party’.

- Continue to share information and develop materials on the strategic uses of the CEDAW Convention and the OP-CEDAW, in light of existing legal initiatives and litigation strategies.
- Organise meetings and coalitions to exchange information on violations of women's human rights that could be addressed by strategic use of litigation and law reform.
- Involve groups interested in following-up on legal initiatives and litigation in relation to the CEDAW Convention, in the monitoring of the domestic implementation of this treaty.

Identifying ways to ensure women's access to justice at the national level

- Monitor the impact or success of steps taken by the State to improve women's access to justice.
- Undertake a review of national laws, policies and practice to identify which elements of the CEDAW Convention and the OP-CEDAW have not been adequately incorporated into national law. For instance, some of the remedies available for victims of women's human rights violations may be inadequate or ineffective. If this is the case, it is important to develop a national-level strategy to address this situation.
- Identify potential opportunities to the obstacles that may emerge in the process of making the OP-CEDAW a working method for addressing areas of national law and practice that are incompatible with the CEDAW Convention.
- Identify how additional elements of the CEDAW Convention and the OP-CEDAW can be successfully incorporated into domestic law and policy.
- Use the CEDAW Committee's reporting process as a way to bring attention to some of the issues that should be addressed as part of the principle of State obligation.

Addressing ethical issues: Guidelines for NGOs³²

In addition to the considerations discussed so far, NGOs should also reflect on the ethical issues involved in bringing forward a communication or inquiry under the OP-CEDAW. At all times, NGOs should strictly adhere to the duty of acting in the best interest of the victim(s), and the requirement of informed consent.

The following are a set of guidelines that informs IRAW Asia Pacific's Global Campaign for the Ratification and Use of the OP-CEDAW. It contains points that may be relevant to the work of other NGOs, in particular, international NGOs (INGOs). Depending on the context, these guidelines may lead to conflicting conclusions about the best course of action. Nevertheless, the main aim should always be to achieve the best possible balance of all factors.

³² Adapted from a background document written by Donna Sullivan for IRAW Asia Pacific's Global Campaign on the Ratification and Use of the OP-CEDAW (2003).

1. International NGOs (INGOs) supporting or providing targeted assistance to national NGOs preparing a communications or inquiry under the OP-CEDAW should be committed to transmitting knowledge and capacity to the latter.
2. An INGO that seeks to play a primary role in assisting a national NGO to use the communications and inquiries procedures of the OP-CEDAW should have:
 - Specific expertise on substantive and procedural issues under the CEDAW Convention and the OP-CEDAW; or
 - Expertise on gender discrimination under other human rights instruments and related procedures.
3. In addition, while giving targeted assistance, INGOs may have important subsidiary roles to play in:
 - Providing advice about substantive legal and procedural issues that may relate to the communication or inquiry of the OP-CEDAW;
 - Facilitating access and exchanges of information and communications that may be required among national-level NGOs representing victims and UN staff, other NGOs or individual activists, or government officials;
 - Assisting in efforts to alert the international community about urgent actions considered by national NGOs to be appropriate for a particular case;
 - Ensuring that the authors of the communication or inquiry receive or have access to factual information which might affect the case (e.g. statistics, comparative national or international practice, and relevant political developments); and/or
 - Providing advice about substantive legal and procedural issues.
4. Direct 'victim shopping' by INGOs seeking to bring communications and inquiries under the OP-CEDAW is presumptively unethical. In particular, if an INGO believes that it has identified an issue suitable for a 'test case' under the OP-CEDAW, it should contact local and national NGOs and lawyers who work on such cases. Further, to determine if a particular case is an appropriate choice as an OP-CEDAW test case, there should be consultations which take into account all local or national political, legal and social factors. After this, if the case continues to appear to be an appropriate choice, the INGO and national NGOs can explore the possibility of a collaborative effort to identify victims and submit the case.
5. In circumstances where a victim contacts the INGO about possible representation, the INGO should suggest the possibility of collaborating with local or national NGOs or lawyers. If the victim is interested in a joint effort, the INGO should contact those NGOs and individuals, and explore possibilities for collaboration. If the victim does not wish to do so, the INGO should request her permission to inform local and national groups of the fact that it intends to submit a communication, unless it is against the interests of the victim(s) to give out such notification.
6. In circumstances where a violation or series of violations has occurred, and the victim(s) is identifiable, an INGO interested in representing the victim(s) should first contact local and national women's groups, human rights groups, and individual lawyers to determine if they are in contact with the victim(s). The practical and political advantages to the victim(s) of local/national

representation indicate that in such situations, the INGO should defer to local and national groups wishing to represent the victim(s). Here again, the possibility of a collaborative effort may be explored.

7. If local and national groups do not wish to pursue the case, the INGO should inform them if it intends to contact the victim(s) and pursue the case. If the victim(s) gives informed consent, the INGO should give periodic progress updates on the case.
8. The best interests of the individual or group whose rights have been violated should take precedence over all other factors affecting decision-making related to a communication or request for an inquiry. These interests can be assessed in light of:
 - The nature of the violation and the remedy needed, including the urgency of the need for a remedy;
 - The extent to which the victim(s) is vulnerable to retaliation and political or social pressures, and whether systems for protecting them against retaliation or pressure exist or can be put in place; and
 - The possible emotional and psychological toll of submitting a communication as balanced against the benefit to the victim(s) of achieving justice.
9. Actions of INGOs and national NGOs should be informed by human rights principles. In circumstances where local or national NGOs oppose the use of the OP-CEDAW – due to their opposition to recognition of specific rights or to the claim of specific groups – INGOs should act in the best interests of the victim(s). For instance, if the victim(s) wants to use the OP-CEDAW but a majority of local or national NGOs oppose this on grounds that the underlying claim is not one entitled to human rights protections because it concerns a marginalised or stigmatised group (e.g. women with disabilities, lesbians or sex workers). In such circumstances, human rights principles suggest that an INGO should consider proceeding with the communication or inquiry.
10. Collaboration among INGOs and national NGOs on potential cases should be guided by a commitment to:
 - Fair and transparent decision-making processes;
 - Full disclosure concerning allocation of financial resources;
 - Full disclosure concerning institutional or individual capacities to fulfil their responsibilities and provide competent representation; and
 - The allocation of responsibilities in a manner consistent with the best interests of the victim(s).
11. When collaborating, INGOs and national NGOs should discuss and agree on:
 - Procedures for decision-making;
 - Means for securing and allocating funding;
 - Maintaining the confidentiality of information provided by the victim(s) unless she/they have given informed consent to disclosure;
 - Information sharing among the groups and individuals working on the case, and information sharing on non-confidential matters with ‘outside’ groups;
 - Roles and responsibilities in dealing with the victim(s), the national government, the media, the CEDAW Committee, and other NGOs at the local, national, regional and international levels; and
 - Ensuring adequate support systems for the victim(s).

12. An INGO or national NGO offering to represent a victim must secure her informed consent before taking any action as her representative. The INGO or national NGO should provide a thorough, accurate and clear explanation of all political and legal options available at the national, regional and international levels and an assessment of the relative merits and weaknesses of all options. Specific points that should be addressed include:
 - Whether using the OP-CEDAW would prevent the use of other procedures;
 - The projected timeline from initiation to conclusion;
 - The non-binding or binding nature of outcomes;
 - The potential exposure to retaliation or stigmatisation;
 - The availability of measures to protect against retaliation or social pressure and possible means of strengthening support systems;
 - The nature of procedures for securing implementation of the CEDAW Committee’s views and recommendations; and
 - Whether to organise campaigning around the case and, if so, how to do so.
13. Like INGOs, national NGOs should fully disclose the extent of their organisational expertise and experience in using CEDAW and other human rights treaties and communications procedures. They should provide an honest assessment of their capacity to provide high quality representation.
14. In circumstances where an identified victim or group of victims is unavailable or unable to give informed consent, the INGO or national NGO must seek informed consent from her/their representative, unless it is against the best interests of the victim(s) to do so. Representatives may include family members unless because they are directly responsible for, complicit in, or tacitly supportive of, the violation; or if the disclosure of the violation to family members for the purpose of obtaining their informed consent creates the likelihood of future harm to the victim.
15. With regards to confidentiality, NGOs must discuss with the victim(s) whether there is information which should not be disclosed in the communication or request for an inquiry, and the scope of the information which may be privately and publicly disclosed. NGOs concerned should make specific requests for permission to:
 - Discuss the case with other groups and individual advocates for the purpose of assessing strategic options, identifying additional victims and/or issues to be raised; and
 - Contact the media or respond to media inquiries regarding the case.
16. General guidelines for evaluating legal factors:
 - Regional procedures in Africa, Europe and the Americas in which there is a reasonable likelihood of success (based on existing case law and the nature of the facts) and subsequent compliance with the decision should be preferred over an international human rights treaty procedure including the OP-CEDAW. This is because the former typically offer enhanced prospects for enforcement, compliance and influence on similar cases in other countries;
 - A procedure which yields binding results should be preferred over a non-binding one;
 - A procedure under which existing case law creates a likelihood of success should be preferred over one in which existing case law is neutral or unfavourable; and

- In a situation involving a State Party to CEDAW with a strong record of legislative and policy measures consistent with the Convention and good faith engagement in the reporting process, the OP-CEDAW should be preferred over a procedure related to a treaty with which States have not sought as vigorously to comply.

‘Our Rights Are Not Optional!’: The global campaign for the ratification and use of the OP-CEDAW

Women’s human rights advocates put the OP-CEDAW on the international agenda and should continue to see that it is further ratified and effectively used. Thus, having participated in the drafting and negotiation processes leading to the adoption of this protocol and entering a new phase in its realisation, IRAW Asia Pacific launched the Global Campaign for the Ratification and Use of the OP-CEDAW in June 2000.

Objectives

Fostering the notion ‘Our Rights Are Not Optional!’, the Campaign seeks to enhance the domestic implementation of the CEDAW Convention through advocacy around ratification and use of its Optional Protocol. This it does by building the capacity of women’s groups all over the world on key aspects of the OP-CEDAW and the CEDAW Convention. Specifically, the Campaign will:

- Build the capacity of women’s and human rights organisations on the CEDAW Convention and the OP-CEDAW;
- Improve the understanding of the rights and obligations in the Convention, by creating an avenue for the CEDAW Committee to interpret the Convention in greater detail;
- Facilitate progressive interpretations of discrimination standards that can inform national courts and lawmakers, in addition to other international human rights bodies;
- Create and support a wide network of women’s groups to mobilise in favour of the effective implementation of recommendations by the CEDAW Committee;
- Support initiatives to increase awareness of the CEDAW Convention and the OP-CEDAW at all levels;
- Develop resources to strengthen advocacy around CEDAW and its Optional Protocol;
- Encourage the establishment of national campaigns to achieve at least 20 additional ratifications or accessions of the OP-CEDAW between 2006 and 2008;
- Assist groups wishing to initiate communications and inquiries and document their experiences; and
- Encourage legal initiatives which can strengthen national human rights mechanisms and trigger the development of domestic jurisprudence on women’s rights.

Activities

- Consultations on ratification strategies around the OP-CEDAW
 - A global consultation in New York in 2000;
 - A Latin American regional consultation in Costa Rica in 2001;
 - An African regional consultation in South Africa in 2003; and
 - A follow-up to the global consultation held in 2000 is planned for 2005.

- Technical assistance to organisations coordinating national consultations and/or training on the OP-CEDAW (e.g. in Bangladesh, Indonesia and Nepal);
- The involvement of the Campaign’s network representatives in processes around the formulation of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- Hosting a discussion on the ratification and effective use of the OP-CEDAW on the IRAW Asia Pacific listserv, cedaw4change; and
- Development of print materials and resources on the OP-CEDAW, some of which are also posted on the IRAW Asia Pacific website <www.iwraw-ap.org/protocol>.

The Network

The Campaign intends to foster the creation of an international network aimed at supporting and strengthening the work of national partners around the ratification and use of the OP-CEDAW. Members of this network are committed to promoting a more progressive interpretation of women’s human rights. Through their efforts, the Campaign will gradually:

- Build a global constituency to support the ratification and use of the OP-CEDAW;
- Develop the capacity of key stakeholders to lobby governments for ratification of the OP-CEDAW. For instance:
 - Conducting research on the domestic treaty ratification process and identifying changes to the constitution, national and State legislation and policy that will be needed to ensure the ratification of the OP-CEDAW;
 - Organising consultations and workshops with key stakeholders in government as well as civil society representatives; and
 - Developing a cohesive national lobbying strategy to promote greater awareness on the CEDAW Convention and the OP-CEDAW;
- Promote the effective use of the OP-CEDAW by:
 - Documenting, collecting and sharing information on the domestic implementation of the CEDAW Convention and domestic remedies relating to discrimination against women;
 - Developing methodologies to identify potential cases and undertake sustained legal initiatives aimed at using the normative standards of the CEDAW Convention in domestic litigation; and
 - Linking individual women and men, as well as NGOs with skills and expertise to support litigation on women’s human rights issues at the national and international levels.

Getting involved

- Volunteer to coordinate national and regional activities;
- Link-up with other partners to assist in coordinating and fundraising for regional activities;
- Use the resources and information available on the IRAW Asia Pacific (Campaign) website and integrate this into your work;
- Translate these materials into local languages and disseminate them widely;
- Advocate for the objectives of the campaign by writing articles, developing mass information strategies and featuring the OP-CEDAW in the media; and/or
- Support postcard campaigns and other such forms of action.

For more ideas, contact: IRAW Asia Pacific <iwraw-ap@iwraw-ap.org>

HANDOUT 10
Tips for submitting complaints under the
communications and inquiry procedures of the OP-CEDAW

1. General tips

- The State Party subject to the communication must be a party to both the CEDAW Convention and the Optional Protocol.
- Be complete in all submissions. If the information provided lacks detail, the author may be asked for more information by the Division for the Advancement of Women – the CEDAW Secretariat – causing considerable delay to the process.
- Be sure to indicate whether you are submitting information for a communication or an inquiry.
- Submit the case in a working language of the Committee (English, French, Spanish, Russian, Chinese or Arabic).
- The information submitted to the Committee must point to discrimination based on sex or gender.
- Be specific about the alleged violation(s) and support it with as much evidence as possible. Remember the violations must be linked to the provisions of the CEDAW Convention.
- Even if the information provided refers to violations which started prior to the date when the OP-CEDAW came into force in the country of the State Party, these facts can still be presented and explained to the Committee provided the violations continue to occur.
- Ensure all submissions to the Committee are in writing. Supporting evidence may be provided in other forms such as video, etc.
- Information may be sent by fax or e-mail. It is also recommended to send originals of communications by courier as individual communications cannot be registered until the signed original has been received by the Secretariat.
- Send all information to:
The CEDAW Committee
c/o Division for the Advancement of Women
Department of Economic and Social Affairs, UN Secretariat
2 UN Plaza, DC2-12th Floor, New York, NY, 10017, USA
Fax: +1-212-963-3463, Email: <daw@un.org>

2. Submitting information on a communication

- Ensure the communication is not anonymous.
- Ensure the communication is submitted by, or on behalf of, an individual or group of individuals under the jurisdiction of a State, which is party to the CEDAW Convention and the OP-CEDAW.
- If a communication is submitted on behalf of an individual or group of individuals, either their consent is necessary or their lack of consent must be justifiable.
- Remember that the communication must not be the same as that which is being or has already been examined by another procedure of international investigation or settlement.
- If interim measures are requested, they must be justified.
- All domestic remedies should normally have been exhausted and evidence to this effect should be provided. Similarly, if domestic remedies have not been availed of, the CEDAW Committee will want to know why.

3. Submitting information on an inquiry

- Ensure that the State Party has not ‘opted-out’ of the inquiry procedure.
- Demonstrate that the violation(s) are grave or systematic.
- Include information on the authors of the submission to the Committee. Delays can be avoided if the information is accurate and verifiable, and the source considered reliable.
- The Committee can continue to receive information on a ‘rolling’ basis, i.e. even after an NGO has initially submitted information, it and others can also do the same.

This information here is based on the CEDAW Committee’s model form for submission of communications under the OP-CEDAW. See <<http://www.un.org/womenwatch/daw/cedaw/protocol/modelform-E.PDF>>.

HANDOUT 11
Guidelines for submission of information –
The communications procedure

Below is a sample complaints form for communication to the CEDAW Committee. Your information need not be limited to this content or format. If further information or an alternative format better facilitates, for example, the explanation of the violation(s), the status of the individual(s) concerned or the justification for interim measures, authors of communications are free to employ these in setting out the basis of a communication.

1. Information on the author(s) of the communication

- Family name
- First name
- Date and place of birth
- Nationality/citizenship
- Passport/identity card number (if available)
- Sex
- Marital status/children
- Profession
- Ethnic background, religious affiliation, social group (if relevant)
- Present address
- Mailing address for confidential correspondence (if different from present address)
- Fax/telephone/e-mail
- Indicate whether you are submitting the communication as:
 - a) Alleged victim(s). If there is a group of individuals alleged to be victims, provide basic information about each individual.
 - b) On behalf of the alleged victim(s). Provide evidence showing the consent of the victim(s), or reasons that justify submission without such consent.

2. Information concerning the alleged victim(s) (if other than the author)

- Family name
- First name
- Date and place of birth
- Nationality/citizenship
- Passport/identity card number (if available)
- Sex
- Marital status/children
- Profession
- Ethnic background, religious affiliation, social group (if relevant)
- Present address
- Mailing address for confidential correspondence (if other than present address)
- Fax/telephone/e-mail

3. Information on the State Party concerned

- Name of the State Party (country)

4. Nature of the alleged violation(s)

- Provide detailed information to substantiate your claim, including:
- Description of alleged violation(s) and alleged perpetrator(s)
 - Date(s)
 - Place(s)
 - Provisions of the CEDAW Convention that were allegedly violated. If the communication refers to more than one provision, describe each issue separately.

5. Steps taken to exhaust domestic remedies

- Describe the action taken to exhaust domestic remedies; for example, attempts to obtain legal, administrative, legislative, policy or programme remedies, including:
- Type(s) of remedy sought
 - Date(s)
 - Place(s)
 - Who initiated the action
 - Which authority or body was addressed
 - Name of court hearing the case (if any)
- If domestic remedies have not been exhausted, explain why.
Please note: Enclose copies of all relevant documentation.

6. Other international procedures

- Has the same matter already been examined or is it being examined under another procedure of international investigation or settlement? If yes, explain:
- Type of procedure(s)
 - Date(s)
 - Place(s)
 - Results (if any)
- Please note:* Enclose copies of all relevant documentation.

7. Recommendations to remedy the alleged violation(s)

Provide information on remedies being sought that are applicable to the case. Recommendations could ask for individual remedy (e.g. financial compensation, restitution, etc.) as well as for measures to address failure of the system that allowed the violation to occur (e.g. the enactment of appropriate law or policy, monitoring of existing law or policy, the installation of infrastructure, capacity building of relevant agencies, support services for victims etc.).

8. Date and signature

- Date/place
- Signature of author(s) and/or victim(s)

9. List of documents attached (do not send originals, only copies)

This format was developed by the CEDAW Committee. See Model Form for Submission of Communications to the Committee on the Elimination of All Forms of Discrimination against Women under the OP-CEDAW. See <<http://www.un.org/womenwatch/daw/cedaw/protocol/modelform-E.PDF>>. Point 7 has been added by IRAW Asia Pacific.

HANDOUT 12
Guidelines for Submission of Information: Inquiry Procedure

Below is an outline of the basic information that the CEDAW Committee would require before considering initiating an inquiry. The points that follow serve as a general guide, and you are free to present your information in a different format.

1. Information on the author(s)

- Submissions of information may be made anonymously. However, it is recommended to include information on author(s) of the inquiry. This would allow the Division for the Advancement of Women – the CEDAW Secretariat – to check that information is reliable and avoid unnecessary delays.
- Name of person/organisation
 - Address
 - Fax/tel/e-mail

2. Information on the inquiry

- Indicate that the information being submitted is for consideration under the inquiry procedure.
- Indicate the State Party concerned.
- Indicate whether the communication relates to (a) grave, (b) systematic or (c) grave and systematic violations of women’s human rights under the CEDAW Convention.
- If possible, include a one-page executive summary of the inquiry: what are the main violations and why should the Committee take action.

3. Nature of the alleged violation(s)

- Provide detailed information in your submission to the Committee:
- Description of alleged violation(s): dates, place, harm suffered or to be prevented
 - Information on victims and/or impact of the violation(s). Include as much detailed information as possible for the Committee to be able to assess the pattern or extent of the violation(s). Violation(s) must be gross and/or systematic. You may want to compile sources that point to the grave and/or systematic nature of the violation(s).
 - Information on alleged perpetrator(s)
 - Information about steps taken by the victims or their families to obtain remedies, including complaints filed with the police, other officials or independent national human rights institutions.
 - Information about steps taken by officials to investigate the alleged violations and to prevent similar acts in the future.
 - If a complaint has been filed, include information about the action taken by the authorities, the status of investigations at the national level at the time the nformation was submitted to the Committee and/or how the results of the investigation are inadequate.
 - Additional information such as statistics, information on discriminatory laws and policies. If your submission concerns a law or policy rather than a specific incident,

summarise the law or policy and the effects of its implementation of women’s human rights.

- Information on action or omissions by the State to remedy the situation. If you are submitting information about violations committed by private individuals or groups (rather than government officials) include any information which might indicate that the government failed to exercise due diligence to prevent, investigate, punish, and ensure compensation for the violations.
- Indicate the provisions of the CEDAW Convention that were allegedly violated. If the inquiry refers to more than one provision, describe each issue separately.

4. Recommended action to address and remedy the violation(s)

5. List of documents attached (do not send originals, only copies)

Note: The CEDAW Committee has not developed any guidelines for submission of information under the inquiry procedure. The guidelines here have been developed using the model form for submission of complaints to the CEDAW Committee <<http://www.un.org/womenwatch/daw/cedaw/protocol/modelform-E.PDF>> and the complaints model questionnaire of the UN Special Rapporteur on Violence Against Women, its Causes and Consequences <<http://www.ohchr.org/english/issues/women/rapporteur/complaints.htm>>.

Supplementary MATERIALS

Annex I
Glossary of key human rights terms

Adoption:

Process by which a law making body of an international organisation or a diplomatic conference approves the final text of an instrument. It can also refer to the diplomatic process through which a ‘treaty’ is accepted.

Accession, accede:

A process by which a state becomes bound by a treaty without having to first sign it.

CEDAW Convention:

Convention on the Elimination of All Forms of Discrimination against Women, also sometimes known as the Women’s Convention.

Complaint:

In legal terms, the initial document that begins an action; it sets forth a brief summary of what happened and argues why relief should be granted. The complaint (petition or communication) in a case of the communication or inquiry procedure under the OP-CEDAW would allege that the government is responsible for violations of the rights of one or more individual women under the CEDAW Convention.

Complaint – Communications procedure:

Under this procedure, the goal is to redress specific grievances that may result in enforceable legal remedies, orders for compensating the victim, or even changing government policies and practices.

Complaint – Inquiry procedure:

Under this procedure, the goal is not to redress individual grievances but to identify broad human rights violations referred to as grave or systematic.

Concluding Comments/Observations:

Each human rights treaty body issues a set of concluding comments or concluding observations following the meeting it has with a ‘State Party’ to the ‘Convention’ or ‘Covenant’ it is mandated to monitor. Usually concluding observations are structured in the following format: positive factors, factors and difficulties affecting the implementation of the Convention or Covenant, principal areas of concern, and recommendations.

Convention:

Binding agreement between states; used synonymously with ‘treaty’ and ‘covenant’. Conventions are stronger than ‘declarations’ because they are legally binding for governments that have signed them. When the UN General Assembly adopts a convention, it creates international norms and standards. Once a convention is adopted by the UN General Assembly, member states can then ‘ratify’ the convention, promising to uphold it. Governments that violate the standards set forth in a convention, can then be censured by the UN.

Covenant:

See Convention.

Customary international law:

Law that becomes binding on states although it is not written, but rather adhered to out

of custom; when enough states have begun to behave as though something is law, it becomes law ‘by use’; this is one of the main sources of international law.

Declaration:

Document stating agreed upon standards, but that is not legally binding. UN conferences, like the 1993 UN Conference on Human Rights in Vienna and the 1995 World Conference for Women in Beijing, usually produce two sets of declarations: one written by government representatives and one by Non-Governmental Organisations (NGOs). The UN General Assembly often issues influential, but legally ‘non-binding’ declarations.

Entry into force:

The day on which a treaty becomes effective because enough parties have ratified it. The OP-CEDAW entered into force three months after the date of the deposit of the tenth ratification instrument of ratification with the UN Secretary-General.

General Comment/Recommendation:

A document issued by a human rights treaty body that elaborates and interprets an article or a theme from its Convention or Covenant that it is mandated to monitor.

Human rights treaty body:

The key human rights Conventions give powers to an institution to monitor the States Parties implementation process. These institutions are known as treaty bodies or treaty committees. There are seven key international human rights treaty bodies.

- Committee Against Torture (monitors the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment)
- Committee on the Elimination of All Forms of Discrimination against Women (monitors the Covenant on the Elimination of All Dorms of Discrimination against Women)
- Committee on Economic, Social and Cultural Rights (monitors the International Covenant on Economic, Social and Cultural Rights)
- Committee on the Elimination of all forms of Racial Discrimination (monitors the Convention on the Elimination of all forms of Racial Discrimination)
- Committee on the Rights of the Child (monitors the Convention on the Rights of the Child)
- Human Rights Committee (monitors the International Covenant on Civil and Political Rights).
- Committee on the Protection of the Rights of Migrant Workers and Members of their Families (monitors the Convention on the Protection of the Rights of Migrant Workers and their Families)

Inalienable:

Refers to rights that belong to every person and cannot be taken from a person under any circumstances.

Indivisible:

Refers to the equal importance of each human rights law. A person cannot be denied a right because someone decides it is ‘less important’ or ‘non-essential’.

Interdependent:

Refers to the complementary framework of human rights law. For example, your ability to participate in your government is directly affected by your right to express yourself, to get an education, and even to obtain the necessities of life.

Intergovernmental Organisation:

Organisations sponsored by several governments that seek to coordinate their efforts; some are regional (e.g. the Council of Europe, the Organisation of African Unity), some are alliances (e.g. the North Atlantic Treaty Organisation, NATO); and some are dedicated to a specific purpose (e.g. the UN High Commission for Refugees, UNHCR; and the UN Education, Scientific and Cultural Organisation, UNESCO).

International Bill of Human Rights:

The combination of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and its optional protocol, and the International Covenant on Economic, Social and Cultural Rights.

Member States:

Countries that are members to the UN.

Non-binding:

A document, like a ‘declaration’, that carries no formal legal obligations. It may, however, carry moral obligations or attain the force of law as ‘international customary law’.

Protocol:

A treaty that modifies another treaty (e.g. adding additional procedures or substantive provisions).

Ratification, Ratify:

Process by which the legislative body of a state confirms a government’s action in signing a treaty; formal procedure by which a state becomes bound to a treaty after acceptance.

Reservation:

The exceptions that States Parties make to a treaty (e.g. provisions that they do not agree to follow). Reservations, however, may not undermine the fundamental meaning of the treaty.

Signing, Sign:

In human rights the first step in ratification of a treaty; to sign a ‘declaration’, ‘Convention’, or one of the ‘Covenant’ constitutes a promise to adhere to the principles in the document and to honour its spirit.

State Party or States Parties:

Those countries that have ratified a Covenant or a Convention and are thereby bound to conform to its provisions.

Summary records:

The public records of UN meetings. Each treaty body issues a set of summary records following the public meetings it has with States Parties it is mandated to monitor.

Treaty:

Formal agreement between States that defines and modifies their mutual duties and obligations; used synonymously with Convention and Covenant. When Conventions are adopted by the UN General Assembly, they create legally binding international obligations for the member states who have signed the treaty. When a national government ratifies a treaty, the articles of that treaty become part of its domestic legal obligations.

UN General Assembly:

One of the principal organs of the UN, consisting of representatives of all member states. The General Assembly issues declarations and adopts Conventions on human rights issues, debates relevant issues, and censures states that violate human rights. The UN Charter governs actions of the General Assembly.

Source: This glossary has been taken from *The Women’s Report Card: CEDAW training and resource kit by the Women’s Rights Action Network-Australia (2001)*, and *Women’s Human Rights Step by Step: A practical guide to using international human rights law and mechanisms to defend women’s human rights by Women Law and Development International and the Human Rights Watch Women’s Human Rights Project (1997)*.

Annex II

Convention on the Elimination of All Forms of
Discrimination against Women

*Adopted and opened for signature, ratification and accession
by General Assembly resolution 34/180 of 18 December 1979
entry into force **3 September 1981, in accordance with article 27(1)***

The States Parties to the present Convention,

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 man and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and 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,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

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:

- (a) To embody the principle of the equality of men and women in their national 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;

- (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 women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic 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 fundamental freedoms on a basis of equality with men.

Article 4

- 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 measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns 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 superiority of either of the sexes or on stereotyped roles for men and women;
- (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 of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate 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:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

- 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
- 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (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;

- (b) Access to the same curricula, the same 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

- 1. 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 women, the same rights, in particular:
 - (a) The right to work as an inalienable right of all human beings;
 - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
 - (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.
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

1. States Parties shall take all appropriate 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.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

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.

Article 14

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 non-monetized 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 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.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

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 action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.
7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.
9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:
 - (a) Within one year after the entry into force for the State concerned;
 - (b) Thereafter at least every four years and further whenever the Committee so requests.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

Source: Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol. United Nations. August 2004.

Annex III

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Adopted by General Assembly resolution A/54/4 on 6 October 1999 and opened for signature on 10 December 1999, Human Rights Day
entry into force 22 December 2000

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 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.

Source: Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol. United Nations. August 2004.

Annex IV

Rules of Procedure of the OP-CEDAW

Part III. Annex I.
Report of the Committee on the Elimination of Discrimination against Women (A/56/38).

XVI. Procedures for the consideration of communications received under the Optional Protocol

Rule 56
Transmission of communications to the Committee

- 1. The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, communications that are, or appear to be, submitted for consideration by the Committee under article 2 of the Optional Protocol.
- 2. The Secretary-General may request clarification from the author or authors of a communication as to whether she, he or they wish to have the communication submitted to the Committee for consideration under the Optional Protocol. Where there is doubt as to the wish of the author or authors, the Secretary-General will bring the communication to the attention of the Committee.
- 3. No communication shall be received by the Committee if it:
 - (a) Concerns a State that is not a party to the Protocol;
 - (b) Is not in writing;
 - (c) Is anonymous.

Rule 57
List and register of communications

- 1. The Secretary-General shall maintain a permanent register of all communications submitted for consideration by the Committee under article 2 of the Optional Protocol.
- 2. The Secretary-General shall prepare lists of the communications submitted to the Committee, together with a brief summary of their contents.

Rule 58
Request for clarification or additional information

- 1. The Secretary-General may request clarification from the author of a communication, including:
 - (a) The name, address, date of birth and occupation of the victim and verification of the victim's identity;
 - (b) The name of the State party against which the communication is directed;
 - (c) The objective of the communication;
 - (d) The facts of the claim;

- (e) Steps taken by the author and/or victim to exhaust domestic remedies;
 - (f) The extent to which the same matter is being or has been examined under another procedure of international investigation or settlement;
 - (g) The provision or provisions of the Convention alleged to have been violated.
2. When requesting clarification or information, the Secretary-General shall indicate to the author or authors of the communication a time limit within which such information is to be submitted.
3. The Committee may approve a questionnaire to facilitate requests for clarification or information from the victim and/or author of a communication.
4. A request for clarification or information shall not preclude the inclusion of the communication in the list provided for in rule 57 above.
5. The Secretary-General shall inform the author of a communication of the procedure that will be followed and in particular that, provided that the individual or individuals consent to the disclosure of her identity to the State party concerned, the communication will be brought confidentially to the attention of that State party.

Rule 59
Summary of information

1. A summary of the relevant information obtained with respect to each registered communication shall be prepared and circulated to the members of the Committee by the Secretary General at the next regular session of the Committee.
2. The full text of any communication brought to the attention of the Committee shall be made available to any member of the Committee upon that member's request.

Rule 60
Inability of a member to take part in the examination of a communication

1. A member of the Committee may not take part in the examination of a communication if:
- (a) The member has a personal interest in the case;
 - (b) The member has participated in the making of any decision on the case covered by the communication in any capacity other than under the procedures applicable to this Optional Protocol;
 - (c) The member is a national of the State party concerned.

2. Any question that may arise under paragraph 1 above shall be decided by the Committee without the participation of the member concerned.

Rule 61
Withdrawal of a member

If, for any reason, a member considers that she or he should not take part or continue to take part in the examination of a communication, the member shall inform the Chairperson of her or his withdrawal.

Rule 62
Establishment of working groups and designation of rapporteurs

1. The Committee may establish one or more working groups, each comprising no more than five of its members, and may designate one or more rapporteurs to make recommendations to the Committee and to assist it in any manner in which the Committee may decide.
2. In the present part of the rules, reference to a working group or rapporteur is a reference to a working group or rapporteur established under the present rules.
3. The rules of procedure of the Committee shall apply as far as possible to the meetings of its working groups.

Rule 63
Interim measures

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 it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violation.
2. A working group or rapporteur may also request the State party concerned to take such interim measures as the working group or rapporteur considers necessary to avoid irreparable damage to the victim or victims of the alleged violation.
3. When a request for interim measures is made by a working group or rapporteur under the present rule, the working group or rapporteur shall forthwith thereafter inform the Committee members of the nature of the request and the communication to which the request relates.
4. Where the Committee, a working group or a rapporteur requests interim measures under this rule, the request shall state that it does not imply a determination of the merits of the communication.

Rule 64
Method of dealing with communications

1. The Committee shall, by a simple majority and in accordance with the following rules, decide whether the communication is admissible or inadmissible under the Optional Protocol.
2. A working group may also declare that a communication is admissible under the Optional Protocol, provided that it is composed of five members and all of the members so decide.

Rule 65
Order of communications

1. Communications shall be dealt with in the order in which they are received by the Secretariat, unless the Committee or a working group decides otherwise.

2. The Committee may decide to consider two or more communications jointly.

Rule 66
Separate consideration of admissibility and merits

The Committee may decide to consider the question of admissibility of a communication and the merits of a communication separately.

Rule 67
Conditions of admissibility of communications

With a view to reaching a decision on the admissibility of a communication, the Committee, or a working group, shall apply the criteria set forth in articles 2, 3 and 4 of the Optional Protocol.

Rule 68
Authors of communications

1. Communications may be submitted by individuals or groups of individuals who claim to be victims of violations of the rights set forth in the Convention, or by their designated representatives, or by others on behalf of an alleged victim where the alleged victim consents.

2. In cases where the author can justify such action, communications may be submitted on behalf of an alleged victim without her consent.

3. Where an author seeks to submit a communication in accordance with paragraph 2 of the present rule, she or he shall provide written reasons justifying such action.

Rule 69
Procedures with regard to communications received

1. As soon as possible after the communication has been received, and provided that the individual or group of individuals consent to the disclosure of their identity to the State party concerned, the Committee, working group or rapporteur shall bring the communication confidentially to the attention of the State party and shall request that State party to submit a written reply to the communication.

2. Any request made in accordance with paragraph 1 of the present rule shall include a statement indicating that such a request does not imply that any decision has been reached on the question of admissibility of the communication.

3. Within six months after receipt of the Committee's request under the present rule, the State party shall submit to the Committee a written explanation or statement that relates to the admissibility of the communication and its merits, as well as to any remedy that may have been provided in the matter.

4. The Committee, working group or rapporteur may request a written explanation or statement that relates only to the admissibility of a communication but, in such cases, the State party may nonetheless submit a written explanation or statement that relates to both the admissibility and the merits of a communication, provided that such written explanation or statement is submitted within six months of the Committee's request.

5. A State party that has received a request for a written reply in accordance with paragraph 1 of the present rule may submit a request in writing that the communication be rejected as inadmissible, setting out the grounds for such inadmissibility, provided that such a request is submitted to the Committee within two months of the request made under paragraph 1.

6. If the State party concerned disputes the contention of the author or authors, in accordance with article 4, paragraph 1, of the Optional Protocol, that all available domestic remedies have been exhausted, the State party shall give details of the remedies available to the alleged victim or victims in the particular circumstances of the case.

7. Submission by the State party of a request in accordance with paragraph 5 of the present rule shall not affect the period of six months given to the State party to submit its written explanation or statement unless the Committee, working group or rapporteur decides to extend the time for submission for such a period as the Committee considers appropriate.

8. The Committee, working group or rapporteur may request the State party or the author of the communication to submit, within fixed time limits, additional written explanations or statements relevant to the issues of the admissibility or merits of a communication.

9. The Committee, working group or rapporteur shall transmit to each party the submissions made by the other party pursuant to the present rule and shall afford each party an opportunity to comment on those submissions within fixed time limits.

Rule 70
Inadmissible communications

1. Where the Committee decides that a communication is inadmissible, it shall, as soon as possible, communicate its decision and the reasons for that decision through the Secretary General to the author of the communication and to the State party concerned.

2. A decision of the Committee declaring a communication inadmissible may be reviewed by the Committee upon receipt of a written request submitted by or on behalf of the author or authors of the communication, containing information indicating that the reasons for inadmissibility no longer apply.

3. Any member of the Committee who has participated in the decision regarding admissibility may request that a summary of her or his individual opinion be appended to the Committee's decision declaring a communication inadmissible.

Rule 71
Additional procedures whereby admissibility maybe considered separately from the merits

1. Where the issue of admissibility is decided by the Committee or a working group before the State party's written explanations or statements on the merits of the communication are received, that decision and all other relevant information shall be submitted through the Secretary-General to the State party concerned. The author of the communication shall, through the Secretary-General, be informed of the decision.

2. The Committee may revoke its decision that a communication is admissible in the light of any explanation or statements submitted by the State party.

Rule 72
Views of the Committee on admissible communications

1. Where the parties have submitted information relating both to the admissibility and to the merits of a communication, or where a decision on admissibility has already been taken and the parties have submitted information on the merits of that communication, the Committee shall consider and shall formulate its views on the communication in the light of all written information made available to it by the author or authors of the communication and the State party concerned, provided that this information has been transmitted to the other party concerned.
2. The Committee or the working group set up by it to consider a communication may, at any time in the course of the examination, obtain through the Secretary-General any documentation from organizations in the United Nations system or other bodies that may assist in the disposal of the communication, provided that the Committee shall afford each party an opportunity to comment on such documentation or information within fixed time limits.
3. The Committee may refer any communication to a working group to make recommendations to the Committee on the merits of the communication.
4. The Committee shall not decide on the merits of the communication without having considered the applicability of all of the admissibility grounds referred to in articles 2, 3 and 4 of the Optional Protocol.
5. The Secretary-General shall transmit the views of the Committee, determined by a simple majority, together with any recommendations, to the author or authors of the communication and to the State party concerned.
6. Any member of the Committee who has participated in the decision may request that a summary of her or his individual opinion be appended to the Committee's views.

Rule 73
Follow-up to the views of the Committee

1. Within six months of the Committee's issuing its views on a communication, the State party concerned shall submit to the Committee a written response, including any information on any action taken in the light of the views and recommendations of the Committee.
2. After the six-month period referred to in paragraph 1 of the present rule, the Committee may invite the State party concerned to submit further information about any measures the State party has taken in response to its views or recommendations.
3. The Committee may request the State party to include information on any action taken in response to its views or recommendations in its subsequent reports under article 18 of the Convention.

4. The Committee shall designate for follow-up on views adopted under article 7 of the Optional Protocol a rapporteur or working group to ascertain the measures taken by States parties to give effect to the Committee's views and recommendations.
5. The rapporteur or working group may make such contacts and take such action as may be appropriate for the due performance of their assigned functions and shall make such recommendations for further action by the Committee as may be necessary.
6. The rapporteur or working group shall report to the Committee on follow-up activities on a regular basis.
7. The Committee shall include information on any follow-up activities in its annual report under article 21 of the Convention.

Rule 74
Confidentiality of communications

1. Communications submitted under the Optional Protocol shall be examined by the Committee, working group or rapporteur in closed meetings.
2. All working documents prepared by the Secretariat for the Committee, working group or rapporteur, including summaries of communications prepared prior to registration and the list of summaries of communications, shall be confidential unless the Committee decides otherwise.
3. The Committee, working group or rapporteur shall not make public any communication, submissions or information relating to a communication prior to the date on which its views are issued.
4. The author or authors of a communication or the individuals who are alleged to be the victim or victims of a violation of the rights set forth in the Convention may request that the names and identifying details of the alleged victim or victims (or any of them) not be published.
5. If the Committee, working group or rapporteur so decides, the name or names and identifying details of the author or authors of a communication or the individuals who are alleged to be the victim or victims of a violation of rights set forth in the Convention shall not be made public by the Committee, the author or the State party concerned.
6. The Committee, working group or rapporteur may request the author of a communication or the State party concerned to keep confidential the whole or part of any submission or information relating to the proceedings.
7. Subject to paragraphs 5 and 6 of the present rule, nothing in this rule shall affect the right of the author or authors or the State party concerned to make public any submission or information bearing on the proceedings.
8. Subject to paragraphs 5 and 6 of the present rule, the Committee's decisions on admissibility, merits and discontinuance shall be made public.
9. The Secretariat shall be responsible for the distribution of the Committee's final decisions to the author or authors and the State party concerned.

10. The Committee shall include in its annual report under article 21 of the Convention a summary of the communications examined and, where appropriate, a summary of the explanations and statements of the States parties concerned, and of its own suggestions and recommendations.

11. Unless the Committee decides otherwise, information furnished by the parties in follow up to the Committee’s views and recommendations under paragraphs 4 and 5 of article 7 of the Optional Protocol shall not be confidential. Unless the Committee decides otherwise, decisions of the Committee with regard to follow-up activities shall not be confidential.

Rule 75
Communiqués

The Committee may issue communiqués regarding its activities under articles 1 to 7 of the Optional Protocol, through the Secretary-General, for the use of the information media and the general public.

XVII. Proceedings under the inquiry procedure of the Optional Protocol

Rule 76
Applicability

Rules 77 to 90 of the present rules shall not be applied to a State party that, in accordance with article 10, paragraph 1, of the Optional Protocol, declared at the time of ratification or accession to the Optional Protocol that it does not recognize the competence of the Committee as provided for in article 8 thereof, unless that State party has subsequently withdrawn its declaration in accordance with article 10, paragraph 2, of the Optional Protocol.

Rule 77
Transmission of information to the Committee

In accordance with the present rules, the Secretary-General shall bring to the attention of the Committee information that is or appears to be submitted for the Committee’s consideration under article 8, paragraph 1, of the Optional Protocol.

Rule 78
Register of information

The Secretary-General shall maintain a permanent register of information brought to the attention of the Committee in accordance with rule 77 of the present rules and shall make the information available to any member of the Committee upon request.

Rule 79
Summary of information

The Secretary-General, when necessary, shall prepare and circulate to members of the Committee a brief summary of the information submitted in accordance with rule 77 of the present rules.

Rule 80
Confidentiality

1. Except in compliance with the obligations of the Committee under article 12 of the Optional Protocol, all documents and proceedings of the Committee relating to the conduct of the inquiry under article 8 of the Optional Protocol shall be confidential.

2. Before including a summary of the activities undertaken under articles 8 or 9 of the Optional Protocol in the annual report prepared in accordance with article 21 of the Convention and article 12 of the Optional Protocol, the Committee may consult with the State party concerned with respect to the summary.

Rule 81
Meetings related to proceedings under article 8

Meetings of the Committee during which inquiries under article 8 of the Optional Protocol are considered shall be closed.

Rule 82
Preliminary consideration of information by the Committee

1. The Committee may, through the Secretary-General, ascertain the reliability of the information and/or the sources of the information brought to its attention under article 8 of the Optional Protocol and may obtain additional relevant information substantiating the facts of the situation.

2. The Committee shall determine whether the information received contains reliable information indicating grave or systematic violations of rights set forth in the Convention by the State party concerned.

3. The Committee may request a working group to assist it in carrying out its duties under the present rule.

Rule 83
Examination of information

1. If the Committee is satisfied that the information received is reliable and indicates grave or systematic violations of rights set forth in the Convention by the State party concerned, the Committee shall invite the State party, through the Secretary-General, to submit observations with regard to that information within fixed time limits.

2. The Committee shall take into account any observations that may have been submitted by the State party concerned, as well as any other relevant information.

3. The Committee may decide to obtain additional information from the following:

- (a) Representatives of the State party concerned;
- (b) Governmental organizations;
- (c) Non-governmental organizations;
- (d) Individuals.

4. The Committee shall decide the form and manner in which such additional information will be obtained.

5. The Committee may, through the Secretary-General, request any relevant documentation from the United Nations system.

Rule 84
Establishment of an inquiry

1. Taking into account any observations that may have been submitted by the State party concerned, as well as other reliable information, the Committee may designate one or more of its members to conduct an inquiry and to make a report within a fixed time limit.
2. An inquiry shall be conducted confidentially and in accordance with any modalities determined by the Committee.
3. Taking into account the Convention, the Optional Protocol and the present rules of procedure, the members designated by the Committee to conduct the inquiry shall determine their own methods of work.
4. During the period of the inquiry, the Committee may defer the consideration of any report that the State party concerned may have submitted pursuant to article 18 of the Convention.

Rule 85
Cooperation of the State party concerned

1. The Committee shall seek the cooperation of the State party concerned at all stages of an inquiry.
2. The Committee may request the State party concerned to nominate a representative to meet with the member or members designated by the Committee.
3. The Committee may request the State party concerned to provide the member or members designated by the Committee with any information that they or the State party may consider relates to the inquiry.

Rule 86
Visits

1. Where the Committee deems it warranted, the inquiry may include a visit to the territory of the State party concerned.
2. Where the Committee decides, as a part of its inquiry, that there should be a visit to the State party concerned, it shall, through the Secretary-General, request the consent of the State party to such a visit.
3. The Committee shall inform the State party concerned of its wishes regarding the timing of the visit and the facilities required to allow those members designated by the Committee to conduct the inquiry to carry out their task.

Rule 87
Hearings

1. With the consent of the State party concerned, visits may include hearings to enable the designated members of the Committee to determine facts or issues relevant to the inquiry.
2. The conditions and guarantees concerning any hearings held in accordance with paragraph 1 of the present rule shall be established by the designated members of the Committee visiting the State party in connection with an inquiry, and the State party concerned.
3. Any person appearing before the designated members of the Committee for the purpose of giving testimony shall make a solemn declaration as to the veracity of her or his testimony and the confidentiality of the procedure.
4. The Committee shall inform the State party that it shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill-treatment or intimidation as a consequence of participating in any hearings in connection with an inquiry or with meeting the designated members of the Committee conducting the inquiry.

Rule 88
Assistance during an inquiry

1. In addition to the staff and facilities that shall be provided by the Secretary-General in connection with an inquiry, including during a visit to the State party concerned, the designated members of the Committee may, through the Secretary-General, invite interpreters and/or such persons with special competence in the fields covered by the Convention as are deemed necessary by the Committee to provide assistance at all stages of the inquiry.
2. Where such interpreters or other persons of special competence are not bound by the oath of allegiance to the United Nations, they shall be required to declare solemnly that they will perform their duties honestly, faithfully and impartially, and that they will respect the confidentiality of the proceedings.

Rule 89
Transmission of findings, comments or suggestions

1. After examining the findings of the designated members submitted in accordance within rule 84 of the present rules, the Committee shall transmit the findings, through the Secretary General, to the State party concerned, together with any comments and recommendations.
2. The State party concerned shall submit its observations on the findings, comments and recommendations to the Committee, through the Secretary-General, within six months of their receipt.

Rule 90
Follow-up action by the State party

1. The Committee may, through the Secretary-General, invite a State party that has been the subject of an inquiry to include, in its report under article 18 of the Convention, details of any measures taken in response to the Committee’s findings, comments and recommendations.
2. The Committee may, after the end of the period of six months referred to in paragraph 2 of rule 89 above, invite the State party concerned, through the Secretary-General, to inform it of any measures taken in response to an inquiry.

Rule 91
Obligations under article 11 of the Optional Protocol

1. The Committee shall bring to the attention of the States parties concerned their obligation under article 11 of the Optional Protocol to take appropriate steps to ensure that individuals under their jurisdiction are not subjected to ill-treatment or intimidation as a consequence of communicating with the Committee under the Optional Protocol.
2. Where the Committee receives reliable information that a State party has breached its obligations under article 11, it may invite the State party concerned to submit written explanations or statements clarifying the matter and describing any action it is taking to ensure that its obligations under article 11 are fulfilled.

Source: <<http://www.un.org/womenwatch/daw/cedaw/cedawreport-a5638-RulesOfProcedure.htm#part3>>. Accessed on: 5 August 2005

Annex V

Signatories and States Parties to the OP-CEDAW

As of 7 January 2005
Signatories: 76
Parties: 71

Participant	Signature	Ratification/Accession (a)
Albania		23 June 2003 (a)
Andorra	9 July 2001	14 October 2002
Argentina	28 February 2000	
Austria	10 December 1999	6 September 2000
Azerbaijan	6 June 2000	1 June 2001
Bangladesh	6 September 2000	6 September 2000
Belarus	29 April 2002	3 February 2004
Belgium	10 December 1999	17 June 2004
Belize		9 December 2002 (a)
Benin	25 May 2000	
Bolivia	10 December 1999	27 September 2000
Bosnia and Herzegovina	7 September 2000	4 September 2002
Brazil	13 March 2001	28 June 2002
Bulgaria	6 June 2000	
Burkina Faso	16 November 2001	
Burundi	13 November 2001	
Cambodia	11 November 2001	
Cameroon		7 January 2005 (a)
Canada		18 October 2002 (a)
Chile	10 December 1999	

Participant	Signature	Ratification/Accession (a)
Colombia	10 December 1999	
Costa Rica	10 December 1999	20 September 2001
Croatia	5 June 2000	7 March 2001
Cuba	17 March 2000	
Cyprus	8 February 2001	26 April 2002
Czech Republic	10 December 1999	26 February 2001
Denmark	10 December 1999	31 May 2000
Dominican Republic	14 March 2000	10 August 2001
Ecuador	10 December 1999	5 February 2002
El Salvador	4 April 2001	
Finland	10 December 1999	29 December 2000
France	10 December 1999	9 June 2000
Gabon		5 November 2004 (a)
Georgia		30 July 2002
Germany	10 December 1999	15 January 2002
Ghana	24 February 2000	
Greece	10 December 1999	24 January 2002
Guatemala	7 September 2000	9 May 2002
Guinea-Bissau	12 September 2000	
Hungary		22 December 2000
Iceland	10 December 1999	6 March 2001
Indonesia	28 February 2000	
Ireland	7 September 2000	7 September 2000
Italy	10 December 1999	22 September 2000
Kazakhstan	6 September 2000	24 August 2001

Participant	Signature	Ratification/Accession (a)
Kyrgyzstan		22 July 2002
Lesotho	6 September 2000	24 September 2004
Liberia	22 September 2004	
Libyan Arab Jamahiriya		18 June 2004
Liechtenstein	10 December 1999	24 October 2001
Lithuania	8 September 2000	5 August 2004
Luxembourg	10 December 1999	1 July 2003
Madagascar	7 September 2000	
Malawi	7 September 2000	
Mali		5 December 2000 (a)
Mauritius	11 November 2001	
Mexico	10 December 1999	15 March 2002
Mongolia	7 September 2000	28 March 2002
Namibia	19 May 2000	26 May 2000
Nepal	18 December 2001	
Netherlands	10 December 1999	22 May 2002
New Zealand	7 September 2000	7 September 2000
Niger		30 September 2004 (a)
Nigeria	8 September 2000	22 November 2004
Norway	10 December 1999	5 March 2002
Panama	9 June 2000	9 May 2001
Paraguay	28 December 1999	14 May 2001
Peru	22 December 2000	9 April 2001
Philippines	21 March 2000	12 November 2003
Poland		22 December 2003 (a)

Participant	Signature	Ratification/Accession (a)
Portugal	16 February 2000	26 April 2002
Romania	6 September 2000	25 August 2003
Russian Federation	8 May 2001	28 July 2004
Sao Tome and Principe	6 September 2000	
Senegal	10 December 1999	26 May 2000
Serbia and Montenegro		31 July 2003 (a)
Seychelles	22 July 2002	
Sierra Leone	8 September 2000	
Slovakia	5 June 2000	17 November 2000
Slovenia	10 December 1999	23 September 2004
Solomon Islands		6 May 2002
Spain	14 March 2000	6 July 2001
Sri Lanka		15 October 2002 (a)
Sweden	10 December 1999	24 April 2003
Tajikistan	7 September 2000	
Thailand	14 June 2000	14 June 2000
The former Yugoslav Republic of Macedonia	3 April 2000	17 October 2003
Timor-Leste		16 April 2003 (a)
Turkey	8 September 2000	29 October 2002
Ukraine	7 September 2000	26 September 2003
United Kingdom of Great Britain and Northern Ireland		17 December 2004 (a)
Uruguay	9 May 2000	26 July 2001
Venezuela	17 March 2000	13 May 2002

Source: <<http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm>>. Accessed on: 3 August 2005.

Annex VI
Other materials and resources on the OP-CEDAW
Publications
<i>The Convention on the Elimination of All Forms of Discrimination against Women: The Optional Protocol text and materials</i> (United Nations: 2000).
Amnesty International. “Claiming Women’s Rights: The Optional Protocol to the UN Women’s Convention”. AI Index: IOR 51/001/2001.
Anne F. Bayefsky. <i>The UN Human Rights Treaty System: Universality at the crossroads</i> (Springer: 2001).
Anne F. Bayefsky. <i>How to Complain to the UN Human Rights Treaty System</i> (Transnational Publishers: 2003).
Equality Now. “Report: Using the Optional Protocol to CEDAW: A workshop for lawyers” (2001).
Inter-American Institute of Human Rights. <i>Optional Protocol: Convention on the Elimination of All Forms of Discrimination against Women</i> (2000).
Inter-Parliamentary Union. Confronting Discrimination. <i>The Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol: A handbook for parliamentarians</i> (United Nations: 2003).
IWRAW Asia-Pacific, <i>Building Capacity for Change: A Training Manual on the CEDAW Convention</i> (updated version, forthcoming).
Websites
Bayefsky.com: < www.bayefsky.com >
IWRAW Asia Pacific: < www.iwraw-ap.org >
UN Division for the Advancement of Women: < www.un.org/womenwatch/cedaw/ >

