

Part Four:

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

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4. Optional Protocol to the Convention On the Elimination of All Forms Of Discrimination against Women

4.1 Overview

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW) was adopted on 6 October 1999 and entered into force on 22 December 2000. It is a separate treaty, open to States Parties to the parent Convention, CEDAW. The OP-CEDAW covers all the rights provided for in the CEDAW Convention, including discrimination in access to economic, social and cultural rights. The OP-CEDAW is procedural in nature and does not establish new rights.

Structure of OP-CEDAW

There are 21 Articles in OP-CEDAW which cover the following areas:

Articles 1-5	Communications Procedure;
Article 5	Interim Measures;
Articles 6-7	Procedural stages of communications procedure, CEDAW Committee's consideration of communication and outcome of its consideration;
Articles 8-10	Inquiry Procedure, including opt-out (Article 10);
Article 11	Obligation to ensure complainants are not subjected to retaliatory measures;
Articles 12-17	Publicity of activities related to OP-CEDAW by the CEDAW Committee and State Party, CEDAW Committee's authority to develop its rules of procedure, entry in force, prohibition of reservations to the OP (Article 17);
Articles 18-21	Procedure for amending OP-CEDAW, denunciations, official languages of the OP-CEDAW and transmission of OP-CEDAW text to State Parties.

The procedures under the OP-CEDAW are implemented by the CEDAW Committee, which consists of 23 international independent experts who monitor implementation of the CEDAW Convention and State Parties' compliance with the CEDAW Convention. States that are a party to the Optional Protocol recognise the competence of the CEDAW Committee to receive and consider complaints from persons within their jurisdiction alleging violations of their rights under the Convention.

The CEDAW Committee's, views, findings and recommendations under either the communication procedure or inquiry procedure are not legally binding. However, States Parties have a general legal obligation to act in good faith with regard to their participation in the procedures established by the OP-CEDAW and their obligations under the CEDAW Convention itself. Therefore, they are expected to comply with the CEDAW Committee's views, findings and recommendations.

The CEDAW Committee has established follow-up procedures designed to encourage the implementation of its recommendations under the OP-CEDAW.

Ratification

The OP-CEDAW is a separate treaty, which can only be ratified by States who are already parties to the CEDAW Convention. States Parties must ratify or accede to the OP-CEDAW, separately to the CEDAW Convention.¹ As of 18 March 2013 105 States Parties are signatories to the OP-CEDAW.

At the time of ratifying or acceding to OP-CEDAW States Parties can make a reservation to "opt-out" of the inquiry procedure by declaring that they do not recognise the authority of the CEDAW Committee to conduct inquiries. If a State Party does opt-out, the inquiry procedure cannot be used in relation to that State. States cannot opt-out of the communications procedure.

As of 18 March 2013 four of the States Parties that are



signatory to the OP-CEDAW have made reservations to opt-out of the inquiry procedure. These are Bangladesh, Belize, Colombia and Cuba.

4.2 Communications Procedure under OP-CEDAW

Although not legally binding, the communications procedure is characterised as “quasi-judicial” in nature because of the following characteristics:

- The procedure is adversarial in nature: both the complainant and the State against which the communication is being brought have an opportunity to present opposing arguments in written form to the CEDAW Committee.
- The CEDAW Committee assesses the sufficiency and credibility of evidence presented by the parties in order to reach a conclusion on the facts of the case.
- The CEDAW Committee applies legal rules in interpreting

the provisions of the CEDAW Convention at issue.

- In considering a communication, the CEDAW Committee members are expected to be impartial and independent.
- The CEDAW Committee’s views as to whether a violation has occurred represent an authoritative determination of the matter.

The OP-CEDAW sets out the requirements regarding the processing and consideration of communications and inquiries.

In addition, the CEDAW Committee has adopted Rules of Procedure that set out more detailed requirements regarding the processing and consideration of communications and requests for inquiries. The development of these is provided for in Article 14 of OP-CEDAW.

The Rules of Procedure cover requirements for the admissibility of communications, the Committee’s working methods for preparing decisions on communications, and the

rules governing the Committee's decision-making process.² They were based primarily on the UN Human Rights Committee's Rules of Procedure for the First Optional Protocol to the ICCPR. The jurisprudence of other human rights bodies with communication procedures can also be drawn upon to clarify the broad meaning of the procedural requirements found in the OP-CEDAW.

The diagram on pages 36-37 maps the main stages of the communications procedure, as outlined in the OP-CEDAW and its Rules of Procedure.

4.2.1 Submitting a complaint under the communication procedure

Individuals or groups of individuals from States which have ratified the Convention and its Optional Protocol can submit a complaint under the communication procedure.

Communications can also be submitted on behalf of individuals or groups of individuals with their written consent, or without such consent, where the complainant can justify acting on their behalf:

- Representatives can include lawyers, family members, a national or international NGO or any other representative designated by the victim(s).
- 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.
- Examples of situations where it may be justifiable to act on behalf of the complainant without their consent include:
 - bringing a communication on behalf of a very large group of individuals—a “class” of victims—where 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 the complainant consents to the communication on their behalf;
 - The victim(s) may be in detention or other confinement, in serious ill health, or have the lack of legal authority to consent;

The Human Rights Committee has allowed representation

in the absence of authorisation³ where: it can be proven that the alleged victim is unable to submit the communication in person due to compelling circumstances, such as (i) following an arrest the victim's location is unknown;⁴ (ii) detained victims;⁵ (iii) when the death of the victim was caused by an act or omission of the State concerned;⁶ and (iv) proof that the alleged victim would approve of the representation.⁷

The practice implemented by the CEDAW Committee under the OP-CEDAW⁸ has required third parties seeking to act without the consent of the victim/s to submit a written explanation of the justification for such action, taking into account the specific context and circumstances of the case:

- the nature of the alleged violation;
- the circumstances that make obtaining the consent of the alleged victims unworkable or impossible;
- the capacity of the third party to represent the interests of the victims effectively, including attentiveness to the needs of victims; and
- the absence of any conflict between the interests of the victims and possible interests that third parties may themselves have in relation to the claim.

Communication No. 5/2005 Goekce v Austria

The Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of Hakan Goekce, Handan Goekce, and Guelue Goekce (descendants of the deceased)—The deceased victim was represented by two NGOs. The authors maintained that it was justified and appropriate for them to submit the complaint on behalf of the victim since the victim had died and would never be able to give consent. The authors also had the written consent from the City of Vienna office for Youth and Family affairs that was the guardian of the victim's children. The Vienna Intervention Centre stated that it was able to submit the complaint given that a) the family of the victims was its client and, therefore, had a personal relationship with the victim; and b) the Vienna Centre was an organization working in the area of domestic violence. The Committee accepted this argument and admitted the communication.⁹

Although there is no provision for direct submissions of *amicus curiae* information from third parties, such information will be considered if submitted by one of the parties. To this end, the Committee decided recently to revise its model

communication form (although the modifications have not yet been made) to include an instruction that expert information, including in an *amicus curiae* brief, must be:

- channeled through the author; and
- provided within a reasonable time after the original submission or within the deadline given to the author for this purpose.

The process for a communication is intended to be as straightforward as possible. The complainant does not need to be a lawyer or to have a legal representative to submit a complaint before the CEDAW Committee. However, the assistance of a lawyer or other trained advocate is often advisable given the legal and procedural intricacy of complaints. Legal advice may also improve the quality of the submissions in terms of the persuasiveness of the presentation of facts and how they represent a violation of economic, social and cultural rights. The United Nations does not provide legal aid or financial assistance for complainants and does not mandate that States Parties provide legal aid. Complainants should verify whether legal aid in their countries is available for bringing complaints under international mechanisms and whether non-governmental organisations offer assistance free of charge.

Some of the requirements for submitting a complaint contained in the text of the Optional Protocol and the Rules of Procedure, include:

a) The complaint must be in writing in one of the six official UN languages (English, French, Spanish, Chinese, Arabic and Russian).

- Oral, recorded or video-taped communications are not allowed. However, communications may be accompanied by documentation and information in various formats to support and/or to prove the violation of the rights at issue.

b) The communication must not be anonymous (individuals may however request that identifying information is not published in the Committee's final decision).

- There must be an identifiable "victim"—an individual or group of individuals that have been personally and directly affected by a concrete violation of a human right recognized under CEDAW.

- Status as a victim can be based on actual harm already suffered, or potential harm arising from a risk that an offending law may be applied to the victim.¹⁰
- The requirement for communications to not be anonymous can make it difficult for many vulnerable women, such as women victims of violence, to bring complaints forward. The author can request that identifying information is concealed during the consideration and in the Committee's final decision.

It is the established practice of the CEDAW Committee, other treaty bodies, including the Human Rights Committee and the Committee against Torture, and of the regional human rights bodies, that, if requested, they will suppress the name of the alleged victim in published documents. Initials or pseudonyms are substituted for the names of victims and/or authors.¹¹ This occurred in two CEDAW Committee communications including *Ms B.- J. v. Germany* and *Ms A.T. v. Hungary*.

c) The complaint must concern a State Party to the CEDAW Convention and to OP-CEDAW.

- A communication must be directed against a State Party and not against a non-State entity, such as a private individual, a private company or corporation or an intergovernmental organization. Where the alleged violation relates to the conduct of non-State actors, the claim must be based on the obligation of the State Party to prevent or respond to the alleged violation.
- The victim must be "under the jurisdiction of the State Party." That is, they must be:
 - o within the territory of the State Party;
 - o in territory under the effective control or occupation of the State Party; or
 - o otherwise subject to the jurisdiction of the State Party (eg, issue of passports).
- For example, where an individual is not legally admitted to the territory of a State Party but faces violations while under the control of officials from the State Party, then the State Party is still considered to have jurisdiction over that person.

Communication No. 15/2007—

Ms. Zhen Zhen Zheng v. The Netherlands

The victim was a Chinese asylum seeker living in the

Communications Procedure

Violation(s)

1. Acts or failure to act by government official
2. Acts of non-governmental persons, groups, or enterprises (SP has duty to prohibit 'private' discrimination)

Submitted by "author"
(victim, representative or others "on behalf")

Receivability requirements

1. written
2. not anonymous

Standing Requirements

Author must be:

1. Individual victim or group of individual victims
2. Designated representatives of victim(s) - need not be under the jurisdiction of the State Party (SP)
3. Others 'on behalf of' victim(s) of (a) consent by victim(s), (b) 'justified' in acting on behalf of without consent

Victim(s) must have:

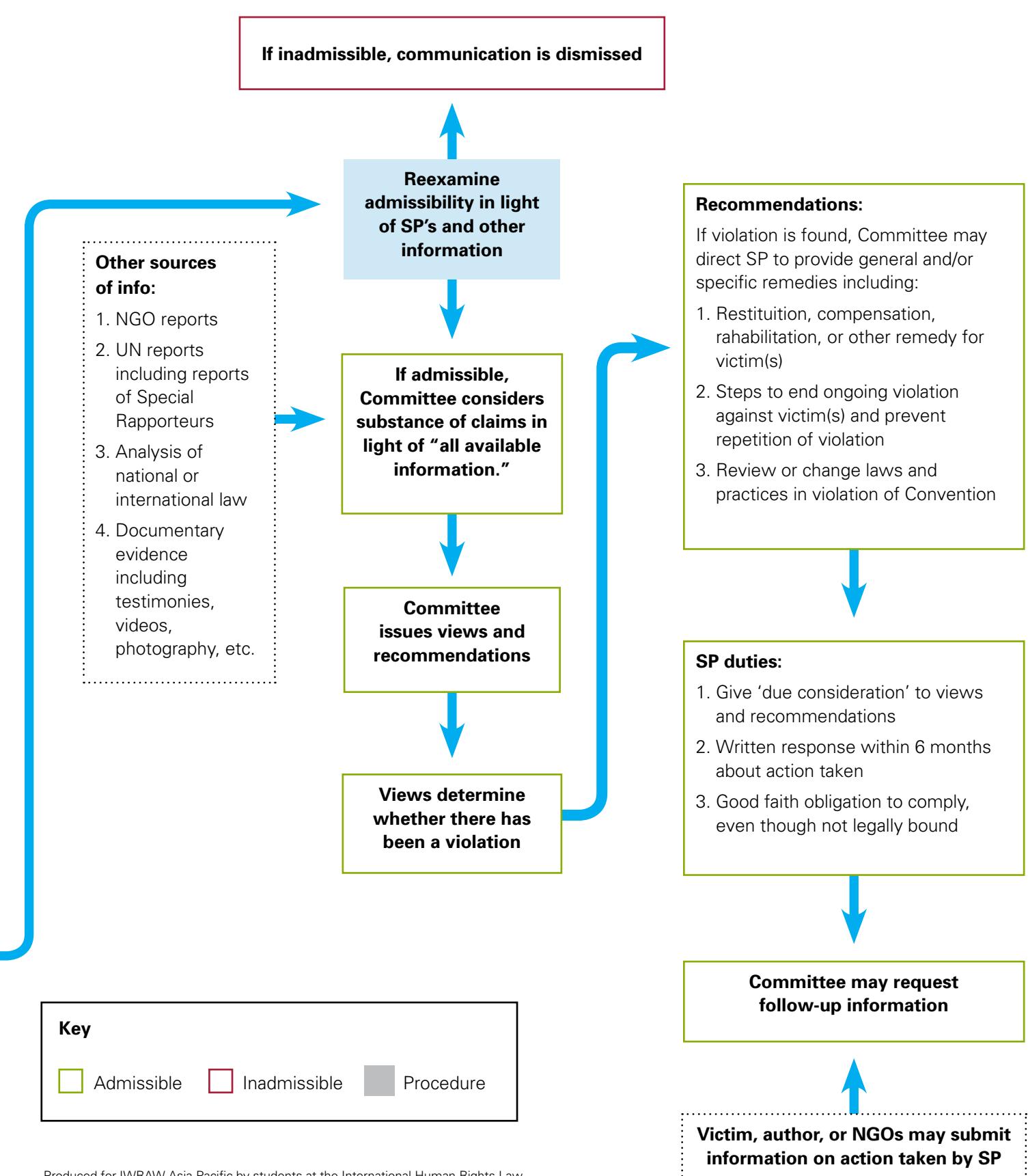
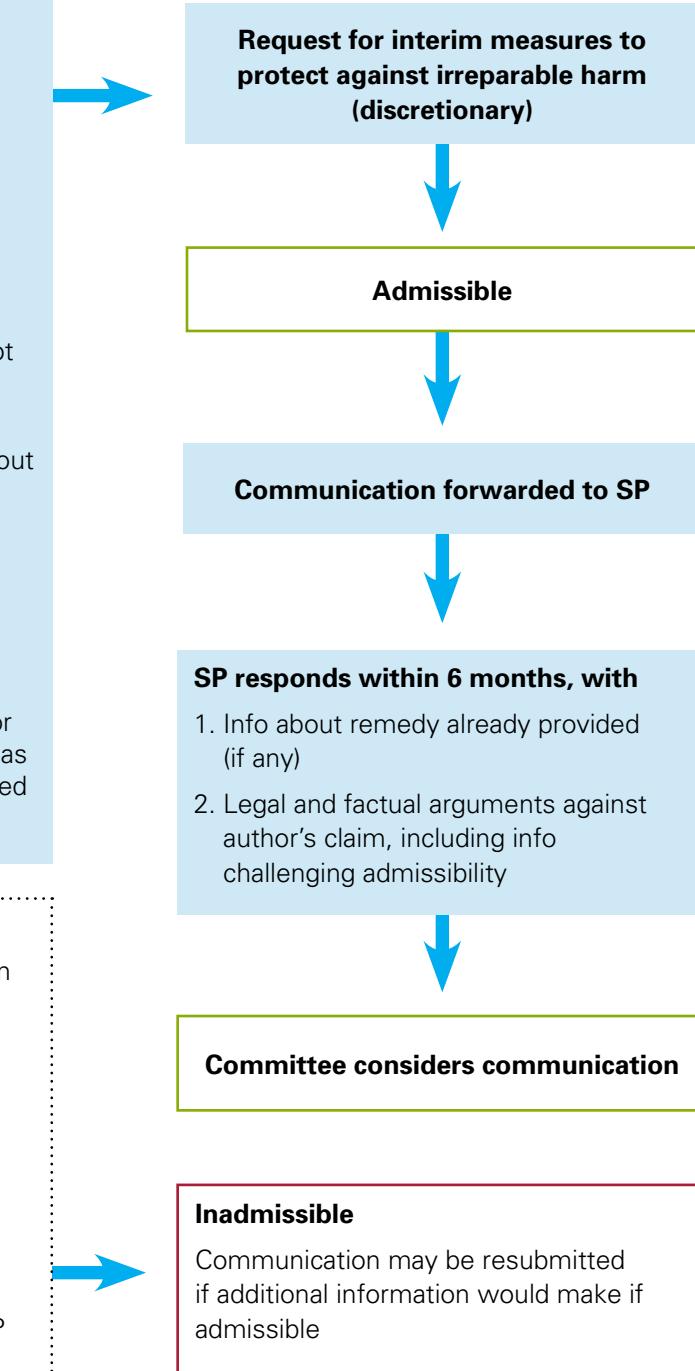
1. suffered harm
2. been under SP's jurisdiction at time of violation

Subject matter jurisdiction:

Violation of right defined in Arts. 2-16 of Convention, or derived from right stated in Convention or interpreted as pre-condition for enjoyment of right explicitly recognised in the Convention

Reasons for inadmissibility

1. Failure to exhaust domestic remedies, unless within recognised exceptions of 'unreasonable delay' or ineffective remedy
2. Same matter examined by Committee or other international procedure
3. 'Incompatible with provisions of Convention'
4. 'Manifestly ill-founded' or not 'sufficiently substantiated'
5. Abuse of the right to submit communication
6. Events occurred before OP entered into force for SP



Key

- Admissible
- Inadmissible
- Procedure

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

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Netherlands. She complained that she was a victim of a violation by the State Party of Article 6 of CEDAW. Due to the negligence of the State Party, she was traumatized during the asylum procedure and became suicidal as a result of the insecurity of her situation. The victim was under the jurisdiction of the State Party. Although the Committee ultimately found the communication inadmissible on the grounds of failure to exhaust domestic remedies, the Netherlands was recognized as having legal jurisdiction over the victim.

d) The individual must claim to be a victim of a violation of a right enshrined in CEDAW.¹² The CEDAW Committee's General Recommendations and Concluding Observations are important sources to refer to for understanding the full scope of specific rights under CEDAW.

In the cases listed in the chart on page 50, the CEDAW Committee discussed and interpreted the meaning of "victim" under the Convention.

Communication No. 12/2007—

G. D. and S. F. v. France

The Committee held that the authors failed to show that they suffered any sex-based discrimination by bearing their father's family name. There was no discrimination as the family name they are given is not dependent on their sex. The Committee therefore concluded that the authors lacked the quality of victims under Article 2 of the Optional Protocol and the communication was inadmissible.

The dissenting opinion found that the test of victim status is whether the authors have been directly and personally affected by the violations alleged. The authors have suffered sex-based discrimination by bearing their fathers' family names in their civil status documents, and that that discrimination was based on discriminatory and sexist customary rules on transmission of family names which were in force at the time of their births. The legislation governing family names discriminates against women by prohibiting the transmission of or change of family name to the mother's family name only and that the lack of choice with respect to a mother's family name, as the family name to be transmitted to her children or changed, constitutes sex-based discrimination against women as defined in Article 1 of the Convention and prohibited under Articles 2, 5 and 16 (1).

Communication No. 13/2007—

Michèle Dayras, Nelly Campo-Trumel, Sylvie Delange, Frédérique Remy-Cremieu, Micheline Zeghouani, Hélène

Muzard-Fekkar and Adèle Daufrene-Levrard (represented by SOS Sexisme) v. France

The Committee found that as Ms. Dayras and Ms. Zeghouani are not married, do not live in husband-and-wife relationships and do not have children, they cannot claim rights pertaining to the use or the transmission of family names and cannot be victims of a right whose beneficiaries are only married women, women living in de facto unions or mothers. They have not personally been adversely affected by French legislation and therefore lack the quality of victim.

e) The complaint should include the following:

- The relevant facts, including any supporting documentation, and an indication of what provisions of the Convention are alleged to have been violated by the State Party.

Although failure to name the Articles of the Covenant alleged to be violated would not affect the Committee's decision regarding the admissibility of the communication, it can influence the understanding of the matter at issue.¹³ It is important to submit the communication as completely as possible and to include all relevant information on the case. The complainant should set out, ideally in chronological order, all the facts on which her claim is based. For example, a group of women from a rural community that does not have reasonable access to maternal health care, alleges that the State failed to take steps to ensure access for this community. Although the complainants will not be asked to list all the Articles that have been violated, they will be expected to make the necessary efforts to provide as much information as possible, regarding the population that lives in the area, the lack of access to the health system, the chronology of the facts, the context of the situation, whether there is disparate access for men and women because of limited hours or lack of transportation, etc., to give the Committee enough information to recognize the violation and examine the claim.¹⁴

- Information about steps taken to exhaust domestic remedies at the national level. This means that the case must have been brought at the national level, negative decisions appealed as possible, taken to relevant administrative bodies if relevant or otherwise evidence be shown why national remedies are ineffective, unavailable or unreasonably prolonged.
- Importantly, the CEDAW Committee does not place

any time restrictions on when a communication can be made.¹⁵

- An indication of whether this matter is or has been before any other procedure of international investigation or settlement.¹⁶

A model communication form is available from the CEDAW Committee at: <http://www2.ohchr.org/english/law/cedaw-one.htm>. It is also available in IWRAW Asia Pacific's "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, which can be accessed in various languages at <http://www.iwraw-ap.org/publications/opcedaw.htm>.

Communications can be submitted in writing and signed to:

The CEDAW Committee
Office of the High Commissioner for Human Rights
United Nations Office
1211 Geneva 10, Switzerland
Fax: +41 22 917 9022
For further information:
E-mail: tb-petitions@ohchr.org
Or call on Tel: +41 22 917 1234

Confidentiality

All working documents and deliberations related to communications are confidential and the discussions by the Working Group and the full Committee related to communications are held in closed sessions. Members of the CEDAW Committee are prohibited from making public any information related to communications prior to a determination being made. The parties to the communication (ie the State Party and the author of the communication) can make information related to the communication public. The Committee can request the parties not to do so, although it cannot require them to maintain confidentiality.

4.2.2 Interim Measures

After receiving a communication, but before making a determination on admissibility or the merits of the communication, the CEDAW Committee can request the State Party to take interim measures necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

"Interim measures" are usually requested when they are necessary to protect the victim from physical or mental harm or action that could have 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 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.

Communication No. 2/2003—Ms. A. T. v. Hungary

The author made a request for interim measures of protection to avoid possible irreparable damage to her person—that is to save her life—which she felt was threatened by her violent former partner. The Committee requested the State Party to provide immediate, appropriate and concrete preventive interim measures of protection to the author, as may be necessary, in order to avoid irreparable damage to her person.

4.2.3 Consideration of a communication

In considering a communication under OP-CEDAW the CEDAW Committee will consider three aspects:

- The admissibility of the communication;
- The merits of the communication; and
- The remedies available and follow-up

The Committee will form a Working Group of up to 5 members to prepare the communication for consideration by the full Committee. The Working Group assigns a Rapporteur, who prepares analyses of the procedural and substantive issues related to the communication and draft texts for consideration by the Working Group. The Working Group meets one week prior to the Committee's regular session. The Working Group has authority to declare a communication admissible if all members agree. If there is no unanimity among its members that the communication is admissible, the Working Group must refer the decision on admissibility for decision by the full Committee. Based on discussion among its members, the Working Group transmits its recommendations and a draft text for review and discussion by the full Committee.

The full Committee considers the communication in light of the Working Group's recommendations and any additional points raised by members in the discussions of the Committee as a whole. It then takes a decision as to its views and

recommendations. The decision is generally reached by consensus but may be reached by simple majority if no consensus is possible. Members of the Committee may register individual concurring or dissenting opinions.

4.2.4 Admissibility

A number of technical legal requirements must be met in order for the communication to be admissible. A communication will be declared inadmissible if:

- All available domestic remedies have not been exhausted.

Communication No. 1/2003—Ms. B.-J. v. Germany

The Committee found that the author had not exhausted domestic remedies concerning the issue of the equalization of pensions, because the author was reasonably expected to include a specific appeal on the issue to the appellate court, as well as in her constitutional complaint. The Committee also held that an improperly filed constitutional complaint cannot constitute an exhaustion of remedies.

Communication No. 8/2005—Rahime Kayhan v. Turkey

The Committee found that the author had not exhausted domestic remedies because she had not put forward arguments that raised the matter of discrimination based on sex in substance and in accordance with procedural requirements in Turkey before the administrative bodies that she addressed before submitting a communication to the Committee.

Communication No. 11/2006—

Ms. Constance Ragan Salgado v. The United Kingdom of Great Britain and Northern Ireland

The Committee stated that in line with a longstanding jurisprudence of other international human rights treaty bodies, in particular the Human Rights Committee, authors of communications are required to raise in substance before domestic courts the alleged violation of the provisions of CEDAW, which enables a State Party to remedy an alleged violation before the same issue may be raised before the Committee.

- It is not necessary to “exhaust” domestic remedies if:
 1. No remedies for the violation are available;
 2. Remedies available are “unreasonably prolonged” (unreasonably time-consuming).
 3. Remedies available are “unlikely to bring effective relief.”

Communication No. 1/2003—Ms. B.-J. v. Germany

The dissenting opinion found that given the author’s age and that since her divorce she had lived without a reliable income for five years and had few prospects for being able to earn an independent income—that the application of remedies was “unreasonably prolonged,” which is an exception to the rule of exhaustion of domestic remedies.

Communication No. 12/2007—G. D. and S. F. v. France

The Committee found that although the domestic remedies had not been exhausted because the appeals before the Paris Administrative Tribunal and the Paris Administrative Court of Appeal were pending, the application of the remedy provided by Article 61-1 of the Civil Code was both unreasonably prolonged and unlikely to bring effective relief.

To be effective the relief must be comprehensive enough to cover restitution, compensation or rehabilitation for the victim(s) and/or action to prevent the violation from happening again. To be effective, a remedy must be capable of producing the result for which it was designed and it must offer a reasonable prospect of success or a reasonable possibility that it will prove effective. Core elements of an effective remedy include:

- enforceability;
- the independence of the decision-making body and its reliance on legal standards;
- the adequacy of due process protections afforded the victim; and
- promptness.

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.

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Communication No. 5/2005—

The Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of Hakan Goekce, Handan Goekce, and Guelue Goekce (descendants of the deceased) v. Austria

The Committee found that Sahide Goekce's heirs not availing themselves of the procedure under Article 140, paragraph 1, of the Federal Constitution, did not prevent them from meeting the requirement of exhaustion of domestic remedies because the abstract nature of this remedy meant that it would not be likely to bring effective relief.

The Committee also found that the entitlement of Sahide Goekce to bring a complaint under section 37 of the Public Prosecutor's Act—which is designed to determine the lawfulness of official actions of the responsible Public Prosecutor — cannot be regarded as a remedy which is likely to bring effective relief to a woman whose life is under a dangerous threat, and should thus not bar the admissibility of the communication.

Communication No. 15/2007—

Ms. Zhen Zhen Zheng v. The Netherlands

The Committee referred to the Human Rights Committee jurisprudence, according to which mere doubts about the effectiveness of the remedies do not absolve an individual from exhausting domestic remedies.

Communication No. 18/2008—

Karen Tayag Vertido v. Philippines

The Committee found that for a remedy to be effective, "adjudication of a case involving rape and sexual offences claims should be dealt with in a fair, impartial, timely and expeditious manner". The Committee found that the case remaining at the trial court level from 1997 to 2005 was not an effective remedy.

Communication No. 22/2009—

T. P. F. (represented by the Centre for Reproductive Rights and the Promotion and Protection of Sexual and Reproductive Rights) v. Peru

In light of the urgency of the situation of the victim, the Committee found that it was not reasonable to require that, in addition to the lengthy procedure before medical authorities, the author should have to initiate a court proceeding of an unpredictable duration and hence the Committee found that domestic remedies had been exhausted.

- Such exceptions allow the Committee to interpret the "exhaustion" requirement in light of the obstacles that women face when seeking redress.

What constitutes an (available, adequate and) effective domestic remedy?

- The case has been considered by all appropriate legal or administrative fora within the domestic legal system without a proper review or assessment of the alleged violations;
- The case has been considered by all appropriate mechanisms but appropriate remedies do not exist;
- The domestic remedy available provides inadequate restitution, compensation, rehabilitation or other relief to the victim;
- Legal barriers, e.g. lack of legal capacity, prevent the victim from seeking redress;
- The victim has been deterred or prevented from seeking redress through intimidation or threats;
- Widespread gender discrimination in the administration of justice or weakness in the rule of law that generally render the domestic procedures ineffective;
- Practical constraints render the remedy inaccessible (e.g. financial costs that are so burdensome as to prevent the victim from pursuing the remedy available; a geographic location that makes the relevant forum inaccessible to the victim; or a failure by the State Party to provide translation where the victim is unable to speak or comprehend the working language of the relevant forum); and
- The domestic remedy itself incorporates discriminatory elements, such as restrictions on the evidentiary weight of women's testimony.

In all cases, whether it is alleged that domestic remedies have proven inadequate or unavailable, the communication submitted to the CESCR must be fully substantiated with evidence and a detailed account of the steps taken at the domestic level.

Source: A Resource Guide Our Rights are not Optional, Advocating through the implementation of the Convention on the Elimination of All Forms of Discrimination against Women through its Optional Protocol, IWRAW Asia Pacific, 2008 (2nd Edition)

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In analyzing the exhaustion of domestic remedies, intersectional discrimination (e.g. race, gender, ethnic, nationality, economic condition, etc.) and the social, economic, political and legal environment that contributes to discrimination and experiences of oppression and privilege should be taken into account. Evidence of a pattern of defects in the administration of justice, such as discriminatory rules of evidence or a widespread refusal by the judiciary and/or the police to apply existing legal protections to migrant women, women with disabilities, lesbians, bisexual or transgender, indigenous women or women from racial and ethnic minority groups, can demonstrate the ineffectiveness of the remedies in question.

- The same matter has already been examined by the CEDAW Committee or has been or is being examined under another procedure of international investigation or settlement.

The Committee will consider both the facts and the content of the rights in question. If the facts have changed significantly, or the claims were raised through other international procedures by a different individual, the Committee may decide that the communication is admissible.

Communication No. 8/2005—*Rahime Kayhan v. Turkey*

The Committee referred to *Fanali v. Italy* (communication No. 075/1980) in which the Human Rights Committee held: “the concept of “the same matter” within the meaning of Article 5 (2) (a) of the Optional Protocol to ICCPR had to be understood as including the same claim concerning the same individual, submitted by him or someone else who has the standing to act on his behalf before the other international body.” Applying this interpretation the CEDAW Committee held the communication was admissible because the author is a different individual to the one who brought another case regarding the veil before the European Court of Human Rights.

- The matter is incompatible with the provisions of CEDAW.
 - o 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).

Communication No. 7/2005—

Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain

In a dissenting opinion, 8 members of the Committee found that the title of nobility in question was of a purely symbolic and honorific nature, devoid of any legal or material effect. Consequently, they considered that claims of succession to such titles of nobility are not compatible with the provisions of the Convention, as there is no impairing or nullifying of a right.

- Claims related to rights subject to reservations are also inadmissible, if the reservation is one that is permissible and the scope of the reservation covers the specific rights allegedly violated.
 - o The matter is manifestly ill-founded or not sufficiently substantiated.
- A communication will be considered “manifestly ill-founded” if it:
 - o Alleges violations of rights that are not guaranteed by CEDAW;
 - o Relies on an incorrect interpretation of the Convention; or
 - o Alleges facts that unquestionably indicate that the State Party’s act or omission is consistent with its obligations under CEDAW.
- 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.
- The matter is an abuse of the right to submit a communication.

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- 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;
 - The claim has been previously found by the Committee to be unfounded; or
 - The facts of the communication occurred prior to the entry into force of the Optional Protocol for the State Party concerned, unless those facts continued after that date.

Communication No. 1/2003—*Ms. B.-J. v. Germany*

The Committee did not consider elements of the communication relating to the equalisation of pensions because the author's divorce was finalised together with the matter of the equalization of pensions prior to the OP-CEDAW entering into force in Germany and the Committee found there were no facts that continued after that date.

Communication No. 3/2004 —

Ms. Dung Thi Thuy Nguyen v. The Netherlands

The Committee found that while the first period of pregnancy leave occurred before the OP-CEDAW had entered into force in the Netherlands, the second period of pregnancy leave extended beyond the date OP-CEDAW had entered into force in the Netherlands and therefore the communication was not declared inadmissible on this requirement.

Communication No. 4/2004 —

Ms. A. S. (represented by the European Roma Rights Center and the Legal Defence Bureau for National and Ethnic Minorities) v. Hungary

Although the sterilisation took place before the OP-CEDAW came into force in Hungary, the Committee found that sterilization is intended to be irreversible and should be viewed as permanent. Therefore the facts that are the subject of the communication to be of a continuous nature and therefore extend beyond the date that the OP-CEDAW came into force in Hungary.

Communication No. 7/2005 —

Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain

The Committee found that the succession to the title was the event that was the basis of the author's complaint, and was completed before the OP-CEDAW came into force in Spain, and that the event was not of a continuous nature.

Communication No. 8/2005—

Rahime Kayhan v. Turkey

The Committee found that while the author's dismissal occurred before the OP-CEDAW came into force in Turkey, the dismissal continued to affect the author's loss of status, namely her means of subsistence to a great extent, the deductions that would go towards her pension entitlement, interest on her salary and income, her education grant and her health insurance. The Committee held this constituted a continuation of the facts.

- The Committee can also admit a communication if the State Party has failed to remedy ongoing consequences of a past violation. In this case, the State's inaction can be viewed as an affirmation of its previous violation.¹⁷

The determination of admissibility focuses on an assessment of the specific facts of the case. It is therefore especially important to present a detailed description of the facts of the case, including: the alleged violation; the victim's personal circumstances; and where systemic conditions or violations are relevant, the broader factual context of the case. It is also useful to refer to established interpretations of admissibility requirements developed by other human rights bodies to which the CEDAW Committee is also likely to refer such as the need to apply the rule of exhaustion of domestic remedies with a degree of flexibility, rather than undue formalism, given the context of protecting human rights.¹⁸

To date, of the 20 communications considered, 10 of them have been held inadmissible. The most common reason for inadmissibility has been failure to exhaust domestic remedies.

If the communication is found to be inadmissible, it is dismissed. Where the CEDAW Committee decides that a communication is inadmissible, the decision and the reasons for it are communicated through the CEDAW Secretariat at the Office of the High Commissioner for Human Rights to the author of the communication and to the State Party concerned.

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.

4.2.5 Merits

If the communication meets the admissibility requirements, only then will the CEDAW Committee consider the merits of the claims raised.

In considering the merits, the Committee bases its findings regarding the facts on the written information presented by the complainant and by the respondent State. The Committee will consider a communication even if the respondent State does not submit a response to the communication as the OP requires it to do.

Both parties have an opportunity to review and respond to the other party's submissions. The Committee can request additional information from the parties subsequent to the parties' initial submissions. The parties can provide information from other sources on the record but third parties can not submit information directly to the Committee.

In considering the merits, the Committee may request the Secretariat to obtain information from organizations in the UN system or other bodies that may assist it in the resolution of the communication. The communications procedure does not allow for oral hearings, on-site visits or interviews. All information must be provided in written submissions.

The scope of the factual information considered by the Committee in a communication focuses closely on the set of facts related to the claim, because a communication is intended to resolve claims brought by individual victims. The communication may address systemic factors in considering the broader context at the national level within which the facts related to the individual claim took place, but commonly is more narrowly focused than in an inquiry.

In considering the merits, the CEDAW Committee will consider whether:

a) The violation is within the "subject matter jurisdiction" of the OP-CEDAW. This means the violation must be of a right recognised in Articles 2-16 of the CEDAW Convention. If a right is not explicitly spelled out in the Convention, it can still be 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);

Communication No. 2/2003—Ms. A. T. v. Hungary

In a communication relating to domestic violence, the Committee recalled its General Recommendation No. 19 on Violence against Women. The Committee also recalled its recommendations made in its Concluding Comments on Hungary's combined fourth and fifth periodic report in 2002.

Communication No. 18/2008—

Karen Tayag Vertido v. The Philippines

The Committee acknowledged that the text of the Convention does not expressly provide for a right to a remedy, however, such a right is implied in the Convention, in particular in Article 2 (c), by which States Parties are required "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." The Committee further found that for a remedy to be effective, adjudication of a case involving rape and sexual offenses claims should be dealt with in a fair, impartial, timely and expeditious manner.

Communication No. 20/2008—

Ms. V. K. (represented by counsel, Ms. Milena Kadieva) v. Bulgaria

The Committee recalled General Recommendation 19 which notes that gender based violence is not limited to acts that inflict physical harm, but also covers acts that inflict mental or sexual harm or suffering, threats of any such acts, coercion and other deprivations of liberty.

Communication No. 22/2009—

T. P. F. (represented by the Centre for Reproductive Rights and the Promotion and Protection of Sexual and Reproductive Rights) v. Peru

The Committee found that, owing to her condition as a pregnant woman, L. C. did not have access to an effective and accessible procedure allowing her to establish her entitlement to the medical services that her physical and mental condition required. Those services included both spinal surgery and therapeutic abortion.

- Interpreted as a precondition for the enjoyment of an explicitly recognised 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).

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Communication No. 18/2008—

Karen Tayag Vertido v. Philippines

The Committee noted that there was an implied right to remedy in Article 2 (c) of CEDAW which requires States to provide legal protection of the rights of women.

Communication No. 18/2008—

Karen Tayag Vertido v. Philippines

The Committee notes that "by Articles 2 (f) and 5 (a), the State Party is obligated to take appropriate measures to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women. In this regard, the Committee stresses that stereotyping affects women's right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general." The Committee found that the court had relied on stereotypes and gender-based myths in the judgment and the State failed to fulfil its obligations under Article 2 (c) and (f), and Article 5 (a) read in conjunction with Article 1 of the Convention and General Recommendation No. 19 of the Committee.

b) The act or failure to act (an "omission") by a State Party has adversely affected the victim's enjoyment of a right under the CEDAW Convention; or that there is a real threat of such. The adverse affect 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.

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, then consider the facts of the case to see if the State Party has failed to take that 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).

Under the due diligence standard, State Parties must take "reasonable steps" to prevent human rights violations, investigate, impose the appropriate punishment and provide adequate redress to the victims.

Communication No. 3/2004—

Ms. Dung Thi Thuy Nguyen v. The Netherlands

The Committee found that the State had a margin of discretion to determine the appropriate maternity benefits within the meaning of Article 11, paragraph 2 (b) of the Convention for all employed women, and therefore there had been no violation.

The dissenting opinion found that while there was no direct discrimination, the anti-accumulation clause could constitute a form of indirect discrimination based on sex against self-employed women.

Communication No. 5/2005—

The Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of Hakan Goekce, Handan Goekce, and Guelue Goekce (descendants of the deceased) v. Austria

The Committee referred to the due diligence obligations of the State as outlined in the CEDAW Committee General Recommendation 19: "[U]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."

Communication No. 17/2008—

Maria de Lourdes da Silva Pimentel, represented by the Center for Reproductive Rights and Advocacia Cidadã pelos Direitos Humanos v. Brazil

In this case the Committee found that "Ms. da Silva Pimentel Teixeira's vulnerable condition required individualized medical treatment which was not forthcoming due to a potential failure in the medical assistance provided by a private health institution, caused by professional negligence, inadequate infrastructure and lack of professional preparedness. The Committee concluded that Ms. da Silva Pimentel Teixeira has not been ensured appropriate services in connection with her pregnancy."

Even though it was a private hospital that did not provide the appropriate treatment, the Committee concluded that in accordance with Article 2(e) of CEDAW the State has a due diligence obligation to take measures to ensure that the activities of private actors in regard to health policies and practices are appropriate. The State is directly responsible for the action of private institutions when it outsources its medical services, and has the duty to regulate and monitor private health-care institutions.

The Committee will analyse the language of specific Articles and then consider any interpretations of that language

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or similar language in other human rights instruments. The Committee could refer to its own General Recommendations and Concluding Observations, 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.

Communication No. 15/2007—

Ms. Zhen Zhen Zheng v. The Netherlands

The Committee recalled that in the Concluding Observations issued to the State Party in 2007, the Committee urged the State Party to provide all necessary benefits to victims of trafficking regardless of whether they are able to cooperate.

Communication No. 23/2009—

Inga Abramova v. Belarus

The Committee referred to Standard Rule 53 of the Minimum Rules for the Treatment of Prisoners, General Assembly Resolution 65/299 on the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and the Human Rights Committee's General Comment No 28.

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.

Communication No. 17/2008—

Maria de Lourdes da Silva Pimentel, represented by the Center for Reproductive Rights and Advocacia Cidadã pelos Direitos Humanos v. Brazil

The Committee referred to its General Recommendation No. 24, which notes that measures to eliminate discrimination against women are considered to be inappropriate in a health-care system which lacks services to prevent, detect and treat illnesses specific to women.

The Committee also referred to its recent General Recommendation 28 on the Core Obligations of State Parties under Article 2, noting that the lack of appropriate maternal health services means the State is not meeting the specific distinctive health needs of women, which constitutes a violation of Article 12 on the right to health, Article 2 on non-discrimination, and has "a differential impact on the right to life of women."

The Committee also found that the author experienced multiple discrimination as a woman of African descent and her

socio-economic background, and referred to the Committee's Concluding Observations of Brazil in 2007 in which it had noted the de facto discrimination experienced by women from vulnerable sectors of society.

Communication No. 23/2009—Inga Abramova v. Brazil

"Violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms" including "the right not to be subjected torture, cruel, inhuman or degrading treatment punishment," constitutes discrimination within the meaning of Article 1 of the Convention (para. 7 (b)).

The Committee found that the inappropriate touching, unjustified interference with the author's privacy constitutes sexual harassment and discrimination within the meaning of Articles 1 and 5 (a) of CEDAW.

Given that violations may be based on one or more of the CEDAW Convention 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 State Parties.

Once the Committee's views and recommendations have been adopted they are made publicly available on the Committee's website at: <http://www2.ohchr.org/english/law/jurisprudence.htm>). The texts of the decisions are also published in the CEDAW Committee's annual report to the UN General Assembly.

4.2.6 Remedies

The remedies identified by the Committee if a violation is found typically focus on redress for the individual victim(s) and aim at repairing the harm to the individual(s). They can also include a range of systemic recommendations aimed at preventing future violations, many of which have a public interest component.

The kinds of recommendations that the CEDAW Committee may make include:

- a) Restitution, compensation, rehabilitation, or any other remedies for the victim(s):**

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- o 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);
- o Settlement, compensation and/or rehabilitation for the victim(s);
- o Retrial;
- o Enforcement of domestic court judgments establishing conditions to enable the victim(s) to exercise a right (e.g. women's inheritance rights, visitation rights).

b) Steps to end ongoing violations against the victim(s):

- o Interim guidelines, instructions and steps to end continuing violations or prevent repetition of these in the future.

c) Law reform and changes in programmes and policies that are in violation of the Convention:

- o Including review of laws, administrative decisions and/or policies which are disputed in the case.

d) Steps to prevent the repetition of the violation(s):

- o Development of directives, guidelines or policies to prevent similar violations in the future;
- o Adoption of measures and remedies to effectively address similar violations;
- o Action and measures to ensure the full recognition, enjoyment and exercise of rights contained in the CEDAW Convention;
- o 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);
- o Adoption of temporary special measures in a particular field (e.g. quota system in parliament);
- o Recognition of the "justiciability" of specific rights enshrined in the CEDAW Convention as a whole;
- o Enactment of new legislation—if this was not available previously—to recognise the right(s) alleged to have been violated;
- o Take steps to condemn, sanction or regulate discrimination by private and public actors;

- o The creation of appropriate support services for victims of abuse such as shelters, counselling services, legal aid etc.

The OP-CEDAW mandates the Committee to transmit its views and recommendations to the concerned parties to the communication.

Communication No. 2/2003—Ms. A. T. v. Hungary

The Committee made the following recommendations for remedies to the State:

Concerning the author of the communication

- (a) Take immediate and effective measures to guarantee the physical and mental integrity of A. T. and her family;
- (b) Ensure that A. T. is given a safe home in which to live with her children, receives appropriate child support and legal assistance as well as reparation proportionate to the physical and mental harm undergone and to the gravity of the violations of her rights;

General

- (a) Respect, protect, promote and fulfil women's human rights, including their right to be free from all forms of domestic violence, including intimidation and threats of violence;
- (b) Assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women;
- (c) Take all necessary measures to ensure that the national strategy for the prevention and effective treatment of violence within the family is promptly implemented and evaluated;
- (d) Take all necessary measures to provide regular training on the CEDAW and the Optional Protocol thereto to judges, lawyers and law enforcement officials;
- (e) Implement expeditiously and without delay the Committee's Concluding Comments of August 2002 on the combined fourth and fifth periodic report of Hungary in respect of violence against women and girls, in particular the Committee's recommendation that a specific law be introduced prohibiting domestic violence against women, which would provide for protection and exclusion orders as well as support services, including shelters;
- (f) Investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards;

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(g) Provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure them available, effective and sufficient remedies and rehabilitation; and

(h) Provide offenders with rehabilitation programmes and programmes on non-violent conflict resolution methods.

The State Party was required to submit to the Committee, within six months, a written response, including any information on any action taken in the light of the views and recommendations of the Committee. The State Party was also requested to publish the Committee's views and recommendations and to have them translated into the Hungarian language and widely distributed in order to reach all relevant sectors of society.

Communication No. 18/2008—Karen Tayag Vertido v. The Philippines

The Committee made the following recommendations for remedies to the State:

Concerning the author of the communication

Provide appropriate compensation commensurate with the gravity of the violations of her rights.

General

- Take effective measures to ensure that court proceedings involving rape allegations are pursued without undue delay;
- Ensure that all legal procedures in cases involving crimes of rape and other sexual offenses are impartial and fair, and not affected by prejudices or stereotypical gender notions. To achieve this, a wide range of measures are needed, targeted at the legal system, to improve the judicial handling of rape cases, as well as training and education to change discriminatory attitudes towards women. Concrete measures include:

(i) Review of the definition of rape in the legislation so as to place the lack of consent at its centre;

(ii) Remove any requirement in the legislation that sexual assault be committed by force or violence, and any requirement of proof of penetration, and minimize secondary victimization of the complainant/survivor in proceedings by enacting a definition of sexual assault that either:

o requires the existence of "unequivocal and voluntary agreement" and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting; or

o requires that the act take place in "coercive circumstances" and includes a broad range of coercive circumstances.¹⁹

(iii) Appropriate and regular training on the CEDAW, its Optional Protocol and its General Recommendations, in particular General Recommendation No. 19, for judges, lawyers and law enforcement personnel;

(iv) Appropriate training for judges, lawyers, law enforcement officers and medical personnel in understanding crimes of rape and other sexual offences in a gender-sensitive manner so as to avoid revictimization of women having reported rape cases and to ensure that personal mores and values do not affect decision-making.

The State Party was required to provide within six months, a written response, including any information on any action taken in the light of the views and recommendations of the Committee. The State Party is also requested to publish the Committee's views and recommendations and to have them translated into the Filipino language and other recognized regional languages, as appropriate, and widely distributed in order to reach all relevant sectors of society.

4.2.7 Follow-up

Where the CEDAW Committee finds a violation has occurred, the State Party and the author of the communication are provided written notice of the findings and recommendations. The State Party is required to submit a written response within 6 months, outlining the steps it has taken to give effect to the Committee's views and recommendations. Two Rapporteurs for follow-up are appointed by the Committee. They have the authority to monitor implementation through contacts with representatives of the respondent State. The CEDAW Committee is allowed to make further requests to the State Party for additional information and updates, including in its periodic reports.

Enforcement of remedies and recommendations by State Parties will, in many ways rely on on-going dialogue and persuasion rather than firm instructions regarding compliance.

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.

Brief Analysis of CEDAW Decisions to Date

(See page 50 for full list of decisions)

In comparison with other more established communication procedures, there have been comparatively fewer communications submitted or decided under the OP-CEDAW. Further, a violation was established in only four cases. The lack of a settled body of jurisprudence and practice means that it is difficult to predict the Committee's likely response to a particular issue. It also means there is an insufficient jurisprudential base to make a general evaluation of the CEDAW Committee's approach to the interpretation of the Convention. It is also not yet possible to have a meaningful assessment of the effectiveness of the Committee's follow-up procedures.

A significant proportion of communications submitted have been declared inadmissible. The majority of these have been inadmissible due to the failure to exhaust domestic remedies. Timing (i.e. the facts occurred before the OP-CEDAW came into force for the relevant State Party), lack of victim status and incompatibility with CEDAW are some of the other reasons communications have been declared inadmissible. Some commentators have noted that the Committee has not yet clarified its approach to a number of questions related to admissibility, leaving it unclear as to how admissibility will be determined in future cases.²⁰

However, the CEDAW Committee's findings of inadmissibility do not appear to reflect an overly strict approach or to be obviously unsupported by the facts and the Committee has frequently referred to relevant jurisprudence from other human rights bodies. Thus the OP-CEDAW results appear to be largely consistent with the practice of other human rights bodies.

The majority of communications to date have been in relation to issues of violence against women, and most commonly domestic violence. Some of the other subject matters have included health, family name change, trafficking, nationality, gender stereotyping, employment and marriage and family among others. This shows a gradual expansion of the use of the communications procedure under OP-CEDAW to a range of human rights violations experienced

by women, including both civil and political and economic social and cultural rights.

Also of note is that the majority of communications under OP-CEDAW have been brought by authors based in Europe. Comparatively fewer communications have been brought by women in other geographical regions. This could in part reflect the number of which State Parties in other regions that have signed the OP-CEDAW (i.e. in the Pacific there are 3 State Parties to the OP-CEDAW, and worldwide there are only 104 State Parties); or the extent to which they are using regional mechanisms rather than the UN mechanism; or even the level of capacity and support that exists within countries in other regions for women to firstly, exhaust domestic remedies and, secondly, to bring a communication at the international level.

The evolving character of the CEDAW Committee's work under the OP-CEDAW's communication procedure presents an opportunity for advocates to shape the approach to procedural and substantive questions through the types of cases submitted and the information presented in submissions.

4.3 Inquiry Procedure

The inquiry procedure under the OP-CEDAW (Article 8) provides for the CEDAW Committee to initiate an examination where it has received reliable information indicating grave or systematic violations by a State Party of rights in CEDAW. The procedure was modelled on the OP inquiry procedure available under the Convention Against Torture (Article 20).

Information sent to the CEDAW Committee about a grave or systematic violation and a request for an inquiry related to a given factual situation can be submitted by women's groups and other NGOs, other UN bodies or experts, regional human rights bodies or experts and the media.

The inquiry procedure can be useful for the CEDAW Committee to respond urgently to serious violations that are occurring (e.g. the widespread rape of women during protests or the disappearance and assassination of women human rights defenders). It can also be useful for addressing 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.

The Committee's role in an inquiry is investigative in

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Communications to Date under CEDAW

Communication	CEDAW Articles alleged to be violated	Communication	CEDAW Articles alleged to be violated
Ms. B.-J. v. Germany was adopted on 14 July 2004	1, 2 (a-f), 3, 5 (a and b), 15 (2) and 16 (1.c, d, g and h)	Karen Tayag Vertido v. The Philippines was adopted on 16 July 2010	2 (c), (d), (f) and 5 (a)
Ms. A. T. v. Hungary was adopted on 26 January 2005	2 (a), (b) and (e), 5 (a) and 16	Maria de Lourdes da Silva Pimentel, represented by the Center for Reproductive Rights and Advocacia Cidadã pelos Direitos Humanos v. Brazil was adopted on 25 July 2011	2 (c) and 12
Ms. Dung Thi Thuy Nguyen v. The Netherlands was adopted on 14 August 2006	11 (2) (b)	Ms. V. K.(represented by counsel, Ms. Milena Kadieva) v. Bulgaria was adopted on 25 July 2011	1, 2 (a-c) (e-g), 5 (a) and 16 (1, c, g and h in light of general recommendation No 19)
Ms. A. S. (represented by the European Roma Rights Center and the Legal Defence Bureau for National and Ethnic Minorities) v. Hungary was adopted on 14 August 2006	10 (h), 12 and 16 (1) (e)	Inga Abramova (represented by counsel, Roman Kisliak) v. Belarus was adopted on 25 July 2011	2 (a), (b), (d), (e), (f), 3 and 5 (a) (read in conjunction with 1)
The Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of Hakan Goekce, Handan Goekce, and Guelue Goekce (descendants of the deceased) v. Austria was adopted on 6 August 2007	1, 2, 3 and 5	T.P.F.(represented by the Centre for Reproductive Rights and the Centre for the Promotion and Protection of Sexual and Reproductive Rights) v. Peru was adopted on 17 October 2011	1, 2 (c), (f), 3, 5, 12 and 16 (e)
The Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of Banu Akbak, Gülen Khan, and Melissa Özdemir (descendants of the deceased) v. Austria was adopted on 6 August 2007	1, 2, 3 and 5	Guadalupe Herrera Rivera (represented by counsel, Rachel Benaroch) v. Canada was adopted on 18 October 2011	1, 2(a), (b), (c), (d), 5 (a) and 24
Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain was adopted on 9 August 2007	2 (c) and (f)	Zhanna Mukhina v. Italy was adopted on 18 October 2011	16 (f)
Rahime Kayhan v. Turkey was adopted on 27 January 2006	11	Cecilia Kell v. Canada was adopted on 28 February 2012	1; 2 ((d) and (e)); 14 (2 (h)); 15 (1-4); 16 (1(h))
Ms. N. S. F. v. The United Kingdom of Great Britain and Northern Ireland was adopted on 30 May 2007	2 and 3	RKB v. Turkey was adopted on 24 February 2012	1; 2 ((a) and (c)); 5, (a); 11 (1 (a) and (d))
Ms. Constance Ragan Salgado v. The United Kingdom of Great Britain and Northern Ireland was adopted on 22 January 2007	1, 2 (f) and 9 (2)	Isatou Jallow v. Bulgaria 23 July 2012	1, 2((b), (c), (d), (e), and (f)) 3, 4, 5 (a) and 16.1 ((c), (d), and (f))
G. D. and S. F. v. France was adopted on 4 August 2009	16 (1) (g)	MPM v. Canada was adopted on 24 February 2012	2((c), (d)) ; 3; 15; 16
Michèle Dayras, Nelly Campo-Trumel, Sylvie Delange, Frédérique Remy-Cremieu, Micheline Zeghouani, Hélène Muzard-Fekkar and Adèle Daufrene-Levrard (represented by SOS Sexisme) v. France was adopted on 4 August 2009	16	SVP v. Bulgaria was adopted on 12 October 2012	1; 2 (b), (c), (d), (e), and (f); 3; 4; 5 (a); 12; 15
Ms. Zhen Zhen Zheng v. The Netherlands was adopted on 27 October 2008	6	CJS v. UK was adopted on 12 October 2012	1; 2; 3; 9

nature, whereby in addition to receiving information from NGOs and other groups, as well as the State Party, the Committee can conduct its own fact-finding activities in the form of interviews, on-site visits and hearings, with the consent of the State Party.

An inquiry is conducted confidentially and the cooperation of the State Party is sought at all stages of the proceedings.

The diagram on pages 54-55 maps the main stages of the inquiry procedure, as outlined in the OP-CEDAW and Rules of Procedure.

4.3.1 Meeting the requirements for an inquiry

The technical requirements for submitting a request for an inquiry are less extensive than those under the communications procedure and relate mainly to the nature of the information which the Committee will consider.

a) In the first instance the State Party must not have opted out of the inquiry procedure under the OP-CEDAW.

b) Secondly, the inquiry procedure applies only to violations that are grave or systematic in nature. This means the main requirement to be satisfied when requesting the CEDAW Committee to initiate an inquiry is to show that violations of this nature have taken place:

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, torture, forced disappearances or killings; e.g. two hundred single mothers and their children being forcibly evicted from a public housing building). A single violation can be grave in nature and a single act can violate more than one right.

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 resulting in the sterilisation of a large group of indigenous women without their consent).

Mexico Inquiry

The Committee found that the widespread and systematic

violence against women and crimes of murder and disappearances of women constituted grave and systematic violations of the provisions of the CEDAW, as well as of Recommendation No. 19 of the Committee.

c) The third important requirement is that the information provided must be considered “reliable” by the Committee.

The reliability of the information can be determined by consideration of the level of specificity, the internal coherence and consistency in reporting from different sources; the credibility of the sources and the extent to which sources such as the media are independent and bi-partisan.²¹

The scope of the factual information on which the Committee bases its finding of fact is broad: it may encompass details of alleged violations against both named individuals and groups of unnamed victims; the content of national law and policy; statements by victims and witnesses; and statements by government officials at local, regional and/or national levels.

There are no other admissibility requirements as there are with the communications procedure. It is not necessary to identify specific victims or to show that domestic remedies have been exhausted before requesting an inquiry. As individual victims do not have to be identified, it may be better suited than the communications procedure to situations in which individual victims could face the threat of reprisals if they seek redress at the international level.

d) As mentioned above, the only other requirement to be aware of is that the State Party must not have opted out of the inquiry procedure through a declaration or reservation at the time of signature or ratification of the OP-CEDAW.

IWRAW Asia Pacific has developed Guidelines for the drafting of a request for an inquiry to the CEDAW Committee which are available on its website (www.iwraw-ap.org).

4.3.2 The inquiry process

The formal process of an inquiry can only be initiated by the Committee itself. Information submitted by individuals, NGOs and others will be examined by the Committee to determine whether it is reliable and whether it indicates that grave or systematic violations have occurred.

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Mexico Inquiry

Non-governmental organizations Equality Now and Casa Amiga, located in New York and Ciudad Juárez, Mexico, respectively, requested the Committee to conduct an inquiry, under Article 8 of the Protocol, into the abduction, rape and murder of women in and around Ciudad Juárez, State of Chihuahua, Mexico.

Commonly, the Committee designates representative(s) from among its members to evaluate the information received, request additional information and present an evaluation of the factual record to the full Committee as the basis for deciding whether to initiate an inquiry.

The Committee invites the State concerned to submit observations on the information received and it seeks the cooperation of the State at all stages of the process. In these exchanges with the State, the Committee may be subject to political pressure from the State not to launch an inquiry. The confidential nature of the process may increase the likelihood of such pressure.

Upon confirming whether the information relates to a grave or systemic violation and whether the information is reliable, the CEDAW Committee can decide to establish an inquiry.

At this point the Committee's representative(s) are designated to conduct inquiry. The Committee's representatives have a broad authority to determine their own methods of work. The Committee can conduct its own fact-finding activities in the form of interviews, on-site visits and hearings, with the consent of the State Party. During an on-site visit members of the CEDAW Committee's 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.

Mexico Inquiry

Ms. María Yolanda Ferrer Gómez and Ms. Maria Regina Tavares da Silva were the Committee members selected to conduct the inquiry and report to the full Committee. The Government of Mexico consented to the members' request to conduct a visit to Mexico. During the visit the members met with government officials and bodies, UN representatives in Mexico and representatives of civil society, including Casa Amiga, Equality Now and victims' relatives.

The Committee invites the State Party to cooperate in

the examination and to submit observations with regard to the information concerned within six months. The Committee can proceed with the inquiry even if the State refuses to cooperate. However, in practice, the State's cooperation will be necessary for an effective inquiry (e.g. an on-site visit requires the consent of the State). As in the communications procedure, Committee members are expected to carry out their work under the inquiry procedure impartially and independently.

All documents and proceedings related to an inquiry are confidential. The meetings in which the Committee discusses information related to an inquiry are closed. The members of the Committee, testifiers and interpreters are required to maintain confidentiality.

However, NGOs or the State Party are free to make information related to an inquiry public. In practice, the fact that an inquiry has been initiated will be public due to the Committee's fact-finding activities, especially in connection with an on-site visit.

4.3.3 Findings and Recommendations

The outcome of an inquiry by the Committee is in the form of "findings." The findings outline the facts related of the situation, the CEDAW Committee's decision on whether grave or systematic violations have been committed, and the Committee's recommendations for measures to correct any violations. The recommendations may set out specific legal and non-legal steps to halt ongoing violations or establish accountability for violations which have occurred, identify changes to bring domestic laws, policies or practices into line with the Convention, and measures to prevent future violations, including policy reform and broad-based educational or other promotional initiatives. Such recommendations can include:

- measures to combat structural causes of discrimination against women; and
- measures to achieve equality between women and men.

Examples of remedies that could be made 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 the 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 context;
- 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.

The recommendations which are issued by the Committee if it finds a violation do not include specific measures of redress for the individual victim(s), such as compensation.

After the Committee concludes an inquiry and adopts its findings, comments and recommendations, it may consult with the State Party concerned prior to issuing to a public report on the inquiry. The final report is described as a “summary of its activities” in connection with an inquiry. The public report is included in the Committee’s annual report to the General Assembly and is available on the CEDAW

Committee website at: http://www2.ohchr.org/english/bodies/cedaw/inquiry_procedure.htm.

4.3.4 Follow-up

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, or include information on its response in its next periodic review.

The CEDAW Committee’s findings are not legally binding but they are determinative. As with the communication procedure, enforcement of recommendations to State Parties will, in many ways rely on on-going dialogue and persuasion rather than firm instructions regarding compliance.

4.3.5 Review of Inquiries to date

As of April 2013 the CEDAW Committee has only considered one inquiry. The inquiry related to facts in Mexico and the first information for the inquiry was received from NGOs in October 2002. The Committee decided to initiate the inquiry in July 2003 and its report was adopted in January 2004. The subject of the inquiry was the pattern of violence against women in the area of Ciudad Juarez, Mexico.

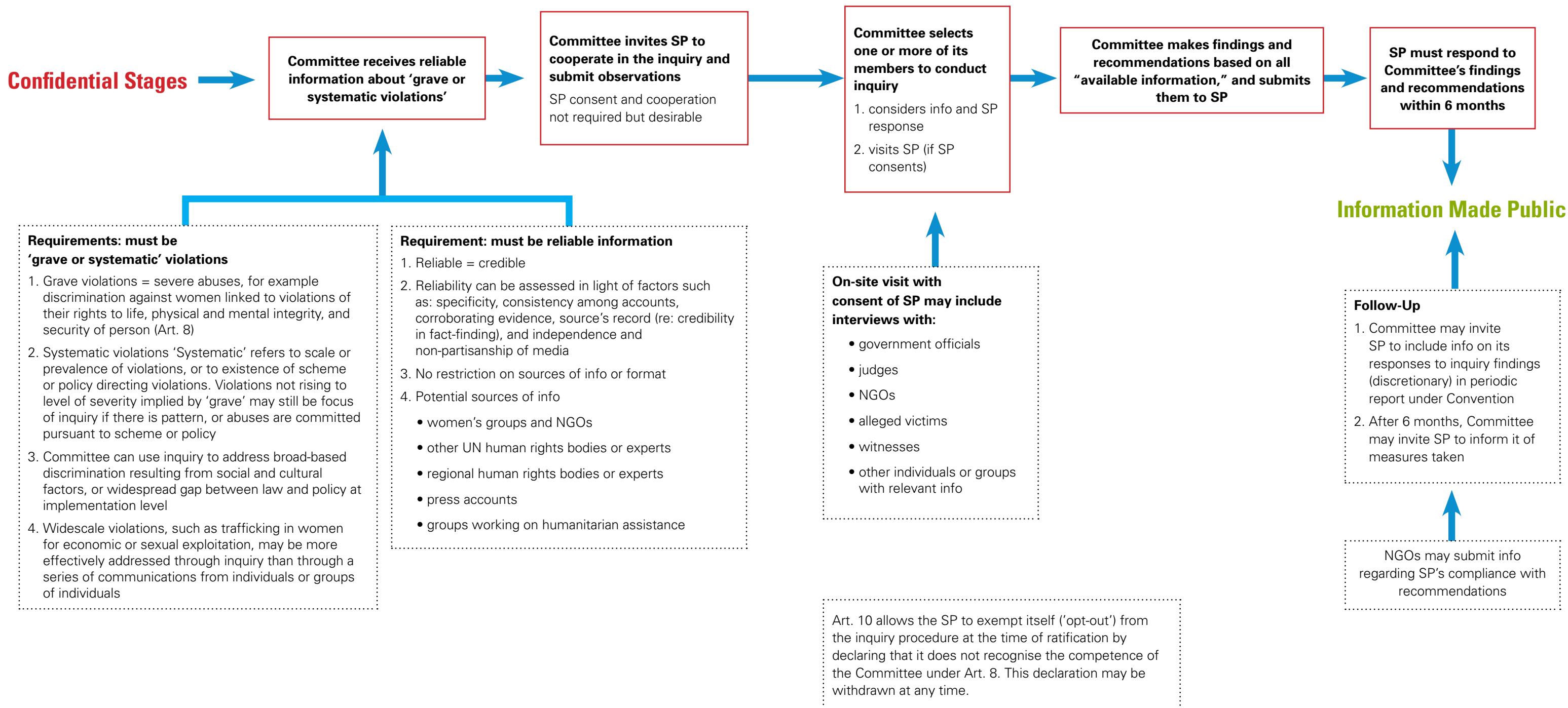
The inquiry took two years from the time information was received from one Mexican NGO (Casa Amiga) and an international NGO (Equality Now), and placed under review until the Committee issued its findings and recommendations.

The violations at issue in the inquiry were abductions, rapes and murders of women over the course of a ten year period. More than 200 young women and girls, primarily maquila workers, students and employees of commercial companies, had been disappeared and murdered in the area of Ciudad Juarez.

The Committee designated two members to assess the information. Based on their assessment and the information itself, the Committee decided that the information before it was reliable and indicated grave or systematic violations were occurring. The nature of violations was both grave and systematic: violations at issue were murders and disappearances, there had been a large number of victims, there was a pattern continuing over a lengthy period of time, and the documented failures of the justice system demonstrated

Inquiry Procedure

Applies to States Parties (SPs) that have not 'opted-out'*



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that government inaction or complicity had resulted in impunity for the perpetrators. There was also clear evidence of official complicity in the violations at the local level, confirming the systematic nature of the violations.

The Committee invited the Government of Mexico to submit observations and the Government cooperated. In its response the Government acknowledged the gravity of the situation and measures being taken to respond. The Mexican Human Rights Commission and the two NGOs provided additional information indicating that the violations were ongoing. The Committee decided to initiate an inquiry and appointed the same two members to conduct it.

The Mexican Government was fully cooperative and consented to an on-site visit in Mexico for nine days. The visit was conducted by the Committee's representatives and included interviews with senior federal and State officials with the Public Prosecutors Office, Office of the Attorney General, National Women's Institute, Human Rights Unit of Ministry of Interior and the National Human Rights Commission; with Congressional representatives; the UNIFEM representative, and local, national and international NGOs.

The Committee's principal findings were that the facts constituted grave and systematic violations of Articles 2 and 5 of the Convention as well as of Recommendation No. 19 and the UN Declaration on the Elimination of Violence against Women. The Committee found that there had been serious lapses in compliance with the commitments made by Mexico through its ratification of the Convention as evidenced by the continuation of very widespread and systematic violence against women and by the crimes of murder and disappearance of women as one of its most brutal manifestations.

The Committee made a range of recommendations pertaining to the framework for responses to the violations, concerning the investigation of the violations, punishment of perpetrators and support for victims' family and concerning general measures to prevent violence, guarantee security and promote women's human rights. The Mexican Government issued a response and began undertaking measures to address the recommendations.

A second inquiry brought under the OP-CEDAW on the reproductive rights of women in the city of Manila, Philippines, is pending. In October 2011, the CEDAW Committee

agreed to initiate an inquiry procedure in relation to the murders and disappearances of Aboriginal women and girls across Canada. No further information on this inquiry was available at the time of publication.

It is likely that the CEDAW Committee may not establish inquiries frequently, due to the practical need for cooperation from the State concerned, political pressures related to the State's desire to avoid an inquiry, and the financial costs and administrative burdens associated with on-site visits to the State concerned.

4.4 Conclusion

The CEDAW Convention and the OP are part of a broader, holistic framework for the protection of human rights. Like all human rights, women's human rights are interdependent and the equality aims of the CEDAW Convention can only be achieved in practice if States implement the rights guaranteed in other human rights treaties. OP-CEDAW is a critical tool in demanding the implementation and realization of women's economic, social and cultural rights and should be utilized to make violations specific to women related to food, water, health, housing and work more visible at the national and international levels.

In seeking to use the procedures under the OP-CEDAW, women's human rights advocates should take into account the jurisprudence and practice of other human rights bodies, because the CEDAW Committee and State Parties have referred to those sources for guidance and will undoubtedly continue to do so. A significant number of the procedural and substantive issues that are raised in communications are the subject of broadly agreed jurisprudence in international human rights law, such as the exhaustion of domestic remedies and positive obligations to prevent and respond to violence by non-State actors.

The Convention must be interpreted in light of its specific wording and its object and purpose. However, the language and legal concepts used in other human rights treaties parallel or resemble those found in the CEDAW Convention. The Committee will look to approaches taken by other human rights bodies for authoritative guidance on a range of questions, including methods of interpretation, procedural requirements, general international law principles, and the types of measures necessary to remedy a

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violation and prevent future violations.

Jurisprudence under other human rights treaties and general human rights law is relevant not only with respect to procedural or technical questions, but also with respect to certain substantive issues. For example, a communication alleging gender discrimination with regard to the rights to housing or food would require the CEDAW Committee to look to general human rights law for clarification of the scope and content of the underlying rights if it wishes to recommend effective measures to remedy the violation, rather than merely finding that the acts or omission of the State were discriminatory. This is particularly true where claims relate to failure to fulfill the underlying rights. For example, a claim based on the indirectly discriminatory effects of the types of measures taken by the State to fulfill the right to housing requires an evaluation of whether those measures are of the type understood in human rights law to be effective in fulfilling the State's general obligations regarding the right to adequate housing. Similarly, a claim regarding gender discrimination in the context of government responses to the disappearance of a woman human rights defender would require the Committee to consider general human rights law and practice related to the obligations of the State in cases of disappearance. Of course, the Committee would apply the definition of discrimination in the CEDAW Convention and assess the State's obligations under other relevant provisions of the Convention, in order to determine whether a violation had taken place.

The potential for general human rights law to have beneficial effects on developments in women's human rights law is illustrated by the incorporation of the "due diligence" standard into the UN Declaration on Violence Against Women, the CEDAW Committee's General Recommendation No. 19 on Violence against Women and the CEDAW Committee's decisions in communications related to domestic violence: the due diligence standard and the rationale supporting its application to violations by non-State actors were taken directly from the decision of the Inter-American Court of Human rights in the 1988 *Velasquez Rodriguez v. Honduras* case.

If women are to benefit from helpful developments in general human rights law, advocates must take an active role in bringing them to the attention of the Committee and arguing for their application in a particular communication or in a

situation which is the subject of an inquiry. Article 3 of the CEDAW Convention states that:

State 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.

In thus extending the objectives to be achieved by States beyond enjoyment of the specific rights recognized in the Convention, Article 3 points to the need to situate the Convention within the wider human rights framework.

Notes

¹ For a list of State Parties to CEDAW see: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

For a list of State Parties to the OP CEDAW see: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en.

² See *Compilation of Rules of Procedure Adopted by Human Rights Treaty Bodies. Addendum* (UN Doc HRI/Gen/3/Add.1) 18 April 2002: Part III—Rules of procedure for the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; XVI—Procedures for the Consideration of Communications Received under the Optional Protocol.

³ Rule 96(b) of the Rules of Human Rights Council (HRC) in *Compilation of Rules of Procedure adopted by Human Rights Treaty Bodies HRC/GEN/3/Rev.2* at <http://www.law.wits.ac.za/humanrts//esc/compilationprocedures2001.html>.

⁴ HRC, *Lanza v. Uruguay*, Communication No. 8/1997, UN Doc CCPR/C/9/D/8/1997.

⁵ HRC, *Weinberger v. Uruguay*, Communication No. 28/1978, UN Doc CCPR/C/11/D/28/1978.

⁶ HRC, *Miango v. Democratic Republic of Congo*, Communication No. 194/1985, UN Doc CCPR/C/31/D/194/1995.

⁷ HRC, *Sahid v. New Zealand*, Communication No. 893/1999, UN Doc CCPR/C/77/D/893/1999.

⁸ See CEDAW Committee Rules of Procedure, *supra* n. 65 above, Rule 68(3)

⁹ Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of Banu Akbak, Gülen Khan, and Melissa Özdemir (descendants of the deceased). CEDAW/C/39/D/6/2005 1 October 2007.

¹⁰ HRC, *Toonen v. Australia*, Communication No. 488/1992, UN Doc CCPR/C/50/D/488/1992 (1994).

¹¹ See also Inter-American Commission of Human Rights (IACHR), "PM 43-10—"Amelia", Nicaragua." On February 26, 2010, the IACHR granted precautionary measures for a person who the IACHR will identify as Amelia, in Nicaragua. The request seeking precautionary measures alleges that Amelia, mother of a 10-year-old girl, is not receiving the necessary medical attention to treat the cancer she had, because of her pregnancy. The request alleges that the doctors had recommended to urgently initiate chemotherapy or radiotherapy treatment, but the hospital informed Amelia's mother and representatives that the treatment would not be given, due to the high risk that it could provoke an

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abortion. The Inter-American Commission asked the State of Nicaragua to adopt the measures necessary to ensure that the beneficiary has access to the medical treatment she needs to treat her metastatic cancer; to adopt the measures in agreement with the beneficiary and her representatives; and to keep her identity and that of her family under seal. Within the deadline set to receive an answer, the State of Nicaragua informed the IACtHR that the requested treatment has been initiated; See also, ECHR, *K.H. and Others v. Slovakia*, (Application no. 32881/04); ACHPR, *B. v. Kenya*, Communication 283/2003, Seventeenth Activity Report.

¹² Office of the High Commissioner for Human Rights, *Fact Sheet: How to submit individual complaints under the Optional Protocol to CEDAW*, available at: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CEkQFjAA&url=http%3A%2F%2Fwww2.ohchr.org%2Fenglish%2Fbodydocs%2Fcedaw%2Fdocs%2FFS_ModelCommunicationForm.doc&ei=DukjUJK3Gsm0AGq2lHYDA&usg=AFQjCNF8TyVVxNAfqhyVIY-kfgjuna07zQ.

¹³ See IWRAW-Asia Pacific, *The OP-CEDAW as a mechanism for implementing women's human rights: An analysis of decisions Nos. 6-10 of the CEDAW Committee under the Communications procedure of the OP-CEDAW, Occasional Paper Series, No 13* (2009). Under "Lessons Learned," discussing Communication 9: Case of *N.S.F. vs. the United Kingdom of Great Britain and Northern Ireland*, Communication No.10/2005, CEDAW/C/38/D/10/2005, the author reminds that "proceedings before the Committee are legal in nature and there would be a lot of discussion and analysis of the de jure and de facto position of state obligations and laws. The author did not invoke specific provisions of the Convention nor demonstrated how the Convention may have been violated. The Committee was of the opinion that her claims appeared to raise issues under Articles 2 and 3 of the Convention. And although it was not the reason why the Committee declared the communication inadmissible it was one of the objections of the state party.

¹⁴ See CESCR, General Comment No 15 on the right to water, and No 14 on the right to health, para.11.

¹⁵ In contrast, CERD, for example, will deem a complaint inadmissible if it is submitted after 6 months have lapsed between the exhaustion of domestic or international remedies and the submission of the complaint.

¹⁶ OHCHR Factsheet, supra n. 74 above.

¹⁷ The admissibility requirements can also be identified as follows:
•Admissibility *ratione loci*: requirements concerning the state's jurisdiction with regard to the violation
•Admissibility *ratione materiae*: requirements concerning what rights and obligations of the state are covered by the treaty
•Admissibility *ratione personae*: requirements concerning who may present a claim and who may be the respondent
•Admissibility *ratione temporis*: requirement that the events on which the claim is based occurred after the treaty had entered into force for the State.

¹⁸ See for example, European Court of Human Rights, *Aksoy v. Turkey*, Judgment of 18 December 1996, Reports of Judgments and Decisions 1996 IV, p. 2275, para. 53; African Commission on Human and Peoples' Rights, Communication Nos. 147/95, 149/96, *Jawara v. The Gambia*, Thirteenth Annual Activity Report (1999-2000), para 31; and African Commission on Human and Peoples' Rights, Communication 71/92, *Rencontre Africaine pour la Défense Droits de l'Homme v. Zambia* (Zambian expulsion case), Ninth Annual Activity Report (1995 -1996), para. 11.

¹⁹ Handbook for legislation on violence against women, Department of Economic and Social Affairs, Division for the Advancement of Women, United Nations Publication, New York, 2009, p. 27

²⁰ IWRAW Asia-Pacific, Occassional Paper No 13, supra n. 75 above.

²⁵ See, Inter-American Institute of Human Rights (IIDH) and International

Commission of Jurists (ICJ), *Commentary on the Optional Protocol to ICE-SCR* (2010) p. 97.