



Australian
Human Rights
Commission

Mechanisms for advancing women's human rights:

A GUIDE TO USING THE OPTIONAL PROTOCOL
TO CEDAW AND OTHER INTERNATIONAL
COMPLAINT MECHANISMS • 2011



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Mechanisms for advancing women's human rights:

A guide to using the
Optional Protocol to
CEDAW and other
international complaint
mechanisms

Australian Human Rights Commission 2011



**Australian
Human Rights
Commission**

Foreword



Elizabeth Broderick
Sex Discrimination Commissioner
Australian Human Rights Commission

In my role as Sex Discrimination Commissioner, I have been working together with the Australian Government, business, unions and community groups to identify practical ways of achieving gender equality in Australia.

Australia's accession to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2008 offers a new way in which women's human rights can be advanced.

Australia has a strong system of law and strong processes for the protection of women's rights. However, it is not perfect and gaps do exist. Gaps exist in a variety of areas covered by the *Sex Discrimination Act 1984* including superannuation, sport, provisions of goods and services, and in employment. These gaps exist not only in the coverage of legislation but sometimes in the manner in which the legislation is enforced. The Optional Protocol provides a possible means for redressing such gaps.

An Optional Protocol enables individuals or groups of individuals to seek redress for violations of their human rights that are recognised in an international human rights treaty. An international complaint mechanism can be effective in drawing international

attention to alleged violations of rights. The availability of the Optional Protocol to individuals within Australia provides a strong impetus to use international mechanisms to correct discrepancies and failings within our current domestic legal system. It has moved Australia one step closer to eliminating discrimination against women.

The guide provides lawyers, advocates and women experiencing violations of their rights with an introduction and a practical guide on how to use the Optional Protocol to CEDAW and other alternative protective mechanisms at the international level. This guide is an important educative tool for progressing gender equality in Australia.

A handwritten signature in black ink that reads "E. Broderick". The signature is written in a cursive, flowing style.

Elizabeth Broderick
Sex Discrimination Commissioner
Australian Human Rights Commission

June 2011

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Abbreviations

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT Committee	Committee against Torture
CED	Committee on Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	Committee on Migrant Workers
Commission	Australian Human Rights Commission
CPED	International Convention for the Protection of All Persons from Enforced Disappearances
CRPD	Convention on the Rights of Persons with Disabilities
CRPD Committee	Committee on the Rights of Persons with Disabilities
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
NGOs	Non-governmental organisations
Optional Protocol to CEDAW	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
Optional Protocol to the CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities
Optional Protocol to the ICCPR	Optional Protocol to the International Covenant on Civil and Political Rights
Optional Protocol to ICESCR	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
UN	United Nations

Executive Summary

Mechanisms for advancing women's human rights: A guide to using the Optional Protocol to CEDAW and other international complaint mechanisms (Guide) provides an introduction to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (**Optional Protocol to CEDAW**).

The Guide seeks to outline what the Optional Protocol to CEDAW is, and how the Protocol and other international complaint mechanisms can be used to advance the human rights of women in Australia.

What is an Optional Protocol?

An Optional Protocol establishes mechanisms designed to enable individuals or groups of individuals to seek redress for violations of their human rights. An Optional Protocol can also be used as an advocacy tool to advance human rights.

A government is bound by an Optional Protocol if it takes formal steps to become a 'party' to it. The Australian Government became a party to the Optional Protocol to CEDAW in 2008, and is also a party to other Optional Protocols.

Women in Australia can now use the Optional Protocol to CEDAW to seek redress for alleged violations of their rights in the UN Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**).

Women can also seek redress for alleged violations of their human rights which are guaranteed in treaties other than CEDAW, through other international complaint mechanisms that exist under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Optional Protocol to the International Covenant on Civil and Political Rights, and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

When should women use international complaint mechanisms?

International complaint mechanisms provide women with an important means of seeking redress for alleged violations of their human rights. A woman might, for instance, consider using an international complaint mechanism where she has been unable to obtain redress within Australia. She might consider

using an international complaint mechanism to draw international attention to the alleged violations of her rights, so that she can mobilise support for her case and apply pressure for effective change. Generally speaking, women must exhaust all available domestic remedies before using international complaint mechanisms.

Using an international complaint mechanism to obtain redress for alleged violations may not, however, always be the only or necessarily the most effective means available to seek redress.

This Guide seeks to identify some of the factors that women should consider in deciding whether or not to use an international complaint mechanism to seek redress for alleged violations of their human rights.

How can women use the Optional Protocol to CEDAW to advance their human rights?

There are two ways women can use the Optional Protocol to CEDAW to seek redress for violations of their rights in CEDAW. They can use the communication procedure or the inquiry procedure.

The communication procedure enables women to submit a complaint to the UN Committee on the Elimination of Discrimination against Women (**CEDAW Committee**) seeking redress for alleged violations of their rights in CEDAW, by the Australian Government.

The inquiry procedure enables women to submit a request to the CEDAW Committee to conduct an inquiry into alleged grave or systematic violations of rights in CEDAW, by the Australian Government.

Who should read this Guide?

This Guide is intended for advocates and lawyers who can assist women to use international complaint mechanisms.

The Guide will also be helpful for increasing understanding within the community of the international complaint mechanisms that are available and the ways they can be used by women to advance their human rights.

1 Introduction

In March 2011, the world celebrated the one hundredth anniversary of International Women's Day. This important occasion prompted reflection on the progress that has been made, both in Australia and overseas, in eliminating discrimination against women and ensuring substantive equality.

Over the past century, Australia has moved to eliminate discrimination against women, through enactment of such laws as the *Sex Discrimination Act 1984*, the *Equal Opportunity for Women in the Workplace Act 1999* and, most recently, the *Paid Parental Leave Act 2010*. The government has also launched a *National Plan to Reduce Violence against Women and their Children* and Australia is one of a group of countries ranked first for women's educational attainment.

Yet, as we reflect on women's position in Australian society, it is clear that women still experience inequality and disadvantage, and sex discrimination remains a harsh reality for many women. The number of complaints made under the *Sex Discrimination Act 1984* has increased in recent years.¹ One in three women in Australia has experienced violence since the age of 15,² and one in five women experience sexual harassment.³ Women currently earn approximately 82 cents in the male dollar (full-time adult ordinary earnings), the gender pay gap has widened over the past four years,⁴ and superannuation balances and payouts for women are approximately half of those of men.⁵ In addition, despite comprising over 45% of Australia's total workforce, women remain grossly under-represented in leadership and management positions in virtually all sectors.⁶

It is clear from this picture that a stronger commitment to achieving substantive equality is urgently needed. Australia's accession to the Optional Protocol to CEDAW⁷ in 2008 provides women with an additional tool to address the inequality and disadvantage they experience, and to advance their human rights. On the occasion of the entry into force of the Optional Protocol for Australia, the Government acknowledged that the Optional Protocol to CEDAW would 'strengthen the rights of Australian women and provide a further measure to protect them against discrimination'.⁸

The Guide provides an introduction to the Optional Protocol to CEDAW as well as other international complaint mechanisms, and explains how such instruments can be used to advance the rights of women in Australia.⁹ It is intended for advocates and

lawyers who can assist women to use international complaint mechanisms. The Guide is also useful for increasing community understanding about international complaint mechanisms and how they can be used to advance women's human rights.

Section 2 of the Guide provides an introduction to the communication procedure of the Optional Protocol to CEDAW, and explains how to use the procedure to seek redress for alleged human rights violations under CEDAW¹⁰ – the international human rights treaty that aims to eliminate all forms of discrimination against women. Section 3 provides an introduction to the inquiry procedure in the Optional Protocol to CEDAW, and describes how to request an inquiry into acts or omissions of the Government that may have resulted in grave or systematic violations of CEDAW. Section 4 briefly explores the other international complaint mechanisms that are available to women and provides examples of how they have been used to hold the government accountable for human rights violations. Section 5 outlines a number of factors to be taken into account when deciding whether to use international complaint mechanisms. Section 6 identifies where women can go for further assistance and information about using international complaint mechanisms.

1.1 What is a human rights treaty?¹¹

An international human rights treaty (sometimes called a 'convention' or a 'covenant') is a document that contains a collection of human rights norms and standards agreed to by different countries.

An Optional Protocol is a type of human rights treaty. It is usually developed to establish a new procedural or substantive norm, or to build upon procedures that are insufficiently developed within the primary human rights treaty. The Optional Protocol to CEDAW is a treaty that establishes a process for individuals or groups of individuals to lodge a complaint of, or request an inquiry into, discrimination against women, with the CEDAW Committee.

To be bound by a human rights treaty, a government must take formal steps to become a 'party' to it. By becoming a party to a human rights treaty, governments agree to ensure that all people subject to its jurisdiction are able to access and enforce the rights outlined in those treaties. This often involves being subject to UN scrutiny, including by 'treaty bodies' that are responsible for monitoring States Parties' efforts to implement the provisions of human rights treaties.

1.2 CEDAW and its Optional Protocol

In 1979, the UN General Assembly adopted CEDAW to address ongoing discrimination against women. Described sometimes as an international bill of rights for women, CEDAW aims to eliminate all forms of discrimination against women, with a view to achieving substantive equality.

The human rights and fundamental freedoms enshrined in CEDAW cover all aspects of women's lives, including in the political, economic, social, cultural, and civic fields.

Substantive rights protected in CEDAW

Freedom from all forms of discrimination against women, including gender-based violence against women (art. 1)¹²

Freedom from prejudices, discriminatory customs and other practices, and gender stereotyping (arts. 2(f), 5)

Freedom from trafficking and exploitation of prostitution (art. 6)

Right to equality in political and public life (arts. 7-8)

Right to equality regarding nationality (art. 9)

Right to equality in education (art. 10)

Right to equality in employment (art. 11)

Right to equality in health care (art. 12)

Right to equality in economic life, sport and culture (art. 13)

Rights of women living in rural and remote areas (art. 14)

Right to equality before the law (art. 15)

Right to equality in marriage and family relations (art. 16)

In addition to the specific obligations outlined above (e.g., to guarantee women equality in political and public life), CEDAW imposes a number of general obligations on States Parties.

State obligations to eliminate all forms of discrimination against women

Article 2 – general obligations

States Parties undertake to:

- embody the principle of equality in national constitutions or other appropriate legislation;
- adopt legislative and other measures, including sanctions, prohibiting discrimination;
- adopt legal protection of the rights of women on an equal basis with men and ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- refrain from engaging in discrimination and ensure public authorities and institutions refrain from discrimination;
- eliminate discrimination against women by any person, organization or enterprise;
- take measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women;
- repeal discriminatory penal provisions.

Article 4 – temporary special measures

Adoption of temporary special measures aimed at accelerating de facto equality between men and women does not constitute discrimination.

See Appendix A for unabridged text of articles 2 and 4 of CEDAW.

CEDAW contains two mechanisms to monitor the steps taken by States Parties to give effect to the provisions in CEDAW.

- The **reporting procedure** requires States Parties to report periodically to the CEDAW Committee on the measures adopted to give effect to the provisions of CEDAW.¹³ The CEDAW Committee then issues 'Concluding Observations' that evaluate the adequacy of measures adopted to give effect to CEDAW and makes recommendations for improving the protection and promotion of women's human rights.
- The **interstate complaint procedure** enables States Parties to refer disputes concerning the interpretation or application of CEDAW to the International Court of Justice.¹⁴ Only States Parties to CEDAW can initiate the interstate complaint procedure, though no State Party has ever used the procedure to challenge an interpretation of CEDAW or its application by another State Party.

Although important for the advancement of women's human rights, the communication and interstate complaint procedures do not enable individual women to seek redress for alleged violations of CEDAW.

The Optional Protocol to CEDAW

The UN General Assembly adopted the Optional Protocol to CEDAW in 1999 to supplement the reporting and interstate complaint procedures, and strengthen the mechanisms available to individual women to seek redress for violations of their rights in CEDAW. The Optional Protocol introduced two new procedures known as the communication procedure and the inquiry procedure.

- The **communication procedure** enables individual women, groups of individual women, or persons acting on their behalf to submit a communication (i.e., a complaint) to the

CEDAW Committee alleging violations, by a State Party, of rights in CEDAW. It enables women to obtain international redress for violations of their rights in CEDAW, where attempts to obtain redress through domestic remedies have failed.

- The **inquiry procedure** authorises the CEDAW Committee to conduct inquiries into allegations of grave or systematic violations, by a State Party, of rights in CEDAW. The procedure enables the CEDAW Committee to make recommendations to States Parties on how to redress egregious and widespread violations of women's human rights.

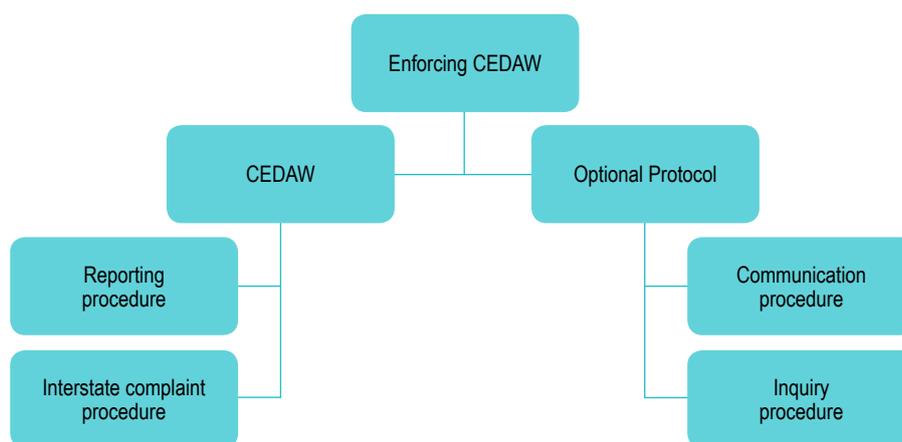


Figure 1 – Enforcing rights in CEDAW

Just over a decade old, the Optional Protocol to CEDAW has already shown great promise in its ability to advance women's human rights. It has been used, and continues to be used, by women to seek redress for alleged violations of their rights, including gender-based violence, preventable maternal mortality, forced sterilisation, a prohibition against headscarves, sex trafficking, paid maternity leave, denied access to contraceptives and related health information, and gender stereotyping in a rape trial.

The Australian Government became a party to the Optional Protocol to CEDAW in 2008. It can be used as a tool to seek redress for violations of human rights in CEDAW. Yet, despite its potential as a tool to advance women's human rights, limited use has been made of the Optional Protocol in the Asia Pacific region, including in Australia. At the time of writing, neither the communication procedure nor the inquiry procedure had been used in relation to Australia.

The reasons for the limited use of the Optional Protocol in Australia are varied. One explanation is that the Optional Protocol only recently entered into force for Australia. Another, related reason is lack of community awareness of the Optional Protocol, including how to use its communication and inquiry procedures to protect and promote the human rights of women.

1.3 Other international complaint mechanisms

The Optional Protocol to CEDAW is not the only means of seeking to hold the Australian Government legally accountable for alleged violations of women's human rights. A number of other international human rights treaties contain communication and inquiry procedures that women can use to advance their human rights. This Guide refers to them collectively as 'international complaint mechanisms'.

Women can submit complaints alleging violations of their human rights, through the communication procedures of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**), the International Convention on the Elimination of All Forms of Racial Discrimination (**ICERD**), the Optional Protocol to the International Covenant on Civil and Political Rights (**Optional Protocol to the ICCPR**), and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (**Optional Protocol to the CRPD**).

Communication procedures are also contained in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (**ICRMW**), the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (**Optional Protocol to ICESCR**), and the International Convention for the Protection of All Persons from Enforced Disappearances (**CPED**). However, as the Australian Government has not yet ratified these treaties and as the Optional Protocol to ICESCR and CPED have not yet entered into force, women are not yet able to use those procedures to submit complaints against the Australian Government.

CAT and the Optional Protocol to the CRPD also contain an inquiry procedure, which enables requests to be submitted for an inquiry into grave or systematic

violations of human rights. An inquiry procedure is contained in the Optional Protocol to ICESCR, however, this instrument has not yet entered into force and the Australian Government has not yet ratified it.

No communication or inquiry procedure has been established to advance the rights guaranteed in the UN Convention on the Rights of the Child. However, the UN Human Rights Council, in June 2011, passed a resolution to establish an Optional Protocol to the Convention that would allow allegations concerning violations of the rights of children to be determined by the Committee on the Rights of the Child. Other communication and inquiry procedures may also be established in the future, which will provide further means of holding the Australian Government legally accountable for violations of women’s human rights.

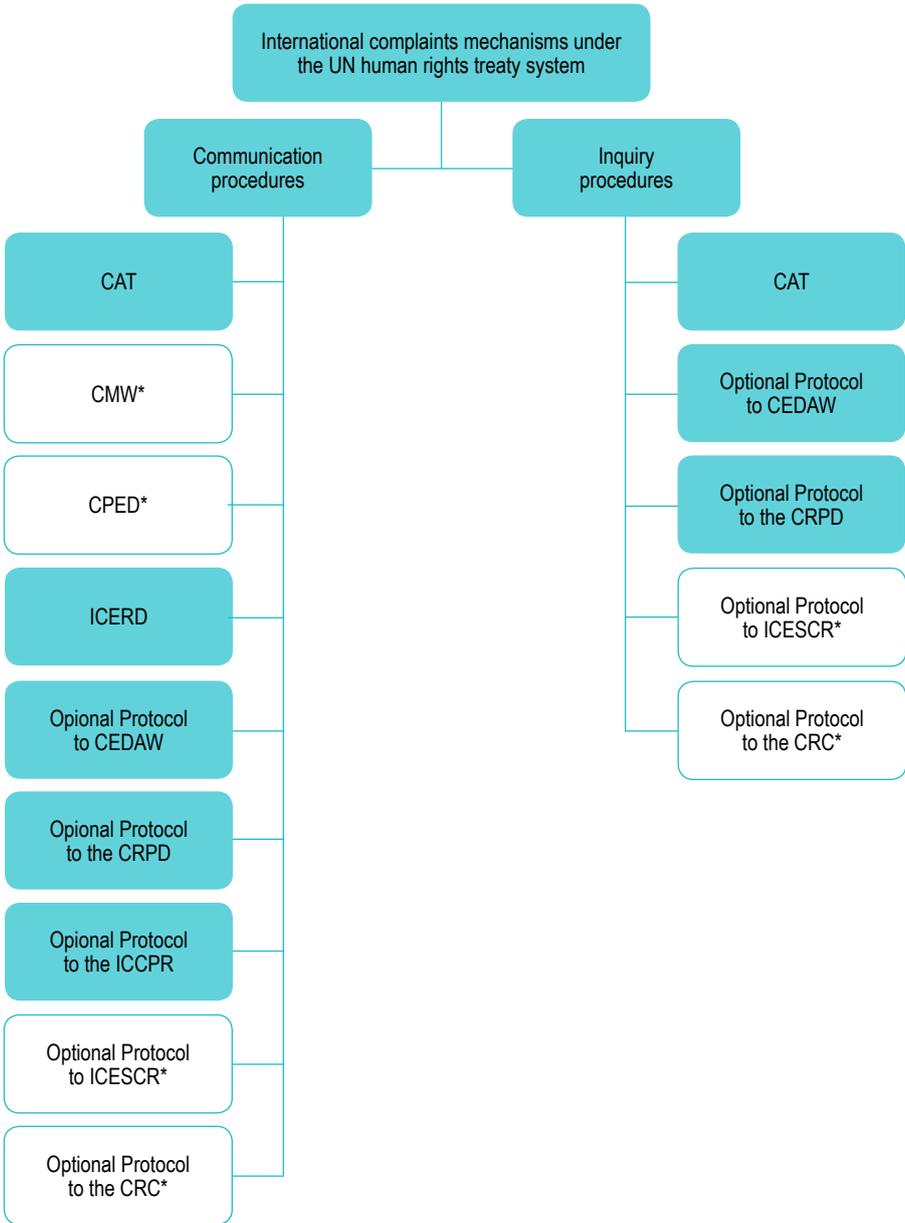


Figure 2 – International complaints mechanisms under the UN human rights treaty system

* These procedures have not entered into force or are not binding on the Australian Government.

1.4 Why use international complaint mechanisms?

International complaint mechanisms, such as the Optional Protocol to CEDAW, offer an important means of holding governments accountable for failures to respect, protect and fulfil women's human rights. However, they are not the only or necessarily the most effective means available to address specific violations of women's human rights. Whether or not international complaint mechanisms are appropriate in a particular case requires careful consideration of the facts and circumstances of the alleged victim as well as any potential barriers to using those mechanisms.

There are a number of reasons why someone might consider using international complaint mechanisms. For example, a woman might:

- have exhausted all available means of obtaining redress at the domestic level for violations of her rights, and may want to obtain international redress for violations of her human rights;
- want to establish the legal accountability of the Australian Government for alleged breaches of its human rights obligations;
- want to draw international attention to violations of her rights, with a view to mobilising support and applying pressure on the Australian Government to respond effectively;

- seek structural change, including law reform or policy development;
- aim to build jurisprudence that can influence decision-making in national bodies, including courts;
- seek to establish an international legal precedent that would compel the Australian Government to take action to address particular human rights violations;
- want to bring the alleged violation of her rights to the attention of an international body, comprised of independent experts, so that it can scrutinise the actions of the Australian Government and monitor closely how it responds to alleged violations of women's human rights;
- want to provide a focus for national campaigns on issues relevant to the advancement of women's human rights, and encourage strategic alliances amongst women's human rights activists.

The potential benefits of using international complaint mechanisms as a tool for advancing women's human rights hinge on the advantages to women of the substantive guarantees in the human rights treaties themselves.

2 Communication procedure

Under the communication procedure, individual women, groups of individual women, or persons acting on their behalf can submit communications to the CEDAW Committee alleging violations of rights in CEDAW.

The communication procedure provides women with a means of seeking international redress for violations of their rights in CEDAW, where attempts to obtain redress in Australia have failed.

The communication procedure consists of six stages.

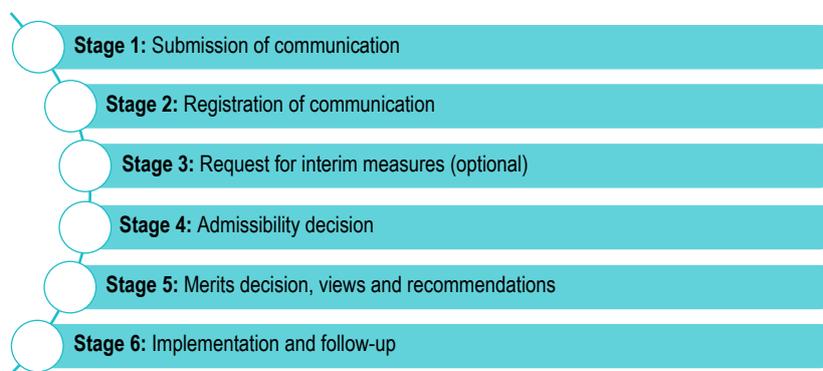


Figure 3 – Stages of the communication procedure

Stage 1: The communication procedure is triggered when a communication is submitted to the CEDAW Committee for its consideration.

Communications are initially submitted to the Office of the High Commissioner for Human Rights, which acts as a Secretariat to the CEDAW Committee. The Office will determine whether the communication should be brought to the attention of the CEDAW Committee, in accordance with the Optional Protocol and the Rules of Procedure. If deemed appropriate, the Office will transmit a summary of relevant information to the CEDAW Committee at its next regular session.

Stage 2: The CEDAW Committee decides whether or not to register the communication.

Stage 3: At any time after the CEDAW Committee registers a communication and before it reaches a final determination, it can transmit to the State Party a request to take such interim measures as may be necessary to avoid possible irreparable harm to the alleged victim.

Stage 4: Once a communication has been registered, the CEDAW Committee determines whether or not it meets the admissibility criteria set out in articles 2 – 4 of the Optional Protocol.

Communications that satisfy all criteria will be declared admissible. Communications that do not satisfy all criteria will be declared inadmissible, and the CEDAW Committee will be prevented from considering whether the rights of the alleged victim have been violated.

The CEDAW Committee will sometimes consider the admissibility and merits of a communication at the same time. In such circumstances, stages 4 and 5 are combined.

Stage 5: After a communication has been declared admissible, the CEDAW Committee considers whether or not the State Party has breached its obligations under CEDAW. This process is sometimes referred to as a 'merits decision'.

Once a decision has been reached, the CEDAW Committee issues its 'views' (i.e., findings). The views will identify whether or not, in the CEDAW Committee's expert opinion, the State Party has violated any substantive rights in CEDAW (e.g., the right to equal pay for work of equal value). If a violation of CEDAW is found, the CEDAW Committee will include in its views recommendations on how the State Party should redress those violations.

Stage 6: The State Party is responsible for implementing the CEDAW Committee's views and recommendations. The Committee may decide to follow-up on its views and recommendations to monitor the State Party's progress in this regard.

Each of these stages is explored in detailed below.

2.1 Stages 1 and 2: submission and registration of communications

The CEDAW Committee will only 'receive' communications that satisfy the requirements set out in article 3 of the Optional Protocol.

Requirements to receive communications

Article 3

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

In order to be received by the CEDAW Committee, a communication must:

- be in writing;
- not be anonymous;
- concern a State Party to the Optional Protocol to CEDAW.

(a) Communications must be in writing and not be anonymous

The CEDAW Committee will only receive communications that are in writing and not anonymous.¹⁵

The Committee has developed a model communication form to facilitate the submission of written communications (**Appendix 4**). The communication must be written in one of the six official UN languages.¹⁶

Among other things, the form asks for information (e.g., name, date of birth) to assist the CEDAW Committee to identify both the author and the alleged victim (if other than the author).

The **author** of the communication is the person(s) who submits the communication. The **victim** is the person(s) whose rights in CEDAW have allegedly been violated. Where the alleged victim submits a communication herself, she is both the victim and author. The victim and author will be different if an individual or organisation submits a communication on behalf of the alleged victim (see Section 2.3(a)).

The alleged victim must agree to disclose her identity to the Australian Government, so that it can investigate the allegations made against it. However, the alleged victim may request that the CEDAW Committee not publish her name and identifying details.¹⁷ An alleged victim might make such a request where, for example, she wishes to protect her privacy or fears reprisal if it becomes known that she submitted a communication under the Optional Protocol to CEDAW.

Communications should be sent to the CEDAW Committee care of the Office of the High Commissioner for Human Rights.

Where to submit a communication

Petitions Team

Office of the High Commissioner for Human Rights

United Nations Office at Geneva

1211 Geneva 10, Switzerland

Email: tb-petitions@ohchr.org

The Optional Protocol to CEDAW does not impose a time limit on the submission of communications. However, it is prudent for alleged victims to act quickly, since the CEDAW Committee could take significant delay into account when determining admissibility criteria, such as abuse of the right to submit a communication (see Section 2.3(f)). Alleged victims should include information in their communication justifying or explaining long periods of delay, for example refusal of prison authorities to provide key documentation.

(b) Communications must be submitted against a State Party

The CEDAW Committee will only receive communications that allege a violation of CEDAW by a State Party, meaning a country that has ratified or acceded to the Optional Protocol to CEDAW.¹⁸

The Optional Protocol entered into force for Australia on 4 March 2009. This means that the CEDAW Committee has authority to consider communications alleging violations of CEDAW, by the Australian Government, that occurred on or after this date. The Committee has authority to consider violations that occurred before 4 March 2009 only if the facts that are the subject of the communication continued after that date (see Section 2.3(g)).

All levels and branches of the Australian Government are liable for violations of rights in CEDAW. This includes the executive, legislative and judicial branches of the federal and state and territory governments, as well as local government.

The Australian Government is also liable under CEDAW if it fails to exercise due diligence to ensure that private actors do not discriminate against women. For example, the Australian Government may be held responsible for private acts if it fails to act with due diligence to prevent, investigate, punish and remedy acts of domestic violence.¹⁹ Several communications have already been submitted to the CEDAW Committee alleging violations of States Parties' obligations to protect against domestic violence.

2.2 Stage 3: request for interim measures

The CEDAW Committee can transmit to the State Party an urgent request to take 'interim measures' to avoid possible irreparable harm to the alleged victim(s).

An alleged victim/author can make a request for interim measures at any time after the CEDAW Committee receives a communication and before it reaches a final determination on its merits.²⁰

Request for interim measures

Article 5(1)

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

Interim measures are in many ways similar to interim orders issued by Australian courts, for example family violence interim intervention orders.

A request for interim measures is made on the unproven assumption that alleged violations of CEDAW are true, to prevent irreparable harm to a woman while the communication is determined by the CEDAW Committee. A request for interim measures does not, therefore, imply a determination on the merits of the communication.²¹

The CEDAW Committee has received requests for interim measures in several communications concerning domestic violence or the threat of domestic violence.²² These requests have had mixed success.

Request for interim measures to protect against life-threatening violence

A.T. submitted a request for interim measures 'to avoid possible irreparable damage to her person' and 'to save her life, which she [felt was] threatened by her violent former partner'. She made the request at the same time as she submitted her communication to the CEDAW Committee.

Ten days later, the CEDAW Committee transmitted the request to Hungary to take necessary measures to avoid possible irreparable harm to A.T. Hungary responded that it had established contact with A.T., retained a lawyer for her in the civil proceedings, and initiated contact with child welfare services. The CEDAW Committee subsequently made a follow-up request, in which it urged Hungary to immediately offer A.T. a safe place for her and her children to live. Hungary responded by repeating its earlier reply to the CEDAW Committee. In its views on the merits, the CEDAW Committee noted 'that the lack of effective legal and other measures prevented the State party from dealing in a satisfactory manner with the request for interim measures'.

Source: *A.T. v Hungary*

2.3 Stage 4: admissibility decision

Before proceeding to an examination of the merits of a communication, the CEDAW Committee must, by a simple majority, determine whether the communication meets the admissibility criteria in articles 2 and 4 of the Optional Protocol.

Admissibility criteria

Article 2

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

Article 4

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

(2) The Committee shall declare a communication inadmissible where:

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

The CEDAW Committee will declare communications against the Australian Government admissible only if the:

- author has legal ‘standing’ (i.e., is eligible) to submit a communication;
- alleged victim has exhausted domestic remedies;
- same matter has not already been examined by the CEDAW Committee or another procedure of international investigation or settlement;
- communication is not incompatible with CEDAW;
- communication is not manifestly ill-founded and is sufficiently substantiated;
- communication is not an abuse of the right to submit a communication;
- alleged facts occurred on or after the entry into force date of the Optional Protocol for Australia.

In determining whether or not a communication is admissible, the CEDAW Committee will take into account submissions made by the author and the Australian Government in relation to admissibility. It will also take into account the responses of the author and the Australian Government to the other party’s submissions.²⁴ It is common for there to be a series of exchanges of information between the Committee, the author and the Government.

Communications that satisfy all criteria will be declared admissible and the CEDAW Committee will proceed to an examination of its merits.

Communications that do not satisfy all criteria will be declared inadmissible, and the CEDAW Committee will be prevented from considering whether the rights of the alleged victim have been violated. The CEDAW Committee will provide the author and the Australian Government with a copy of its admissibility decision and its reasons.²⁵

The CEDAW Committee can review a decision of inadmissibility only if it receives a written request from, or on behalf of, the author that contains information indicating that the reasons for inadmissibility no longer apply.²⁶

(a) Author must have standing to submit a communication

For a communication to be admissible, it must be submitted by or on behalf of an individual woman or group of individual women, under the jurisdiction of a State Party, claiming to be a victim or victims of a violation of rights in CEDAW.²⁷

The majority of communications submitted to the CEDAW Committee to date have concerned the rights of **individual women**. Examples include a minor who was allegedly denied access to a lawful abortion after she was raped repeatedly,²⁸ and a 28-year-old woman who died of a preventable maternal death.²⁹

The CEDAW Committee has received a handful of communications from **groups of individual women** alleging a violation of their individual rights based on the same set of facts.³⁰ For example, two women submitted a joint communication to the CEDAW Committee alleging that a French law violated their right to choose a family name on a basis of equality of men and women.³¹

Although not required, it is common for alleged victims to appoint a designated representative, such as a lawyer or non-governmental organisation (**NGO**).³² Designated representatives can assist alleged victims in the preparation and submission of a communication to the CEDAW Committee. In Australia, women’s organisations and community legal centres may offer important expertise and support throughout the communication process (see Section 6).

An individual or organisation can submit a communication to the CEDAW Committee **on behalf of an alleged victim**. This might include a family member of a woman who lacks legal capacity to initiate her own communication.

The consent of the alleged victim must be obtained before a communication can be submitted on her behalf, unless the author can justify acting without such consent.³³ Where an author seeks to submit a communication in the absence of the alleged victim’s consent, written reasons must be provided to the CEDAW Committee explaining why such action is justified.³⁴ The author will usually be required to show some kind of relationship with the victim.

Examples of where an individual might be justified acting without consent include where the alleged victim has died as a result of domestic violence or has been abducted and her whereabouts is unknown. It is prudent, however, to consult the alleged victim or, where she is unable to be consulted, her family, before pursuing a communication.

Standing to submit a communication when the alleged victim has died

In 2007, the CEDAW Committee determined two separate communications alleging that Austria had failed to protect two women effectively against domestic violence, culminating in their untimely death. The Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice submitted the communications on behalf of the victims' children.

The authors argued that they had standing to submit the communications, even though the alleged victims of the violence were not alive to provide consent. They based their claim on the fact that the alleged victims had been former clients of theirs and had personal relationships with their respective organisations. They also claimed to have standing as specialist service providers for domestic violence victims and as advocates seeking to improve legal protections against domestic violence. Even so, the authors obtained written consent from the authors' surviving children or their guardians. The CEDAW Committee granted standing to the two organisations.

Sources: *Fatma Yildirim v Austria*; *Şahide Goekce v Austria*

The CEDAW Committee has indicated a willingness to receive **expert information**, including *amicus curiae* briefs, from third parties.

Obtaining expert information could be a helpful way to strengthen a communication against the Australian Government, especially where the alleged victim or author has limited expertise in international human rights law and/or the substantive subject matter of the communication (e.g., health care practice and procedure).

Reliance on expert information in sterilization communication

When A.S. submitted a communication to the CEDAW Committee concerning coerced sterilization, she included an *amicus curiae* brief prepared by the U.S.-based Center for Reproductive Rights. The brief, which supported the author's claim, drew on the Center's global expertise in human rights law and reproductive health care, in particular in law and practice regarding access to health care information and the full and informed consent of patients. The author's claim was successful.

Source: *A.S. v Hungary*

Expert information should be channelled through the author of the communication, and should be provided within a reasonable time after the author's original submission to the CEDAW Committee or before expiration of the deadline set by the CEDAW Committee.³⁵

The right to submit a communication extends to individuals **under the jurisdiction of Australia**. It could, for example, include a woman who is seeking asylum in Australia.

Submitting a communication against a foreign country

Zhen Zhen Zheng, a Chinese citizen, was trafficked to the Netherlands where she was denied asylum. The victim submitted a communication to the CEDAW Committee alleging a violation, by the Netherlands, of her rights in article 6 of CEDAW (freedom from trafficking and exploitation of prostitution). Her claim concerned the failure of the Netherlands Government to grant her asylum.

Source: *Zhen Zhen Zheng v The Netherlands*

Only persons claiming to be a **victim** of a violation of rights in CEDAW (or a person acting on their behalf) may submit a communication to the CEDAW Committee.

The term 'victim' is usually used to describe a person whose rights have been directly and personally affected by the act or omission of a State Party.³⁶

Failure to establish 'victim' status regarding inability to change surname

G.D. and S.F., the authors, were born in France. In accordance with French law, they were given their fathers' surname at birth and were unable to change it legally to their mothers' surname.

The authors submitted a communication to the CEDAW Committee. They claimed to be 'victims' of a violation of article 16(1)(g) of CEDAW, which guarantees an equal right to choose a family name. The authors argued that article 16(1)(g) covers all family members, including children, who receive a family name from their parents.

A majority of the CEDAW Committee interpreted the aim of article 16(1)(g) as enabling 'a married woman or a woman living in a husband-and-wife relationship to keep her maiden name, which is part of her identity, and to transmit it to her children...'. The beneficiaries, it said, are 'only married women, women living in de facto unions and mothers'. As the authors were children seeking to change their name to their mothers' surname and were not themselves married, in a de facto relationship or have children of their own, the majority concluded that they were not 'victims' and could not claim a violation of article 16(1)(g).

Several Committee members disagreed and found that the authors could be viewed as victims of an alleged violation of article 16(1) and several other CEDAW articles. In so finding, they suggested that the test of victim status is 'whether the authors have been directly and personally affected by the violations alleged'.

Source: *G.D. and S.F. v France*

In certain circumstances, 'victim' may include a woman who wishes to challenge a law that allegedly violates her rights but that has not been enforced against her by the Australian Government.

A law may violate rights in the absence of enforcement

Nicholas Toonen submitted a communication to the Human Rights Committee (HRC) challenging a Tasmanian law that criminalised sexual relations between consenting men. Toonen argued that although the law had not been enforced for several years, its stigmatizing effects had nevertheless rendered him a 'victim'. The HRC agreed. In its view, the very existence of the law breached or at least imminently threatened Toonen's rights. It noted that 'the author had made reasonable efforts to demonstrate that the threat of enforcement and the pervasive impact of the continued existence of these provisions on administrative practices and public opinion had affected him and continued to affect him personally...'.
Source: *Toonen v Australia*

Source: *Toonen v Australia*

(b) Alleged victim must have exhausted domestic remedies

For a communication to be declared admissible, it must be shown that all available domestic remedies have been exhausted.³⁷

The CEDAW Committee has explained that the requirement of exhaustion of domestic remedies is intended to ensure 'that States parties have an opportunity to remedy a violation of any of the rights set forth under the Convention through their legal systems before the Committee considers the violation'.³⁸

The **domestic remedies** that need to be exhausted are usually ordinary judicial remedies, but can also be administrative remedies and extraordinary remedies, unless such remedies would be manifestly futile or their use cannot reasonably be expected from the victim.³⁹

The CEDAW Committee has yet to provide guidance on the types of domestic remedies that need to be exhausted before a communication can be submitted against the Australian Government, though jurisprudence suggests it will apply the requirement strictly.

For a discrimination complaint brought under the *Sex Discrimination Act 1984* (Cth), it is likely that the victim would need to file a complaint with the Australian Human Rights Commission and, if unsuccessful, make an application to either the Federal Court of Australia or the Federal Magistrate's Court. Depending on the circumstances, if the victim is unsuccessful in either of those courts, she may also need to appeal to the Full Court of the Federal Court and perhaps even the High Court of Australia.

Complaints of discrimination and human rights breaches

The Commission can investigate complaints of discrimination and human rights breaches. Our complaint handling service is free, informal and impartial.

What can I complain about?

The Commission can investigate complaints of discrimination, harassment and bullying based on a person's:

- **sex**, including pregnancy, marital status, family responsibilities and sexual harassment
- **disability**, including temporary and permanent disabilities; physical, intellectual, sensory, psychiatric disabilities, diseases or illnesses; medical conditions; work related injuries; past, present and future disabilities; and association with a person with a disability
- **race**, including colour, descent, national or ethnic origin, immigrant status and racial hatred
- **age**, covering young people and older people
- **sexual preference, criminal record, trade union activity, political opinion, religion or social origin** (in employment only)

It is against the law to be discriminated against in many areas of public life, including employment, education, the provision of goods, services and facilities, accommodation, sport and the administration of Commonwealth laws and services.

The Commission can also investigate complaints about alleged breaches of human rights against the Commonwealth and its agencies.

How are complaints resolved?

Complaints to the Commission are resolved through a process known as conciliation. This is where the people involved in a complaint talk through the issues with the help of someone impartial and settle the matter on their own terms.

Conciliation is a very successful way of resolving complaints. Feedback shows that most people find our process fair, informal and easy to understand. It also helps them to better understand the issues and come up with solutions that are appropriate to their circumstances.

Complaint outcomes can include an apology, reinstatement to a job, compensation for lost wages, changes to a policy or developing and promoting anti-discrimination policies.

Contact us

For more information or to discuss a complaint contact our Complaints unit

Phone: 1300 656 419 (local call) or 02 9284 9888

Email: complaintsinfo@humanrights.gov.au

TTY: 1800 620 241 (toll free)

Fax: 02 9284 9611

Free interpretation and translation services are available by contacting **13 14 50** and asking for the Commission.

Given the complexity of the exhaustion of domestic remedies requirement, it is advisable to seek legal advice on the remedies that need to be exhausted having regard to the particular facts of the case.

It may also be advisable to consider how other human rights treaty bodies have applied the exhaustion of domestic remedies requirement to Australia. For example, in *Brough v Australia*, which concerned the alleged ill-treatment and inhuman conditions of detention of a young Indigenous man with a mild mental illness, the HRC found that the exhaustion requirement did not apply to the New South Wales Ombudsman, since 'any finding of this body would only have hortatory rather than binding effect so far as the [prison] authorities [were] concerned'.⁴⁰

An alleged victim is expected to make **normal use** of domestic remedies. This means that she should comply 'with procedural requirements in domestic law, such as time limits, and formal requirements, such as subject matter jurisdiction and standing to bring the action'.⁴¹

Make 'normal use' of remedy

The CEDAW Committee found that a constitutional complaint filed improperly, including because of failure to comply with time limits, could not be considered an exhaustion of domestic remedies.

Source: *B.J. v Germany*

In order to satisfy the requirement of exhaustion of domestic remedies, the victim must **raise the substance of her claim at the domestic level**. The CEDAW Committee has explained that the purpose of the exhaustion requirement is to give States Parties 'an opportunity to remedy a violation of any of the rights set forth under the Convention through their legal systems' before the Committee addresses the same issues.⁴²

Need to raise substance of claim at domestic level

The CEDAW Committee declared inadmissible a communication concerning a schoolteacher's right to wear a headscarf to work on the ground that she had failed to exhaust domestic remedies, by not raising sex discrimination as an issue for determination in domestic proceedings. She had focused, instead, on the freedoms of religion and expression, among other rights. It explained:

In sharp contrast to the complaints made before local authorities, the crux of the author's complaint made to the Committee is that she is a victim of a violation by the State party of article 11 of the Convention by the act of dismissing her and terminating her status as a civil servant for wearing a headscarf, a piece of clothing that is unique to women. By doing this, the State party allegedly violated the author's right to work, her right to the same employment opportunities as others, as well as her right to promotion, job security, pension rights and equal treatment. The Committee cannot but conclude that the author should have 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.

Source: *Rahime Kayhan v Turkey*

The question of whether domestic remedies have been exhausted is determined at the **time** of the consideration of a communication, save in exceptional circumstances.⁴³ Thus, if domestic proceedings were ongoing at the time the author submitted her communication but were exhausted when the Committee considered it, the requirement to exhaust domestic remedies would be satisfied. As it is not possible to predict with certainty how long it will take the CEDAW Committee to determine a communication after its original submission, it is prudent to exhaust domestic remedies before submitting a communication.

A victim is obliged to exhaust only those domestic remedies that are **available** to her.⁴⁴ The remedies must be available both in law and practice.

Remedy of certiorari not available to victim

The CEDAW Committee dismissed an argument that a rape victim/survivor had failed to exhaust domestic remedies because she had not availed herself of the remedy of certiorari (i.e., a writ or order by which a higher court reviews a decision of a lower court). It explained that, as criminal cases are prosecuted by the 'People of the Philippines', represented by the Office of the Solicitor General, this remedy was unavailable to the victim and thus did not need to be exhausted.

Source: *Karen Tayag Vertido v The Philippines*

Failure to exhaust available asylum and residency remedies

A majority of the CEDAW Committee declared inadmissible a communication concerning an asylum application from a Chinese woman allegedly trafficked to the Netherlands, on the ground that she had not appealed asylum or residency proceedings, or raised the alleged violation of article 6 of CEDAW (trafficking) before domestic courts in the Netherlands.

Source: *Zhen Zhen Zheng v The Netherlands*

It is possible that a woman who is unable to afford the costs associated with domestic legal proceedings and, who is thereby limited in her ability to pursue domestic remedies, might not be required to exhaust those remedies because they are unavailable to her.⁴⁵ While the CEDAW Committee has yet to consider the relationship between the exhaustion of domestic remedies requirement and indigency, it would likely find that, to prove unavailability, the victim would need to demonstrate that she was in fact unable to afford the associated costs and was also unable to obtain assistance from legal aid, a community legal centre, or a lawyer acting pro bono.

The CEDAW Committee can waive the requirement to exhaust domestic remedies if the application of such remedies is unreasonably prolonged or unlikely to bring effective relief to the victim.⁴⁶

Whether a remedy is **unreasonably prolonged** is a question to be determined by the CEDAW Committee in each case, having regard to the facts of the communication. Factors to be considered include

whether the delay is: imputable to the State, due to active obstruction, negligence or inactivity; imputable to the conduct of the victim; reasonable in light of the nature and severity of the violation, the complexity of the case, and its criminal or civil character; or likely to have a negative impact on the effectiveness of the relief sought by the victim.⁴⁷

Three-year delay too long in case involving domestic violence

The CEDAW Committee waived the requirement to exhaust domestic remedies in a communication concerning life-threatening domestic violence. It explained that

such a delay of over three years from the dates of the incidents in question would amount to an unreasonably prolonged delay within the meaning of article 4, paragraph 1, of the Optional Protocol, particularly considering that the author has been at risk of irreparable harm and threats to her life during that period. Additionally, the Committee takes account of the fact that she had no possibility of obtaining temporary protection while criminal proceedings were in progress and that the defendant had at no time been detained.

Source: *A.T. v Hungary*

Whether a remedy is **effective** is also a question to be determined by the Committee in each case, having regard to the facts. A remedy will be effective only if it is available to the alleged victim and would enable her to obtain redress for the specific violations of her rights.⁴⁸ A remedy that is abstract is not effective; there should be a close correlation between the harm suffered by the alleged victim and the remedy available to redress the harm she has experienced.⁴⁹

Eight-year delay in rape case rendered remedy ineffective

The CEDAW Committee concluded that the Philippines had denied Karen Tayag Vertido an effective remedy for her alleged rape, when it allowed her case to remain at the trial court level from 1997 to 2005 before a decision was reached. It explained that for a remedy to be effective in cases of rape and other sexual offences, the matter needs to be 'dealt with in a fair, impartial, timely and expeditious manner'.

Source: *Karen Tayag Vertido v The Philippines*

Constitutional remedy not effective to address violence

In two communications concerning domestic violence, the CEDAW Committee noted that the question of whether domestic remedies are effective needs to be examined in relation to allegations that the State Party has failed to satisfy its due diligence obligation to protect the victims against such violence.

The CEDAW Committee determined that a constitutional remedy could not be characterised as a remedy likely to bring effective relief to women whose lives were threatened. Nor, according to the CEDAW Committee, could it be regarded as an effective remedy for the victims' descendants, given its abstract nature. In addition, the CEDAW Committee determined that a remedy designed to determine the lawfulness of actions of the Public Prosecutor could not be regarded as effective in circumstances where women's lives were threatened.

Source: *Fatma Yildirim v Austria*; *Şahide Goekce v Austria*

Different complaints concerning headscarves

Rahime Kayhan, a Turkish national, was fired from her job as a schoolteacher because she refused to stop wearing a headscarf. She submitted a communication to the CEDAW Committee alleging that the termination of her employment constituted a violation of her right in article 11 of CEDAW to equality in employment.

Turkey objected that the communication should be dismissed on a number of grounds, including that the European Court of Human Rights had already determined the same matter.

The CEDAW Committee dismissed Turkey's objection on the basis that the two matters were not the same. The CEDAW communication concerned the right of Rahime Kayhan to wear a headscarf at her workplace. The European Court complaint concerned the right of a university student to wear a headscarf at her university. The fact that both cases concerned headscarves in educational settings was insufficient to render the CEDAW communication inadmissible on the 'same matter' ground.

Source: *Rahime Kayhan v Turkey*

(c) Communication must not concern the 'same matter'

A communication will be dismissed as inadmissible where 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.⁵⁰

In assessing whether or not a communication concerns the **same matter** as another complaint, it is important to consider whether:

- the same individual (or someone who has standing to act on their behalf) has submitted both communications;
- the underlying facts of both communications are the same or substantially similar;
- both complaints allege violations of the same or substantially similar rights.⁵¹

If it is found that the authors, underlying facts and alleged violations of both communications are the same or substantially similar, the communication before the CEDAW Committee is likely to be characterised as the 'same matter' as the other communication and declared inadmissible on this ground.

If, however, it is found that the authors, underlying facts and/or alleged violations are substantially different, then the communication could be declared admissible on this ground.

For example, a woman could submit a communication to the CEDAW Committee alleging rape as a violation of the prohibition against gender-based violence, even if the Committee on the Elimination of Racial Discrimination (**CERD**) rejected a separate communication alleging race discrimination motivated by ethnic cleansing arising from the same rape.⁵²

The CEDAW Committee must ascertain whether or not the same matter was or is being **examined**. Not every decision of a procedure of international investigation or settlement will constitute an examination of the matter.⁵³

A communication has been examined if it has been decided or is being decided on the merits, regardless of whether a violation was or is found.

The question of what constitutes an examination is less clear in communications not involving a merits decision. A distinction is often made in those cases between communications declared inadmissible on procedural grounds only and communications declared inadmissible following an examination of its substance.

Inadmissibility decisions based on procedural grounds (e.g., failure to comply with a deadline for submitting communications) usually will not constitute an examination of a matter. In contrast, inadmissibility decisions that in any way involve an evaluation of the merits of the communication (e.g., a finding that the communication is manifestly ill-founded) will typically constitute an examination.

Examination of matter: no appearance of a violation

N.S.F., a Pakistani woman, unsuccessfully sought asylum in the UK based on her fear of persecution by her former husband, who had been violent toward her and threatened her life. She submitted a communication to the CEDAW Committee alleging that, in denying her claim, the UK had violated her rights in CEDAW.

The UK contested the admissibility of the communication on several grounds, including that the same matter had already been examined by another procedure of international investigation or settlement. The UK submitted that N.S.F. had brought an identical complaint to the European Court of Human Rights and that those proceedings constituted proceedings under 'another procedure of international investigation or settlement'. The UK noted that the European Court had dismissed the complaint made by N.S.F. because it 'did not disclose any appearance of a violation of the rights and freedoms set out in the [European] Convention or its Protocols'. It argued that, as the matter had been rejected as inadmissible following an evaluation of its substance, it could not be considered by the CEDAW Committee.

The CEDAW Committee did not consider the argument put forward by the UK, and dismissed the communication on an unrelated ground.

Source: *N.S.F. v The United Kingdom*

Procedures concerned with the determination of individual complaints, such as the communication procedures in the Optional Protocols to the ICCPR and the CRPD, constitute **procedures of international investigation or settlement**. However, not all international procedures will fall into this category.

For example, consideration of a complaint by procedures or bodies such as UN Special Rapporteurs or the UN Commission on the Status of Women is unlikely to result in a finding of inadmissibility by the CEDAW Committee on the 'same matter' ground. This is because the decisions of those bodies are not binding on States Parties and individuals cannot obtain individual redress for violations of their rights.

(d) Communication must be compatible with CEDAW

A communication will be dismissed as inadmissible where it is incompatible with the provisions of CEDAW.⁵⁴

Incompatibility implies either that:

- the substantive rights that the communication alleges the State Party has violated are not guaranteed by CEDAW; or
- the communication seeks a result that conflicts with the overall object and purpose of CEDAW, which is to eliminate all forms of discrimination against women and achieve substantive equality.⁵⁵

CEDAW protects a number of substantive rights (see Section 1). A communication that alleges a violation of one or more of those rights is compatible with CEDAW and will be declared admissible on this ground. Allegations of a violation of a right not protected in CEDAW are not compatible and will be declared inadmissible on this ground.

Claim to a title of nobility incompatible with CEDAW

Cristina Muñoz-Vargas y Sainz de Vicuña, a Spanish citizen and first-born child of the 'Count of Bulnes', submitted a communication concerning succession to her father's title of nobility. Under the law then in effect, a first-born child was entitled to inherit a nobility title, except in cases where the child was female and had a younger brother. The male child, in this case the author's brother, was given primacy in the ordinary line of succession.

A majority of the CEDAW Committee found the communication inadmissible because the facts predated the Protocol's entry into force for Spain.

While agreeing with the majority's conclusion, several CEDAW Committee members issued a concurring opinion in which they declared the communication inadmissible on the ground of incompatibility with CEDAW. They reasoned that 'the title of nobility ... is of a purely symbolic and honorific nature, devoid of any legal or material effect'. Therefore, it could not form the basis of a communication.

One Committee member challenged this view. Although conceding that CEDAW does not guarantee a right to inherit a nobility title, she concluded in dissent that 'when Spanish law ... provides for exceptions to the constitutional guarantee for equality on the basis of history or the perceived immaterial consequence of a differential treatment, it is a violation, in principle, of women's right to equality'. She explained that, in deciding the compatibility of communications, it is important to 'take into account the intent and spirit of the Convention', namely the elimination of all forms of discrimination against women and the achievement of substantive equality. In her view, the communication should have been declared admissible.

Source: *Cristina Muñoz-Vargas y Sainz de Vicuña v Spain*

Although the CEDAW Committee is not competent to consider alleged violations of rights guaranteed in other human rights treaties (e.g., ICERD), it takes those rights into account when determining communications.

Gender stereotyping and the right to a fair trial

In a recent communication, the CEDAW Committee found that the Philippines had violated the rights of Karen Tayag Vertido not to be stereotyped on the basis of her sex/gender. The CEDAW Committee concluded that the decision to acquit the accused of rape was based not in law or fact but on gender stereotypes and myths about rape, in violation of articles 2(f) and 5(a) of CEDAW. In addition, the CEDAW Committee acknowledged that the gender stereotyping in this case impeded the author's right to a fair trial, a right not explicitly protected in CEDAW. It stressed that 'the judiciary must take caution not to create inflexible standards of what women or girls should be or ... have done when confronted with ... rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general'.

Source: *Karen Tayag Vertido v The Philippines*

Communications that allege a violation of a provision of CEDAW in respect of which Australia has made a **reservation** are likely to be declared inadmissible as incompatible with CEDAW, unless the CEDAW Committee determines that the reservation is invalid.⁵⁶

A reservation is a unilateral statement, made by a country when signing or ratifying an international treaty, which effectively excludes it from any obligations in regard to a particular provision(s) of that treaty.

When Australia ratified CEDAW in 1984, it entered a reservation to article 11(2), advising the CEDAW Committee that it was not in a position to introduce paid maternity leave or comparable social benefits. Although Australia's first national paid parental leave scheme commenced on 1 January 2011, Australia has yet to remove its reservation to article 11(2) of CEDAW.

When Australia ratified CEDAW, it entered a further reservation to article 11 (employment), advising that it does not accept the application of CEDAW insofar as it would require women's participation in roles involving direct, armed combat. This reservation also remains current.

Although the CEDAW Committee has urged the Australian Government to withdraw its two reservations as soon as possible, it has not indicated that it considers the reservations to be incompatible with CEDAW and, therefore, invalid.⁵⁷ Thus, it seems likely that communications submitted against the Australian Government that allege a violation of article 11 in respect of women's roles in direct, armed combat, or article 11(2) in respect of paid maternity leave, will be declared inadmissible as incompatible with CEDAW.

Reservation regarding transmission of nationality to a child

Constance Ragan Salgado submitted a communication to the CEDAW Committee alleging that the UK had violated her right in article 9 of CEDAW to transfer her British nationality to her son.

The UK argued that the communication should be declared inadmissible on the basis of its reservations to article 9 of CEDAW, which it submitted was compatible with the object and purpose of CEDAW and, therefore, valid.

The Committee declined to address the effect of the UK's reservation, choosing to declare the communication inadmissible on unrelated grounds.

Source: *Constance Ragan Salgado v The United Kingdom*

(e) Communication must not be manifestly ill-founded or insufficiently substantiated

A communication will be dismissed as inadmissible where it is manifestly ill-founded or not sufficiently substantiated.⁵⁸

A communication is **manifestly ill-founded**

if, assuming all the facts stated to be true, it alleges violations of rights that are not guaranteed by the Convention, relies on a plainly erroneous interpretation of the Convention, or alleges facts that unquestionably indicate that the State Party's act or omission is consistent with the obligations imposed by the Convention.⁵⁹

Other examples include where the author invites the CEDAW Committee to assess and review findings of fact or law of a domestic court,⁶⁰ or there is settled and abundant jurisprudence of the CEDAW Committee in identical or similar cases on the basis of which it can conclude that there is no violation of CEDAW.⁶¹

The CEDAW Committee is not an appellate body

In a communication to the CEDAW Committee, Karen Tayag Vertido claimed that if it were not for the trial judge's reliance on gender stereotypes, the accused would have been convicted of raping her. Whether intentionally or not, in making this claim, the author effectively invited the CEDAW Committee to assess and review the facts and evidence before the trial judge.

Responding to the invitation, a majority of the CEDAW Committee clarified that it is not its role to 'replace ... domestic authorities in the assessment of facts' or to 'decide on the alleged perpetrator's criminal responsibility'. One Committee member, in a concurring opinion, further explained that '[t]he Committee is not equipped to examine the testimony of [the] parties concerned, nor to evaluate the credibility of the accused or the author'. In declaring the communication admissible, the majority drew a distinction between placing itself in the shoes of the judge (e.g., assessing the credibility of the victim's testimony) and deciding if her Honour's reliance on gender stereotypes violated CEDAW.

Source: *Karen Tayag Vertido v The Philippines*

A communication is **not sufficiently substantiated** if it lacks adequate evidence or legal argument. An author does not need to prove her allegations at the admissibility stage, but she must submit sufficient evidence and argument to convince the CEDAW Committee, on a preliminary examination of the communication, to proceed to an examination of its merits.

The factual evidence submitted to the CEDAW Committee should be comprehensive and specific to the author's situation.⁶² Broad information – for example, referring in general terms to a report on the gender gap in retirement savings⁶³ – will not of itself be sufficient to substantiate a communication. Copies of supporting documentation, such as medical records or decisions of domestic courts or other authorities, should be included with a communication, wherever possible.

The author should be explicit about which rights in CEDAW, in her view, the Australian Government has violated and how.⁶⁴ It is not enough to refer to CEDAW or one or more of its provisions in general terms, without explaining how the Australian Government has allegedly violated them.

Substantiation of allegation regarding threat of violence

N.S.F., a Pakistani woman, unsuccessfully sought asylum in the UK based on a fear of persecution by her former husband, who had been violent toward her and threatened her life. She submitted a communication to the CEDAW Committee alleging that, in denying her claim, the UK had violated her rights in CEDAW.

The UK contested the admissibility of the communication on several grounds, including that the allegations made by N.S.F. had not been sufficiently substantiated. The UK argued that N.S.F. had failed to identify which specific rights in CEDAW it was alleged to have violated or how its acts or omissions breached those rights. It also noted that other authorities had rejected her assertion that her removal to Pakistan created 'substantial grounds for believing that there is a real risk of a violation of her rights not to be tortured or subjected to inhuman or degrading treatment', and that N.S.F. had not provided new evidence warranting a different finding of fact.

The communication was dismissed on an unrelated ground.

Source: *N.S.F. v The United Kingdom*

(f) Author must not abuse the right to submit a communication

A communication will be dismissed as inadmissible where it is an abuse of the right to submit a communication.⁶⁵

Communications that might be characterised as abusive include those that:

- contain information intended to deceive the CEDAW Committee;
- contain offensive language;
- are frivolous;
- are submitted with malicious intent;
- are vexatious (i.e., repeatedly submitting similar communications that have already been declared inadmissible or without merit);
- are submitted for the sole purpose of defaming an individual.⁶⁶

(g) Timing of violation(s)

A communication will be dismissed as inadmissible where the facts that are the subject of the communication occurred before the entry into force of the Optional Protocol for Australia.⁶⁷ This means that the CEDAW Committee will only consider those communications against Australia that allege violations that occurred on or after 4 March 2009 (i.e., the entry into force date).

The one exception is where the facts that are the subject of the communication continued after the entry into force date. An example is a continuing violation that is alleged to have originated before 4 March 2009 but persists after that date.

Clear continuum of regular domestic violence

A.T. submitted a communication claiming that she had been subjected to regular, severe domestic violence and serious threats, and that Hungary had failed to protect her against that violence. She argued that, although most of the incidents of violence occurred prior to the entry into force of the Optional Protocol for Hungary, one serious incident had occurred after that date. According to A.T., the incidents constituted 'a clear continuum of regular domestic violence', which continued to place her life in danger.

The CEDAW Committee accepted A.T.'s argument and found that it was competent to consider the communication

because the facts that are the subject of the communication cover the alleged lack of protection/ alleged culpable inaction on the part of the State party for the series of severe incidents of battering and threats of further violence that has uninterruptedly characterized the period beginning in 1998 to the present.

Source: *A.T. v Hungary*

A further example is where an alleged violation occurred before 4 March 2009 but the effects of that violation are ongoing and continuous.

Ongoing effects of irreversible coerced sterilization

A.S., a Hungarian woman of Roma origin, submitted a communication alleging that she had been sterilized without her full and informed consent, in violation of CEDAW. She argued that, although the act of sterilization occurred prior to the entry into force of the Optional Protocol for Hungary, the effects of the violations, which included an inability to give birth, are 'of an ongoing, continuing character'. Hungary contested this claim, arguing that A.T. had 'not sustained a permanent disability because the sterilization is not irreversible surgery and [had] not caused permanent infertility'.

The CEDAW Committee found that the effects of the sterilization on A.S. are ongoing. Key in this respect was the 'irreversible' nature of the sterilization. The CEDAW Committee explained:

the success rate of surgery to reverse sterilization is low and depends on many factors, such as how the sterilization was carried out, how much damage was done to the fallopian tubes or other reproductive organs and the skills of the surgeon; there are risks associated with reversal surgery; and an increased likelihood of ectopic pregnancy following such sterilization.

Source: *A.S. v Hungary*

2.4 Stage 5: merits decision, views and recommendations

(a) Merits decision

If a communication is declared admissible, the CEDAW Committee will proceed to an examination of its **merits**, by determining whether or not the Australian Government has met its legal obligations under CEDAW.⁶⁸

The CEDAW Committee will reach a decision on the merits in closed meetings, by taking into account all information made available to it by the author(s) and the Australian Government, as well as any other reliable information (e.g., Concluding Observations) and expert information (e.g., amicus briefs).⁶⁹

(b) Views and recommendations

Once the CEDAW Committee has reached a decision on the merits, it will transmit its **views** (i.e., findings) to the author(s) and the Australian Government.⁷⁰ The views will identify whether or not the Australian Government has violated any substantive rights in CEDAW (e.g., the right to equal pay for work of equal value). At the time of writing, the CEDAW Committee had found violations of rights in CEDAW in five of the six communications decided on the merits.⁷¹

If the CEDAW Committee finds that the government has violated a woman's rights, it will include in its views **recommendations** on how the government should redress those violations.⁷²

Recommendations typically fall into two categories.

Recommendations might be aimed at redressing the victim's **individual** situation. Such recommendations might include a call to compensate the victim for the harm she suffered or ensure she has access to legal assistance.

Alternatively, recommendations might be **structural** in nature, targeting the underlying causes of the violation. Such recommendations might include a call to reform domestic legislation, introduce sanctions for health centres that fail to ensure women give fully informed consent to be sterilized, and ensure court proceedings involving rape allegations are pursued without undue delay.

It is advisable for authors to include specific information in their communication about the types of individual and structural recommendations they would like the CEDAW Committee to make to the government, in the event of a finding of a violation of their rights. The information should concern specific, measurable and time-limited recommendations.

Although not legally binding on the Australian Government, the views of the Committee, as authoritative interpretations of CEDAW, as well as its recommendations, are highly persuasive. Moreover, as a State Party to CEDAW and the Optional Protocol, the government has a good faith obligation to act on the views and recommendations of the Committee.

Gender stereotyping in a rape trial is a violation of CEDAW

The CEDAW Committee found the Philippines in violation of its obligations under articles 2(c), 2(f) and 5(a) of CEDAW, for its failure to refrain from wrongful gender stereotyping. The Committee explained that the decision of the trial judge to acquit the accused of rape had been based not in law or fact but on gender stereotypes and myths about rape. '[T]he assessment of the author's version of events,' the Committee said, 'was influenced by a number of stereotypes, the author in this situation not having followed what was expected from a rational and "ideal victim" or what the judge considered to be the rational and ideal response of a woman in a rape situation...'. Acknowledging that gender stereotyping can impede women's access to a fair trial, the Committee explained 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'. In recognition of the obligation incumbent on all branches and levels of the Philippines Government not to engage in gender stereotyping, the CEDAW Committee made a number of recommendations to the Philippines, including urging it to 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'.

Source: *Karen Tayag Vertido v The Philippines*

Practice suggests that States Parties to the Optional Protocol do take the CEDAW Committee's views and recommendations seriously. At times, however, States Parties have been slow to implement the necessary steps to redress violations of CEDAW.

2.5 Stage 6: implementation and follow-up

As explained previously, the government is required to give due consideration to the views and recommendations of the CEDAW Committee. It must submit a written response to the CEDAW Committee within six months that includes information about steps taken to address the Committee's views and **implement** its recommendations.⁷³

The CEDAW Committee may **follow-up** on its views and recommendations by appointing a rapporteur(s) or establishing a working group to ascertain the measures taken by the government to give effect to its views and recommendations. It may also invite the government to submit information on the steps it has taken to address the CEDAW Committee's views and implement the Committee's recommendations, in its next periodic report.⁷⁴

Actions taken to address coerced sterilization of a Roma woman

The CEDAW Committee found that Hungary, through its public hospital personnel, had failed to provide A.S. appropriate information and advice on family planning and ensure she gave fully informed consent to be sterilized. It also found that the act of sterilization had deprived A.S. of her natural reproductive capacity and denied her the ability to decide freely and responsibly on the number and spacing of her children. The CEDAW Committee therefore concluded that Hungary had failed to fulfil its obligations under articles 10(h), 12 and 16(1)(e) of CEDAW.

Following the CEDAW Committee's decision, Hungary paid the author 5.4 million Hungarian forints (approximately US\$28,000) in compensation and offered her psychiatric support. It also distributed an information package to gynaecological wards in all county hospitals and, among other things, committed to undertake inspections of sterilization procedures and issue guidelines on sterilization procedures.

Source: *A.S. v Hungary*

2.6 Communication procedure checklist

Submission and registration of communication

- Have you prepared a written communication?
- Have you identified the alleged victim and the author (if different from the victim)?
- Have you alleged violations against the government?
- Have you enclosed supporting information (e.g., court decisions, medical records, expert reports)?

Interim measures (optional)

- Have you included a request for interim measures?

Admissibility

- Have you confirmed that the woman is a 'victim' of a violation of rights in CEDAW?
- Have you confirmed that the alleged victim has exhausted domestic remedies? If she has not, is she able to show that domestic remedies have been unreasonably prolonged or would be ineffective?
- Have you confirmed whether this is the first time the alleged victim has submitted the matter to the CEDAW Committee or another procedure of international investigation or settlement for consideration?
- Have you confirmed that the communication is compatible with CEDAW?
- Have you confirmed that the communication is well founded and sufficiently substantiated?
- Have you confirmed that the communication is respectful of the right of submission?
- Have you confirmed whether the communication concerns violations that occurred on or after 4 March 2009 (i.e., the entry into force date of the Optional Protocol to CEDAW for Australia)? If not, are the violations ongoing?

Merits, views and recommendations

- Have you identified the relevant facts? Have you identified the harm to the alleged victim?
- Have you identified which provisions of CEDAW the government has allegedly violated?
- Have you identified how the government violated those provisions?
- Have you provided information about the individual and structural remedies the alleged victim is seeking?

Implementation of recommendations and follow-up

- Have you developed a strategy to encourage the government to implement favourable recommendations?

Example communication (optional)

For further guidance, see example communication from A.S. v Hungary (**Appendix 5**).

3 Inquiry procedure

Under the inquiry procedure, the CEDAW Committee is empowered to conduct inquiries where it receives reliable information indicating grave or systematic violations, by a State Party, of rights in CEDAW.⁷⁵

The inquiry procedure enables women to address egregious violations of their human rights. It also

enables them to challenge widespread abuses of their rights, which may be difficult to address effectively through the individual communication procedure because of their scale or structural nature.⁷⁶

The inquiry procedure consists of **five stages**.



Figure 4 – Stages of the inquiry procedure

Stage 1: The inquiry procedure is triggered when the CEDAW Committee receives a request to conduct an inquiry, in accordance with article 8 of the Optional Protocol, or the CEDAW Committee decides on its own to initiate an inquiry.

Stage 2: Once a request has been received, the CEDAW Committee determines whether or not the information provided with the request satisfies the threshold requirements set out in article 8(1) of the Optional Protocol.

Stage 3: If it is determined that the information satisfies the threshold requirements, the CEDAW Committee invites the State Party to submit observations on the information within a fixed time period. The Committee may also obtain additional, reliable information.

The CEDAW Committee then considers whether or not to exercise its discretion to establish an inquiry, taking into account the information submitted with the initial request, the submission of the State Party, and any additional reliable information.

If the CEDAW Committee chooses not to exercise its discretion, it will not inquire into the alleged violations of CEDAW. If the CEDAW Committee does decide to establish an inquiry, it designates one or more of its members to conduct the inquiry and report back urgently to the full Committee. The inquiry is conducted confidentially and may, with the consent of the State Party, include an onsite visit and hearings.

Stage 4: Once the CEDAW Committee has completed its inquiry, it publishes a report outlining its findings and recommendations. The report identifies whether or not, in the CEDAW Committee's view, the State Party has violated any rights in CEDAW. If a violation of CEDAW is found, the CEDAW Committee will include in its report recommendations on how the State Party should redress those violations.

Stage 5: The State Party is responsible for implementing the Committee's recommendations. The Committee may decide to follow-up on its report and recommendations to monitor the State Party's progress in this regard.

Each of these stages is explored in detailed below.

3.1 Stage 1: request to conduct inquiry

Anyone is able to submit a request to the CEDAW Committee to conduct an inquiry, in accordance with article 8 of the Optional Protocol to CEDAW.⁷⁷ This could include alleged victims, national human rights institutions, NGOs, community legal centres and/or academics.

It is common for requests to be submitted under the inquiry procedure by more than one person or organisation. There are several advantages to this approach, including capitalising on the expertise and experiences of a diverse range of actors, and coalition building, which can be particularly important if the CEDAW Committee subsequently finds violations and makes recommendations for reform.

Request submitted by rape crisis centre and equality and human rights NGOs

In 2002, Casa Amiga (a rape crisis centre in Ciudad Juárez, Mexico) and Equality Now (a U.S.-based women's rights organisation) jointly requested the CEDAW Committee to establish an inquiry into widespread abduction, rape and murder of women in Ciudad Juárez, Mexico. Information was also submitted later by the Mexican Commission for the Defense and Promotion of Human Rights, a non-governmental organisation and member of the 'Stop Impunity: No More Murders of Women' campaign.

Source: *Ciudad Juárez inquiry*

Request submitted by an international NGO coalition

In 2008, an NGO coalition requested the CEDAW Committee to establish an inquiry into a policy of the City of Manila in the Philippines, which has allegedly impaired women's access to contraceptives and related health care services and information.⁷⁸ The coalition is comprised of 'Task Force CEDAW Inquiry' (a Philippines-based NGO coalition, consisting of 17 organisational members), the Center for Reproductive Rights (a U.S.-based reproductive rights organisation) and International Women's Rights Action Watch – Asia Pacific (an international women's rights organisation based in Malaysia).

Source: *Manila City inquiry*

A request for an inquiry might be made in an isolated case or in the context of an existing advocacy campaign. Given the resources needed to develop a compelling request for an inquiry and related networks or coalitions, requests for an inquiry may often be better suited to existing campaigns with developed networks, research and materials.

Although the CEDAW Committee has not developed a model form for requesting an inquiry, the two Committee members responsible for conducting the first Optional Protocol inquiry have suggested that the request should be as complete and illustrative as possible, and include

a clear description of the alleged violations, their gravity or systematic nature, their impact and consequences, and the specific provisions of CEDAW being violated. Information should also be provided on the alleged perpetrators; on complaints filed; on investigation(s) undertaken; on involvement of the police or other authorities; on support of civil society organizations, women's nongovernmental organizations ..., or human rights NGOs; as well as on measures taken, or not taken, within the jurisdiction of the State Party, to respond to the situation.⁷⁹

In the absence of a model form, International Women's Rights Action Watch – Asia Pacific (an international women's rights organisation) has developed guidelines on how to request an inquiry. The guidelines, which draw on the model communication form, are available online.⁸⁰

Requests to the CEDAW Committee to establish an inquiry should be sent to:

Where to submit requests to establish an inquiry

Petitions Team
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10, Switzerland
Email: tb-petitions@ohchr.org

Requests should be submitted in one of the six official UN languages.⁸¹ It has been suggested that information can be submitted in non-written forms, including video and other electronic means.⁸²

The Optional Protocol does not impose a time limit from the date of the alleged violation to the date of submission of a request for an inquiry. However, as in the case of the communication procedure, it is prudent to submit requests as soon as possible after the violation occurs. Information should be included in materials submitted to the CEDAW Committee justifying or explaining any significant periods of delay.

3.2 Stage 2: assessment of threshold requirements

Once a request has been received, the CEDAW Committee determines whether or not the information included with the request meets the threshold requirements set out in article 8(1) of the Optional Protocol to CEDAW.⁸³

Threshold requirements

Article 8(1)

If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

If the CEDAW Committee determines that the information satisfies the threshold requirements, it can exercise its discretion to establish an inquiry.

To satisfy the threshold requirements, a request for an inquiry must:

- concern a State Party to the Optional Protocol that has recognised the competence of the CEDAW Committee to conduct inquiries;
- contain reliable information;
- concern alleged grave or systematic violations of CEDAW.

In making a determination regarding these requirements, the CEDAW Committee may seek additional information to substantiate the facts of the situation.⁸⁴

(a) Request must concern a State Party

The CEDAW Committee is only authorised to undertake inquiries into alleged violations of CEDAW by a 'State Party'. In the context of the inquiry procedure, this means a country that has both ratified or acceded to the Optional Protocol to CEDAW and recognised the Committee's competence to conduct inquiries, by not 'opting out' of the inquiry procedure.⁸⁵

The Optional Protocol to CEDAW entered into force for Australia on 4 March 2009. When Australia acceded to the Optional Protocol, it chose not to opt out of the inquiry procedure. It may, as a consequence, be subject to inquiries alleging grave or systematic violations of CEDAW that occurred on or after 4 March 2009.

The CEDAW Committee might decide to inquire into alleged violations that occurred prior to 4 March 2009, if it can be shown that the facts continued after that date. This might be because the alleged violation originated before 4 March 2009 but persists after that date or because the effects of an alleged violation that occurred prior to 4 March 2009 are continuous (see Section 2.3(g)).

Violence persisted after entry into force date

The Mexican Government ratified the Optional Protocol to CEDAW on 15 March 2002. On 2 October 2002, the CEDAW Committee received a request to establish an inquiry into the abduction, rape and murder of women in Ciudad Juárez. The request included information about alleged abductions, rapes and murders of women that dated as far back as 1993. Information submitted to the CEDAW Committee showed that although many of the alleged incidents of violence occurred prior to the entry into force date of the Optional Protocol for Mexico, the alleged violations persisted and had continuing effects on the victims.

Source: *Ciudad Juárez inquiry*

(b) Request must include reliable information

For the CEDAW Committee to establish an inquiry, the information it receives with the initial request must be reliable.⁸⁶

The reliability of information is assessed on the basis of such factors as 'its consistency, corroborating evidence, the credibility of its sources, as well as information from other sources, national or international, official or nonofficial'.⁸⁷ An assessment of the credibility of the source of the information might include an evaluation of its expertise and experience in the relevant subject matter, and its established record for credible fact-finding and reporting.⁸⁸ In the case of a media source, it might include an evaluation of 'the extent to which they are independent and non-partisan'.⁸⁹

Reliance on **expert information**, including *amicus curiae* briefs, might be a helpful way to improve the likelihood of a finding of reliability. Expert information should be channelled through the person(s) or organisation(s) responsible for submitting the initial request to the CEDAW Committee. Information should be provided within a reasonable time after the original request is made or before expiration of the deadline set by the CEDAW Committee.

Diverse sources of information and reliance on expert evidence

The NGO coalition that requested an inquiry into access to contraceptives in Manila City submitted a diverse range of material in support of its request.

Allegations in the initial request drew on sources such as national health data, information on the prevalence of contraceptive use, and past Concluding Observations about the Philippines. The request also drew on expert reports and legal scholarship, including notably *Imposing Misery: The Impact of Manila's Ban on Contraception* (2007). The report draws on a range of evidence, including interviews with health care professionals as well as women directly and personally affected by the Manila City policy. Attached to the formal request to the CEDAW Committee were: a copy of the Manila City policy; selected media coverage; correspondence to and from state officials regarding a request to repeal the policy; and a UN video on teenage pregnancy in Manila slums. In the course of submitting supplementary information to the CEDAW Committee, the NGO coalition commissioned an amicus brief examining whether and to what extent the Manila City policy enforces gender stereotypes, in violation of articles 2(f) and 5(a) of CEDAW.

The decision of the CEDAW Committee to establish an inquiry is proof that it found the information sufficiently reliable, for the purposes of article 8(1) of the Protocol.

Source: *Manila City inquiry*

(c) Request must allege grave or systematic violations

For the CEDAW Committee to establish an inquiry, the information it receives must indicate either 'grave' or 'systematic' violations of CEDAW.⁹⁰

A violation is **grave** if it concerns 'a severe abuse of fundamental rights' under CEDAW.⁹¹ This includes

discrimination against women expressed in the abuse of their right to life and security, to their integrity, both physical and mental, or to any other fundamental right protected by [CEDAW]. Severe violence or torture, disappearances or kidnappings, trafficking or killings could ... be motives for an inquiry....⁹²

Violence against women is the most radical expression of discrimination

The CEDAW Committee found that allegations of abduction, rape and murder of women were sufficiently 'grave' as to warrant the establishment of the *Ciudad Juárez inquiry*. In so finding, it described these acts as violations 'of women's basic human rights and as the most "radical" expressions of gender-based discrimination'.

Source: *Ciudad Juárez inquiry*

A violation is **systematic** if it

is not an isolated case, but rather a prevalent pattern in a specific situation; one that has occurred again and again, either deliberately with the intent of committing those acts, or as the result of customs and traditions, or even as the result of discriminatory laws or policies, with or without such purpose.⁹³

Examples of systematic violations of CEDAW include

[s]ystematic denial of equal rights for women regarding, for example, nationality or inheritance; laws that permit polygamy or are sex-specific in regard to adultery; tolerance of sex tourism, or recruitment of labor under false promises leading to forced prostitution; systematic acceptances of forced marriages; tolerance of violence against women, including the practice of female genital mutilation ... or other traditional harmful practices⁹⁴

Systematic violence and a culture of impunity

The CEDAW Committee found that allegations of abduction, rape and murder of women were not only 'grave', but also 'systematic'. It emphasised that the acts of violence were 'not isolated, sporadic or episodic cases of violence'. According to the Committee, they represented 'a structural situation and a social and cultural phenomenon deeply rooted in customs and mindsets'. Mexico was witnessing 'systematic violations of women's rights, founded in a culture of violence and discrimination that is based on women's alleged inferiority'.

Source: *Ciudad Juárez inquiry*

To be systematic, it is not necessary that alleged violations have taken place or are taking place on a national or even state scale. Both inquiries to date have concerned systematic violations of women's human rights within a single city and surrounding areas.

3.3 Stage 3: establishment and conduct of inquiry

Assuming the CEDAW Committee is satisfied that the information it received meets the inquiry procedure's threshold requirements, it will consider whether to exercise its discretion to establish an inquiry.

In making this determination, the CEDAW Committee will take into account the original submissions received under article 8 of the Optional Protocol, the submissions of the Australian Government, and any other relevant and reliable information, including information obtained from representatives of the Australian Government, governmental organisations, NGOs, individuals and the UN.⁹⁵

Factors that could influence the CEDAW Committee's decision to establish an inquiry include:

- the severity and pervasiveness of the alleged violation(s);
- whether the Australian Government is taking active steps to redress the alleged violation(s);
- the likelihood that an inquiry would have a positive impact on the lives of the woman or women affected by the alleged violation(s);
- available resources of the CEDAW Committee;
- other ongoing procedures concerning the Australian Government. For example, the CEDAW Committee recently put on hold a request for an inquiry while it proceeds with an existing follow-up procedure under the CEDAW periodic reporting procedure.⁹⁶

If the CEDAW Committee decides to establish an inquiry, it may designate one or more of its members to conduct a confidential inquiry and report back urgently to the full Committee.⁹⁷

As at the time of writing, the CEDAW Committee has exercised its discretion to undertake inquiries in two cases. Its first inquiry concerned the abduction, rape and murder of women in Ciudad Juárez, Mexico. The second inquiry, which is currently underway, concerns access to contraceptives in Manila City, in the Philippines.

Inquiry into access to contraceptives in Manila City

At the heart of the *Manila City inquiry* is Executive Order No. 003, which was issued by a former Mayor of Manila City. The Order

promotes responsible parenthood and upholds natural family planning not just as a method but as a way of self-awareness in promoting the culture of life while discouraging the use of artificial methods of contraception like condoms, pills, intrauterine devices, surgical sterilisation, and others.

It requires Manila City to establish programs and activities that 'promote and offer as an integral part of their functions counseling facilities for natural family planning and responsible parenthood'.

The Order does not ban use of, or access to, contraceptives explicitly. However, the NGO coalition that requested the inquiry has alleged that, by prohibiting access to contraceptives at public health facilities, where the majority of Filipinos access contraception, the Order has significantly impaired access to contraceptives and related health care services and information. In its initial request to the CEDAW Committee, the NGO coalition noted that '[n]early half of all Filipino women have an unmet need for contraception' and that, since the Executive Order was issued,

the policy has been to withdraw the supplies of modern contraceptives from city public health facilities and to deny women any referral or information on family planning services. Thus, women who for many years had relied on city public health facilities for modern contraceptives were suddenly left without their main source of supplies. Furthermore, these women cannot afford to buy these contraceptives in private facilities or in other cities.

The NGO coalition requested, and the CEDAW Committee agreed to conduct, an inquiry into whether the Executive Order violates articles 2-4 (general state obligations), 5 (gender stereotyping), 10 (education), 11 (employment), 12 (health care) and 16 (marriage and family relations) of CEDAW. It argued, for instance, that the Executive Order 'reflects a discriminatory government policy that denies women services that only they need in violation of articles 12(1) and (2) of ... CEDAW ... Women predominantly bear the consequences of the inability to access and use contraception'.

Source: *Manila City inquiry*

If the CEDAW Committee decides to establish an inquiry into Australia, it must seek the cooperation of the Australian Government at all stages of that inquiry.⁹⁸ Failure of the Australian Government to cooperate does not prevent the CEDAW Committee from proceeding with the inquiry. It may, however, limit the nature and extent of the inquiry, as explained further below.

The members of the CEDAW Committee designated to conduct the inquiry will seek to determine whether or not Australia has met its legal obligations under CEDAW.

Where warranted, an inquiry may include a **visit** to Australia as well as **hearings**, to assist the CEDAW Committee members to determine relevant facts or issues.⁹⁹ The ability of the CEDAW Committee to visit Australia and conduct hearings is contingent on the consent of the Australian Government.¹⁰⁰

Request to visit Mexico accepted

The Mexican Government promptly accepted the CEDAW Committee's request to permit two of its member to visit Mexico for the purposes of inquiring into allegations of abduction, rape and murder of women in Ciudad Juárez. The Government also made a commitment to provide all necessary assistance to the designated Committee members.

During their visit to Mexico, the two CEDAW Committee members met with a wide range of individuals and organisations, including government officials, representatives from the national human rights institution, parliamentary committees, UN bodies, NGOs, victims' organisations and family members, as well as members of the organisations that submitted the initial request for an inquiry. The Committee members also visited various sites in and around Ciudad Juárez, including sites where numerous victims' bodies had been found.

Source: *Ciudad Juárez inquiry*

The Australian Government has extended a standing invitation to UN Special Procedures mandate holders. Although the CEDAW Committee is a treaty body and not a UN Special Procedure, its inquiry and onsite functions are similar to those of Special Procedures. It seems likely, therefore, that the Australian Government would agree to a visit by the CEDAW Committee.

In order to facilitate an inquiry into alleged violations, it might be advisable to send the CEDAW Committee a list of key persons and organisations that it should consider meeting during a visit to Australia.

3.4 Stage 4: findings and recommendations

Once the CEDAW Committee has completed its inquiry, it transmits a report of the inquiry to the State Party concerned.

The report identifies whether or not, in the CEDAW Committee's view, the State Party has violated any substantive rights in CEDAW.¹⁰¹ The Committee may take a number of considerations into account when determining whether a State Party has violated CEDAW, including: the submissions of the author and the State Party, other reliable information (e.g., information obtained during an onsite visit), and expert information (e.g., amicus briefs).

If a violation of CEDAW is found, the CEDAW Committee will include in its report recommendations on how the Australian Government should redress those violations.¹⁰² Recommendations will typically be of a structural nature.

Structural remedies

The CEDAW Committee's recommendations in the *Ciudad Juárez inquiry* aimed to redress the structural elements of the violations. The first category of recommendations, which were of a general nature, urged Mexico to, among other things, comply with its obligations under CEDAW and incorporate a gender perspective into its policies to prevent and combat violence against women. The second category concerned the investigation of the crimes and punishment of the perpetrators, and included calls to investigate and punish the negligence and complicity of public authorities in the disappearances and murders of women. The final category of recommendations concerned the prevention of violence, the guarantee of security and the protection and promotion of women's human rights. These recommendations included a call to Mexico to take steps to guarantee victims and their family legal support in accessing justice.

Source: *Ciudad Juárez inquiry*

It is advisable to include specific information in a request for an inquiry about the types of recommendations you would like the CEDAW Committee to make to the Australian Government, in the event of a finding of a violation. The information should concern specific, measurable and time-limited recommendations.

Examining past reports of the CEDAW Committee can be a helpful way to strengthen a request for an inquiry and may increase the likelihood of a finding of violations of CEDAW. This is because past reports provide insight into how the Committee will interpret the different threshold requirements as well as its views on the scope and content of rights in CEDAW and the circumstances that will lead to a finding of a violation of those rights.

3.5 Stage 5: implementation and follow-up

The findings and recommendations of the CEDAW Committee are not legally binding on Australia. However, the findings and recommendations are highly persuasive and should be implemented by the Australian Government. Moreover, as a State Party to CEDAW and the Optional Protocol, Australia has a good faith obligation to act on the CEDAW Committee's findings and recommendations.

Six months after receiving the CEDAW Committee's inquiry report, the Australian Government must submit to the CEDAW Committee its observations on the findings, comments and recommendations.¹⁰³ The Australian Government should include information about steps taken to date, and the steps it plans to take, to implement the Committee's findings and recommendations.

The CEDAW Committee may decide to follow-up on its report and recommendations to monitor the Australian Government's progress in this regard.¹⁰⁴ The Committee may, for example, invite the Australian Government to include information in its next periodic report on the measures adopted in response to its inquiry.¹⁰⁵

Further measures needed to respond effectively to violence against women

Since the completion of the CEDAW Committee's inquiry, Mexico has taken a number of steps to address gender-based violence against women, including adoption of the *General Law on Women's Access to a Life Free From Violence* and the creation of the Office of the Special Prosecutor to address crimes of femicide.

Nevertheless, gender-based violence against women continues. The CEDAW Committee and other international and regional bodies (e.g., the HRC) have criticised Mexico for its ongoing failure to take adequate measures to address the situation of violence and the prevailing culture of impunity, and continue to monitor Mexico's efforts in this regard closely.

Source: *Ciudad Juárez inquiry*

The *Ciudad Juárez inquiry* highlights the challenges of responding effectively to violations that are widespread, especially where the State Party has allowed a culture of impunity to surround violations of rights in CEDAW over a long period of time. It is important, therefore, to see the inquiry procedure not as an isolated procedure but as one tool in a broader arsenal comprised of the reporting procedure, general recommendations and the communication procedure, as well as the procedures of other international bodies and general advocacy and activism for the advancement of women's human rights.

3.6 Inquiry procedure checklist

Request to conduct an inquiry

- Have you prepared a formal request to initiate an inquiry?
- Have you included supporting information (e.g., court decisions, medical records, expert reports, testimonies, statistical information)?

Assessment of threshold requirements

- Does your request allege violations by the Australian Government?
- Is your supporting information reliable?
- Does your request identify how a woman or women have been harmed?
- Does your request concern alleged grave or systematic violations of CEDAW?

Establishment and conduct of inquiry (optional)

- Does your request include a call for an onsite visit and hearings?
- Does your request detail the names of individuals or organisations with whom the CEDAW Committee should consult during an onsite visit to Australia?

Findings and recommendations

- Does your request identify which articles of CEDAW the Australian Government has allegedly violated?
- Does your request identify how the Australian Government allegedly violated those articles of CEDAW?
- Does your request provide information on the remedies sought?

Implementation of recommendations and follow-up

- Is there a strategy in place to ensure that the Australian Government implements the recommendations of the CEDAW Committee?

Example request for an inquiry

For further guidance, see example request for an inquiry ([Appendix 6](#)).

4 Other international complaint mechanisms

The Optional Protocol to CEDAW is not the only means of seeking redress for alleged violations of women's human rights. Communications can be brought using the communication procedures in CAT, ICERD, the Optional Protocol to CRPD and the Optional Protocol to the ICCPR. Requests for an inquiry into alleged grave or systematic violations can be made under CAT and the Optional Protocol to the CRPD.

Further means of seeking redress may be available in the future, as the Australian Government ratifies other human rights treaties that contain communication and inquiry procedures (e.g., the Optional Protocol to ICESCR and the ICRMW) and as communication and inquiry procedures are established in new human rights treaties.

Section 4 describes briefly how the communication and inquiry procedures operate in treaties other than the Optional Protocol to CEDAW. Several examples of the communication procedure being used to address discrimination and human rights violations in Australia are highlighted. A brief summary of past communications concerning Australia is contained in **Appendix 7**. Australia has not yet been the subject of an inquiry.

4.1 CAT

CAT contains a communication procedure and an inquiry procedure that can be used to address allegations of torture and other cruel, inhuman or degrading treatment or punishment.

The communication procedure is outlined in article 22 of CAT. It authorises the Committee against Torture (**CAT Committee**) to receive and consider communications from or on behalf of individuals who claim to be victims of a violation, by a State Party, of CAT.¹⁰⁶

States that ratify CAT are not automatically bound by its communication procedure. They must also declare that they recognise the competence of the CAT Committee to receive and consider communications.¹⁰⁷ The Australian Government recognised the authority of the CAT Committee to determine communications in January 1993, and it has been bound by the communication procedure ever since.

A total of 11 communications have been brought against Australia under CAT. In only one communication has the CAT Committee found the Australian Government in violation of its substantive obligations under CAT.

Australia obligated not to deport person in danger of being subjected to torture

In 1998, Mr Sadiq Shek Elmi, a Somali national and failed asylum seeker, submitted a communication to the CAT Committee. He alleged that his forced return to Somalia would constitute a violation, by the Australian Government, of article 3 of CAT, because he was a member of a minority clan that had a well-documented history of persecution in Mogadishu. Article 3 requires States Parties not to expel or return an individual to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

The CAT Committee determined that Elmi, a member of the Shikal tribe, was personally at risk of torture if returned to Somalia and that members of his family had already been murdered and raped. The Committee consequently found that the Australian Government had an obligation to refrain from forcibly returning Elmi to Somalia or any other country where there was a risk he would be expelled or returned to Somalia. Following the decision of the CAT Committee, the Australian Government allowed Elmi to remain in Australia.

Source: *Elmi v Australia*

Article 20 of CAT contains an inquiry procedure that authorises the CAT Committee to conduct confidential inquiries where it receives 'reliable information which appears to it to contain well-founded indications that torture is being systematically practised'.¹⁰⁸ Inquiries are conducted with the co-operation of the State Party concerned, and may include an onsite visit with the consent of the State Party.¹⁰⁹

States that ratify CAT are bound by the inquiry procedure unless they 'opt out' in accordance with article 28. When Australia ratified CAT on 8 August 1989, it chose not to opt out of the inquiry procedure and, as such, is bound by the procedure. The CAT Committee has not yet conducted inquiries into allegations of torture and other cruel, inhuman or degrading treatment or punishment against Australia.

4.2 ICERD

Article 14 of ICERD contains a communication procedure that can be used to address allegations of race discrimination. The procedure authorises CERD to receive and consider communications from individuals or groups of individuals claiming to be victims of a violation, by a State Party, of rights in ICERD.¹¹⁰

As in the case of CAT, States that ratify ICERD are not automatically bound by its communication procedure. They must also declare that they recognise the competence of CERD to receive and consider communications.¹¹¹ The Australian Government recognised CERD's authority in relation to the communication procedure in January 1993.

Since that time, nine communications have been submitted to CERD alleging that the Australian Government violated its obligations under ICERD. Of those communications, only one has been successful.

Offensive and insulting language to be removed from sporting grandstand

In 1960, a sporting grandstand in Toowoomba, Queensland, was named 'E.S. "Nigger" Brown Stand', in honour of a well-known sporting and civic personality. The term 'nigger' was featured on a large sign on the grandstand and was repeated orally in public announcements at, and relating to, the grandstand. Stephen Hagan, an Aboriginal man, sought to have the term removed from the grandstand and to obtain an apology from the trustees of the grandstand. After several Australian courts dismissed complaints brought by Hagan under the *Racial Discrimination Act 1975*, he submitted a communication to CERD alleging that the use of the term violated his rights in ICERD.

CERD found that, although the offending term was not considered offensive at the time the grandstand was erected in 1960, it was considered offensive and insulting at the time Hagan submitted his communication. It explained that ICERD, 'as a living instrument, must be interpreted and applied taking into [account] the circumstances of contemporary society'. CERD determined that the failure to ensure the removal of the offending term from the grandstand constituted a violation of ICERD. It consequently recommended that the Australian Government take the necessary measures to ensure its removal.

The Australian Government refused to follow CERD's decision. However, in 2008, the grandstand, including the sign with the offensive term, was demolished when work was undertaken to upgrade the venue. An agreement was reached between the Chair of the Toowoomba Sports Ground Trust and the then Sports Minister not to use the term anywhere on the grounds following the demolition of the grandstand.¹¹²

Source: *Hagan v Australia*

The communication procedure in ICERD is the only procedure to impose a time limit. Communications must be submitted to CERD within six months of the date of exhaustion of domestic remedies, unless there are 'duly verified exceptional circumstances' warranting otherwise.¹¹³ In cases where time has expired under ICERD, it may still be possible to submit a communication alleging racial discrimination under other international complaint mechanisms, provided that the relevant admissibility criteria are satisfied.

4.3 Optional Protocol to the CRPD

The Optional Protocol to the CRPD is one of the newest international complaint mechanisms, having only entered into force on 3 May 2008. The Protocol contains a communication procedure and an inquiry procedure that can be used to advance the rights of persons with disabilities.

The communication procedure is outlined in articles 1 to 5 of the Optional Protocol to the CRPD. Like other communication procedures, it authorises the Committee on the Rights of Persons with Disabilities (**CRPD Committee**) to receive and consider communications from individuals or groups of individuals (or persons acting on their behalf) who claim to be victims of violations, by the Australian Government, of CRPD rights.

The inquiry procedure is contained in articles 6 to 8 of the Optional Protocol. It authorises the CRPD Committee to conduct inquiries into 'reliable information indicating grave or systematic violations,'¹¹⁴ by the Australian Government, of rights set forth in the CRPD. Inquiries may include onsite visits, with the consent of the Australian Government.¹¹⁵

The Australian Government acceded to the Optional Protocol to the CRPD on 21 August 2009, and the Protocol entered into force for Australia one month later. In acceding to the Protocol, the Australian Government agreed to be bound by both the communication and inquiry procedures. There are currently no communications or inquiries against the Government under the Optional Protocol to the CRPD. This may change, however, as awareness of the Optional Protocol grows in Australia and, for example, as individuals have had an opportunity to exhaust domestic remedies.

4.4 Optional Protocol to the ICCPR

The Optional Protocol to the ICCPR contains a communication procedure that can be used to address violations of rights in the International Covenant on Civil and Political Rights (**ICCPR**). States that ratify the Optional Protocol recognise the competence of the HRC to receive and consider communications from individuals who claim to be victims of a violation, by a State Party, of rights in the ICCPR.¹¹⁶

Australia acceded to the Optional Protocol to the ICCPR on 25 September 1991. Since then, the HRC has received around sixty communications against Australia, including communications concerning discrimination on the ground of sexual orientation, the treatment of prisoners, and immigration detention. The HRC has determined on numerous occasions that the Australian Government failed to comply with its obligations under the ICCPR.

Criminalisation of sexual relations between consenting men a violation of the rights to non-discrimination and privacy

Nicholas Toonen, a homosexual man, submitted a communication to the HRC challenging a Tasmanian law that criminalised sexual relations between consenting men. Toonen argued that the law violated his rights to privacy and non-discrimination, in violation of the ICCPR.

The HRC found that the Australian Government had violated the rights to privacy and non-discrimination in the ICCPR. It dismissed the claim of the Australian Government that laws criminalising sexual relations between consenting men were justified on public health grounds, explaining that 'the criminalization of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of HIV/AIDS'.

Following the Toonen decision, the Commonwealth Government enacted the *Human Rights (Sexual Conduct) Act 1994* (Cth), which provides that '[s]exual conduct involving only consenting adults acting in private life is not to be subject, by or under any law of the Commonwealth, a State or a Territory, to any arbitrary interference with privacy....' Tasmania still refused to repeal the offending provisions of the *Criminal Code Act 1924* (Tas.). In 1997, in *Croome v Tasmania*, the impugned provisions were challenged in the High Court of Australia on the basis of their inconsistency with the Commonwealth Act. Following an unsuccessful attempt to have the matter struck out on procedural grounds, Tasmania repealed the impugned provisions.

Source: *Toonen v Australia*

Differentiating between same and opposite sex couples in the provision of veterans' pensions a violation of the right to non-discrimination

After Mr C died, his same sex partner, Edward Young, applied for a pension as a veteran's dependent. His request was denied on the basis that the *Veterans' Entitlements Act 1986* (Cth) applied only to opposite sex couples. Following unsuccessful appeals at the domestic level, Young submitted a communication to the HRC, alleging discrimination on the ground of sexual orientation.

The HRC found that, in differentiating between same sex and opposite sex couples in the provision of pensions for veterans' dependants, the Australian Government had violated its obligations under article 26 of the ICCPR not to discriminate. The HRC urged the Government to provide an effective remedy to Young, 'including the reconsideration of his pension application without discrimination based on his sex or sexual orientation, if necessary through an amendment of the law'. It further urged the Government to prevent similar violations of the ICCPR in the future.

The Australian Government did not adopt the recommendations of the HRC in this case. However, in 2008, approximately five years after the HRC's decision, and following the Commission's National Inquiry into Discrimination against People in Same-Sex Relationships, the Government enacted the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008* (Cth). That Act amended a number of federal laws, including the *Veterans' Entitlements Act 1986*, to eliminate discrimination on the ground of sexual orientation. An eligible person is now entitled to receive a pension as a veteran's dependent regardless of whether the veteran and the dependant are of the same sex or a different sex.

Source: *Young v Australia*

Treatment of Aboriginal youth with mental illness in prison a rights violation

In a communication concerning the conditions of detention of Corey Brough, an Aboriginal youth with a mild mental illness, the HRC found that the Australian Government had violated articles 10 (rights of persons deprived of their liberty) and 24 (rights of the child) of the ICCPR. In reaching this finding, the HRC acknowledged that Brough had been kept in a 'safe cell' to provide him with a less stressful, more supervised environment. However, it said that this intention was negated by the fact that his mental health worsened while in that cell. The HRC observed that Brough's

extended confinement to an isolated cell without any possibility of communication, combined with his exposure to artificial light for prolonged periods and the removal of his clothes and blanket, was not commensurate with his status as a juvenile person in a particularly vulnerable position because of his disability and his status as an Aboriginal. As a consequence, the hardship of the imprisonment was manifestly incompatible with his condition, as demonstrated by his inclination to inflict self-harm and his suicide attempt.

The HRC concluded that the administration of anti-psychotic medication ('Largactil') without Brough's consent did not constitute a violation of article 7 of the ICCPR (freedom from cruel, inhuman or degrading treatment or punishment), because it was intended to control his self-destructive behaviour, the medication had been prescribed by a general practitioner, and the treatment continued only after Brough was examined by a psychiatrist.

The HRC recommended that the Australian Government provide an effective remedy to Brough, including compensation. In its response, the Government stated that it did not accept the HRC's findings that Brough's rights had been violated. It suggested that Brough had been 'dealt with in a manner appropriate to his age, Indigenous status and intellectual disability, with due consideration to the challenges presented by his behaviour and the risk he presented to himself, other inmates and the security of the Parklea Correctional Centre'.¹¹⁷ It also stated that it did not consider monetary compensation or other measures (e.g., early release on parole) appropriate.¹¹⁸

Source: *Brough v Australia*

Prolonged immigration detention without an effective opportunity to have lawfulness of detention reviewed a rights violation

A, a Cambodian citizen, submitted a communication to the HRC in which he claimed that the Australian Government had violated his rights under the ICCPR by detaining him in immigration detention for a period of more than four years.

The HRC concluded that the Australian Government had violated article 9 of the ICCPR because A had been subject to arbitrary detention and denied an effective opportunity to have the lawfulness of his detention reviewed by a court. In reaching its decision, the HRC recalled that

the notion of 'arbitrariness' must not be equated with 'against the law' but be interpreted more broadly to include such elements as inappropriateness and injustice. Furthermore, remand in custody could be considered arbitrary if it is not necessary in all the circumstances of the case, for example to prevent flight or interference with evidence: the element of proportionality becomes relevant in this context.

The HRC went on to explain that

every decision to keep a person in detention should be open to review periodically so that the grounds justifying the detention can be assessed. In any event, detention should not continue beyond the period for which the State can provide appropriate justification. ... [T]he State party has not advanced any grounds particular to the author's case, which would justify his continued detention for a period of four years, during which he was shifted around between different detention centres.

The HRC further explained that although A 'could, in principle, have applied to the court for review of the grounds of his detention', that review was limited 'to a formal assessment of the self-evident fact that he was indeed a "designated person"...'. According to the HRC, the review was thus merely formal, and not real, in its effects and did not satisfy the requirements of article 9 of the ICCPR. Pursuant to article 9, the review must include the possibility of ordering release and not be limited to mere compliance of the detention with domestic law.

The HRC recommended that the Australian Government provide A with an effective remedy, including adequate compensation for the length of his detention. The Government rejected the views of the HRC and declined to compensate A or provide any other remedy.

Source: *A v Australia*

5 Practical considerations

International complaint mechanisms, such as the Optional Protocol to CEDAW, offer an important means of holding the Australian Government accountable for its failures to respect, protect and fulfil women's human rights. Individual women can seek redress for violations of their human rights, and decisions and findings of treaty bodies can serve as an important trigger for structural change, including law reform or policy development.

International complaint mechanisms are not, however, the only or necessarily the most effective means available to address specific violations of women's

human rights. Such mechanisms can be time and resource intensive to use, especially when domestic remedies need to be exhausted first and there can be significant consequences for all involved, particularly the alleged victim(s). Moreover, even if it is found that the Australian Government has violated its international human rights obligations, there is no guarantee that it will accept the findings of the relevant treaty body or implement its recommendations.

Section 5 explores some of the considerations that an alleged victim or anyone assisting an alleged victim should take into account when deciding whether to use an international complaint mechanism.

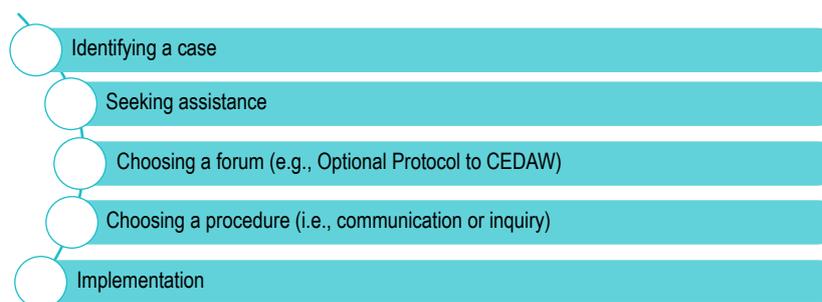


Figure 5 – Practical considerations in deciding to use an international complaint mechanism

5.1 Identifying a case

The decision whether to use an international complaint mechanism may be influenced by whether or not a violation of human rights has occurred and can be substantiated. It may also be influenced by whether or not the needs and best interests of the alleged victim(s) are served by use of such a mechanism.

(a) Identifying a human rights violation

If a violation of a woman's human rights has occurred and the Australian Government has failed to redress that violation, it might be appropriate to seek redress through an international complaint mechanism.

In determining whether or not it is appropriate to use an international complaint mechanism to obtain redress for a specific violation of a woman's rights, it is important to identify:

- the relevant facts;
- the harm to the alleged victim;
- which human rights allegedly have been violated;

- how the Australian Government allegedly violated those rights;
- whether there is sufficient evidence to substantiate the alleged violations;
- whether the case has legal merit.

Identification of each of these elements will help to paint a clearer picture of the alleged violation, the evidence available to substantiate that alleged violation, and the legal merits of the case. This picture will, in turn, influence the decision whether to seek redress through an international complaint mechanism or some other means. For example, an international complaint mechanism may not be the most effective means available to address a specific violation of a woman's human rights, if it is not possible to identify sufficient evidence to substantiate the alleged violation.

(b) Identifying an alleged victim

That a violation of a woman's human rights has occurred does not necessarily mean that she will want to use formal legal mechanisms, such as international complaint mechanisms, to obtain redress for that violation. She may, for instance, wish to pursue non-legal avenues or simply put the violation behind her, so that she can get on with her life.

If an alleged victim is considering using an international complaint mechanism to seek redress, it is important that she has a clear understanding of:

- the range of international complaint mechanisms available to her;
- the purpose of the communication and inquiry procedures as well as their comparative strengths and weaknesses relevant to her situation;
- the range of admissibility criteria and/or threshold requirements that need to be satisfied;
- the commitment and resources required to use international complaint mechanisms effectively;
- the likelihood of success or failure;
- the potential risks and benefits of using an international complaint mechanism, and options for minimising risks;
- what can and cannot be achieved through international complaint mechanisms.

It is also important to ensure that the alleged victim will have an adequate support system in place throughout all stages of the process.

In cases where a third party, such as an NGO, wishes to use an international complaint mechanism as part of broader advocacy efforts, it is important to ensure that the alleged victim gives her full and informed consent and that her needs and best interests are always paramount. If a third party is considering using an international complaint mechanism, it will need to ensure that it has a clear understanding of the same considerations outlined above in relation to alleged victims.

5.2 Seeking assistance

In deciding whether to use an international complaint mechanism, it is important to identify what types of assistance may be required. This might include legal and financial assistance as well as resources detailing relevant human rights jurisprudence and practice. It might also include expert information. Once the required assistance have been identified, it is important to evaluate whether or not the victim can access them, either herself or with the support of a third party.

(a) Legal assistance

Legal assistance is not a prerequisite to using international complaint mechanisms. Even so, legal assistance may be needed to pursue remedies at the domestic level. In addition, jurisprudence suggests that legal assistance can help in satisfying admissibility criteria / threshold requirements, and in articulating a strong legal case.

Legal assistance to bring a communication or make a request for an inquiry can be sought from a lawyer. However, a women's organisation familiar with international human rights law and practice may also be in a position to provide advice. Section 6 lists various legal services that offer low cost or free legal assistance. It also lists a number of women's organisations that may be able to offer assistance and support in using international mechanisms.

(b) Financial assistance

There is no fee involved in using international complaint mechanisms. However, associated costs may be incurred. For example, an alleged victim may incur costs in exhausting domestic remedies and she may also be exposed to an adverse costs order if she is unsuccessful in pursuing her case in Australia. If an organisation assists an alleged victim to bring a communication or make a request for an inquiry, it may incur staff, administrative and other expenses.

Financial assistance may be available to the victim to help defray associated costs. This might include legal aid, pro bono legal assistance or a grant from a funding agency.

(c) Consultation

Key stakeholders, such as the Commission, community legal centres and women's organisations may be able to provide important information and guidance in deciding whether or not to use international complaint mechanisms. Individuals and organisations with experience in using international complaint mechanisms may provide a further source of information and guidance.

In addition to providing key insights into the operation and jurisprudence of international complaint mechanisms, these stakeholders may be able to provide strategic advice regarding the broader social, legal and political climates. They may also be able to reflect on lessons learnt from the submission of past communications against Australia.

Consulting with a broad range of stakeholders can be a helpful way to build a coalition and gain support for a communication or inquiry. If a communication or inquiry results in a finding of a violation against Australia, coalitions can be an important way to raise awareness of the finding and to lobby the Australian Government to implement the recommendations of the relevant treaty body.

(d) Expert information

Expert information, including amicus briefs, can be a helpful way to strengthen allegations made in a communication or a request for an inquiry.

If it is determined that expert information may bolster claims under an international complaint mechanism, appropriate experts will need to be identified and an invitation extended to submit expert information.

5.3 Choosing a forum

As a number of international complaint mechanisms can be used to address human rights violations, it is important to consider which forum is most suitable, having regard to the alleged facts and the needs and best interests of the victim(s).

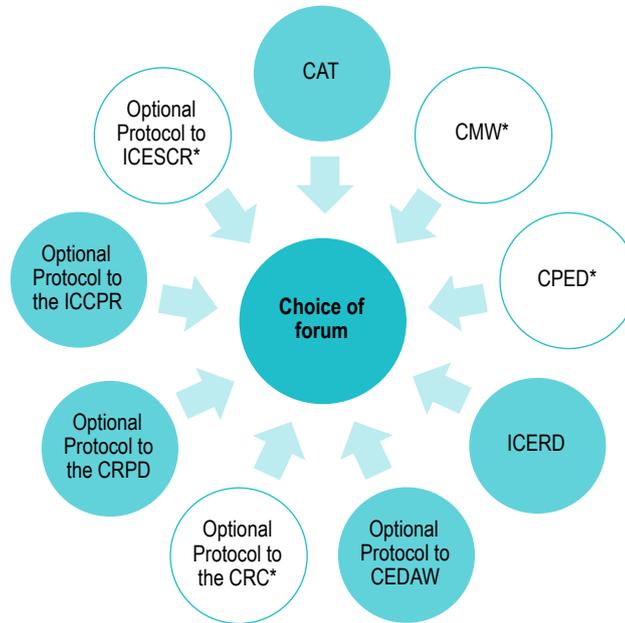


Figure 6 – Choosing a forum

* These mechanisms have not yet entered into force or are not binding on the Australian Government

(a) Human rights

The decision regarding which international complaint mechanisms to use may be influenced by the substantive human rights that it is alleged have been violated. It will be recalled, for instance, that the CEDAW Committee will declare a communication inadmissible if it alleges a violation of a human right not protected in CEDAW. Although the CEDAW Committee will take rights protected in other human rights treaties into account when considering alleged violations of rights in CEDAW, it is not competent to determine whether those other rights have been violated. It is therefore important to identify relevant human rights and determine which human rights treaties afford those rights protection.

Overlap between international human rights treaties means that, in certain circumstances, there may be a choice of which treaty to rely on. For example, a woman with a disability who allegedly has been forcibly sterilized could rely on rights protected in several human rights treaties, including CEDAW, the CRPD and the ICCPR. In such cases, other considerations will need to be taken into account before settling on a particular forum.

How a treaty body has interpreted or applied a particular human right may also influence the choice of forum. If a treaty body has interpreted a right more liberally than another treaty body or applied it favourably in similar circumstances to the facts of the case, it may be prudent to submit a communication or request an inquiry using that forum.

(b) Ratification and reservations

The decision regarding which forum to use may be limited according to whether the Australian Government has ratified the relevant treaty and/or entered a reservation to the relevant human right.

For example, it is not possible to bring a communication against the Australian Government using the CMW communication procedure, since it has not yet ratified that treaty. Similarly, communications brought under the Optional Protocol to CEDAW that allege a violation, by the Australian Government, of article 11 of CEDAW in respect of women's roles in direct, armed combat, will likely be declared inadmissible.

(c) Jurisprudence

Past jurisprudence in similar cases is a helpful indicator of the likelihood of a favourable decision from a particular treaty body. A forum that already has been used with success to hold a State Party accountable might be a suitable choice of forum. However, there may be reasons for choosing a forum without an established record of findings of violations in similar cases. One such reason is the development of new and compelling jurisprudence, particularly where a treaty has recently entered into force, such as in the case of the Optional Protocol to the CRPD.

(d) Admissibility criteria and threshold requirements

Although the communication procedure's admissibility criteria and threshold requirements of the various treaty mechanisms are predominantly similar, there are important distinctions that warrant close examination and may influence the choice of forum.

For example, in contrast to ICERD, which imposes a six-month deadline from the date of exhaustion of domestic remedies to the date of submission of a communication, the Optional Protocol to CEDAW does not impose any time limit. Even so, it is prudent for victims to act quickly, because the CEDAW Committee could take significant delay into account when determining admissibility criteria, such as abuse of the right to submit a communication.

(e) Time considerations

The length of time it takes to use the communication and inquiry procedures varies between international complaint mechanisms.

The communication procedure in the Optional Protocol to CEDAW currently takes approximately two to three years from the initial date of submission of a communication until a final merits decision. In the *Vertido* case, for example, Karen Tayag Vertido submitted her communication on 27 November 2007 and the CEDAW Committee adopted its views over two and half years later, on 16 July 2010. By way of comparison, the communication procedure in the Optional Protocol to the ICCPR currently takes approximately two to six years from the date a communication is submitted until a final merits decision is reached.

Examining recent communication decisions and inquiry reports of the different treaty bodies is a helpful way to determine the current length of time it usually takes to use the communication or inquiry procedures.

5.4 Choosing a procedure

In the case of CAT and the Optional Protocols to CEDAW and CRPD, women have a choice between using the communication procedure or the inquiry procedure, to allege human rights violations by the Australian Government. For ICERD and the Optional Protocol to the ICCPR, the choice of procedure is limited to the communication procedure.

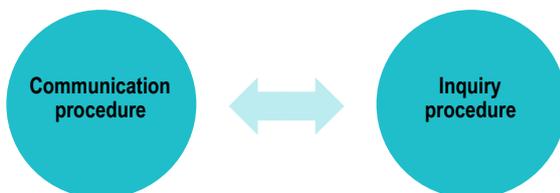


Figure 7 – Choosing a procedure

There are a number of considerations that could influence whether the communication procedure or the inquiry procedure is more suitable.

(a) Outcome sought

The desired outcome may influence the choice of procedure.

If individual redress, such as compensation or access to a safe home, is sought, the communication procedure might be more suitable. If, however, structural change, such as legal reform or a change in state practice, is the desired outcome, then the inquiry procedure might be the preferred choice of procedure. In cases where both individual redress and structural change is sought, the ability of the communication procedure and the inquiry procedure to deliver those outcomes will need to be weighed carefully, having regard to the particular facts of the case.

(b) Number of women affected and nature of violation

The number of women allegedly affected and the nature of the alleged violation may influence whether the communication procedure or the inquiry procedure is the more appropriate choice.

As a general rule, violations concerning individual women or a small group of individual women are better suited to the communication procedure. While it is possible that the CAT, CEDAW and CRPD Committees would decide to establish an inquiry into a single, egregious violation or a violation concerning a small group of individual women, their limited resources mean that they are likely to exercise their discretion to do so sparingly and only in the most egregious of cases.

In contrast, alleged violations concerning a large number of women or that are structural in nature (e.g., violations resulting from discrimination institutionalised in law), are usually better dealt with through the inquiry procedure. It is difficult to imagine, for instance, how the CEDAW Committee could have gained the same insights into, or responded as effectively to, the widespread abduction, rape and murder of women in Ciudad Juárez, had it received a communication rather than a request for an inquiry.

(c) Anonymity

Whether or not an alleged victim wishes to remain anonymous may determine whether the communication procedure or the inquiry procedure should be used.

Communications can only be received if they are not anonymous. While an alleged victim may request that a treaty body not publish her name and identifying details, she must still agree to disclose her identity to the Australian Government if she decides to use the communication procedure. In cases where an alleged victim wishes to preserve her anonymity, the inquiry procedure may be the best procedure to use.

(d) Admissibility criteria and threshold requirements

Whether the communication procedure's admissibility criteria or the inquiry procedure's threshold requirements can be satisfied may influence which procedure is more appropriate in the circumstances. For example, an alleged victim might not be able to satisfy the admissibility criteria of the communication procedure but may be able to meet the threshold requirements established by the inquiry procedure.

If an examination reveals that certain admissibility criteria or threshold requirements would not be met, the necessary steps should be taken to comply with those criteria or requirements. For example, if there is a question as to the reliability of information supporting a request for an inquiry, additional corroborating information should be obtained or steps should be taken to ascertain and demonstrate the veracity of that information. If it is determined that it is not possible to satisfy the admissibility criteria or threshold requirements, it may be advisable to consider other means of obtaining redress for violations of women's human rights.

(e) Length of procedure

The length of the communication and inquiry procedures may influence the choice of procedure, especially where time is of the essence. The length of the procedure will depend on a range of factors, including the treaty body's current workload, whether

the communication or request for an inquiry includes all relevant information and supporting documentation, whether admissibility criteria or threshold requirements are met, and the timeliness of the parties' responses. Examining recent communication decisions and inquiry reports is a helpful way to determine the current length of time it usually takes to obtain a final decision through the communication procedure or for the CAT, CEDAW or CRPD Committees to publish their final inquiry report.

As explained above, the communication procedure in the Optional Protocol to CEDAW currently takes approximately two to three years from the date of submission of a communication until a final merits decision. Communications that are dismissed as inadmissible are usually dealt with in a shorter period of time. The CEDAW Committee's first inquiry took approximately three years from the date of the initial request until publication of the final report. The Committee's current inquiry into access to contraceptives in the Philippines appears to be taking longer, however.

(f) Strengths and weaknesses

The communication and inquiry procedure both have strengths and weaknesses that may influence the choice of procedure. The relative strengths and weaknesses of each procedure will need to be weighed carefully in light of the particular facts of the case. A number of strengths and weaknesses are outlined below.

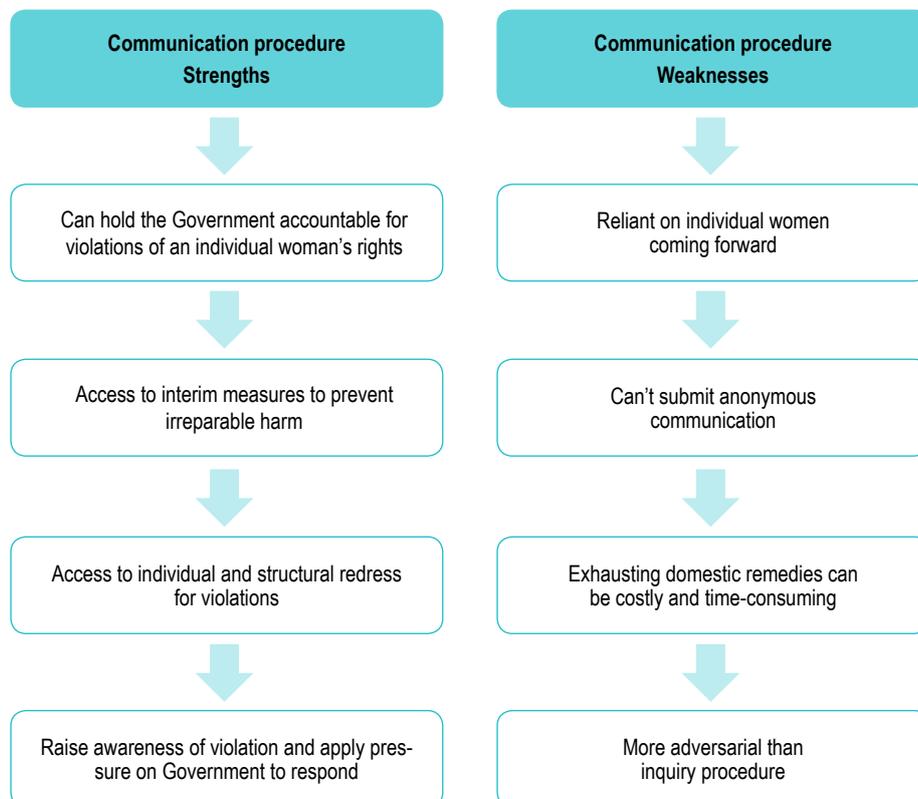


Figure 8 – Strengths and weaknesses of the communication procedure

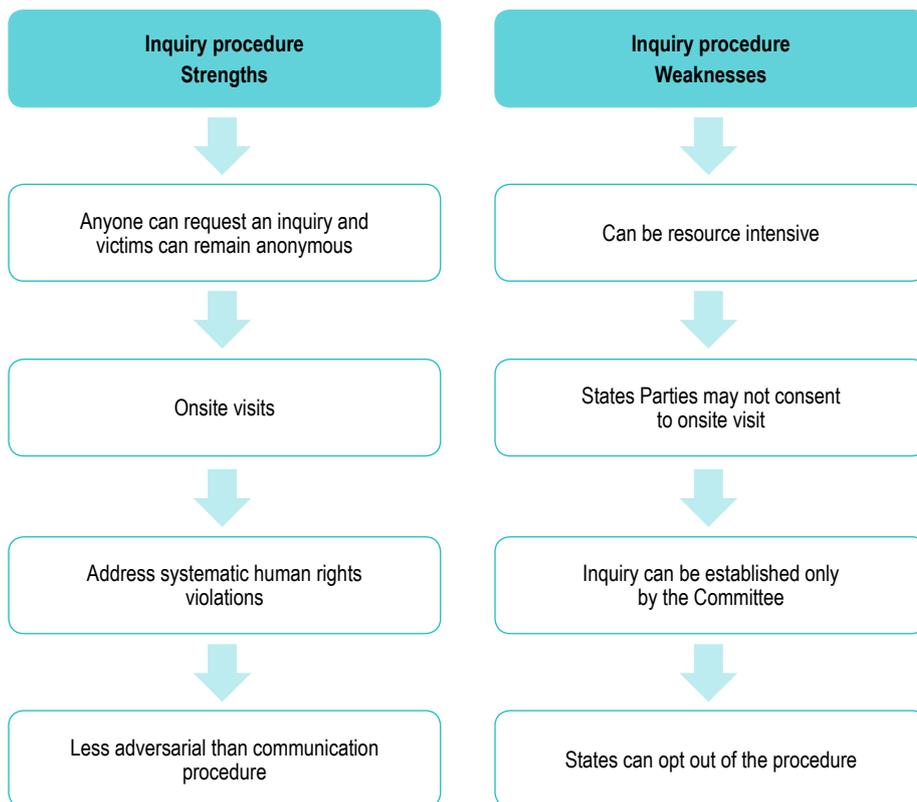


Figure 9 – Strengths and weaknesses of the inquiry procedure

5.5 Implementation

It is important to consider whether or not a favourable result is likely to produce concrete change for women in Australia, before submitting a communication or making a request for an inquiry. There may be little merit in using an international complaint mechanism if the Government has indicated that it will not take steps to redress the violation, even if it is found that the Government has breached its international human rights obligations.

In circumstances such as these, consideration should be given to whether use of an international complaint mechanism might nevertheless be useful in raising awareness of an issue, garnering public support, and bringing domestic and international pressure to bear on the Government, which, in turn, may have a flow on effect and influence long-term change.

Enactment of Civil Union Act 2004

Although the HRC determined that the failure, by the New Zealand Government, to recognise same sex marriage did not amount to a violation of the ICCPR,¹¹⁹ the Government introduced the *Civil Union Act 2004* two years later. The Act permits two people, whether of the same sex or a different sex,¹²⁰ to enter into a civil union. The *Marriage Act 1955*, however, continues to apply only to couples of a different sex, and the HRC's unfavourable decision may have set back the normative development of a right to marry for same sex couples in New Zealand.

Source: *Joslin v New Zealand*

It is advisable at the outset to develop a strategy to encourage the Government to implement the recommendations of the relevant treaty body, in the event of a finding of a violation of women's human rights. Raising the profile of the communication or inquiry, generating media interest, coalition building, and tapping into existing advocacy movements are just some of the steps that might be taken to create a favourable environment for change.

5.6 Practical considerations checklist

Identifying a case

Identifying a human rights violation

- Have you identified the relevant facts?
- Have you identified the harm to the alleged victim?
- Have you identified the alleged human rights violation?
- Have you confirmed that the government is responsible for the alleged violation?
- Have you confirmed whether there is sufficient evidence to substantiate the allegations?
- Have you determined whether the case has legal merit?

Identifying a victim

- Have you confirmed whether the alleged victim wishes to obtain redress for the violation of her rights?
- Have you explained the range of available international complaint mechanisms?
- Have you identified the potential risks and benefits of using international complaint mechanisms? Have you identified options for minimising potential risks?
- Have you ensured that the alleged victim has clear and realistic expectations of what can be achieved through international complaint mechanisms?
- Have you confirmed whether the alleged victim has an adequate support system in place?

Seeking assistance

- Have you confirmed whether the alleged victim has sought legal and/or financial assistance?
- Have you consulted key stakeholders?
- Have you sought expert information, if needed?

Choosing a forum

- Have you identified the relevant human rights and the treaties that protect those rights?
- Have you confirmed whether the Australian Government has ratified the relevant international complaint mechanism? Have you confirmed whether it has entered any reservations?
- Have you determined whether similar cases have been decided previously by treaty bodies?
- Have you considered if there are any admissibility criteria or threshold requirements specific to a particular international complaint mechanism? (e.g., deadlines for submission)
- Have you determined the likely length of time it would take the treaty body to reach a decision?

Choosing a procedure

- Have you identified what outcome the alleged victim is seeking?
- Have you identified how many women are affected and what is the nature of the alleged violation?
- Have you asked the alleged victim if she wishes to remain anonymous?
- Have you identified whether the alleged victim can meet the admissibility criteria or threshold requirements?
- Have you determined the likely length of time the communication and inquiry procedures will take?
- Have you identified the strengths and weaknesses of the communication and inquiry procedures as they relate to the particular facts of the case?

Implementation

- Have you identified whether a favourable outcome would likely result in concrete change for the alleged victim and other women in Australia?
- Have you developed a strategy to encourage the government to implement favourable recommendations? How could existing advocacy be harnessed to help implement favourable recommendations?

6 Further information and assistance

6.1 Further information

(a) Key documents

Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 August 1981): <http://www2.ohchr.org/english/law/cedaw.htm>

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 10 December 1999, 2131 UNTS 83 (entered into force 22 December 2000): <http://www2.ohchr.org/english/law/cedaw-one.htm>

Rules of Procedure of the Committee on the Elimination of Discrimination against Women: <http://www2.ohchr.org/english/bodies/cedaw/rules.htm>

(b) CEDAW Jurisprudence

Communications: <http://www2.ohchr.org/english/law/jurisprudence.htm>

Communication Name	Comm. No.	UN Doc.
<i>A.S. v Hungary</i>	4/2004	CEDAW/C/36/D/4/2006 (2006)
<i>A.T. v Hungary</i>	2/2003	CEDAW/C/32/D/2/2003 (2005)
<i>B.-J. v Germany</i>	1/2003	CEDAW/C/36/D/1/2003 (2004)
<i>Constance Ragan Salgado v U.K.</i>	11/2006	CEDAW/C/37/D/11/2006 (2007)
<i>Cristina Muñoz-Vargas y Sainz de Vicuña v Spain</i>	7/2005	CEDAW/C/39/D/7/2005 (2007)
<i>Dung Thi Thuy Nguyen v The Netherlands</i>	3/2004	CEDAW/C/36/D/3/2004 (2006)
<i>Fatma Yildirim v Austria</i>	6/2005	CEDAW/C/39/D/6/2005 (2007)
<i>G.D. and S.F. v France</i>	12/2007	CEDAW/C/44/D/12/2007 (2009)
<i>Karen Tayag Vertido v The Philippines</i>	18/2008	CEDAW/C/46/D/18/2008 (2010)
<i>Michèle Drayas et al. v France</i>	13/2007	CEDAW/C/44/D/13/2007 (2009)
<i>N.S.F. v U.K.</i>	10/2005	CEDAW/C/38/D/10/2005 (2007)
<i>Rahime Kayhan v Turkey</i>	8/2005	CEDAW/C/34/D/8/2005 (2006)
<i>Şahide Goekce v Austria</i>	5/2005	CEDAW/C/39/D/5/2005 (2007)
<i>Zhen Zhen Zheng v The Netherlands</i>	15/2007	CEDAW/C/42/D/15/2007 (2009)

Inquiries: http://www2.ohchr.org/english/bodies/cedaw/inquiry_procedure.htm

Inquiry name	UN Doc.
<i>Report on Mexico Produced by the Committee on the Elimination of Discrimination Against Women Under Article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico</i> ['Ciudad Juárez Inquiry']	CEDAW/C/2005/OP.8/MEXICO (2005)

(c) Resources

Attorney-General's Department, Human Rights Communications: http://ag.gov.au/www/agd/agd.nsf/Page/Human_rights_and_anti-discriminationCommunications

Australian Human Rights Commission and the Office for Women, Women's Human Rights: United Nations Convention on the Elimination of All Forms of Discrimination against Women (2008): http://www.hreoc.gov.au/sex_discrimination/publication/CEDAW/index.html

Bayefsky, Anne F., How To Complain to the UN Human Rights Treaty System: <http://www.bayefsky.com/unts/index.html>

Equality and Human Rights Commission (United Kingdom), A Lever for Change: Using the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (2010): http://www.equalityhumanrights.com/uploaded_files/humanrights/a_lever_for_change.pdf

Facio, Alda, The OP-CEDAW as a Mechanism for Implementing Women's Human Rights: An Analysis of The First Five Cases under the Communications Procedure of the OP-CEDAW, International Women's Rights Action Watch – Asia Pacific, Occasional Paper Series No. 12 (2008): http://www.iwraw-ap.org/aboutus/pdf/OPS12_Final_for_publication_April_28.pdf

French, Philip, Guide to Making Complaints under the Optional Protocol to the CRPD (forthcoming)

Inter-American Institute of Human Rights, Optional Protocol: Convention on the Elimination of All Forms of Discrimination against Women (2000)

Inter-Parliamentary Union, The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol: Handbook for Parliamentarians (2003): http://www.ipu.org/PDF/publications/cedaw_en.pdf

International Service for Human Rights, Simple Guide to the UN Treaty Bodies (2010): http://www.ishr.ch/component/docman/doc_download/1031-ishr-simple-guide-to-the-un-treaty-bodies

International Women's Rights Action Watch – Asia Pacific, 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 (2008): http://www.iwraw-ap.org/documents/resourceguide/Our_Rights_Guide.pdf

International Women's Rights Action Watch – Asia Pacific, The Optional Protocol to CEDAW (2009): <http://www.iwraw-ap.org/protocol/doc/opcedaw.pdf>

KARAT Coalition, Optional Protocol to CEDAW and How It Can Be Used to Advance Women's Human Rights: http://www.karat.org/op_cedaw/

Office of the United Nations High Commissioner for Human Rights, Human Rights Treaty Bodies: <http://www2.ohchr.org/english/bodies/treaty/index.htm>

Office of the United Nations High Commissioner for Human Rights, The United Nations Human Rights Treaty System: An Introduction to The Core Human Rights Treaties and The Treaty Bodies, Fact Sheet No. 30 (2005) <http://www.ohchr.org/Documents/Publications/FactSheet30en.pdf>

Office of the United Nations High Commissioner for Human Rights, Working with the United Nations Human Rights Programme: A Handbook for Civil Society (2008): http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf

Ramaseshan, Geeta, 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 Communication Procedure of the OP-CEDAW, International Women's Rights Action Watch – Asia Pacific, Occasional Paper Series No. 13 (2009): http://www.iwraw-ap.org/publications/doc/OPS13_Final.pdf

Sullivan, Donna, Overview of The Rule Requiring The Exhaustion of Domestic Remedies under the Optional Protocol to CEDAW, International Women's Rights Action Watch Asia Pacific OP-CEDAW Technical Papers No. 1 (2008): http://www.iwraw-ap.org/publications/doc/DonnaExhaustionWeb_corrected_version_march%2031.pdf

Sullivan, Donna, Guide to the Optional Protocol to CEDAW, International Women's Rights Action Watch – Asia Pacific (forthcoming).

6.2 Assistance

(a) Legal

<p>Australian Human Rights Commission 1300 656 419 http://www.humanrights.gov.au/</p>	<p>Public Interest Advocacy Centre (02) 8898 6500 http://www.piac.asn.au/</p>
<p>Human Rights Law Centre (03) 8636 4450 http://www.hrlc.org.au/</p>	<p>Women's Legal Services Australia (02) 8745 6988 / 1800 801 501 (advice line) http://womenslegalnsw.asn.au/</p>
<p>National Association of Community Legal Centres (02) 9264 9595 http://www.naclc.org.au/</p>	

(b) Other

<p>Australian Immigrant and Refugee Women's Alliance (02) 9569 1288 http://www.airwa.org/</p>	<p>National Aboriginal and Torres Strait Islander Women's Alliance (02) 6175 9919 http://www.natsiwa.org.au/</p>
<p>Australian Women Against Violence Alliance 1300 252 006 http://awava.org.au/</p>	<p>National Rural Women's Coalition and Network (03) 5422 3238 http://www.nrwc.com.au/</p>
<p>Economic Security for Women 1300 918 273 http://www.security4women.org.au/</p>	<p>UN Women Australia (02) 6225 5810 http://www.unifem.org.au/</p>
<p>Equality Rights Alliance (02) 6230 5152 http://www.equalityrightsalliance.org.au/</p>	<p>YWCA Australia (02) 6230 5150 http://ywca.org.au/</p>
<p>International Women's Rights Action Watch – Asia Pacific (Malaysia) + 60 3 2282 225 http://www.iwraw-ap.org</p>	

- 1 See Australian Human Rights Commission, *Annual Report 2009-2010* (2010), p 77.
- 2 See ABS, *Personal Safety, Australia, 2005* (Reissue), Catalogue No 4906.0 (2006), p 7. At [www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4906.0Main+Features12005%20\(Reissue\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4906.0Main+Features12005%20(Reissue)?OpenDocument) (viewed 13 June 2011).
- 3 See ABS, above.
- 4 See ABS, *Average Weekly Earnings, Australia, February 2010*, Catalogue No 6302.0 (2010); R Cassells et al., *The impact of a sustained gender wage gap on the Australian economy* (2009), National Centre for Social and Economic Modelling, p v. At https://guard.canberra.edu.au/natsem/index.php?mode=download&file_id=1058 (viewed 13 June 2011).
- 5 See Australian Human Rights Commission, *Accumulating Poverty? Women's Experiences of Inequality Over the Lifecycle: an issues paper examining the gender gap in retirement savings* (2009).
- 6 See Equal Opportunity for Women in the Workplace Agency (EOWA), *EOWA 2010 Australian Census of Women in Leadership* (2010), pp 7-8. At http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2010_Australian_Women_In_Leadership_Census/Media_kit/2010_census.pdf (viewed 13 June 2011).
- 7 *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 10 December 1999, 2131 UNTS 83 (entered into force 22 December 2000).
- 8 Attorney-General and Minister for the Status of Women, 'Australia Strengthens Women's Rights', 4 March 2009. At http://www.ag.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2009_FirstQuarter_4March-AustraliaStrengthensWomensRights (viewed 13 June 2011).
- 9 The Guide should be read together with Australian Human Rights Commission and the Office for Women, *Women's Human Rights: United Nations Convention on the Elimination of All Forms of Discrimination against Women* (2008) [Women's Education Kit] At http://www.hreoc.gov.au/sex_discrimination/publication/CEDAW/index.html (viewed 13 June 2011).
- 10 *Convention on the Elimination of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 August 1981).
- 11 This section builds on Factsheet 4 in the Women's Education Kit, above 9.
- 12 See also CEDAW Committee *General Recommendation No. 19: Violence against Women*, UN Doc A/47/38 at 1 (1993) (defining gender-based violence as a form of discrimination against women that States Parties to CEDAW are required to eliminate).
- 13 CEDAW, art 18. The community sector, including non-governmental organisations, can provide 'shadow' or 'alternative' reports to the CEDAW Committee, which provide their own evaluation of a State Party's compliance with CEDAW.
- 14 CEDAW, art 29.
- 15 Optional Protocol to CEDAW, art 3.
- 16 The six official UN languages are Arabic, Chinese, English, French, Russian and Spanish.
- 17 Optional Protocol to CEDAW, art 6(1); *Rules of Procedure of the Committee on the Elimination of Discrimination against Women*, UN Doc A/56/38 (Supp), as amended by UN Doc A/62/38 (Supp) [Rules of Procedure], r 74(4).
- 18 Optional Protocol to CEDAW, art 3.
- 19 CEDAW Committee, *General Recommendation No. 19*, note 12, para 9; CEDAW Committee, *General Recommendation No. 28: Core Obligations of States Parties (Article 2)*, UN Doc CEDAW/C/2010/47/GC.2 (2010), paras 13, 19.
- 20 See Optional Protocol to CEDAW, art 5(1). See also Rules of Procedure, rr 63(1)-64(3).
- 21 See Optional Protocol to CEDAW, art 5(2). See also Rules of Procedure, r 63(4).
- 22 CEDAW Committee, *A.T. v Hungary*, Communication No. 2/2003, UN Doc CEDAW/C/32/D/2/2003 (2005), paras 1.2, 4.1-4.8, 9.5; CEDAW Committee, *Fatma Yildirim v Austria*, Communication No. 6/2005, UN Doc CEDAW/C/44/D/12/2007 (2009), para 3.8; CEDAW Committee, *N.S.F. v United Kingdom*, Communication No. 10/2005, UN Doc CEDAW/C/38/D/10/2005 (2007), paras 1.2-1.3.
- 23 See Rules of Procedure, r 64(1).
- 24 See Rules of Procedure, r 69.
- 25 See Rules of Procedure, r 70.
- 26 See Rules of Procedure, r 70(2).
- 27 Optional Protocol to CEDAW, art 2. See also Rules of Procedure, r 68.
- 28 CEDAW Committee, *L.C. v Peru*, Communication No. 22/2009 (pending).
- 29 CEDAW Committee, *Alyne da Silva Pimentel v Brazil*, Communication No. 17/2008 (pending).
- 30 Donna Sullivan, 'Commentary on the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women' in Inter-American Institute of Human Rights (eds), *Optional Protocol: Convention on the Elimination of All Forms of Discrimination Against Women* (2000) 31, p 41.
- 31 See CEDAW Committee, *G.D. and S.F.*, Communication No. 12/2007, UN Doc CEDAW/C/44/D/12/2007 (2009).
- 32 See Rules of Procedure, r 68(1).
- 33 See Optional Protocol to CEDAW, art 2. See also Rules of Procedure, r 68(2).
- 34 See Rules of Procedure, r 68(3).
- 35 Report of the CEDAW Committee, UN GAOR, 66th ses, Suppl. No. 38 (A/65/38) (2010), p 147, para 13(e).
- 36 See Human Rights Committee, *Aumeeruddy-Cziffra and 19 Other Mauritian Women v Mauritius*, Communication No. 35/1978, UN Doc CCPR/C/12/D/35/1978 (1981), para 9.2.
- 37 See Optional Protocol, art 4(1). See generally Donna Sullivan, *Overview of The Rule Requiring The Exhaustion of Domestic Remedies under the Optional Protocol to CEDAW*, International Women's Rights Action Watch Asia Pacific OP-CEDAW Technical Papers No. 1 (2008).
- 38 CEDAW Committee, *Rahime Kayhan v Turkey*, Communication No. 8/2005, UN Doc CEDAW/C/34/D/8/2005 (2006), para 7.5.
- 39 Human Rights Committee, *Brough v Australia*, Communication No. 1184/2003, UN Doc CCPR/C/86/D/1184/2003 (2006), para 8.6.
- 40 *Brough v Australia*, above, para 8.7.
- 41 Sullivan, note 37, at p 9 [references omitted].
- 42 See CEDAW Committee, *Şahide Goekce v Austria*, Communication No. 5/2005, UN Doc CEDAW/C/39/D/5/2005 (2007), CEDAW Committee, *Zhen Zhen Zheng v The Netherlands*, Communication No. 15/2007, UN Doc CEDAW/C/42/D/15/2007 (2009), para 7.3; *Rahime Kayhan v Turkey*, note 38, paras 7.5, 7.7; *N.S.F. v United Kingdom*, note 22, para 7.3.
- 43 *Fatma Yildirim v Austria*, note 22, para 11.3.
- 44 *Karen Tayag Vertido v The Philippines*, Communication No. 18/2008, UN Doc CEDAW/C/46/D/18/2008 (2010), para 8.3.
- 45 See *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46 (2)(b) of the American Convention on Human Rights)*, Advisory Opinion OC-11/90, August 10, 1990, Inter-Am. Ct. H.R. (Ser. A) No. 11 (1990), paras 20-32. At: http://www1.umn.edu/humanrts/iachr/b_11_4k.htm (viewed 13 June 2011).
- 46 Optional Protocol, art 4(1).
- 47 Sullivan, note 37, at p 18 [references omitted].
- 48 *Karen Tayag Vertido v The Philippines*, note 44, at para 6.2.
- 49 See *Şahide Goekce v Austria*, note 42, at para 7.5.
- 50 Optional Protocol to CEDAW, art 4(2)(a).
- 51 See Human Rights Committee, *Fanali v Italy*, Communication No. 75/1980, UN Doc CCPR/C/OP/2 at 99 (1990), para 7.2; Sullivan, note 37, at pp 52-53.
- 52 Sullivan, note 37, at pp 52-53.

- 53 See generally Catherine Phuong, 'The Relationship Between the European Court of Human Rights and the Human Rights Committee: Has the "Same Matter" Already Been "Examined"?' (2007) 1 *Hum. Rts. L. Rev.* 385, at pp 390-392.
- 54 Optional Protocol to CEDAW, art 4(2)(b).
- 55 Sullivan, note 30, at p 53.
- 56 Report of the Committee on the Elimination of Discrimination against Women, GAOR, 63rd session, Suppl. no. 38 (A/63/38) part II, p 88.
- 57 CEDAW Committee, *Concluding Observations of the CEDAW Committee: Australia*, UN Doc CEDAW/C/AUL/CO/7 2010, paras 18-19.
- 58 Optional Protocol to CEDAW, art 4(2)(c).
- 59 Sullivan, note 30, at p 53.
- 60 See, for example, *Karen Tayag Vertido v The Philippines*, note 44.
- 61 See, for example, European Court of Human Rights, *Galev and Others v Bulgaria*, Appl. No. 18324/04, Judgment of 29 September 2009.
- 62 Sullivan, note 30, at p 54 [references omitted].
- 63 See Australian Human Rights Commission, note 5.
- 64 See, for example, *N.S.F. v The United Kingdom*, note 22.
- 65 Optional Protocol to CEDAW, art 4(2)(d).
- 66 See, for example, Sullivan, note 30, p 54.
- 67 Optional Protocol to CEDAW, art 4(2)(e).
- 68 Optional Protocol to CEDAW, art 7(1).
- 69 Optional Protocol to CEDAW, arts 7(1), 7(2).
- 70 Optional Protocol to CEDAW, art 7(3).
- 71 See *A.T. v Hungary*, note 22; CEDAW Committee, *A.S. v Hungary*, Communication No. 4/2004, UN Doc CEDAW/C/36/D/4/2006 (2006); *Fatma Yildirim v Austria*, note 22; *Şahide Goekce v Austria*, note 42; *Karen Tayag Vertido v The Philippines*, note 44.
- 72 Optional Protocol to CEDAW, art 7(3).
- 73 Optional Protocol to CEDAW, art 7(4).
- 74 Optional Protocol to CEDAW, art 7(5); Rules of Procedure, r 73.
- 75 Optional Protocol to CEDAW, arts 8-10.
- 76 See generally, Andrew Byrnes and Jane Connors, 'Enforcing the Human Rights of Women: A Complaints Procedure for the Women's Convention,' (1995-1996) 21 *Brooklyn Journal of International Law*, 679, pp 704-705.
- 77 Optional Protocol to CEDAW, art 8(1).
- 78 Initial request for inquiry submitted to the CEDAW Committee (June 2008). At: <http://www.engenderights.org/?q=node/27> (viewed 13 June 2011). Second submission to the CEDAW Committee (October 2008). At: <http://www.engenderights.org/?q=node/34> (viewed 13 June 2011). Third submission to the CEDAW Committee (April 2009). At: <http://www.engenderights.org/?q=node/41> (viewed 13 June 2011).
- 79 Maria Regina Tavares da Silva and Yolanda Ferrer Gómez, 'The Juárez Murders and the Inquiry Procedure' in Hanna Beate Schöpp-Schilling and Cees Flinterman (eds), *Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination against Women* (2007), pp 299-309, at p 299.
- 80 International Women's Rights Action Watch – Asia Pacific, *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* (2008), pp 85-86. At: http://www.iwraw-ap.org/documents/resourceguide/Our_Rights_Guide.pdf (viewed 13 June 2011).
- 81 The six official UN languages are Arabic, Chinese, English, French, Russian and Spanish.
- 82 Maria Regina Tavares da Silva and Yolanda Ferrer Gómez, note 79, p 299.
- 83 Rules of Procedure, r 82.
- 84 Rules of Procedure, rr 82(1)-82(2).
- 85 Optional Protocol to CEDAW, art 10.
- 86 Optional Protocol to CEDAW, art 8(1); Rules of Procedure, r 82(2).
- 87 Maria Regina Tavares da Silva and Yolanda Ferrer Gómez, note 79, p 299.
- 88 Sullivan, note 30, p 74.
- 89 Sullivan, above.
- 90 Optional Protocol to CEDAW, art 8(1); Rules of Procedure, r 82(2).
- 91 Tavares da Silva and Ferrer Gómez, note 79, p 299.
- 92 Tavares da Silva and Ferrer Gómez, above, p 299-300 n 2.
- 93 Tavares da Silva and Ferrer Gómez, above, p 300.
- 94 Tavares da Silva and Ferrer Gómez, above.
- 95 Optional Protocol to CEDAW, arts 8(1)-8(2); Rules of Procedure, rr 83-84.
- 96 See Closing remarks of the Chair of the Committee on the Elimination of Discrimination against Women (Ms. Silvia Pimentel), 48th session, 4 February 2011. At: http://www2.ohchr.org/english/bodies/cedaw/docs/CLOSING_REMARKS_Chair_CEDAW48.pdf (viewed 13 June 2011).
- 97 Optional Protocol to CEDAW, art 8(2); Rules of Procedure, r 84.
- 98 Optional Protocol to CEDAW, art 8(2); Rules of Procedure, r 85.
- 99 Optional Protocol to CEDAW, art 8(2); Rules of Procedure, rr 86-87.
- 100 Optional Protocol to CEDAW, art 8(2); Rules of Procedure, rr 86-87.
- 101 Optional Protocol to CEDAW, art 8(3); Rules of Procedure, r 89.
- 102 Optional Protocol to CEDAW, art 8(3); Rules of Procedure, r 89.
- 103 Optional Protocol to CEDAW, art 8(4); Rules of Procedure, r 89(2).
- 104 Optional Protocol to CEDAW, art 9; Rules of Procedure, r 90.
- 105 Optional Protocol to CEDAW, art 9(1); Rules of Procedure, r 90(1).
- 106 CAT, art 22(1).
- 107 CAT, art 22(1).
- 108 CAT, art 20(1).
- 109 CAT, art 20(3).
- 110 ICERD, art 14(1).
- 111 ICERD, art 14(1).
- 112 See Tanya Chilcott, 'Toowoomba to drop "nigger" name from sports ground', *Courier Mail*, 26 September 2008. At: <http://www.couriermail.com.au/news/queensland/n-word-banned-from-ground/story-e6f6roef-1111117585280> (viewed 13 June 2011).
- 113 ICERD, art 14(5).
- 114 Optional Protocol to the CRPD, art 6(1).
- 115 Optional Protocol to the CRPD, art 6(2).
- 116 Optional Protocol to the ICCPR, art 1.
- 117 Response of the Australian Government to the views of the Committee in Communication No. 1184/2003 *Brough v Australia*, para 5. At: [http://ag.gov.au/www/agd/rwpattach.nsf/VAP/\(CFD7369FCAE9B8F32F341DBE097801FF\)-4Communication+no+1184_2003+Brough+v+Australia.doc/\\$file/4Communication+no+1184_2003+Brough+v+Australia.doc](http://ag.gov.au/www/agd/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)-4Communication+no+1184_2003+Brough+v+Australia.doc/$file/4Communication+no+1184_2003+Brough+v+Australia.doc) (viewed 13 June 2011).
- 118 Response of the Australian Government to the views of the Committee in Communication No. 1184/2003 *Brough v Australia*, above, paras 12-13.
- 119 See Human Rights Committee, *Joslin v New Zealand*, Communication No. 902/1999, UN Doc A/57/40 at 214 (2002).
- 120 See *Quilter v Attorney-General*, [1998] 1 NZLR 523 (N.Z., Court of Appeal).

Appendix 1 – CEDAW

The States Parties to the Present Convention,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Have agreed on the following:

PART I

Article 1

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

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

(1) Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

(2) Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

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

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

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

Article 9

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

(2) States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

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

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

(1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

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

Article 12

- (1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
- (2) Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

- States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:
- (a) The right to family benefits;
 - (b) The right to bank loans, mortgages and other forms of financial credit;
 - (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

- (1) States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
- (2) States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
- (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
 - (c) To benefit directly from social security programmes;
 - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
 - (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
 - (f) To participate in all community activities;
 - (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
 - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

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

Article 16

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

PART V

Article 17

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

(6) The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

(7) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

(8) The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

(9) The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

(1) States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

(2) Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

(1) The Committee shall adopt its own rules of procedure.

(2) The Committee shall elect its officers for a term of two years.

Article 20

(1) The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

(2) The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

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

(2) The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

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

PART VI

Article 23

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

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Article 24

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

Article 25

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

Article 26

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

Article 27

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

Article 28

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

Article 29

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

Article 30

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

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

Appendix 2 – Optional Protocol to CEDAW

The States Parties to the Present Protocol,

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

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

Recalling that the International Covenants on Human Rights Resolution and other international human rights instruments prohibit discrimination on the basis of sex,

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

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

Have agreed as follows:

Article 1

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

Article 2

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

Article 3

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

Article 4

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

(2) The Committee shall declare a communication inadmissible where:

(a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(b) It is incompatible with the provisions of the Convention;

(c) It is manifestly ill-founded or not sufficiently substantiated;

(d) It is an abuse of the right to submit a communication;

(e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 5

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

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

Article 6

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

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

Article 7

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

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

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

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

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

Article 8

(1) If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

(2) Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

(3) After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

(4) The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

(5) Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 9

(1) The Committee may invite the State Party concerned to include in its report under article 18 of the Convention details of any measures taken in response to an inquiry conducted under article 8 of the present Protocol.

(2) The Committee may, if necessary, after the end of the period of six months referred to in article 8.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 10

(1) Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9.

(2) Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 11

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

Article 12

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

Article 13

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

Article 14

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

Article 15

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

Article 16

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

Article 17

No reservations to the present Protocol shall be permitted.

Article 18

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

Article 19

- (1) Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.
- (2) Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 or any inquiry initiated under article 8 before the effective date of denunciation.

Article 20

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

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

Article 21

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

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

Appendix 3 – Rules of Procedure

Part 3 – Rules of Procedure for the Optional Protocol to CEDAW

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

Rule 56 – Transmission of communications to the Committee

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

Rule 57 – List and register of communications

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

Rule 58 – Request for clarification or additional information

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

Rule 59 – Summary of information

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

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

1. A member of the Committee may not take part in the examination of a communication if:
 - (a) The member has a personal interest in the case;
 - (b) The member has participated in the making of any decision on the case covered by the communication in any capacity other than under the procedures applicable to this Optional Protocol;
 - (c) The member is a national of the State party concerned.
2. Any question that may arise under paragraph 1 above shall be decided by the Committee without the participation of the member concerned.

Rule 61 – Withdrawal of a member

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

Rule 62 – Establishment of working groups and designation of rapporteurs

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

Rule 63 – Interim measures

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

Rule 64 – Method of dealing with communications

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

Rule 65 – Order of communications

1. Communications shall be dealt with in the order in which they are received by the Secretariat, unless the Committee or a working group decides otherwise.
2. The Committee may decide to consider two or more communications jointly.

Rule 66 – Separate consideration of admissibility and merits

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

Rule 67 – Conditions of admissibility of communications

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

Rule 68 – Authors of communications

1. Communications may be submitted by individuals or groups of individuals who claim to be victims of violations of the rights set forth in the Convention, or by their designated representatives, or by others on behalf of an alleged victim where the alleged victim consents.
2. In cases where the author can justify such action, communications may be submitted on behalf of an alleged victim without her consent.
3. Where an author seeks to submit a communication in accordance with paragraph 2 of the present rule, she or he shall provide written reasons justifying such action.

Rule 69 – Procedures with regard to communications received

1. As soon as possible after the communication has been received, and provided that the individual or group of individuals consent to the disclosure of their identity to the State party concerned, the Committee, working group or rapporteur shall bring the communication confidentially to the attention of the State party and shall request that State party to submit a written reply to the communication.
2. Any request made in accordance with paragraph 1 of the present rule shall include a statement indicating that such a request does not imply that any decision has been reached on the question of admissibility of the communication.
3. Within six months after receipt of the Committee's request under the present rule, the State party shall submit to the Committee a written explanation or statement that relates to the admissibility of the communication and its merits, as well as to any remedy that may have been provided in the matter.
4. The Committee, working group or rapporteur may request a written explanation or statement that relates only to the admissibility of a communication but, in such cases, the State party may nonetheless submit a written explanation or statement that relates to both the admissibility and the merits of a communication, provided that such written explanation or statement is submitted within six months of the Committee's request.
5. A State party that has received a request for a written reply in accordance with paragraph 1 of the present rule may submit a request in writing that the communication be rejected as inadmissible, setting out the grounds for such inadmissibility, provided that such a request is submitted to the Committee within two months of the request made under paragraph 1.
6. If the State party concerned disputes the contention of the author or authors, in accordance with article 4, paragraph 1, of the Optional Protocol, that all available domestic remedies have been exhausted, the State party shall give details of the remedies available to the alleged victim or victims in the particular circumstances of the case.
7. Submission by the State party of a request in accordance with paragraph 5 of the present rule shall not affect the period of six months given to the State party to submit its written explanation or statement unless the Committee, working group or rapporteur decides to extend the time for submission for such a period as the Committee considers appropriate.
8. The Committee, working group or rapporteur may request the State party or the author of the communication to submit, within fixed time limits, additional written explanations or statements relevant to the issues of the admissibility or merits of a communication.
9. The Committee, working group or rapporteur shall transmit to each party the submissions made by the other party pursuant to the present rule and shall afford each party an opportunity to comment on those submissions within fixed time limits.

Rule 70 – Inadmissible communications

1. Where the Committee decides that a communication is inadmissible, it shall, as soon as possible, communicate its decision and the reasons for that decision through the Secretary-General to the author of the communication and to the State party concerned.
2. A decision of the Committee declaring a communication inadmissible may be reviewed by the Committee upon receipt of a written request submitted by or on behalf of the author or authors of the communication, containing information indicating that the reasons for inadmissibility no longer apply.

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

Rule 71 – Additional procedures whereby admissibility may be considered separately from the merits

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

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

Rule 72 – Views of the Committee on admissible communications

1. Where the parties have submitted information relating both to the admissibility and to the merits of a communication, or where a decision on admissibility has already been taken and the parties have submitted information on the merits of that communication, the Committee shall consider and shall formulate its views on the communication in the light of all written information made available to it by the author or authors of the communication and the State party concerned, provided that this information has been transmitted to the other party concerned.

2. The Committee or the working group set up by it to consider a communication may, at any time in the course of the examination, obtain through the Secretary-General any documentation from organizations in the United Nations system or other bodies that may assist in the disposal of the communication, provided that the Committee shall afford each party an opportunity to comment on such documentation or information within fixed time limits.

3. The Committee may refer any communication to a working group to make recommendations to the Committee on the merits of the communication.

4. The Committee shall not decide on the merits of the communication without having considered the applicability of all of the admissibility grounds referred to in articles 2, 3 and 4 of the Optional Protocol.

5. The Secretary-General shall transmit the views of the Committee, determined by a simple majority, together with any recommendations, to the author or authors of the communication and to the State party concerned.

6. Any member of the Committee who has participated in the decision may request that a summary of her or his individual opinion be appended to the Committee's views.

Rule 73 – Follow-up to the views of the Committee

1. Within six months of the Committee's issuing its views on a communication, the State party concerned shall submit to the Committee a written response, including any information on any action taken in the light of the views and recommendations of the Committee.

2. After the six-month period referred to in paragraph 1 of the present rule, the Committee may invite the State party concerned to submit further information about any measures the State party has taken in response to its views or recommendations.

3. The Committee may request the State party to include information on any action taken in response to its views or recommendations in its subsequent reports under article 18 of the Convention.

4. The Committee shall designate for follow-up on views adopted under article 7 of the Optional Protocol a rapporteur or working group to ascertain the measures taken by States parties to give effect to the Committee's views and recommendations.

5. The rapporteur or working group may make such contacts and take such action as may be appropriate for the due performance of their assigned functions and shall make such recommendations for further action by the Committee as may be necessary.

6. The rapporteur or working group shall report to the Committee on follow-up activities on a regular basis.

7. The Committee shall include information on any follow-up activities in its annual report under article 21 of the Convention.

Rule 74 – Confidentiality of communications

1. Communications submitted under the Optional Protocol shall be examined by the Committee, working group or rapporteur in closed meetings.
2. All working documents prepared by the Secretariat for the Committee, working group or rapporteur, including summaries of communications prepared prior to registration and the list of summaries of communications, shall be confidential unless the Committee decides otherwise.
3. The Committee, working group or rapporteur shall not make public any communication, submissions or information relating to a communication prior to the date on which its views are issued.
4. The author or authors of a communication or the individuals who are alleged to be the victim or victims of a violation of the rights set forth in the Convention may request that the names and identifying details of the alleged victim or victims (or any of them) not be published.
5. If the Committee, working group or rapporteur so decides, the name or names and identifying details of the author or authors of a communication or the individuals who are alleged to be the victim or victims of a violation of rights set forth in the Convention shall not be made public by the Committee, the author or the State party concerned.
6. The Committee, working group or rapporteur may request the author of a communication or the State party concerned to keep confidential the whole or part of any submission or information relating to the proceedings.
7. Subject to paragraphs 5 and 6 of the present rule, nothing in this rule shall affect the right of the author or authors or the State party concerned to make public any submission or information bearing on the proceedings.
8. Subject to paragraphs 5 and 6 of the present rule, the Committee's decisions on admissibility, merits and discontinuance shall be made public.
9. The Secretariat shall be responsible for the distribution of the Committee's final decisions to the author or authors and the State party concerned.
10. The Committee shall include in its annual report under article 21 of the Convention a summary of the communications examined and, where appropriate, a summary of the explanations and statements of the States parties concerned, and of its own suggestions and recommendations.
11. Unless the Committee decides otherwise, information furnished by the parties in follow-up to the Committee's views and recommendations under paragraphs 4 and 5 of article 7 of the Optional Protocol shall not be confidential. Unless the Committee decides otherwise, decisions of the Committee with regard to follow-up activities shall not be confidential.

Rule 75 – Communiqués

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

XVII. Proceedings under the inquiry procedure of the Optional Protocol

Rule 76 – Applicability

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

Rule 77 – Transmission of information to the Committee

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

Rule 78 – Register of information

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

Rule 79 – Summary of information

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

Rule 80 – Confidentiality

1. Except in compliance with the obligations of the Committee under article 12 of the Optional Protocol, all documents and proceedings of the Committee relating to the conduct of the inquiry under article 8 of the Optional Protocol shall be confidential.
2. Before including a summary of the activities undertaken under articles 8 or 9 of the Optional Protocol in the annual report prepared in accordance with article 21 of the Convention and article 12 of the Optional Protocol, the Committee may consult with the State party concerned with respect to the summary.

Rule 81 – Meetings related to proceedings under article 8

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

Rule 82 – Preliminary consideration of information by the Committee

1. The Committee may, through the Secretary-General, ascertain the reliability of the information and/or the sources of the information brought to its attention under article 8 of the Optional Protocol and may obtain additional relevant information substantiating the facts of the situation.
2. The Committee shall determine whether the information received contains reliable information indicating grave or systematic violations of rights set forth in the Convention by the State party concerned.
3. The Committee may request a working group to assist it in carrying out its duties under the present rule.

Rule 83 – Examination of information

1. If the Committee is satisfied that the information received is reliable and indicates grave or systematic violations of rights set forth in the Convention by the State party concerned, the Committee shall invite the State party, through the Secretary-General, to submit observations with regard to that information within fixed time limits.
2. The Committee shall take into account any observations that may have been submitted by the State party concerned, as well as any other relevant information.
3. The Committee may decide to obtain additional information from the following:
 - (a) Representatives of the State party concerned;
 - (b) Governmental organizations;
 - (c) Non-governmental organizations;
 - (d) Individuals.
4. The Committee shall decide the form and manner in which such additional information will be obtained.
5. The Committee may, through the Secretary-General, request any relevant documentation from the United Nations system.

Rule 84 – Establishment of an inquiry

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

Rule 85 – Cooperation of the State party concerned

1. The Committee shall seek the cooperation of the State party concerned at all stages of an inquiry.
2. The Committee may request the State party concerned to nominate a representative to meet with the member or members designated by the Committee.

3. The Committee may request the State party concerned to provide the member or members designated by the Committee with any information that they or the State party may consider relates to the inquiry.

Rule 86 – Visits

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

Rule 87 – Hearings

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

Rule 88 – Assistance during an inquiry

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

Rule 89 – Transmission of findings, comments or suggestions

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

Rule 90 – Follow-up action by the State party

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

Rule 91 – Obligations under article 11 of the Optional Protocol

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

Appendix 4 – Model communication form

The CEDAW Committee has developed a model communication form for submitting a communication under the Optional Protocol to CEDAW.

Part of the form is excerpted below. It is also available online at http://www2.ohchr.org/english/bodies/cedaw/docs/FS_ModelCommunicationForm.doc.

Send your communication to:

Petitions Team
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10, Switzerland
E-Mail: tb-petitions@ohchr.org

1 Information concerning the author(s) of the communication

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

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

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

3 Information on the State party concerned

- Name of the State party (country)

4 Facts of the complaint and nature of the alleged violation(s)

Please detail, in chronological order, the facts and circumstances of the alleged violations, including:

- Description of alleged violation(s) and alleged perpetrator(s)
- Date(s)
- Place(s)
- Provisions of the Convention on the Elimination of All Forms of Discrimination against Women that were allegedly violated. If the communication refers to more than one provision, describe each issue separately.

5 Steps taken to exhaust domestic remedies

Describe the action taken to exhaust domestic remedies; for example, attempts to obtain legal, administrative, legislative, policy or programme remedies, including:

- Type(s) of remedy sought
- Date(s)
- Place(s)
- Who initiated the action
- Which authority or body was addressed
- Name of court hearing the case (if any)
- If you have not exhausted domestic remedies on the ground that their application would be unduly prolonged, that they would not be effective, that they are not available to you, or for any other reason, please explain your reasons in detail.

Please note: Enclose copies of all relevant documentation.

6 Other international procedures

Has the same matter already been examined or is it being examined under another procedure of international investigation or settlement? If yes, explain:

- Type of procedure(s)
- Date(s)
- Place(s)
- Results (if any)

Please note: Enclose copies of all relevant documentation.

7 Disclosure of your name(s)

Do you consent to the disclosure of your name(s) to the State party should your communication be registered by the Committee in accordance with article 6, paragraph 1 of the Optional Protocol and rule 69, paragraph 1 of the Committee's rules of procedure?

8 Date and signature

Date/place:

Signature of author(s) and/or victim(s):

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

Model communication form for other communication procedures

A common model communication form is available for communications submitted under the Optional Protocol to the ICCRP, CAT, ICERD and the Optional Protocol to the CRPD. This form is online at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/IndividualComplaints.aspx>

Appendix 5 – Example communication

I Information concerning the victim/petitioner¹

Family name: S.
First name: A.
Date and place of birth: 5 September 1973, Fehérgyarmat, Hungary
Nationality: Hungarian
Sex: Female
Marital status/children: partner and 3 children
Ethnic background: Roma
Present address: ...

II Information concerning the authors of the communication

European Roma Rights Center (ERRC), P.O. Box 906/93, 1386 Budapest 62, Hungary.

The European Roma Rights Center is an international public interest law organisation that defends the legal rights of Roma across Europe. The ERRC has consultative status with the Economic and Social Council of the United Nations as well as the Council of Europe.

Telephone: 00 36 1 413 2200 Fax: 00 36 1 413 2201 E-mail: office@errc.org

Legal Defence Bureau for National and Ethnic Minorities (NEKI), P.O. Box 453/269, 1537 Budapest 114, Hungary.

NEKI provides legal help in cases of discrimination based on the victim's ethnic or national origin.

Telephone/Fax: 00 36 1 303 89 73 Email: bbodrogi@yahoo.com

This communication is being submitted jointly by the ERRC and NEKI as the appointed representatives of the victim.

III Information on the state party concerned

This communication is directed against Hungary as a State party to the Optional Protocol of the United Nations Convention on the Elimination of All Forms of Discrimination against Women ("the Optional Protocol").

We note that the incident giving rise to this communication occurred on 2 January 2001, just over two months before Hungary acceded to the Optional Protocol on 22 March 2001. However, we respectfully submit that: a) Hungary ratified the Convention itself on 3 September 1981 and that it is legally bound by its provisions from that date on, b) the Optional Protocol is anyway a jurisdictional mechanism which results in the recognition by the state concerned of yet another way in which the Committee can seize competence and consider its compliance with the standards enshrined in the Convention,² and c) most importantly, the effects of the violations at issue in the instant case are of an ongoing (continuing) character.

In particular, the Petitioner asserts that as a result of being sterilised on 2 January 2001 without her informed and full consent she can no longer give birth to any further children and that this amounts to a clear cut case of a continuing violation in accordance with Article 4(2)(e) of the Optional Protocol. Namely, the aim of a sterilisation is to end the patient's ability to reproduce and from a legal as well as a medical perspective it is intended to be and in most cases is irreversible. (These issues are covered in greater detail in paragraphs VI.2 and VI.25 of this communication).

1 The Commission acknowledges the European Roma Rights Center and the Legal Defence Bureau for National and Ethnic Minorities for generously permitting the reproduction of their communication to the CEDAW Committee in *A.S. v Hungary*, Communication No. 4/2004, UN Doc CEDAW/C/36/D/4/2006 (2006).

2 In terms of the Optional Protocol to the Covenant on Civil and Political Rights, for example, Professor Manfred Nowak has stressed that this is a jurisdictional document with retroactive effect. In particular, state parties are obligated to respect the Covenant as of the very moment of ratification and regardless of whether or not they are also state parties to the Optional Protocol. The ratification of the Optional Protocol hence results merely in the opportunity for the victims to file individual communications with the Human Rights Committee. Such communications will be inadmissible *ratione temporis* only if they relate to events that have occurred prior to the date of entry into force of the Covenant itself. (See Nowak, Manfred, CCPR – Commentary, Kehl, 1993, 679-680.)

In a well known Strasbourg case,³ for example, a German national obtained a residence and work permit for Switzerland in 1961, married a Swiss national in 1965, lost his job in 1968, was served a deportation order in 1970, which was executed in 1972, and ultimately found himself separated from his wife. Although the facts of the case occurred prior to the European Convention entering into force with respect to Switzerland in 1974, the Commission considered that it should not declare that it lacked jurisdiction *ratione temporis* to examine the application since, subsequent to the date of entry into force, the applicant found himself in a continuing situation of not being able to enter Switzerland to visit his wife who resided there.⁴

The UN Human Rights Committee, has likewise repeatedly held that it can consider an alleged violation occurring prior to the date of the entry into force of the Optional Protocol to the International Covenant on Civil and Political Rights if it continues or has effects which themselves constitute violations after that date.⁵ For example, in a case concerning Australia,⁶ in which a lawyer who had been unwilling to pay his annual practising fee had continued to practise, was fined by the Supreme Court and struck off the list of practising lawyers, the Human Rights Committee held that although these events had been concluded before the Optional Protocol entered into force for Australia, the effects of the Supreme Court decision were still continuing and the case was found admissible.

In view of the above, even though the incident here at issue predates Hungary's accession to the Optional Protocol, we submit that the Committee's competence remains absolute and undiminished – both in terms of declaring this communication admissible and with regard to ruling on the merits of the instant case.

Should the Committee deem further clarification necessary, we respectfully request that, as the authors of this communication, we be allowed an additional opportunity to address this question in greater detail.

IV Facts of the case

A.S. ("the Petitioner") is a Hungarian citizen of Romani origin who was subjected to a coerced sterilisation without her full and informed consent at a Hungarian public hospital.

On 30 May 2000, the Petitioner was confirmed to be pregnant by a medical examination.⁷ From that day until her expected date of hospital confinement, 20 December 2000, she attended all prescribed appointments with the district nurse, her gynaecologist, and hospital doctors. On 20 December 2000 she went to the hospital in Fehergyarmat. During an examination, the embryo was found to be 36-37 weeks old and she was told to return home and informed to come back to the hospital when birth pains start.

On 2 January 2001, the Petitioner felt pains and she lost her amniotic fluid, which was accompanied by heavy bleeding. She was taken to Fehergyarmat hospital by ambulance, a journey of one hour. She was admitted to the hospital, undressed, examined, and prepared for an operation. During the examination the attending physician, Dr Andras Kanyo, diagnosed that her embryo had died in her womb, her womb had contracted, and her placenta had broken off. Dr Kanyo informed the Petitioner that a caesarean section needed to be immediately performed to remove the dead embryo.⁸ While on the operating table she was asked to sign a statement of consent to a caesarean section. This consent statement had an additional hand-written note at the bottom of the form that read: *Having knowledge of the death of the embryo inside my womb I firmly request "my sterilisation". I do not intend to give birth again, neither do I wish to become pregnant.* The hand-written sections of this statement were completed by Dr Kanyo in barely readable script.⁹ The doctor used the Latin equivalent of the word sterilisation on the form, a word unknown to the victim, rather than the common usage Hungarian language word for sterilisation "lekotes", or the Hungarian legal term "muvi meddove tetel". The plaintiff signed both the consent to a caesarean section and under the hand-written sentence consent to the sterilisation. The form itself was also signed twice by Dr Kanyo and by Mrs Laszlo Fejes, midwife. Finally, the Petitioner also signed consent statements for a blood transfusion, and for anaesthesia.

She did not receive information about the nature of sterilisation, its risks and consequences, or about other forms of contraception, at any time prior to the operation being carried out. This was later confirmed by the Court of Second Instance which found that "the information given to the plaintiff concerning her sterilisation was not detailed. According to the witness statement of Dr Kanyo, the plaintiff was not informed of the exact method of the operation, of the risks of its performance, and of the possible alternative procedures and methods."¹⁰

Her partner, Mr Lakatos, was also not informed about the sterilisation operation or other forms of contraception. He was not present at the hospital at the time of the operations.

3 Application No.7031/75, D.R.6 p.126.

4 As regards Strasbourg jurisprudence, for example, declarations made by state parties under former Article 25 of the European Convention on Human Rights, recognising the competence of the Commission to receive individual petitions, have consistently been ruled to have retroactive effect as of the moment of ratification of the Convention itself. Or in other words, the Commission deemed itself competent *ratione temporis* to examine incidents that have occurred between the date of ratification of the Convention by a given state and the date on which the state concerned has made its declaration in accordance with Article 25 of the Convention. (This approach was expressly confirmed in numerous cases. See e.g. Application No. 9587/81, D&R 29, pp. 238-239; Application No. 9559/81, D&R 33, pp.209-210, and Application No. 13057/87, D&R 60, pp. 247-248.)

5 See, for example, HRC Communication No.1/1976, Communication No.24/1977, Communication No.196/1985, Communication No.310/1988, Communication No.457/1991.

6 HRC Communication No.491/1992.

7 See Exhibit 3, Decision of the Fehergyarmat Town Court.

8 See Exhibit 3, Decision of the Fehergyarmat Town Court.

9 Court Consent form at Exhibit 1.

10 See Exhibit 5, Decision of the Szabolcs-Szatmar-Bereg Court.

The hospital records show that the Petitioner had lost a substantial amount of blood and was in a state of shock. The hospital records state that “She felt dizzy upon arrival, heavy uterine bleeding, shock suffered during delivery and giving birth, due to the heavy blood loss we need to make a transfusion”.¹¹ She was operated on by Dr Andras Kanyo, assisted by Dr Anna Koperdak. The anaesthetist was Dr Maria Kriczki. The caesarean section was performed, the dead foetus and placenta were removed, and the Petitioner was sterilised by tying both fallopian tubes.¹²

The hospital’s records show that only 17 minutes passed from the ambulance arriving at the hospital until the completion of both operations.¹³

Before leaving the hospital, the Petitioner sought out Dr Kanyo and asked him for information on her state of health and when she could try to have another baby. It was only then that she learnt the meaning of the word sterilisation, and that she could not become pregnant again.

The sterilisation had a profound impact on the life of the petitioner. Since then both she and her partner have received medical treatment for depression. They both have strict religious beliefs that prohibit contraception of any kind, including sterilisation. Their religion is a local Hungarian branch of the Catholic Church. In Catholic teaching, sterilisation is a mutilation of the body which leads to the deprivation of a natural function and must be rejected.¹⁴ They are both Roma and live in accordance with traditional Romani ethnic customs. In a study by the Hungarian Academy of Science about Roma women’s attitude to childbirth,¹⁵ the researcher, Maria Nemenyi, stated that:

“Having children is a central element in the value system of Roma families. The fact that there are more children in Roma families than in those of the majority population is mainly not due to a coincidence, to the lack of family planning ... on the contrary, it is closely related to the very traditions which different Roma communities strive to maintain. I am convinced that the low level of acceptance of birth control methods among the Roma is not only due to the expensive nature of contraception, the high prices which some of these families cannot afford, but rather due to the absolute value of having children in these communities. Sterilisation would violate such a deeply rooted ... [belief] ... , which [many] women living in [traditional] Roma communities could not identify with and could not undertake without damaging their sexual identity and their role as a mother and a wife.”

V Steps taken to exhaust domestic remedies

On 15 October 2001, one of the authors of this communication, Dr Bea Bodrogi, a staff lawyer at NEKI, filed a civil claim against the Szatmar-Bereg State hospital on behalf of the Petitioner.¹⁶ The lawsuit, inter alia, requested that the Town Court of Fehergyarmat find the hospital in violation of the plaintiff’s civil rights and that the hospital had acted negligently in its professional duty of care with regard to the sterilisation carried out in the absence of the Petitioner’s full and informed consent. The claim sought pecuniary and non-pecuniary damages. The Town Court of Fehergyarmat in its decision on 22 November 2002,¹⁷ held that the hospital doctors did not commit any professional failure even though it found that the legal conditions for the Petitioner’s sterilisation operation were not fully met. Namely, the Court itself held that “the negligence of the doctors can be detected in the fact that the plaintiff’s partner was not informed about the operation and that the birth certificates of the plaintiff’s live children were not obtained”.¹⁸ In addition, we note that the medical witnesses relied on by the Court were in fact the same doctors who carried out the sterilisation operation on the Petitioner. Finally, the first instance court confirmed that in Hungary, sterilisation is recommended for any mother who has three children.¹⁹

Dr Bodrogi filed an appeal against this decision, on behalf of the Petitioner, on 5 December 2002.²⁰ The appeal argued that the Court of first instance had not properly considered whether the conditions required by law for performing a sterilisation had been attained, and that the Court had neglected to consider the plaintiff’s evidence and argumentation, contained in her written as well as her oral pleadings. Instead, the Court relied totally on the defendant doctors’ testimonies. The appeal reiterated the plaintiff’s claim for damages with respect to the sterilisation (i.e. the pain and suffering caused by the illegal operation) and for the consequences of the sterilisation (i.e. that the Petitioner can no longer give birth to further children).

The second instance court, the Szabolcs-Szatmar County Court, passed judgement on the appeal on 12 May 2003.²¹ It found the hospital doctors negligent for not providing the Petitioner with full and detailed information about the sterilisation and held that “in the present case the information given to the plaintiff concerning her sterilisation was not detailed”. According to the “witness statement of Dr. Andras Kanyo, the plaintiff was not informed of the exact method of the operation, of the risks of its performance, and of the possible alternative procedures and methods”. Thus she “was not informed of the possible complications and risks of inflammation, purulent inflammation, opening of the wounds, and she was not informed of further options for contraception

11 Statement before the Court by the Petitioner’s Attorney, Exhibit 9.

12 See Exhibit 3, Decision of the Fehergyarmat Town Court.

13 See Exhibit 7, hospital records.

14 Taken from Dr J. Poole, “The Cross of Unknowing”, 1989.

15 Maria Nemenyi: Roma Mothers in Health Care, <http://mek.oszk.hu/01100/01156>.

16 Claim at Exhibit 2.

17 Fehergyarmat Town Court Decision 2.P.20.326/2001/22, Exhibit 3.

18 *idem*.

19 Hungarian Act on Healthcare, Article 187, para. 2.

20 Appeal at Exhibit 4.

21 Szabolcs-Szatmar-Bereg County Court decision No 4.Pf.22074/2002/7, Exhibit 5.

as an alternative procedure either”.²² The Court further stated that “the defendant acted negligently in failing to provide the plaintiff with detailed information” and that “although the information provided to the plaintiff did include the risks involved in the omission of the operation, she was not informed in detail about the operation and the alternative procedures (further options for birth control), or she was not, or was not appropriately, informed about the possibilities of a further pregnancy following performance of the planned operation”.²³ The Court then stressed that since the sterilisation was not a life- saving operation its performance should have been subject to informed consent. Finally, it held that “pursuant to Article 15 paragraph 3 of the Act on Healthcare, if the information given to the patient is not detailed, the prevalence of the legal conditions of performing an operation cannot be established”.²⁴

Ultimately, notwithstanding the above, the Court turned down the plaintiff’s appeal and ruled that there was no evidence that the Petitioner’s loss of her reproductive capacity had amounted to a lasting handicap. In the view of the Court (contrary to established medical opinion, as mentioned in VI.2. of this communication), “the performed sterilisation was not a lasting and irreversible operation ... [and] ... therefore the plaintiff did not lose her reproductive capacity ... [or suffer] ... a lasting handicap”.²⁵ The Court therefore clearly looked at the Petitioner’s moral damages relating to the consequences of the operation only while the issue of her obvious emotional distress as a result of being subjected to a serious surgical procedure, in the absence of her full and informed consent, remained absolutely unaddressed. The Judgement of the Court of Second Instance specifically states that no appeal against the decision is permitted.

The Petitioner respectfully submits that she has therefore exhausted all effective domestic remedies and turns to the Committee to obtain just satisfaction and compensation.

VI Violations of the Convention

As the facts of this case disclose, in the coerced sterilisation of the Petitioner without her full and informed consent by medical staff at a Hungarian public hospital, there have been violations of a number of rights guaranteed by the Convention on the Elimination of Discrimination against Women (“the Convention”), in particular, Article 10.h, Article 12, and Article 16.1.e.

Before turning to the provisions in the Convention, the Petitioner would like to respectfully emphasise a few important points about sterilisation. The aim of sterilisation is to end the patient’s ability to reproduce. Standard medical practice maintains that sterilisation is never a life saving intervention that needs to be performed on an emergency basis and without the patient’s full and informed consent.²⁶ An important feature of the operation from the legal and ethical standpoint is that it is generally intended to be irreversible;²⁷ although it may be possible to repair the sterilisation operation, the reversal operation is a complex one with a low chance of success.²⁸ The World Health Organisation in its “Medical Eligibility Criteria for Contraceptive Use” states that sterilisation procedures are irreversible and permanent.²⁹

International and regional human rights organisations have repeatedly stressed that the practice of forced (non-consensual) sterilisation constitutes a serious violation of numerous human rights standards. For example, the Human Rights Committee has specifically noted that coerced sterilisation would be a practice that violates Article 7 of the International Covenant on Civil and Political Rights, covering torture or cruel, inhuman or degrading treatment and free consent to medical and scientific experimentation.³⁰ Coercion presents itself in various forms. The most direct form is to physically force a person to undergo sterilisation. A different form of coercion is pressure from and/or negligence by medical personnel as well as medical paternalism. In the instant case, the Petitioner was required to give her consent to the sterilisation while she was on the operating table, in a state of shock, without having had the chance to exercise her right to make an informed choice that would have led to informed consent or refusal.

Violation of Article 10.h: no information on contraceptive measures and family planning was given to the Petitioner

Article 10.h. of the Convention provides that “States parties shall take all appropriate measures ... in particular to ensure access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning”.

22 *idem.*

23 *idem.*

24 *idem.*

25 *idem.*

26 Statements by Dr Wendy Johnson, Doctors for Global Health, Dr Douglas Laube, Vice President, American College of Obstetricians and Gynecologists, and Dr Joanna Cain, Chair, Committee for the Ethical Aspects of Human Reproduction and Women’s health, International Federation of Gynecology and Obstetrics.

27 Taken from Law and Medical Ethics by J.K. Mason, Professor of Forensic Medicine at Edinburgh University and R.A. McCall Smith, Professor of Medical Law at Edinburgh University, page 89, published by Butterworths.

28 In Robert Blank’s book “Fertility Control: new techniques, new policy issues” 1991, pp31-33, he states that the reversal operation is a complicated one, with a success rate of only 40-75%, and a significantly increased risk of ectopic pregnancy.

29 WHO Medical Eligibility Criteria for Contraceptive Use, Second edition, at http://who.int/reproductive-health/publications/RHR_00_2_medical_eligibility_criteria_second_edition/rhr_00_2_ster.html.

30 Human Rights Committee, General Comment 28: Equality of Rights Between Men and Women (Art. 3) (68th Sess., 2000), in Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies, 11, U.N. Doc. HRI/GEN/1/Rev.5 (2001).

The Committee on the Elimination of Discrimination against Women, in its General Recommendation 21 on equality in marriage and family relations, reported on coerced sterilisation practices and stated that “in order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in Article 10.h. of the Convention”.³¹

The Hungarian Act on Healthcare Article 187 allows sterilisation for family planning purposes or for health reasons, on the basis of a written request by the woman or man concerned, as well as on the basis of an appropriate medical opinion. There should be a three-month period of grace between a woman submitting a request to be sterilised and the operation being carried out.³² The Act further states that the doctor performing the operation must inform the person requesting the intervention and her/his spouse or partner about their further options of birth control, and about the nature, possible risks and consequences of the intervention prior to its performance, “in a way that is comprehensible to him/her, with due regard to his or her age, education, knowledge, state of mind and his/her expressed wish on the matter”.³³

The Hungarian law-makers, in drafting the Act on Healthcare with its three month grace period, realised that sterilisation is not an operation of a life saving character (as the Second Instance Court agreed in the Petitioner’s case)³⁴ and that sufficient time needs to be given to the person requesting the sterilisation, in order to consider the implications arising out of the information given to her/him.

However, the practice of medical paternalism, which dictates the doctor-patient relationship, is still used by many doctors in Hungary. The doctrine of this practice is that doctors know more about the patient’s needs and interests than the patient does. For this reason, doctors often withhold information that could disrupt the “patient’s emotional stability”.

In her study, Maria Neményi from the Hungarian Academy of Science, points out the following:

“ ... The prerequisite of accepting advice, information, instruction or orders from a doctor is that the patient should understand the directions addressed to him or her. Medical staff should use the appropriate language and manner or showing the proper example (e.g. how to treat a baby), adapting themselves to the recipient is a strategy that most of the patients agree to. We know the conception that in the hierarchy of the health system the higher ranked medical person does not pass on his privileged knowledge and involves less the patient into the components of his decision. The Roma women questioned in the study concur with this statement ... The conversations with the Roma questioned during the study convinced us that their everyday experience is that medical staff judge the Romani people on the basis of general prejudices rather than the person’s actual manner or problem. We are of the opinion that these distortions of prejudice could affect the medical treatment as well.”³⁵

This notion violates the patient’s right to information and freedom of action to choose a course of treatment. In the UK case of *Re T*,³⁶ a case regarding an adult who refused medical treatment, the judge stated that “an adult patient who suffers from no mental incapacity has an absolute right to choose whether to consent to medical treatment, to refuse it, or to choose one rather than another of the treatments being offered....This right of choice is not limited to decisions which others might regard as sensible. It exists notwithstanding that the reasons for making the choice are rational, irrational, unknown or even non-existent”.

As the facts of this case show, the Petitioner received no specific information about the sterilisation operation, the effects that the operation would have on her ability to reproduce, or advice on family planning and birth control, in the months or years before the operation was carried out (or immediately before the operation). She signed the consent to be sterilised while on the operating table, having just heard of the death of her unborn baby, having lost a considerable amount of blood and in severe pain, not understanding the word used for sterilisation, and about to undergo an emergency operation to remove the dead foetus and placenta. The Petitioner had not been given information about the nature of the operation and its risks and consequences in a way that was comprehensible to her, before she was asked to sign the consent form. This is confirmed by the Court of Second Instance that held that “the defendant also acted negligently in failing to provide the plaintiff with detailed information. Although the information provided to the plaintiff did include the risks involved in the omission of the operation, she was not informed in detail about the operation and the alternative procedures (further options of birth control), or she was not, or was not appropriately, informed about the possibilities of a further pregnancy following performance of the planned operation”.³⁷ The Petitioner therefore asserts that she was not given specific information on contraceptive measures and family planning before signing the consent to sterilisation, which is a clear violation of Article 10.h. of the Convention.

31 CEDAW General Recommendation 21, para 22.

32 There are two exceptions to the three months between request and performance of the operation, when a gynaecological operation is planned before the specified time, and when a pregnancy could endanger the mother’s life or that there was a high probability of giving birth to an unhealthy child.

33 Hungarian Act on Healthcare 154/1997, Article 13.8.

34 See Exhibit 5, Decision of the Szabolcs-Szatmar-Bereg Court.

35 The findings of the research done by Neményi are supported by the following cases taken by NEKI. (János H-White Booklet 2002, p. 50-53, Margit B.-White Booklet 2002, p. 54-55, the case of Eva D and Miklos K- pending case – White Booklet 2003.).

36 *Re T*, (1992) 9 BMLR 46/ UK.

37 See Exhibit 5, Decision of the Szabolcs-Szatmar-Bereg County Court.

Violation of Article 12: the lack of informed consent was a violation of the right to appropriate health care services

Article 12 of the Convention provides that “1. States parties shall take all appropriate measures ... in the field of health care in order to ensure access to health care services, including those related to family planning. 2. Notwithstanding the provisions of paragraph 1 of this article, States parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period ... ”

The Committee on the Elimination of Discrimination against Women in its General Recommendation 24 on Women and Health, explained that “Women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available information.”³⁸ The Recommendation further states that “Acceptable [health care] services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her needs and perspectives. States parties should not permit forms of coercion, such as non-con- sensual sterilisation.”³⁹

International standards covering informed consent are also set out in other important documents. The World Health Organisation’s Declaration on Patients’ Rights requires informed consent as a prerequisite for any medical intervention and provides that the patient has a right to refuse or halt medical interventions. The Declaration states that “patients have the right to be fully informed about their health status, including the medical facts about their condition; about the proposed medical procedures, together with the potential risks and benefits of each procedure; about alternatives to the proposed procedures, including the effect of non-treatment, and about the diagnosis, prognosis and progress of treatment.”⁴⁰ It further states that “Information must be communicated to the patient in a way appropriate to the latter’s capacity for understanding, minimising the use of unfamiliar technical terminology. If the patient does not speak the common language, some form of interpreting should be available”.⁴¹

The European Convention on Human Rights and Biomedicine (ECHR) provides that “An intervention in the health field may only be carried out after the person has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks”.⁴² This convention was signed by Hungary on 7 May 1999 and entered into force on 1 May 2002. The Explanatory Report to the Convention states that “In order for their consent to be valid the persons in question must have been informed about the relevant facts regarding the intervention being contemplated. This information must include the purpose, nature and consequences of the intervention and the risks involved. Information on the risks involved in the intervention or in alternative courses of action must cover not only the risks inherent in the type of intervention contemplated, but also any risks related to the individual characteristics of each patient, such as age or the existence of other pathologies.”⁴³ The Explanatory Report further states that “Moreover, this information must be sufficiently clear and suitably worded for the person who is to undergo the intervention. The person must be put in a position, through the use of terms he or she can understand, to weigh up the necessity or usefulness of the aim and methods of the intervention against its risks and the discomfort or pain it will cause.”⁴⁴

International law and international medical guidelines are based on the principles of informed choice and informed consent. Informed choice is a fundamental principle of quality health care services and is recognised as a human right by the international community.⁴⁵ Moreover, it constitutes the basis of all sterilisation programmes.⁴⁶ The notion of informed choice in health care consists of an individual’s well-considered, voluntary decision based on method or treatment options, information and understanding, not limited by coercion, stress, or pressure. Factors that should be taken into consideration under the concept of informed choice include personal circumstances, beliefs, and preferences; and social, cultural and health factors. Informed consent is a patient’s agreement to receive medical treatment or to take part in a study after having made an informed choice. Written informed consent is universally required to authorise surgery, including sterilisation – although the signed informed consent form does not guarantee informed choice. The patient’s consent is considered to be free and informed when it is given on the basis of objective information from the responsible health care professionals. The patient shall be informed of the nature and potential consequences of the planned intervention and of its alternatives. Informed consent cannot be obtained by means of special inducement, force, fraud, deceit, duress, bias, or other forms of coercion or misrepresentation. Therefore, informed consent is based on the ability to reach an informed choice, hence informed choice precedes informed consent.⁴⁷

The Hungarian Act on Healthcare, states that “the performance of any health care procedure shall be subject to the patient’s consent granted on the basis of appropriate information, free from deceit, threats and pressure”.⁴⁸

The Hungarian Court of Second Instance, held that “the defendant also acted negligently in failing to provide the plaintiff with detailed information. Although the information provided to the plaintiff did include the risks involved in the omission of the operation, she was not informed in detail about the operation and the alter- native procedures

38 CEDAW General Recommendation 24, para 20.

39 CEDAW General Recommendation 24, para 22.

40 WHO Declaration on Patients’ Rights, Article 2.2.

41 WHO Declaration on Patients’ Rights, Article 2.4.

42 ECHR, Article 5.

43 ECHR Explanatory Report, para. 35.

44 ECHR Explanatory Report, para. 36.

45 1994 International Conference on Population and Development (ICPD) in Cairo.

46 Engenderhealth, *Contraceptive Sterilization: Global Issues and Trends*, A V S C Intl; March 2002, p. 7.

47 Engenderhealth, *Contraceptive Sterilization: Global Issues and Trends*, A V S C Intl; March 2002.

48 Hungarian Act on Healthcare 154/1997, Article 15.3.

(further options of birth control), or she was not, or was not appropriately, informed about the possibilities of a further pregnancy following performance of the planned operation”.⁴⁹ The Court’s findings are substantiated by the fact that it is impossible in the 17 minutes from arriving at the hospital in the ambulance, through the medical examination, preparations for operating (including administering anaesthetic) and the completion of two operations, that the Petitioner received full information on the sterilisation operation, what it entailed, the consequences and risks as well as full information on alternative contraceptive measures. She was at the time in a state of shock from losing her unborn baby, severe pain and had lost a substantial amount of blood. She was lying on the operating table. She did not understand what the word “sterilisation” meant. This was not explained to her carefully and fully by the doctor. Instead the doctor merely told her to sign a barely-readable hand-written form of consent to the operation, that included the Latin rather than Hungarian word for sterilisation. That the doctor failed to give the Petitioner full information on the intervention in a form that was understandable to her is clearly in violation of provisions in the European Convention on Human Rights and Biomedicine and the WHO Declaration on Patients’ Rights. The UK Department of Health in its “Reference Guide to Consent for Examination or Treatment” states that “The validity of consent does not depend on the form in which it is given. Written consent merely serves as evidence of consent: if the elements of voluntariness, appropriate information and capacity have not been satisfied, a signature on a form will not make the consent valid”.⁵⁰ This publication also states that “Acquiescence where the person does not know what the intervention entails is not “consent””.⁵¹

The Petitioner would never have agreed to the sterilisation had she been fully informed about the operation, its risks, and other forms of contraception. She has strict Catholic religious beliefs that prohibit contraception of any kind, including sterilisation. The Hungarian Academy of Science study on Roma women’s attitude to childbirth stated that “Sterilisation would violate such a deeply rooted ... [belief] ..., which [many] women living in [traditional] Roma communities could not identify with and could not undertake without damaging their sexual identity and their role as a mother and a wife”.⁵² These customs place an absolute value on the right to reproduce. The sterilisation operation had a profound and fundamental impact on the life of the Petitioner. Since then both she and her partner have received medical treatment for depression. She therefore asserts that there is a clear causal link between the failure of the doctors to fully inform her about the sterilisation operation and the injuries that sterilisation caused to her, both physical and emotional. “*We wanted a big family. I wanted to give birth again. But I simply can not...how to say...It bothers me that I can not even if I wanted and I even can not try... I would try even if it risked my life...*” - from the interview made with the Petitioner by NEKI on 13 February 2003.⁵³

Taking into account CEDAW’s standard for informed consent, as set out in paragraphs 20 and 22 of General Recommendation 24, the standards set out in the European Convention on Human Rights and Biomedicine and in the WHO Declaration on Patients’ Rights (described above), and the Hungarian Healthcare Act, the facts of this case show that the Petitioner was unable to make an informed choice before signing the consent form. The elements of voluntariness, appropriate information and the Petitioner’s capacity at the time of the intervention; all necessary for free and fully informed consent, were not satisfied. A signature on a consent form does not make the consent valid when the criteria for free and fully informed consent are not met. As the Human Rights Committee commented, the practice of non-consensual sterilisation constitutes torture or cruel, inhuman or degrading treatment.⁵⁴ A grave violation of human rights. The Petitioner asserts that the standard of health care service that she received from the hospital, in which she was not fully informed of the options to treatment before giving her consent to the sterilisation operation, was in violation of Article 12 of the Convention.

Violation of Article 16.1.e: the State limited the Petitioner’s ability to reproduce

Article 16.1.e. of the Convention provides that “States parties shall take all appropriate measures...in all matters relating to marriage and family relations and in particular shall ensure...(e) the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”

The Committee on the Elimination of Discrimination against Women in its Recommendation 21 on Equality in marriage and family relations, said “Some reports disclose coercive practices which have serious consequences for women, such as forced pregnancies, abortions or sterilisation. Decisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government.”⁵⁵ The Committee also noted in its General Recommendation 19 on violence against women, that “Compulsory sterilisation or abortion adversely affects women’s physical and mental health, and infringes the right of women to decide on the number and spacing of their children.”⁵⁶ It also made a specific recommendation that “States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, ...”⁵⁷

49 See Exhibit 5, Decision of the Szabolcs-Szatmar-Bereg County Court.

50 UK Dept of Health “Reference guide to consent for examination or treatment”, para. 11, <http://doh.gov.uk/consent>.

51 *Idem* para. 1.

52 Maria Neményi: Roma Mothers in Health Care, <http://mek.oszk.hu/01100/01156>.

53 See Exhibit 6, interview with Petitioner.

54 Human Rights Committee, General Comment 28: Equality of Rights Between Men and Women (Art. 3) (68th Sess., 2000), in Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies, 11, UN Doc. HRI/GEN/1/Rev.5 (2001).

55 CEDAW General Recommendation 21, para 22.

56 CEDAW General Recommendation 19, para 22.

57 CEDAW General Recommendation 19, para 24.

International case law is also clear on this issue. The European Court of Human Rights, in the case *Y.F. v. Turkey*⁵⁸ in which a woman was forcibly subjected to a gynaecological examination against her will, held that a person's body concerns the most intimate aspect of one's private life. Thus, a compulsory, forced or coerced medical intervention, even if it is of minor importance, constitutes an interference with a person's right to private life under Article 8 of the European Convention on Human Rights.

In *Planned Parenthood of Southeastern Pennsylvania v. Casey*,⁵⁹ a case brought against provisions in the Pennsylvania State Abortion Control Act, the U.S. Supreme Court explained that the right of individual privacy prevents governmental interference into certain of an individual's most critical decisions about family, including whether to marry or divorce, and whether to conceive and bear a child, which the Court held were the "most intimate and personal choices a person may make in a lifetime".

A case concerning forced sterilisation was taken in 1999 to the Inter-American Commission.⁶⁰ Maria Mamerita Mestanza Chavez was sterilised against her will, and subsequently died. There was a friendly settlement on 14 October 2002. Peru recognised its international responsibility and agreed to indemnify the victim's family and to work for the improvement of policies concerning reproductive health and family planning in the country. The indemnification was fixed in US\$10,000 for moral damages to be paid to each of the victim's 7 children and her husband, besides compensation for health care, education and housing. The government of Peru also assumed the commitment to conduct an extensive investigation to ascertain the responsible parties for Ms. Mestanza's death. Finally, it also agreed to modify national legislation and policies that fail to recognise women as autonomous decision makers.

The facts of this case show that the Petitioner was denied access to information, education and the means to exercise her right to decide on the number and spacing of children. The means to reproduction were taken away from her by Hungarian State actors, the doctors at the public hospital. Sterilisation is regarded in law and medical practice as an irreversible operation. Although an operation can be performed to reverse the operation, the chances of success are very low. The World Health Organisation in its Medical Eligibility Criteria for Contraceptive Use states that "Considering the irreversibility or permanence of sterilisation procedures, special care must be taken to assure a voluntary informed choice of the method by the client. All women should be counselled about the permanence of sterilisation and the availability of alternative, long-term, highly effective methods".⁶¹ In *Re F*⁶² the U.K. House of Lords Judge Lord Brandon, in commenting on sterilisation, said that "first, the operation will in most cases be irreversible; second, by reason of the general irreversibility of the operation, the almost certain result of it will be to deprive the woman concerned of what is widely, as I think rightly, regarded as one of the fundamental rights of a woman, namely, to bear children....." The eminent Hungarian medical expert, Laszlo Lampe, in his handbook on gynaecological surgery for medical practitioners⁶³ said that "Sterilisation has to be considered as an irreversible operation, and this has to be communicated to the patient". The Petitioner asserts that agents of the Hungarian State, public medical doctors, in sterilising her without her fully informed consent, have limited her choice to decide freely and responsibly on the number and spacing of future children, in violation of Article 16.1.e. of the Convention.

VII Other international procedures

This matter has not been and is not currently being examined under any other procedure of international investigation or settlement.

Objective of the Communication

The objective of this Communication is to find the Hungarian Government in breach of Articles 10.h, 12, and 16.1.e of the Convention and for the Petitioner to obtain just compensation.

List of documents attached

- Exhibit 1 Consent form
- Exhibit 2 Civil claim, 15 October 2001
- Exhibit 3 Fehergyarmat Town Court Decision, 22 November 2002
- Exhibit 4 Appeal, 5 December 2002
- Exhibit 5 Szabolcs-Szatmar-Bereg County Court Decision, 12 May 2003
- Exhibit 6 Interview of A.S., 13 February 2003
- Exhibit 7 Hospital records
- Exhibit 8 Extract from Handbook on Gynaecological Surgery by Laszlo Lampe
- Exhibit 9 Statement before the Court by the Petitioner's Attorney

Legal Defence Bureau
For National and Ethnic
Minorities

European Roma Rights Centre

European Roma
Rights Center

58 *Y.F. v. Turkey*, European Court of Human Rights application no. 00024209/94.

59 *Planned parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

60 Inter-American Commission case No. 12,191.

61 WHO Medical Eligibility Criteria for Contraceptive Use, Second edition, at http://who.int/reproductive-health/publications/RHR_00_2_medical_eligibility_criteria_second_edition/rhr_00_2_ster.html.

62 *Re F*, (1990) 2 AC 1.

63 See Exhibit 8, extract from Handbook on Gynaecological Surgery by Laszlo Lampe.

Appendix 6 – Example inquiry

In 2008, an NGO coalition requested the CEDAW Committee to establish an inquiry into a policy of the City of Manila in the Philippines that has allegedly significantly impaired women's access to contraceptives and related health care services and information. The policy, introduced in 2000, is entitled *Executive Order No. 003: Declaring Total Commitment and Support to the Responsible Parenthood Movement in the City of Manila and Enunciating Policy Declarations in Pursuit Thereof*.

In summary, the coalition requested that the CEDAW Committee conduct an inquiry into whether the Executive Order violates several rights guaranteed in CEDAW. The request focuses primarily on alleged violations of women's right to equality in health care (article 12) and women's rights to decide freely and responsibly on the number of spacing of their children and to equality in marriage (article 16). It also alleges violations of the Philippines' general obligations in CEDAW (articles 2 and 3), the freedom from wrongful gender stereotyping (article 5), the right to equality in education (article 10) and the right to equality in employment (article 11).

Due to the length of the initial request to the CEDAW Committee and the volume of supporting materials, it is not possible to reproduce them here as an illustration of how to use the inquiry procedure.

However, aspects of the request have been discussed throughout Section 3 of this Guide. In addition, the initial request made by the NGO coalition as well as some of the subsequent information submitted to the CEDAW Committee are available on the website of EnGenderRights, one of the Philippines organisations involved in the request.

- See Initial request for inquiry submitted to the CEDAW Committee (June 2008).
At: <http://www.engenderights.org/?q=node/27>
- Second submission to the CEDAW Committee (October 2008).
At: <http://www.engenderights.org/?q=node/34>
- Third submission to the CEDAW Committee (April 2009).
At: <http://www.engenderights.org/?q=node/41>

Information about the request will also be included in the CEDAW Committee's final report on the inquiry. Once completed, the report will be made available on the website of the CEDAW Committee: http://www2.ohchr.org/english/bodies/cedaw/inquiry_procedure.htm

Appendix 7 – Communications against Australia

Committee against Torture

Name	UN Doc	Background	Outcome
<i>A.K. v Australia</i>	CAT/C/32/D/148/1999 (2004)	<ul style="list-style-type: none"> • Non-refoulement (No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture: CAT, art 3(1)) • A.K., an asylum seeker, claimed that his forced return to Sudan would violate his rights under article 3 of CAT, as there were substantial grounds for believing he would be subjected to torture due to his religion, prior political activities, and being a military deserter. 	No violation of article 3 of CAT
<i>Elmi v Australia</i>	CAT/C/22/D/120/1998 (1999)	<ul style="list-style-type: none"> • Non-refoulement • Elmi, an asylum seeker, claimed that his forced return to Somalia would violate his rights under article 3 of CAT, as there were substantial grounds for believing he was personally at risk of torture due to his background and clan membership and because members of his family had already been murdered and raped. 	Violation of article 3 of CAT
<i>H.M.H.I. v Australia</i>	CAT/C/28/D/177/2001 (2002)	<ul style="list-style-type: none"> • Non-refoulement • H.M.H.I., an asylum seeker, claimed that his forced return to Somalia would violate his rights under article 3 of CAT, as there were substantial grounds for believing he would be subjected to tortured due to his clan membership and because members of his family had already been murdered and raped. 	No violation of article 3 of CAT
<i>L.J.R. v Australia</i>	CAT/C/41/D/316/2007 (2008)	<ul style="list-style-type: none"> • Non-refoulement, treatment in prison • L.J.R., a prisoner, claimed that extradition to the United States would violate his rights under article 3 of CAT, as there were substantial grounds for believing he would be subjected to torture and that his trial there would be prejudiced because of his race and religion. He also claimed that, while being held in Australian prisons, he was repeatedly subjected to physical and sexual assault by prison guards and other prisoners over a 12-month period. 	No violation of article 3 of CAT
<i>M.P.S. v Australia</i>	CAT/C/27/D/154/2000 (2001)	<ul style="list-style-type: none"> • Non-refoulement • M.P.S., an asylum seeker, claimed that his forced return to Sri Lanka would violate his rights under article 3 of CAT, as he was at risk of being subjected to torture. M.P.S. alleged that he had previously been subjected to torture in Sri Lanka and that there was evidence of a consistent pattern of gross and massive violations of human rights in Sri Lanka. 	No violation of article 3 of CAT

Name	UN Doc	Background	Outcome
<i>M.S. v Australia</i>	CAT/C/27/ D/154/2000 (2001)	<ul style="list-style-type: none"> • Non-refoulement • M.S., an asylum seeker, claimed that his forced return to Algeria would violate his rights under article 3 of CAT, as there were substantial grounds for believing that he would be subjected to torture because he was perceived as an FSI sympathiser, was a draft-evader, and would be arrested and tortured in connection with an earlier court verdict. 	No violation of article 3 of CAT
<i>N.P. v Australia</i>	CAT/C/22/ D/106/1998 (1999)	<ul style="list-style-type: none"> • Non-refoulement • N.P., an asylum seeker, claimed that his forced return to Sri Lanka would violate his rights under article 3 of CAT, as there were substantial grounds for believing he would be arrested, tortured and killed by the army on his return. His claim was based on previous experiences of being tortured by Sri Lankan authorities and the perception that he was as a LTTE supporter. 	No violation of article 3 of CAT
<i>P.A.C. v Australia</i>	CAT/C/34/ D/211/2002 (2005)	<ul style="list-style-type: none"> • Non-refoulement • P.A.C., an asylum seeker, claimed that his forced return to Sri Lanka would violate his rights under article 3 of CAT, as there were substantial grounds for believing he would be tortured. He claimed the decision to deny him a protection visa was biased and unreasonable. 	Communication inadmissible
<i>X. v Australia</i>	CAT/C/42/ D/324/2007 (2009)	<ul style="list-style-type: none"> • Non-refoulement • X, an asylum seeker, claimed that his forced return to Lebanon would violate his rights under article 3 of CAT, as there were substantial grounds for believing he would be subjected to torture due to his political and religious beliefs. 	No violation of article 3 of CAT
<i>Y.H.A v Australia</i>	CAT/C/27/ D/162/2000 (2002)	<ul style="list-style-type: none"> • Non-refoulement • Y.H.A., an asylum seeker, claimed that his forced return to Somalia would violate his rights under article 3 of CAT, as there were substantial grounds for believing he would be subjected to torture. Y.H.A. claimed that he had previously been attacked and that there was evidence of a consistent pattern of gross, flagrant or mass violations of human rights in Somalia. 	No violation of article 3 of CAT
<i>Z.T. v Australia</i>	CAT/C/31/ D/153/2000 (2003)	<ul style="list-style-type: none"> • Non-refoulement • Z.T. claimed that the forced return of her brother, R.T., to Algeria would violate his rights under article 3 of CAT, as there were substantial grounds for believing he would be subjected to torture because of his political opinions and membership in the Islamic Salvation Front. 	No violation of article 3 of CAT

Committee on the Elimination of Racial Discrimination

Name	UN Doc	Background	Outcome
<i>Barbaro v Australia</i>	CERD/C/57/D/12/1998 (2000); CERD/C/51/D/7/1995 (1997)	<ul style="list-style-type: none"> Discrimination on the ground of race Barbaro claimed to be a victim of race discrimination in the workplace based on his Italian origin, in violation of article 1(1), 5(a) and 5(e)(i) of ICERD. 	Communication inadmissible
<i>B.M.S v Australia</i>	CERD/C/51/D/8/1996 (1997); CERD/C/54/D/8/1996 (1999)	<ul style="list-style-type: none"> Discrimination on the ground of race B.M.S. claimed to be a victim of race discrimination, in violation of ICERD. He claimed that qualifying tests for foreign doctors to practise medicine in Australia and the quota on the number of doctors trained overseas were unfair and racially biased. 	No violation of article 5(e)(i) of ICERD
<i>D.F. v Australia</i>	CERD/C/72/D/39/2006 (2008)	<ul style="list-style-type: none"> Discrimination on the ground of race D.F., a New Zealand citizen, claimed to be a victim of race discrimination, in violation of articles 2(1)(a) and 5(e)(iv) of ICERD. He claimed that a new Australian law discriminated against New Zealand citizens living in Australia on the basis of their national origin, by removing certain social security payments. 	No violation of articles 2(1)(a) or 5(e)(iv) of ICERD
<i>D.R. v Australia</i>	CERD/C/75/D/42/2008 (2009)	<ul style="list-style-type: none"> Discrimination on the ground of race D.R., a New Zealand citizen, claimed to be a victim of race discrimination, in violation of articles 2(1)(a), 5(d)(iii), 5(e)(iv), 5(e)(v) and 6 of ICERD. He claimed that a number of Australian laws unlawfully restricted his rights to social security, education, and nationality, on the basis of his national origin. He also claimed that there were no national laws or judicial avenues that he could avail himself of to seek effective protection and remedies. 	No violation of articles 2(1)(a), 5 or 6 of ICERD
<i>Hagan v Australia</i>	CERD/C/62/D/26/2002 (2003)	<ul style="list-style-type: none"> Discrimination on the ground of race Hagan, an Indigenous man, claimed to be a victim of race discrimination, in violation of articles 2(1)(c), 4, 5, 6 and 7 of ICERD. He claimed that use of a racially offensive term ('nigger') on a sign at a sporting grandstand and its use during public announcements at, and relating to, the grandstand, were racially discriminatory towards Aboriginal peoples. 	Violation of ICERD (ambiguous views)
<i>Z.U.B.S. v Australia</i>	CERD/C/55/D/6/1995 (1999); CERD/C/51/D/6/1995 (1997)	<ul style="list-style-type: none"> Discrimination on the ground of race Z.U.B.S., an Australian citizen of Pakistani origin, claimed to be a victim of race discrimination while employed by the NSW Fire Brigade, in violation of articles 2, 3, 5 and 6 of ICERD. 	No violation of articles 2, 3, 5 and 6 of ICERD

Human Rights Committee

Name	UN Doc	Background	Outcome
<i>A v Australia</i>	CCPR/C/59/D/560/1993 (1997)	<ul style="list-style-type: none"> Immigration detention A alleged violations of articles 2(1), 9 and 14 of the ICCPR. He claimed that his indefinite and prolonged detention was arbitrary and that he had been denied the opportunity for judicial or administrative review. 	Partially admissible; violations of articles 2(3), 9(1) and 9(4) of the ICCPR
<i>A.,B.,C.,D., and E. v Australia</i>	CCPR/C/92/D/1429/2005 (2007)	<ul style="list-style-type: none"> Immigration, non-refoulement, protection of children The authors alleged that their detention and removal to Colombia would violate articles 7, 9 (1), 9(4), and 24 of the ICCPR. 	Communication inadmissible
<i>Anderson v Australia</i>	CCPR/C/88/D/1367/2005 (2006)	<ul style="list-style-type: none"> Fair trial Anderson alleged that the failure to compensate him for his wrongful conviction and his inability to access an effective remedy violated articles 2(3) and 14(6) of the ICCPR. 	Communication inadmissible
<i>A.R.J. v Australia</i>	CCPR/C/60/D/692/1996 (1997)	<ul style="list-style-type: none"> Right to life, fair trial, non-refoulement A.R.J. claimed that his forcible return to Iran would violate articles 2(1), 6, 14, 15(1) and 16 of the ICCPR. He claimed that there was a real risk that he would face the death penalty and/or be subjected to torture, if returned to Iran. 	No violation
<i>A S. and L.S. v Australia</i>	CCPR/C/47/D/490/1992 (1993)	<ul style="list-style-type: none"> Fair trial, privacy, discrimination A.S. and L.S. alleged violations of articles 2, 16, 17 and 26 of the ICCPR. They claimed that the judge discriminated against them and unduly favoured the defendants in precipitating the departure of their senior counsel. They further claimed that the judge unjustly refused to make a ruling in relation to the provision of legal aid and allegedly allowed the defendants to introduce as evidence confidential documentation on A.S. obtained by illegal means. In addition, they claimed that they were denied equality before the law when the hearing of an appeal proceeded, even after being informed that L.S. could not attend because of illness. 	Inadmissible
<i>Baban et al v Australia</i>	CCPR/C/78/D/1014/2001 (2003)	<ul style="list-style-type: none"> Immigration detention, non-refoulement, protection of children Baban, on his own behalf and that of his son, alleged violations of articles 7, 9(1), 10(1), 19 and 24(1) of the ICCPR. His claim concerned their treatment in immigration detention and the foreseeable risk of torture or serious mistreatment if deported to Iraq. 	Violations of articles 9(1) and 9(4) of the ICCPR
<i>Bakhtiyari v Australia</i>	CCPR/C/79/D/1069/2002 (2003)	<ul style="list-style-type: none"> Immigration detention, non-refoulement, protection of children Mr and Mrs Bakhtiyari, on their own behalf and that of their children, alleged violations of articles 7, 9, 17, 23(1) and 24(1) of the ICCPR. Their claim concerned their treatment during prolonged immigration detention and the foreseeable risk of torture or cruel, inhuman or degrading treatment or punishment if deported to Afghanistan. 	Violations of articles 9(1), 9(4), 17(1), 23(1) and 24(1) of the ICCPR

Name	UN Doc	Background	Outcome
<i>B.L. v Australia</i>	CCPR/C/58/D/659/1995/Rev.1 (1996)	<ul style="list-style-type: none"> Fair trial, equality before the law, discrimination B.L. alleged violations of articles 1-3, 7, 14, 16-17 and 26 of the ICCPR. She claimed that the Australian legal system and legal profession are corrupt and that its courts are biased against women and immigrants. 	Communication inadmissible
<i>Brough v Australia</i>	CCPR/C/86/D/1184/2003 (2006)	<ul style="list-style-type: none"> Conditions of detention Brough, an Aboriginal youth with a mild disability, alleged that his conditions of, and treatment in, detention violated articles 2(3), 7, 10 and 24(1) of the ICCPR. 	Violation of articles 10 and 24 of the ICCPR
<i>Burgess v Australia</i>	CCPR/C/85/D/1012/2001 (2005)	<ul style="list-style-type: none"> Deportation, non-refoulement, arbitrary interference in family life Burgess claimed that his proposed deportation to the United Kingdom had / would constitute a violation of articles 1-3, 5, 7, 9-10, 12-14, 16-17, 23-24 and 26 of the ICCPR. 	Communication inadmissible
<i>C. v Australia</i>	CCPR/C/76/D/900/1999 (2002)	<ul style="list-style-type: none"> Immigration detention, non-refoulement, inhuman and degrading treatment, rights to life and health C alleged violations of articles 2, 7 and 9 of the ICCPR. He claimed that he had been kept in prolonged detention resulting in harm to his mental health and without opportunity for judicial or administrative review. He further claimed that he was at real risk of harm if deported to Iran. 	Partially admissible; violation of articles 7, 9(1) and 9(4) of the ICCPR
<i>Cabal and Pasini v Australia</i>	CCPR/C/78/D/1020/2001 (2003)	<ul style="list-style-type: none"> Detention Cabal and Pasini alleged violations of articles 7, 10(2)(a), and 14(2) of the ICCPR. They claimed that they had been subjected to sexual and physical assault while in prison and that there had been a failure to segregate them, as unconvicted persons, from convicted inmates. They further claimed that they had not been presumed innocent, the conditions of their detention were not congruent with their right to be treated with humanity and respect for the inherent dignity of the human person, and that their health had been put at serious risk. 	Partially admissible; violation of article 10(1) of the ICCPR
<i>Chung v Australia</i>	CCPR/C/84/D/1336/2004 (2005)	<ul style="list-style-type: none"> Discrimination on the ground of disability and race Chung claimed that his exclusion from certain courses at the University of Sydney and his treatment by the University constituted a violation of articles 1, 2, 5-7, 9-10, 14, 17-20, 22 and 26 of the ICCPR. 	Communication inadmissible
<i>Coleman v Australia</i>	CCPR/C/87/D/1157/2003 (2006)	<ul style="list-style-type: none"> Freedom of speech Coleman claimed that his conviction for breach of a local bylaw (expression of political speech in a pedestrian mall without a permit) violated articles 9(1), 9(5), 15, 19 and 21 of the ICCPR. 	Violation of article 19(2) of the ICCPR
<i>Collins v Australia</i>	CCPR/C/76/D/881/1999 (2002)	<ul style="list-style-type: none"> Conditions of detention Collins alleged violations of articles 10(1) and 10(2) of the ICCPR. He claimed that he had been put under stress due to doubling-up in South Australian corrective facilities. He further claimed that he, as an accused prisoner, was housed in facilities with sentenced prisoners. 	Communication inadmissible

Name	UN Doc	Background	Outcome
<i>D and E v Australia</i>	CCPR/C/87/D/1050/2002 (2006)	<ul style="list-style-type: none"> Immigration detention, rights of the child D and E alleged that the prolonged immigration detention of themselves and their children constituted violations of articles 9(1), 9(4), and 24 of the ICCPR. 	Violation of article 9(1) of the ICCPR
<i>Dixit v Australia</i>	CCPR/C/77/D/978/2001 (2003)	<ul style="list-style-type: none"> Immigration detention; discrimination on the ground of disability Dixit alleged that the denial of a migration visa due to her daughter's Spina Bifida constituted a violation of articles 2(3), 14(1), 17, 24, and 26 of the ICCPR. 	Communication inadmissible
<i>Dranichnikov v Australia</i>	CCPR/C/88/D/1291/2004 (2007)	<ul style="list-style-type: none"> Immigration, discrimination on the ground of sex and marital status, right to life Dranichnikov alleged violations of articles 2, 6-7, 9, 14, 23 and 26 of the ICCPR. She claimed that she was not allowed to file a refugee claim in her own right, there was a failure to conduct an interview with her as a woman in her husband's family unit, and discriminatory amendments were made to the Migration Act. She further claimed that she had been denied a fair hearing and that, if deported to Russia, her rights would be further violated. 	Partly admissible; no violation of article 14(1) of the ICCPR
<i>Dudko v Australia</i>	CCPR/C/90/D/1347/2005 (2007)	<ul style="list-style-type: none"> Fair trial, right to equality before the courts Dudko alleged violations of articles 7, 9(1), 10, 14 and 17 of the ICCPR. She claimed that there was a failure to ensure that she was tried fairly and by an impartial tribunal, she was not afforded the presumption of innocence, there was excessive delay in proceedings, she was not allowed to be present at the hearing on her application to the High Court for leave to appeal, and she was not afforded legal assistance for that application. 	Violation of article 14(1) of the ICCPR
<i>F v Australia</i>	CCPR/C/72/D/832/1998 (2001)	<ul style="list-style-type: none"> Discrimination on the ground of disability F alleged that her son was a victim of a violation of article 26 of the ICCPR. She claimed, among other things, that her son was required to comply with a condition for entry to school not required of students without a disability, and that the contract terms were unreasonable. 	Communication inadmissible
<i>Fardon v Australia</i>	CCPR/C/98/D/1629/2007 (2010)	<ul style="list-style-type: none"> Arbitrary detention, double jeopardy Fardon claimed that post-sentence detention after completion of initial prison sentence for sexual offences, including rape, constituted violations of articles 9(1) and 14(7) of the ICCPR. 	Violation of article 9(1) of the ICCPR
<i>Faure v Australia</i>	CCPR/C/85/D/1036/2001 (2005)	<ul style="list-style-type: none"> Compulsory labour Faure claimed that making unemployment benefits conditional upon performance of compulsory labour violated articles 2 and 8(3) of the ICCPR. 	Violation of articles 2(3) and 8 of the ICCPR
<i>G.T. v Australia</i>	CCPR/C/61/D/706/1996 (1997)	<ul style="list-style-type: none"> Detention, deportation, right to life, arbitrary interference in private life G.T. alleged violations of the ICCPR. She claimed there was a real risk that, if her husband was deported to Malaysia, he would face prolonged detention followed by the death penalty. 	No violation

Name	UN Doc	Background	Outcome
<i>Hart v Australia</i>	CCPR/C/70/D/947/2000 (2000)	<ul style="list-style-type: none"> Medical treatment without consent, failure to properly regulate private hospital practices Hart alleged violations of articles 2, 14, 17-19 and 26 of the ICCPR. He claimed to have been subjected to medical treatment without his consent that had resulted in a disability. He further claimed that there had been a failure to properly regulate the standards and practices at the private hospital and to investigate a series of complaints made against the hospital. In addition, he claimed that the judiciary and legal profession was biased against him and stigmatised him on the basis of his psychiatric treatment. 	Communication inadmissible
<i>Hesse v Australia</i>	CCPR/C/75/1087/2002 (2002)	<ul style="list-style-type: none"> Medical experimentation, discrimination Hesse alleged violations of articles 7, 14(1) and 26 of the ICCPR. He claimed that he had been injected with an experimental drug without his consent leading to ongoing health problems that resulted in disability. He further claimed discrimination because he was prevented from suing the company responsible, as such a claim was statute-barred in Western Australia but would not have been in New South Wales. 	Communication inadmissible
<i>Irving v Australia</i>	CCPR/C/74/D/880/1999 (2002)	<ul style="list-style-type: none"> Fair trial, compensation for wrongful conviction and imprisonment Irving alleged that the failure to provide compensation for wrongful conviction and imprisonment constituted a violation of article 14(6) of the ICCPR. 	Communication inadmissible
<i>Jarman v Australia</i>	CCPR/C/58/D/700/1996 (1996)	<ul style="list-style-type: none"> Fair trial, discrimination, recognition before the law Jarman alleged violations of articles 14, 16 and 26 of the ICCPR. He claimed that the judicial system discriminated against him because he is a layman. He further claimed that his right to be recognised as a person before the law and his right to equal treatment were violated, as he was not permitted to submit his appeal three months after it expired and the plaintiff was permitted to recover a debt that was more than 12 years old. 	Communication inadmissible
<i>Jensen v Australia</i>	CCPR/C/71/D/762/1997 (2001)	<ul style="list-style-type: none"> Conditions of detention, treatment in detention, fair trial Jensen alleged that delays in bringing him to trial and his treatment in and conditions of detention constituted violations of articles 2(3), 7, 9, 14(3) and 15(1) of the ICCPR. 	Communication inadmissible
<i>J.L. v Australia</i>	CCPR/C/45/D/491/1992 (1992)	<ul style="list-style-type: none"> Fair trial, detention J.L. alleged a violation of article 14 of the ICCPR. He claimed that he had been denied proceedings before an independent and impartial tribunal and that his detention for refusing to pay a fine that exceeded the maximum fine envisaged by the relevant law was unlawful. 	Communication inadmissible
<i>Juma v Australia</i>	CCPR/C/78/D/984/2001 (2003)	<ul style="list-style-type: none"> Fair trial, access to translator Juma alleged violations of articles 14(3)(f) and 14(5) of the ICCPR. He claimed that he had been denied a fair trial because he did not have access to an interpreter and, therefore, did not understand what was taking place during trial or the complexities of the legal process. 	Communication inadmissible

Name	UN Doc	Background	Outcome
<i>Karawa v Australia</i>	CCPR/C/84/D/1127/2002 (2005)	<ul style="list-style-type: none"> Immigration detention, deportation, arbitrary interference with family life, protection of children The Karawa family claimed that the proposed expulsion of the parents but not their daughter, an Australian national, to Fiji would violate articles 17, 23(1) and 24(1) of the ICCPR. 	Communication inadmissible
<i>K. L. B. –W. v Australia</i>	CCPR/C/47/D/499/1992 (1993)	<ul style="list-style-type: none"> Effective remedy, privacy, equality, medical treatment without consent K.L.B.-W. claimed that the failure to provide an adequate remedy for the medical maltreatment she suffered violated articles 6(1), 7, 9, 10(1), 16, 17 and 26 of the ICCPR. 	No violation
<i>Kwok v Australia</i>	CCPR/C/97/D/1442/2005 (2009)	<ul style="list-style-type: none"> Immigration detention, non-refoulement, right to life Kwok alleged violations of articles 6, 9 and 14 of the IC-CPR. She claimed that there was a real and foreseeable risk that, if deported to China, she would be convicted and sentenced to death and/or subjected to torture or cruel, inhuman or degrading treatment or punishment. She further claimed that she was unlikely to be afforded due process, including the right to a fair hearing, in China. In addition, she claimed that her detention for a period in excess of four years without any chance of substantive judicial review was arbitrary. 	Violations of articles 6, 7 and 9(1) of the ICCPR
<i>Lamagna v Australia</i>	CCPR/C/65/D/737/1997 (1999)	<ul style="list-style-type: none"> Discrimination Lamagna alleged a violation of the ICCPR (in general) in relation to benefits paid to her nursing home for approved patients for each day they received care in the home. 	Communication inadmissible
<i>Laing v Australia</i>	CCPR/C/81/D/901/1999 (2004)	<ul style="list-style-type: none"> International child abduction, rights of the child, arbitrary interference in family life On behalf of herself and her two children, Lang alleged that she had been denied a fair trial and that the forcible removal of her daughter to her father in the United States had or would violate of articles 2, 3, 7, 14, 17, 23, and 26 of the ICCPR. 	Communication inadmissible
<i>Lim v Australia</i>	CCPR/C/87/D/1175/2003 (2006)	<ul style="list-style-type: none"> Immigration, deportation, arbitrary interference in family life Lim claimed that the expulsion of her and her daughter, but not her son, to the Republic of Korea would violate articles 17 and 23 of the ICCPR. 	Communication inadmissible
<i>Lindon v Australia</i>	CCPR/C/64/D/646/1995 (1998)	<ul style="list-style-type: none"> Right to life, fair trial Lindon alleged violations of articles 6 and 14 of the ICCPR. He claimed, among other things, that he had been denied a legal aid lawyer of his own choosing and that the court was not independent and impartial. He also claimed that by deploying nuclear weapons, Australia had imperilled its citizens and was complicit in a conspiracy to commit imminent genocide. 	Communication inadmissible

Name	UN Doc	Background	Outcome
<i>Love et al v Australia</i>	CCPR/C/77/D/983/2001 (2003)	<ul style="list-style-type: none"> • Discrimination on the ground of age • The authors claimed that failure to protect airline pilots from termination when they reached 60 years of age constituted age discrimination, in violation of articles 2 and 26 of the ICCPR. 	No violation
<i>Lovell v Australia</i>	CCPR/C/80/D/920/2000 (2004)	<ul style="list-style-type: none"> • Freedom of expression, fair trial • Lovell alleged violations of articles 14(1), 14(5) and 19 of the ICCPR. He claimed that he had been denied a fair trial because one of the judges raised at least an appearance of bias and because the prosecution was under no duty to act impartially or provide exculpatory evidence and had a vested interest in obtaining a conviction. He further claimed that his conviction for contempt prevented him from exercising, as a journalist, his freedom of expression. 	No violation
<i>Madaferri v Australia</i>	CCPR/C/81/D/1011/2001 (2004)	<ul style="list-style-type: none"> • Immigration detention, deportation, arbitrary interference with family life, protection of children • Mr and Mrs Madaferri alleged violations of articles 2, 3, 5, 7, 9-10, 12-14, 16-17, 23-24 and 26 of the ICCPR. They claimed the proposed deportation of Mr Madaferri to Italy would violate the rights of their children and that the decision to deport Mr Madaferri was arbitrary and did not respect procedural fairness. The authors further claimed that the conditions of Mr Madaferri's detention were not humane. 	Violations of articles 10(1), 17(1), 23, 24(1) of the ICCPR
<i>Mankarious v Australia</i>	CCPR/C/74/D/1065/2002 (2002)	<ul style="list-style-type: none"> • Discrimination • Mankarious alleged that he had been denied equal access to social rights in Australia as well as legal assistance and that this constituted a violation of article 26 of the ICCPR. 	Communication inadmissible
<i>Masaharu et al v Australia</i>	CCPR/C/88/D/1154/2003 (2006)	<ul style="list-style-type: none"> • Fair trial, access to adequate translation, access to legal representation • The authors, all Japanese nationals, alleged violations of articles 2, 9(2), 14 and 26 of the ICCPR. They claimed that they had been provided with inadequate interpretation following their arrest and throughout subsequent legal proceedings against them. Some of the authors claimed that they had not been provided with legal counsel during their police interrogation. 	Communication inadmissible
<i>Minogue v Australia</i>	CCPR/C/82/D/954/2000 (2004)	<ul style="list-style-type: none"> • Fair trial, liberty and security of the person, humane treatment when deprived of liberty • Minogue alleged violations of articles 2, 9(4), 10, 14, 26, and 50 of the ICCPR. He claimed that regular cell changes and restrictions imposed on him by prison authorities in accessing legal resources, computers and his lawyers, thwarted his attempts to have his case reviewed. 	Communication inadmissible
<i>Nicholas v Australia</i>	CCPR/C/80/D/1080/2002 (2004)	<ul style="list-style-type: none"> • Presumption of innocence, access to health care in detention • Nicholas alleged violations of article 15(1) of the ICCPR. He claimed to be a victim of an impermissible application of a retroactive criminal law and to have been denied adequate health care while in detention. 	No violation of article 15(1) of the ICCPR

Name	UN Doc	Background	Outcome
<i>Pasla v Australia</i>	CCPR/C/65/D/751/1997 (1999)	<ul style="list-style-type: none"> Access to legal aid, fair trial Pasla alleged violations of articles 2, 3, 14(1), 16 and 26 of the ICCPR. He alleged that he had been denied access to court when he was declined legal aid, he had been denied justice, and that the Australian legal system is corrupt. 	Communication inadmissible
<i>Perera v Australia</i>	CCPR/C/53/D/536/1993 (1995)	<ul style="list-style-type: none"> Fair trial, failure to call witness, right of appeal, discrimination on the ground of race Perera claimed violations of articles 14 and 26 of the ICCPR. He submitted that he did not receive a fair trial, was threatened and assaulted by police, was denied the right to call a witness, had a limited right of appeal and was discriminated against by police. 	Communication inadmissible
<i>Rogerson v Australia</i>	CCPR/C/74/802/1998 (2002)	<ul style="list-style-type: none"> Fair hearing, delay in court proceedings Rogerson alleged violations of articles 2, 3, 14(1), 14(3), 15(1), 17(1) and 26 of the ICCPR. He submitted that a delay of almost two years in the Northern Territory Court of Appeals delivering its decision on a contempt charge constituted undue delay. 	Violation of article 14(3)(c) of the ICCPR
<i>Shafiq v Australia</i>	CCPR/C/88/D/1324/2004 (2006)	<ul style="list-style-type: none"> Immigration detention, non-refoulement, humane treatment in detention Shafiq, a Bangladeshi national, alleged violations of articles 7, 9(1), 9(4) and 10(1) of the ICCPR. He claimed that he had been held in arbitrary and indefinite detention and had no recourse to a court for legal determination of his refugee status. He further claimed that he would be at risk of being imprisoned, tortured and subject to cruel and inhuman treatment, if returned to Bangladesh and would be subjected to inhuman conditions in detention. 	Violation of articles 9(1) and 9(4) of the ICCPR
<i>Shams et al v Australia</i>	CCPR/C/90/D/1255, 1256, 1259, 1260, 1266, 1270 & 1288/2004 (2007)	<ul style="list-style-type: none"> Immigration detention, inhuman and degrading treatment, humane treatment in detention The authors claimed that their mandatory detention in immigration detention for a period of between 3 and 4 years, general treatment during detention, and proposed refoulement amounted to violations of articles 7, 9(1), 9(4) and 10(1) of the ICCPR. 	Violations of articles 2(3), 9(1) and 9(4) of the ICCPR
<i>Tillman v Australia</i>	CCPR/C/98/D/1635/2007 (2010)	<ul style="list-style-type: none"> Arbitrary detention, double jeopardy Tillman claimed that post-sentence detention after completion of initial prison sentence for two counts of sexual intercourse with a child under the age of ten years constituted violations of articles 9(1) and 14(7) of the ICCPR. 	Violation of articles 9(1) of the ICCPR
<i>Toonen v Australia</i>	CCPR/C/50/D/488/1992 (1994)	<ul style="list-style-type: none"> Discrimination on the grounds of sex/sexual orientation, arbitrary interference in private life Toonen argued that the criminalisation of sexual relations between consenting men constituted a violation of articles 2(1), 17 and 26 of the ICCPR. 	Violations of articles 2(1) and 17 of the ICCPR
<i>Uebergang v Australia</i>	CCPR/C/71/D/963/2001 (2001)	<ul style="list-style-type: none"> Compensation for wrongful imprisonment, fair trial Uebergang claimed that the refusal to grant compensation for a period of wrongful imprisonment constituted a violation of articles 9(5) and 14(6) of the ICCPR. 	Communication inadmissible

Name	UN Doc	Background	Outcome
<i>Werenbeck v Australia</i>	CCPR/C/59/D/579/1994 (1997)	<ul style="list-style-type: none"> Rights in criminal proceedings, access to health care and legal representation, discrimination Werenbeck claimed violations of articles 9(3), 10(1), 14, 16 and 26 of the ICCPR. He claimed that his pre-trial detention period of nine months for importing narcotics was excessive. Author claimed he did not receive proper medical treatment while in detention. Inadequate time and facilities to prepare legal defence due to changing lawyers. 	Communication inadmissible
<i>Wilson v Australia</i>	CCPR/C/80/D/1239/2004 (2004)	<ul style="list-style-type: none"> Unlawful imprisonment, trial by jury, fair trial, eviction, defamation Wilson alleged violations of articles 1, 2, 9, 14, 17 and 26 of the ICCPR. He claimed that he was not afforded a fair trial or a trial by jury and that this had resulted in him being unlawfully imprisoned, unlawfully evicted from his premises, and defamed. He further claimed unlawful use of authority by a foreign power. 	Communication inadmissible
<i>Winata v Australia</i>	CCPR/C/72/D/930/2000 (2001)	<ul style="list-style-type: none"> Deportation, arbitrary interference with the family, and protection of children Winata and Li claimed that the proposed deportation of them from Australia (but not their son, an Australian national) would constitute a violation of articles 17, 23 and 24 of the ICCPR. 	Violations of articles 17, 23(1) and 24(1) of the ICCPR
<i>X v Australia</i>	CCPR/C/57/D/557/1993 (1996)	<ul style="list-style-type: none"> Discrimination on the ground of race/ethnicity, fair trial, freedom of beliefs, custody dispute X, an Aboriginal man, claimed that the racism and ethnocentrism allegedly displayed by the Family Court of Australia in custody proceedings constituted a violation of articles 14(1), 18(1), 18(4), 23(1), 26 and 27 of the ICCPR. 	Communication inadmissible
<i>Y v Australia</i>	CCPR/C/69/D/772/1997 (2000)	<ul style="list-style-type: none"> Immigration detention, access to legal representation Y, an asylum seeker, claimed that his treatment in quarantine detention and the failure to inform him of his right to seek legal advice constituted a violation of his rights in articles 2(1), 9(3), 10(1) and 14(3)(a), 14(3)(b), 13(3)(d) of the ICCPR. He claimed that he had been denied procedural fairness in so far as he had not been advised of his right to request legal representation and thus lost an opportunity to apply for refugee status. 	Communication inadmissible
<i>Young v Australia</i>	CCPR/C/78/D/941/2000 (2003)	<ul style="list-style-type: none"> Discrimination on the ground of sexual orientation Young claimed that differentiating between same sex and opposite sex couples in the provision of veterans' pensions constituted a violation of article 26 of the ICCPR. 	Violation of article 26 of the ICCPR

Appendix 8 – Glossary

Admissibility decision	A treaty body considers whether a communication satisfies the admissibility criteria set forth in the relevant human rights treaty.
Amicus curiae	A ‘friend of the court’ or, in the international context, a human rights treaty body. A person who, although not a party to a communication or request for an inquiry, submits information to a treaty body that calls the attention of the treaty body to a law, issue or expert information.
Author	The person(s) who submits a communication. The author of a communication may or may not be the alleged victim. See ‘victim’.
Communication procedure	A procedure that enables individuals to submit a complaint to a treaty body alleging violations, by a State Party, of rights guaranteed in a human rights treaty. It enables individuals to seek redress for alleged violations of their human rights, where attempts to obtain redress at the domestic level have failed.
Due diligence	States Parties are required to exercise care to prevent violations of human rights by private (i.e., non-state) actors. States Parties may be held legally responsible for the acts of private actors if they fail to exercise due diligence to prevent violations of rights, investigate and punish alleged violations, and provide compensation for violations.
Entry into force	A human rights treaty is legally binding on a State Party from the day it enters into force for that state, which is usually specified in the treaty itself.
Inquiry procedure	A procedure that empowers a treaty body to conduct inquiries into reliable information indicating grave or systematic violations of human rights.
Merits decision	A treaty body considers the substance of allegations in a communication.
Optional Protocol	An Optional Protocol is a type of human rights treaty. It is usually developed to establish a new procedural or substantive norm, or to build upon procedures that are insufficiently developed within the primary human rights treaty.
Ratify	An act whereby a state consents to be legally bound by an international human rights treaty.
Reservation	A unilateral statement made by a state that purports to exclude or modify the legal effect of certain provisions of a human rights treaty in their application to that state.
State Party	A state that has consented to be bound by a human rights treaty.
Treaty	An international agreement concluded between states in written form that imposes binding legal obligations on States Parties to respect, protect and fulfil the human rights guaranteed in the agreement.
Treaty body	Treaty bodies are comprised of independent experts who monitor the steps taken by States Parties to fulfil their obligations under international human rights treaties.
Victim	The person whose rights under an international human rights treaty have been allegedly violated. If the victim submits a communication, she is both the victim and the author. See ‘author’.
Views	The views of a treaty body identify whether or not a State Party has violated an international human rights treaty.

Further Information

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