

Briefing Paper on Optional Protocol to CEDAW

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

Even after ratification of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, which is a widely subscribed international human rights treaty,

- Violations of women's human rights remain widespread in all societies and cultures
- Women are not aware of their rights and have difficulty getting remedies for violations of these rights.

Considering these facts, to provide for better enforcement for women's human rights, an Optional Protocol to CEDAW has been adopted by the United Nations General Assembly on 15 October 1999.

History of the Optional Protocol

During the drafting of CEDAW, a complaint procedure was suggested, but this was not taken up. In June 1993 the World Conference on Human Rights in Vienna acknowledged the need for new procedures to strengthen implementation of women's human rights. An independent expert group met in 1994 at the Maastricht Center for Human Rights and adopted a draft Optional Protocol. The 4th World Conference on Women called on UN member States to support the elaboration of the Optional Protocol. The Commission on the Status of Women (CSW) established an open-ended working group on the Optional Protocol. Governments, inter-governmental organizations and non governmental organization, at the request of CSW, were invited by the Secretary-General to submit their views on an Optional Protocol. The continuous efforts of the United Nations and of the world communities, the Optional Protocol to CEDAW has been adopted by the General Assembly in 1999. This Optional Protocol has been so far signed by 37 state parties.

What is the Optional Protocol ?

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women provides access to justice for women at the international level. It allows women who have been denied access to justice at the national level to have their claims reviewed by the committee of independent experts that monitors compliance with the Convention. However exhaustion of national remedy in the concerned cases is the basic requirement before using optional protocol. Ratification of the Optional Protocol -- agreeing to be

legally bound by it -- is also a key element of follow-up to the commitments Governments made at the Fourth World Conference on Women in Beijing.

Why Optional Protocol to CEDAW ?

Unless optional protocol to CEDAW is ratified, individuals or groups of individuals cannot obtain remedies in an international forum for breaches of CEDAW that affect them. The Committee, only by the Reporting Procedure as stated in the Convention is unable to focus on individual victims or to make recommendations on their behalf. The Optional Protocol provides a forum for complaint and an avenue for women to obtain remedies for breaches of their human rights.

There are now 165 States that are parties to the Convention. However, the human rights guarantees established in the Convention are far-reaching. It seeks to eliminate discrimination against women in the exercise of their economic, social and cultural rights as well as civil and political rights, in public and private or family life and by both government officials and nongovernmental individuals, groups or enterprises. The gap between the promise of the Convention and the reality of women's lives remains significant. The Optional Protocol can help to bridge this gap.

How the Optional Protocol functions?

- A communications procedure through which the Committee on the Elimination of All Forms of Discrimination (CEDAW) can review complaints to decide if rights guaranteed by the Convention have been violated and identify remedies for victims;
- Allows investigation of substantial abuses of women's human rights by an international body of experts;
- Can launch an inquiry into grave or systematic violations on its own initiative.
- Inquiry procedure is useful where individual communications fail to reflect the systematic nature of widespread violations of women's rights;
- Inquiry procedure also allows widespread violations to be investigated where individuals or groups may be unable to make communications (for practical reasons or because of fear of reprisals);
- Gives the Committee an opportunity to make recommendations regarding the structural causes of violations;
- Allows the Committee to address a broad range of issues in a particular country.

Is the ratification of optional protocol to CEDAW creates a new or additional obligation to the State ?

The Optional Protocol is a separate treaty that is open for signature and ratification by States that are already parties to the Convention. However, the Optional Protocol does not create any new substantive rights. It only allows individuals to forward their complaint in the treaty body, in case they are not satisfied by the remedy provided in the

national level, as in the first Optional Protocol to the International Covenant on Civil and Political Rights in which Nepal is already a party.

How can the Optional Protocol to CEDAW benefit women ?

It can be a means of:

- Catalyzing changes in national law and practices by motivating government ensure that the Convention is implemented at the national level and national remedies are effective in order to avoid being called to account at the international level;
- Providing redress for individual victims of women's human rights violations. Individuals, groups of individuals and NGOs may have standing to submit communications. The Optional Protocol to CEDAW incorporates a settlement procedure, which would allow the Committee to mediate settlements of disputes in some circumstances.
- Conducting inquiry which allows Committee to receive reliable information indicating grave or systematic violations by state party of the rights set forth in the Convention.
- Improving the understanding of the rights and obligations in the Convention, by creating an avenue for CEDAW to interpret the Convention in greater detail. Under a communications procedure, the Committee would be able to focus on individual cases when considering CEDAW. It would be able to say what is required from States in individual circumstances. This would help States to understand better the meaning of the obligations they have undertaken by ratifying CEDAW.

The Committee's views on communications would amount to what is called Jurisprudence. Jurisprudence is the name given to a body of case law about any particular subject. It is used for guidance in interpreting laws. Jurisprudence from communications would provide clarification and guidance for States and for individuals about States' obligations under CEDAW.

- *Developing progressive interpretations of discrimination standards that can inform national courts and lawmakers, in addition to other international human rights bodies.* The Optional Protocol to CEDAW is the first gender specific international complaints procedure. As well as putting CEDAW on a par with human rights treaties, which have complaint procedures, it enhances existing mechanisms by specifically incorporating practices and procedures that have been developed under other complaints procedures.
- *Providing detailed guidance to governments that are seeking to meet their obligations under the Convention.* Under the Optional Protocol, the Committee is able to request the State party concerned to take specific measures to remedy violations of CEDAW. This includes the amendment of legislation, stopping discriminatory practices and implementing affirmative action measures.

- *Creating public awareness of human rights standards prohibiting discrimination against women.* The Optional Protocol requires States to make the Optional Protocol and its procedures as widely known as possible. Communications and inquiries under the Optional Protocol will receive publicity, which will increase public awareness of CEDAW and the Optional Protocol.
- *Building awareness among women of their rights as claimants.*

Why ratification by His Majesty's Government of Nepal ?

By ratifying Convention on Elimination of All forms of Discrimination Against Women (CEDAW) in 22nd April, 1991, the Government has already recognized the rights of women and is committed to eliminate all forms of discrimination against them. By ratifying this Protocol, government can express its commitment in international level, in the protection and promotion of human rights of women. It neither creates new obligation nor imposes any burden. It helps to achieve the faith of the people towards the attitude of the government on the protection of the human rights of its citizen. It also helps to sustain democracy in the country. Hence to show its full faith in Words and Deeds, it is necessary to ratify the Optional Protocol to CEDAW. Nepal has already acceded the first Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) that allows individuals to claim their rights under ICCPR. State parties to the ICCPR undertake to ensure that women and men enjoy all the civil and political rights in the Covenant on a basis of equality. The Human Rights Committee has already decided that article 26 of the ICCPR prohibits discrimination in law, or in fact in any field regulated by public authorities.

ICCPR is, therefore, can also be used to challenge the discriminatory laws even in the absence of optional protocol to CEDAW. Hence, to show its commitment on gender equality and to eliminate all forms of discrimination against women as specified in the Constitution of the Kingdom of Nepal, the Ninth Plan, the National Plan of Action for gender equality and empowerment and to implement Beijing Platform for action in the domestic level, it is very important to ratify optional protocol to CEDAW by His Majesty's Government of Nepal.

We are obliged to IWRAW Asia Pacific for providing related information.

Published By
 Forum for Women, Law and Development
 P.O.Box No. 2923
 Kathmandu, Nepal
 Ph. No. : 266415, Fax : 240627
 E-mail : fwld@fwld.wlink.com.np

Supported By
 Unicef, Country Office, Nepal
 United Nations Building

Pulchowk, Lalitpur, Nepal
P.O. Box 1187