

OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

By Jane Connors

Chief, Special Procedures Branch

Office of the United Nations High Commissioner for Human Rights

Introduction

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as “the Optional Protocol”) was adopted by the General Assembly on 6 October 1999 and opened for signature, ratification and accession in a special ceremony, attended by Mr. Kofi Annan, then Secretary-General of the United Nations on 10 December 1999. As of July 2010, it had been ratified or acceded to by 99 States from all geographical regions, cultures and religious persuasions. The Optional Protocol empowers the Committee on the Elimination of Discrimination against Women, the 23-member expert treaty body created by the Convention (hereinafter referred to as “the Committee”), to receive and consider “communications” or petitions from individuals or groups of individuals, who fulfil certain admissibility criteria, alleging that they have been victims of a violation by a State party to the Optional Protocol of any of the rights in the Convention. It also provides the Committee with the capacity to inquire on its own motion into reliable information indicating grave or systematic violations by a State party of Convention rights. The Optional Protocol precludes States parties from entering reservations to its terms, but States are entitled to “opt out” of the inquiry procedure on ratification or accession. Three States have chosen this option, and they, like other States which may decide to opt out of this procedure in the future, may opt in to the inquiry procedure at any time.

Background

The Convention on the Elimination of All Forms of Discrimination against Women, often called the International Bill of Rights for Women, was adopted by the General Assembly on 18 December 1979. By ratification or accession, its 186 State parties 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. In so doing, they undertake to introduce an appropriate legal framework, with sanctions, to create equality between women and men and the elimination of discrimination against women in the enjoyment of all rights – civil, cultural, economic, political and social. They also agree to take all appropriate measures to modify social and cultural patterns of conduct of women and men in order to eliminate prejudices and customary and other practices which are based on notions of the superiority or inferiority of either of the sexes or on stereotyped gender roles.

The Convention was negotiated in the Commission on the Status of Women and the Third Committee of the United Nations General Assembly. The nature of the body which would monitor its implementation was the subject of much discussion, but the means by which this body would carry out its monitoring role was a lesser focus. As negotiations reached conclusion, delegations agreed that an expert treaty body, similar to those established by the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights would be established by the Convention for the purpose of considering the progress made by States

parties in the implementation of the Convention. Although there was a suggestion that the Committee should have the capacity to consider individual petitions alleging violations of the Convention, its drafters settled on a system of periodic reports by States parties to the Committee as the sole means of oversight.

The Committee on the Elimination of Discrimination against Women began its work in 1982, and focused first on developing its working methods, and particularly this reporting system. The Committee attracted significant support amongst women's non-governmental organizations, including at the national level, and these encouraged it to interpret the Convention and the Committee's role broadly so as to accelerate implementation on the ground. It developed an inclusive reporting system, and formulated helpful general recommendations on particular articles or cross-cutting themes in the Convention which outlined steps States parties should take to meet their substantive obligations in the treaty. The Committee also reflected on further mechanisms which could encourage implementation, concluding that an individual petition procedure would strengthen its capacity to assist States parties to meet their obligations.

The lead-up to the second World Conference on Human Rights, convened in Vienna, Austria, in 1993 was marked by concerted action by women's human rights activists directed towards ensuring that women were able to realize all their human rights. United under the campaign slogan "Women's Rights are Human Rights", they called for the strengthening of the international machinery on women's rights, including by the addition of a "right of petition" to the Convention. Their activism was well rewarded, with the Conference's outcome document, the Vienna Declaration and Programme of Action, recommending that the possibility of introducing the right of petition under the Convention should be examined. In 1994, an independent group of experts met in Maastricht in the Netherlands and produced a draft protocol (the "Maastricht draft") containing both an individual petition procedure and inquiry procedure. This draft was put before the Committee at its January 1995 session by Ms. Silvia Cartwright, one of the Committee members who had participated in the Maastricht expert group.

The Committee studied the Maastricht draft closely and agreed to adopt "Suggestion 7" containing elements that it considered should be included in any future protocol. Suggestion 7 was submitted to the Commission on the Status of Women at its 1995 session. The Commission recommended that the Economic and Social Council request the Secretary-General to seek the views of Governments, non-governmental organizations and others on an optional protocol, as well as its feasibility, and establish an open-ended working group to meet in parallel with its 1996 session to discuss the matter. Meanwhile, in autumn 1995, the outcome of the Fourth World Conference on Women, the Beijing Declaration and Platform for Action, supported the protocol's elaboration.

In March 1996, the first session of the open-ended working group of the Commission on the Status of Women on the Optional Protocol was convened. Discussion was slow, but the working group recommended the renewal of its mandate and that the Secretary-General seek further views of Governments and others on the idea of an optional protocol, as well as provide a comparative summary of existing communications and inquiry procedures. The second session of the working group, convened in 1997, was able to consider a draft protocol prepared by its chairperson on the basis of the views provided by Governments in writing and summarized in the Secretary-General's report and the discussions held during the 1996 session. The draft was the basis of negotiations during the 1997, 1998 and 1999 sessions of the working group. The final text was adopted by the Commission on the Status of Women by consensus on 11 March 1999, and transmitted for adoption to the General Assembly, through the Economic and Social Council. On 6

October 1999, the Assembly adopted the Optional Protocol without reference to the Third Committee.

The Contents of the Optional Protocol

The Optional Protocol provides the Committee with two further procedures to encourage States parties to implement the Convention: a “communications” or petitions procedure; and an inquiry procedure. Unlike earlier and later instruments of a similar nature, it does not contain a State-to-State complaints procedure.

The petitions procedure may only be accessed by individuals or groups of individuals who claim to be victims of a violation of any of the rights in the Convention by a State party to the Convention and the Optional Protocol. Victims themselves must submit the petition, or may consent that it is submitted on their behalf. Petitions may also be submitted on behalf of victims without their consent, if the author can justify acting on their behalf without their consent. Petitions must also fulfil a number of admissibility criteria: they must be in writing and may not be anonymous; they may not concern a matter that has already been examined by the Committee or has been or is being examined under another similar international procedure; they must be compatible with the rights in the Convention and be well-founded and sufficiently substantiated and not constitute an abuse of the right to submit a petition; and they must concern facts which occurred after the entry into force of the Optional Protocol for the State party or constitute continuing events. Most importantly, and emphasizing the fact that the procedure focuses on measures States must have in place at the national level to implement the Convention, petitioners must exhaust domestic remedies, if they are available and effective, before bringing their claim to the Committee.

The Committee considers both the admissibility and the merits of petitions in closed meetings on the basis of information provided by the petitioner and the State party. This information is made available to both sides. The Optional Protocol entitles the Committee to transmit a request for interim measures to the State party if necessary to avoid possible irreparable damage to the victim of the alleged violation. When such measures are ordered, this does not determine the merits of the petition. After consideration, the Committee transmits its views on the petition and recommendations to the parties. The State is required to respond to the Committee on steps taken to implement these within six months. The Committee is also empowered to request follow-up information, including in the State party’s next report under the reporting procedure provided for in the Convention.

With regard to the inquiry procedure, the Committee is entitled to ask a State party to cooperate in the examination of reliable information that the Committee receives indicating grave or systematic violations of the Convention by that State. In so doing, the Committee may designate one or more of its members to conduct an inquiry and report urgently to the Committee; this can include a visit to the State’s territory when the State consents. The result of any inquiry is conveyed to the State party which has six months to respond; the Committee is also entitled to request further follow-up information. The procedure is confidential throughout, with the State’s cooperation being sought at all stages. States are entitled to opt out of the inquiry procedure on ratification or accession. To date, only Bangladesh, Belize and Colombia have taken this approach.

In addition to providing the Committee with new procedures, the Optional Protocol includes a number of innovative elements which have been replicated in later instruments. Article 11 requires States parties to take appropriate steps to ensure that individuals using these procedures are not subject to intimidation or ill-treatment as a consequence. By

article 13, each State party undertakes to make the Optional Protocol and the Convention widely known and facilitate access to information about the views and recommendations of the Committee. Article 17, providing that no reservations to the Optional Protocol shall be permitted, proved controversial during its drafting, but was accepted in light of the fact that many, far-reaching reservations had been made to the Convention.

The Work of the Committee under the Optional Protocol

The international women's rights movement saw the adoption of the Optional Protocol as a triumph and expected that many women would access it. They have been disappointed, however, by the fact that very few petitions have been submitted, and that those few that have been have come predominantly from a limited number of States, themselves within a regional human rights framework.

As at the end of the Committee's forty-sixth session in July 2010, 25 cases have been registered since the entry into force of the Optional Protocol. Fourteen cases have been decided, with eight being held inadmissible, and views being pronounced on six. Three cases have been discontinued and eight cases are pending. The cases that have been decided concern eight States, all except for one are members of the Council of Europe, and except in the case of one with petitions all being brought by or on behalf of persons living in a Council of Europe State. To date, also, only one inquiry, into the systematic killings of women in Ciudad Juarez, Mexico, has been conducted.

Despite the Optional Protocol's limited use, the views of the Committee on petitions and the results of the inquiry have dealt with very significant women's rights issues. Three have concerned domestic violence (with two of these cases relating to fatal attacks by men on their partners), one has concerned forced sterilization, while others have concerned possible trafficking, discrimination in family names and titles of nobility, financial provision on divorce, pension entitlements and discrimination in the workplace. Views adopted in petitions and recommendations in the inquiry have also been extraordinarily influential in the creation of a women's human rights jurisprudence, in particular in regional human rights courts. In *Opuz v. Turkey* the European Court of Human Rights relied on the views of the Committee to decide that Turkey was in breach of the European Convention on Human Rights for failing to protect the applicant and her mother from the violent attacks of her spouse in circumstances where her mother was ultimately murdered. The Inter-American Court of Human Rights also drew on the Committee's inquiry into the disappearance and killings of young women in Ciudad Juarez, Mexico, as well as its views on petitions in *Caso González y Otras v. Mexico* (the "Cotton Field" case) in deciding that Mexico had violated the rights under the Inter-American Convention of Human Rights of three women who had disappeared and were tortured and murdered. It also found that their mothers' rights under the Convention had been violated. In so doing, the Court recognized that violence against women in Juarez which had occurred since 1993 was a structural violation of human rights for which the State was responsible, and ordered reparations, including measures of non-repetition, acknowledgement and concrete action in relation to cases since 1993.

Conclusion

The rapid negotiation of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women testifies to the influence and tenacity of the global women's human rights movement which campaigned for the strengthening of the United Nations women-specific human rights machinery. It also testifies to the commitment of the Committee and the Commission on the Status of Women to translate

this campaign from rhetoric to reality. It has been just over 10 years since the Optional Protocol was adopted, so there should be little surprise that there have been comparatively few petitions and inquiries. Where petitions are concerned, petitioners must exhaust domestic remedies and this usually takes time. What can be said, however, is that the Committee's work under the Optional Protocol has addressed issues which are at the centre of women's human rights and the Committee has approached these issues dynamically and with gender-sensitivity. The impact of its work has been significant both at the national level and in international courts. There is no doubt that the next few years will see more petitions, providing the Committee with the potential to make an even greater contribution to the international jurisprudence on women's human rights.

Related Material

A. Legal Instruments

[International Convention on the Elimination of All Forms of Racial Discrimination](#), New York, 7 March 1966, United Nations, *Treaty Series*, vol. 660, p. 195.

[International Covenant on Civil and Political Rights](#), New York, 16 December 1966, United Nations, *Treaty Series*, vol. 999, p. 171 and vol. 1057, p. 407.

[Convention on the Elimination of All Forms of Discrimination against Women](#), New York, 18 December 1979, United Nations, *Treaty Series*, vol. 1249, p. 13.

B. Jurisprudence

European Court of Human Rights, [Opuz v. Turkey, Judgment, 9 June 2009](#), Application No. 33401/02.

Inter-American Court of Human Rights, [González et al. \("Cotton Field"\) v. Mexico, Judgment, 16 November 2009](#), Series C No. 205.

C. Documents

Vienna Declaration and Programme of Action, Vienna, 25 June 1993 ([A/CONF.157/23](#)).

Note by the Expert Group Meeting on the Adoption of an Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, "An Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women" (CEDAW/C/1995/WG.I/WP.1, 8 November 1994).

Report of the Committee on the Elimination of Discrimination against Women on its fourteenth session, 16 January-3 February 1995, *Official Records of the General Assembly, Fiftieth Session, Supplement No. 38* ([A/50/38](#)).

Report of the Fourth World Conference on Women, Beijing, 4 to 15 September 1995 ([A/CONF.177/20/Rev.1](#)).

[Fourth World Conference on Women, resolution 1 of 15 September 1995](#) (Beijing Declaration and Platform for Action).

Report of the Secretary-General, “Elaboration of a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women” ([E/CN.6/1996/10, 10 January 1996](#)).

The Optional Protocol: Text and Materials, United Nations Publication, Sales No. E.00.IV.2, 2000.

For the decisions and views on communications and reports on inquiries adopted by the Committee on the Elimination of Discrimination against Women, see the official website of the Office of the High Commissioner for Human Rights: <http://www2.ohchr.org/english/law/jurisprudence.htm> (decisions and views) and http://www2.ohchr.org/english/bodies/cedaw/inquiry_procedure.htm (inquiry procedures).