

APPENDIX

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

adopted 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

Organised by the Women in the Law Project,
International Human Rights Law Group,
and the Maastricht Centre for Human Rights,
University of Limburg, Maastricht, Netherlands
(29 September - 1 October 1994)

The States Parties to this Protocol,

Recognizing the desirability of creating a global environment in which the human rights of women will be realized, and the responsibility which all States share to achieve this goal,

Recalling that the Vienna Declaration and Programme of Action urged that the full and equal enjoyment by women of all human rights be a priority for governments and for the United Nations,

Recognizing further that serious violations of the human rights of women remain pervasive in all societies and cultures,

Recognizing further the importance of ensuring that women are aware of their rights under national and international law and the importance of overcoming the obstacles which impede their effective access to judicial procedures and other remedies,

Emphasizing the important role of the Committee on the Elimination of Discrimination Against Women in elaborating the scope and content of the Convention on the Elimination of All Forms of Discrimination Against Women,

Convinced of the importance of ensuring that women have access to effective international procedures for the enforcement of the rights and obligations set forth in the Convention,

Convinced that, in order further to achieve the purposes of the Convention, the Committee should have power to receive and examine communications, and the power to conduct inquiries where there are allegations of serious or systematic violations of rights set forth in the Convention or of a serious or systematic failure by a State Party to give effect to its obligations under the Convention,

Have agreed as follows:

PART I: COMMUNICATIONS PROCEDURE

Article 1

1. A State Party to the Convention that becomes a Party to this Protocol recognizes the competence of the Committee to receive and examine communications submitted in accordance with the provisions of this Protocol.

2. No communication shall be received by the Committee if it concerns a State Party to the Convention which is not a Party to this Protocol.

Article 2

1. An individual, group or organization:

- (a) claiming to have suffered detriment as a result of a violation of any of the rights guaranteed in the Convention, or claiming to be directly affected by the failure on the part of a State Party to this Protocol to give effect to its obligations under the Convention; or
- (b) claiming that a State Party has violated any of the rights set forth in the Convention or has failed to give effect to any of its obligations under the Convention with respect to a person or group of persons other than the author, and having in the opinion of the Committee a sufficient interest in the matter,

may submit a written communication to the Committee for its examination.

2. State Parties to this Protocol undertake not to hinder in any way the effective exercise of this right of communication and to take all steps necessary to prevent any person, group, organization or authority from interfering with the exercise of this right of communication or victimizing any person for exercising such right, and to assist the Committee in its examination of communications lodged under this Part.

Article 3

1. No communication shall be received by the Committee if it is anonymous.
2. The Committee shall declare a communication inadmissible if it:
 - (a) does not contain allegations which if substantiated, would constitute a violation of rights guaranteed by the Convention or a failure by a State Party to give effect to its obligations under the Convention;
 - (b) relates to acts and omissions which occurred before the entry into force of this Protocol for the State Party concerned, unless those acts or omissions—
 - (i) constitute a continuing violation of the Convention or a continuing failure to give effect to the State's obligations under the Convention; or
 - (ii) have effects which continue beyond the entry into force of this Protocol and those effects themselves constitute a violation of a right set forth in the Convention or a failure by the State Party concerned to give effect to its obligations under the Convention; or
 - (c) is an abuse of the right to submit a communication.
3. The Committee shall not declare a communication admissible unless it has ascertained:
 - (a) that all available domestic remedies have been exhausted, unless the Committee considers that the application of this requirement would be unreasonable; and
 - (b) that a communication submitted by or on behalf of the author which raises essentially the same issues of fact and law is not being examined under another procedure of international investigation or settlement. The Committee may, however, examine such a communication where the procedure of international investigation or settlement is unreasonably prolonged.

Article 4

1. The Committee may decline to continue to examine a communication if the author, after being given a reasonable opportunity to do so, fails to provide information which would sufficiently substantiate the allegations contained in the communication.

2. The Committee may recommence examination of a communication which it has declared inadmissible under article 3 if the circumstances which led to its decision have changed.

Article 5

1. At any time after the receipt of a communication the Committee may request the State Party concerned to take such interim measures as may be necessary to preserve the status quo or to avoid irreparable harm.

2. The State Party concerned shall take all necessary steps to comply with a request made by the Committee under paragraph 1.

3. Where the Committee exercises its power under paragraph 1, it shall inform the State Party concerned that its request does not imply a determination of the merits of the communication.

Article 6

1. Unless the Committee considers that a communication should be declared inadmissible without reference to the State Party concerned, the Committee shall confidentially bring any communication referred to it under this Protocol to the attention of the State Party concerned, but the identity of the author shall not be revealed without her or their express consent.

2. Within three months, the receiving State shall submit to the Committee explanations or statements and the remedy, if any, that may have been afforded by that State.

3. During its examination of a communication, the Committee shall place itself at the disposal of the parties concerned with a view to facilitating settlement of the matter on the basis of respect for the rights and obligations set forth in the Convention.

4. If a settlement is reached, the Committee shall prepare a report containing a statement of the facts and of the solution reached.

Article 7

1. The Committee shall consider communications received under this Protocol in the light of all information made available to it by or on behalf of the author and by the State Party concerned. The Committee may also take into account information obtained from other sources, provided that this information is transmitted to the author and State Party for comment.

2. The Committee may adopt such procedures as will enable it to ascertain the facts and to assess the extent to which the State Party concerned has fulfilled its obligations under the Convention.

3. As part of its examination of a communication, the Committee may, with the agreement of the State Party concerned, visit the territory of that State Party.

4. The Committee shall hold closed meetings when examining communications under this Part.

5. After examining a communication the Committee shall adopt its view on the claims made in the communication and shall transmit these to the State Party and to the author, together with any recommendations it considers appropriate.

Article 8

1. Where the Committee is of the view that a State Party has failed to give effect to its obligations under the Convention, the Committee may recommend that the State Party take specific measures to remedy any violation or failure by the State to give effect to its obligations under the Convention and to prevent a recurrence of any such violation or failure.

2. The State Party shall take all steps necessary to remedy any violation of the rights set forth in the Convention or failure to fulfil its obligations under the Convention. The State Party shall implement any recommendations made by the Committee, and shall ensure that adequate reparation or other appropriate remedy is provided.

3. The State Party concerned shall, within three months of receiving notice of the decision of the Committee under paragraph 1, or such long period as may be specified by the Committee, provide the Committee with details of the measures that it has taken in accordance with paragraph 2.

Article 9

1. The Committee may at any time invite a State Party to discuss with it the measures which the State Party has taken to give effect to the views or recommendations of the Committee. The Committee may continue discussions with the State Party concerned until the Committee is satisfied that appropriate steps have been taken to remedy any failure by the State Party to give effect to its obligations under the Convention.

2. The Committee may invite the State Party concerned to include

in its reports under Article 18 of the Convention details of any measures taken in response to the Committee's views and recommendations.

3. The Committee shall include in its annual report an account of the substance of the communications and its examination of the matter, a summary of the explanations and statements of the State Party concerned, of its own views and recommendations, and the response of the State Party concerned to those views and recommendations.

Article 10

The Committee may delegate to one or more members of the Committee any of the powers conferred on it by this Part, other than the powers contained in Articles 7(5) and 8(1) to adopt views and recommendations.

PART II: INQUIRY PROCEDURE

Article 11

1. If the Committee receives reliable information which appears to it to indicate that there is a serious or systematic violation by a State Party of rights set forth in the Convention, or a serious or systematic failure by a State Party to give effect to its obligations under the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to conduct an inquiry and to report urgently to the Committee.

3. If an inquiry is conducted in accordance with paragraph 2 of this article, the Committee shall seek the cooperation of the State Party concerned. Such an inquiry may, with the agreement of the State Party, include a visit to its territory.

4.(a) After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Committee shall transmit these findings, together with any comments and recommendations, to the State Party concerned.

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

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this Article shall be confidential, and the cooperation of the State Party shall be sought at all stages of the proceedings.

6. After taking into account any observations made by the State Party, the Committee may publish a report.

Article 12

1. The Committee may at any time invite a State Party to discuss with it the steps which the State Party has taken in response to a report adopted by the Committee under Article 11. The Committee may continue such discussions with the State Party concerned until the Committee is satisfied that appropriate steps have been taken to remedy any violations of rights set forth in the Convention or any failure by the State Party to give effect to its obligations under the Convention.

2. The Committee may invite the State Party concerned to include in its reports under Article 18 of the Convention details of any measures taken in response to a report adopted by the Committee under Article 11.

Article 13

State Parties to this Protocol undertake to assist the Committee in its inquiries under this Part and to take all steps necessary to prevent any person, group, authority or organization from interfering with or victimizing any person providing information to or assisting the Committee in its inquiries under this Part.

PART III: FINAL PROVISIONS

Article 14

States parties undertake to make widely known, by appropriate and active means:

- (a) the contents of this Protocol and the procedures established under it;
- (b) any views and recommendations adopted by the Committee

- under Part I; and
- (c) the report of the results of any inquiry conducted under Part II.

Article 15

1. The Committee may make rules of procedure prescribing the procedure to be followed when it is exercising the functions conferred on it by this Protocol.

2. Without limiting the generality of the power conferred by paragraph 1, the Committee may make rules of procedure with respect to:

- (a) the measures which may be taken by or on behalf of the Committee in any matter of urgency;
- (b) the gathering of information which the Committee may take into account when carrying out its functions under this Protocol;
- (c) the procedures which the Committee may adopt when examining a communication under Part I or conducting an inquiry under Part II. These may include the taking of evidence in written or oral form; and
- (d) the dissemination by States Parties of views and recommendations adopted by the Committee under Part I and reports of the results of any inquiry conducted under Part II.

Article 16

1. The Committee shall meet for such period, being not less than three weeks annually, as is necessary to carry out its functions under this Protocol.

2. The Secretary General of the United Nations shall provide the Committee with the necessary staff and facilities for the performance of its functions under this Protocol, and in particular shall ensure that expert legal advice is available to the Committee for this purpose.

Article 17

1. This Protocol is open for signature by any State which has signed the Convention.

2. This Protocol is subject to ratification by any State which has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary General of the United Nations.

3. This Protocol shall be open to accession by any State which 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.

5. The Secretary General of the United Nations shall inform all States which have signed this Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 18

1. This Protocol shall enter into force three months after the date of the deposit with the Secretary General of the United Nations of the fifth instrument of ratification or instrument of accession.

2. For each State ratifying this Protocol or acceding to it after its enter into force, this Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 19

1. This Protocol will be binding upon each State Party in respect of all territories subject to its jurisdiction.

2. The provisions of this Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 20

No reservations to this Protocol shall be permitted.

Article 21

1. Any State Party to this Protocol may propose an amendment and file it with the Secretary General of the United Nations. The Secretary General shall thereupon communicate any proposed amendments to the State Parties to this Protocol with the request that they notify him or her whether they favor a conference of State Parties for the purpose of considering and voting upon the proposal. If within four months from the date of such communication at least one third of the State Parties favours such a conference, the Secretary General shall convene such a conference under the auspices of the United Nations. Any amendment adopted by majority of the State 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 State Parties to this Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those State Parties which have accepted them, other State Parties still being bound by the provisions of this Protocol and any earlier amendment which they have accepted.

Article 22

1. Any State Party may denounce this Protocol at any time by written notification addressed to the Secretary General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.

2. Denunciations shall be without prejudice to the continued application of the provisions of this Protocol to any communication submitted under Part I or inquiry commenced under Part II before the effective date of denunciation.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 23

1. The Secretary General of the United Nations shall inform all States referred to in article 25 of the Convention of:

- (a) signatures, ratifications and accessions under this Protocol;
- (b) the date of entry into force of this Protocol and the date of enter into force of any amendment under article 21; and
- (c) denunciations under article 22.

Article 24

1. This 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 this Protocol to all States referred to in article 25 of the Convention.