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**Committee on the Elimination of Discrimination  
against Women**  
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**Working paper on procedures for the administration of the  
Optional Protocol to the Convention on the Elimination of  
All Forms of Discrimination against Women**

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on the Elimination of Discrimination against Women**

## **I. Introduction**

1. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in resolution 54/4 of 6 October 1999. It was opened for signature, ratification or accession on 10 December 1999 and was signed by 23 States on that day. As at 10 May 2000, 35 States parties to the Convention had signed, but none had ratified or acceded to the Optional Protocol.

2. At its twenty-second session, the Committee invited me to prepare the present paper, making recommendations as to the procedures under which the Optional Protocol might operate.<sup>1</sup> It was anticipated that many would be predictable, but that some might require a decision by the Committee. Once broad procedures have been discussed and adopted by the Committee, it is anticipated that rules of procedure for the administration of the Optional Protocol will be drafted.

3. In the preparation of the present paper, the individual complaints procedures of a wide variety of instruments have been reviewed. These have included

the procedures established under the first Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights. Consideration was also given to the Understanding on Rules and Procedures Governing the Settlement of Disputes of the World Trade Organization. Generally this has involved an examination of rules of procedure, but in some instances more direct information from those associated with complaints procedures has been obtained.

## **II. The Optional Protocol**

4. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women permits individuals or groups of individuals to bring before the Committee a complaint against a State

Party for violation of the Convention, provided that the State Party has acceded to both the Convention and the Optional Protocol. There is also an inquiry procedure. Article 14 of the Optional Protocol states:

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

5. The present working paper provides a summary of caseload experience gathered thus far under other United Nations communications procedures in order to give some insight into likely workloads.

### **III. Organizational matters**

#### **A. Appointment of rapporteur and working groups**

6. In order to deal most efficiently and expeditiously with the work generated under the Optional Protocol, it is recommended that the Committee establish a working group to discharge certain functions with regard to communications and the inquiry procedure.

7. The working group should comprise five members of the Committee, selected after consideration is given to equitable geographical distribution, representation of the different forms of civilization and the principal legal systems.

8. It is also recommended that the working group be appointed by the Committee for a period of three to four years to ensure continuity and the development of skills and knowledge.

9. Assuming the Committee will consider it desirable to rotate members of the working group, I suggest that two members be required to stand down after two years and the remaining three members in the third (or fourth) year. Appointments should be made by the Committee by consensus and reappointment should be possible.

10. The working group should appoint from its members a chairperson or rapporteur whose responsibilities would be to maintain liaison with the Secretariat and to coordinate the work referred to below. The role of the chairperson or rapporteur could be rotated on an annual (or two yearly) basis with opportunity for reappointment.

11. As it is anticipated that the working group will often be in the position to prepare decisions without meeting physically, consideration should be given to ensuring that all members have access to e-mail and fax facilities and that the Secretariat be prepared to facilitate interaction between members, including through the provision of translation.

12. While legally qualified members of the working group will be of great assistance to its work, and there should always be some members with such qualifications, it should not be assumed that this is an absolute condition for membership. In this regard, technical support from the Secretariat will be invaluable.

#### **B. Functions of the secretariat**

13. The secretariat will ordinarily be the first recipient of a complaint under the communications procedure. Consequently it is necessary to isolate which responsibilities the secretariat should exercise and which should remain with the Committee (or a working group of the Committee). One commentator (P. R. Ghandi) considers that the secretariat of the Human Rights Committee should exercise considerable administrative powers for two reasons. First, from a political point of view, it is vital that the Committee be seen to be part of the whole apparatus of the United Nations machinery and not merely an organ of the instrument. Secondly, from a practical point of view, the secretariat is in the unique position of being the original recipient of the communication and so may facilitate the subsequent work of the Committee. These reasons seem to have force with relation to the work under the Optional Protocol to the Convention.

14. I therefore suggest that the secretariat exercise the following functions in respect of communications:

(a) Resolution of the problem of overlapping jurisdiction (see below);

(b) Where necessary, obtain additional information and/or clarification from the complainant prior to forwarding the complaint to the working group. The secretariat should, in consultation with the working group, develop form letters and questionnaires for that purpose. The rules of procedure of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee against Torture provide for their secretariats to circulate

complaints to the working group of those Committees while awaiting additional information from the complainant, and this is also appropriate for the Committee on the Elimination of Discrimination against Women in order to minimize delay;

- (c) Register the complaint;
- (d) Keep the complainant informed after a communication has been registered;
- (e) Prepare summaries of complaints and make those summaries available to the working group;
- (f) Distribute cases to the chairperson or rapporteur in a timely fashion;
- (g) Act as a conduit for communications between the Committee and the complainant. Provided that this does not cause undue delay, parties should be able to communicate with one person or office throughout the course of the procedure.

15. In order to discharge the above responsibilities the working group should, in consultation with the Secretariat, develop, and from time to time revise, time limits within which certain steps are to be taken in order to promote the most efficient disposition of complaints.

16. There are two additional functions which are not purely administrative and which I would recommend that the Secretariat discharge:

- (a) The Secretariat should screen the complaint under the basic admissibility criteria (those in article 3 of the Optional Protocol);
- (b) The Secretariat should provide technical (primarily legal) advice to the working group and the Committee at all stages upon request and otherwise as appropriate.

## **IV. Communications**

### **A. Procedural issues**

#### **1. Standing provisions for communications**

17. The rules of procedure should be drafted in such a way as not to limit the broad standing provisions conferred by article 2 of the Protocol.

18. Whether the author of a complaint can justify acting on behalf of an individual or group of

individuals without their consent is a question that should be left to the Committee to decide on a case-by-case basis.

#### **2. The problem of overlapping jurisdiction**

19. It is conceivable that a violation of the Committee on the Elimination of Discrimination against Women may also amount to a violation of the International Covenant on Civil and Political Rights and/or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>2</sup> It will be necessary, therefore, to devise some procedure to resolve the problem of overlapping jurisdiction, given that there are different rights and procedures under each instrument. The problem may be aggravated by the fact that the secretariat for the Committee on the Elimination of Discrimination against Women is based in New York, while the secretariats for other complaints procedures are based in Geneva. Where the complainant specifies the complaint procedure under which she wishes to proceed, or addresses her complaint to a particular Committee, the problem does not arise. However, experience under the first Optional Protocol to the International Covenant on Civil and Political Rights shows that this does not occur. Where the author's intention is unclear, the procedure under other instruments is for the secretariat to seek clarification from the author. Where doubt remains, the relevant Committee assumes responsibility for the complaint. The rules of procedure of the Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Racial Discrimination all contain provisions to this effect. There are, however, problems with this procedure:

(a) Seeking clarification from the author necessarily involves additional delay;

(b) If doubt remains over the author's intentions or if there is overlapping jurisdiction, there is no existing mechanism to determine which Committee should be seized of jurisdiction. Until this difficulty is resolved (which might occur as part of the current examination of the working methods of human rights treaty bodies), I suggest that the problem of resolving overlapping jurisdiction should rest with the secretariat in consultation with the chairperson or rapporteur of the Optional Protocol Working Group. This will require procedures and fixed times within which the secretariat

will respond promptly to complaints, will provide the complainants with full information as to their options and will consult with the chairperson or rapporteur.

## **B. Determination of admissibility**

20. It has already been recommended that the secretariat determine *prima facie* admissibility under article 3. There are more difficult issues, however, which ought to be determined by the Committee, its working group or the chairperson or rapporteur of the working group. Under other complaints procedures there are a variety of practices. Most leave the responsibility for the determination of admissibility with the plenary of the Committee, which will frequently act on the recommendation of a working group. However, the Human Rights Committee has a procedure whereby the working group may declare a complaint admissible if there is unanimity. As already indicated, it is considered that the working group is the most appropriate vehicle for determining admissibility for the whole Committee's consideration. Often decisions on admissibility will be technical in nature and less suitable for the Committee's decision than the merits of a complaint. If the working group is to determine admissibility then decisions may be taken swiftly and throughout the course of the year.

21. Assuming that the Committee accepts my recommendation that admissibility be determined by the working group, the initial recommendation should be made by the recommendation of a member of the working group (for instance the chairperson or the rapporteur) and effectively ratified by the working group unless it determines to the contrary. For the working group's decision to be conclusive, the decision must be unanimous. It is implicit in this procedure that the working group members would not disagree with the chairperson or rapporteur without good cause. The chairperson or rapporteur would first discuss her preliminary conclusion with other members of the working group, then prepare a draft decision for circulation. Subject to difficulties over translation, the use of e-mail, faxes and conference calls would ensure that this procedure is conducted efficiently and speedily.

22. It should be borne in mind that this is not a decision on the merits. Consequently, considerable emphasis should be placed on efficiency and speed and the working group's opinion should be given weight by

the Committee as a whole. Where there is no unanimity, the decision on admissibility must go to the plenary of the Committee, which would decide by a simple majority of those present and voting.

## **C. Review of a decision on admissibility**

23. Under the procedures of the first Optional Protocol to the International Covenant on Civil and Political Rights, and the communications procedures of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, the relevant Committees may reconsider the decision not to admit a complaint when a written application is made and if circumstances have changed. I recommend that a broad right to reconsider be included in the rules of procedure of the Committee on the Elimination of Discrimination against Women and not be limited to the example given above.

24. Conversely the Committees referred to above have the discretion to decide to revoke their decisions on admissibility when considering the merits of the complaint in the light of additional information submitted by the State Party. A similar procedure should therefore be included under the rules of procedure of the Committee on the Elimination of Discrimination against Women for the administration of the Optional Protocol.

## **D. Interim measures**

25. Article 5, paragraph 1, of the Optional Protocol provides that between the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the complainant.

26. The grounds for a request that a State Party take interim measures will usually be found only in situations of urgency. Therefore it is important to put in place a procedure that will ensure an urgent response. It will not normally be appropriate to await one of the two annual sessions of the Committee to issue a request for interim measures. I therefore suggest that the chairperson or rapporteur should first consider whether

there are grounds for requesting interim measures. On the recommendation of the chairperson or rapporteur, the working group should have the authority to request interim measures, as well as to receive and deal with the response. The decision of the working group should be unanimous and should be adopted by the Committee at its next session. If there is no unanimity, the members of the working group may refer the request to the Committee at its next session.

### **E. Determination of the merits**

27. I suggest that the merits be determined in the same way as the question of admissibility, that is, by the unanimous decision of the working group on the recommendation of the chairperson or rapporteur. Where there is no unanimity, the complaint must be referred to the Committee, which would reach its decision by consensus. I have two reasons for suggesting that consensus apply to Committee decisions on the merits rather than the simple majority suggested in questions of admissibility. First, a decision on the merits is of far greater significance than a decision on admissibility. Secondly, the expertise of the entire Committee should be brought to bear on a decision on the merits where there is no unanimity in the working group.

28. It is also appropriate to consider the mechanism to be applied by the Committee where the working group has reached a unanimous decision on the merits. I suggest that the Committee should normally adopt the decision of the working group. However, it should have the right to reject the working group's decision if there is consensus to reject.<sup>3</sup> If the Committee adopts this proposal, a decision will be required as to whether working group members should be excluded from the Committee's consensus decision to reject the working group's decision. I suggest that it is preferable to exclude the members of the working group from the decision, but to allow them to participate in the Committee's discussion.

29. An additional provision for a review by the entire Committee might be considered appropriate. The rules could require the working group to refer its decision for review by the entire Committee, including the working group members, if it gives rise to a serious question affecting the interpretation of the Convention.<sup>4</sup> Such a provision would be supplementary to the consensus rule suggested above.

### **F. Information with respect to communications**

30. Article 7, paragraph 1, of the Optional Protocol provides that the Committee shall consider communications 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. Article 6, paragraph 2, establishes a time-frame of six months, within which the State Party must submit to the Committee written explanations or statements clarifying the matter raised in the communication and the remedy, if any, that may have been provided by that State Party.

31. The Committee may wish to consider establishing time-frames for the submission of additional information.

### **G. Procedure for handling multiple complaints**

32. The practice under the first Optional Protocol to the International Covenant on Civil and Political Rights and the communications procedures of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination permit multiple complaints to be handled at the same time. It is a procedure intended to apply to violations of the same nature and involving the same State Party.<sup>5</sup> A similar provision might well be included in the rules of procedure for the Optional Protocol. Because of the resource implications, the Committee as a whole should make the decision on whether to join two or more complaints. However, the working group could begin its preparatory work between sessions of the Committee without awaiting a decision on joinder. In order to ensure that appropriate cases for joinder are identified, the secretariat should, in consultation with the Committee, develop guidelines to ensure that this possibility is not overlooked.

## **H. Joining the question of admissibility with consideration on the merits**

33. Under the practice of the Human Rights Committee with regard to the first Optional Protocol to the International Covenant on Civil and Political Rights, the State Party is required to make joint submissions on both admissibility and the merits. At first sight there are advantages in this procedure. It speeds the gathering of evidence and permits consideration of admissibility and merits at the same time. However, the advantage may be illusory. The suggestions that I have made thus far require the Committee to decide to accept the unanimous recommendation of the working group on admissibility by simple majority of those present and voting and for the unanimous decision of the working group on the merits to be rejected only if there is a consensus to reject. Consequently, the Committee's role remains a significant one and final decisions can be taken only while the Committee is in session. Therefore, there may be little to be gained by requiring joint submissions. Whether to require joining questions of admissibility with the merits is a matter that will require further discussion by the Committee, but that is not critical to the immediate implementation of the Optional Protocol. In short, one procedure can be adopted by the rules of procedure and, if it proves unsatisfactory after a period of review and implementation, can readily be changed to a new procedure. I do not therefore recommend joining determination of admissibility and merits, but suggest that reconsideration be given after a period of experience in working with the Optional Protocol.

## **I. Follow-up procedure**

34. Article 7, paragraph 4, of the Optional Protocol provides that following the transmittal of its views and recommendations to the parties concerned, the State Party shall give due consideration to those views and recommendations and shall submit to the Committee a written response, including any information on any action taken in the light of those views and recommendations. The Committee may also invite the State Party to submit further information about any measures that the State Party has taken in response to those views and recommendations in the State Party's subsequent report under article 18 of the Convention.

35. The International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the first Optional Protocol to the International Covenant on Civil and Political Rights contain no explicit reference to follow-up, but under its rules of procedure the Human Rights Committee has developed a broad follow-up procedure. The Human Rights Committee appoints a special rapporteur for the purpose of following up on views. It is submitted that this is a procedure that would be valuable under the Optional Protocol. It might not be invoked in every instance, but it is important to give the Committee the widest possible follow-up powers. To appoint a special rapporteur for this purpose will ensure that a focus of attention remains on the State Party after the Committee's recommendations have been disseminated and it will also enable the Committee to evaluate the effectiveness of measures taken by the State Party to comply with the Committee's recommendations. This will be valuable information when the State Party's next report is scheduled for examination and will also provide an opportunity for the Committee to provide ongoing assistance to the State Party as to the manner in which compliance most effectively can be achieved. In these circumstances the Committee ought to impose time restrictions on stages of compliance on a case-by-case basis. The Committee may also wish to consider whether follow-up might also involve missions to the State Party concerned.

## **V. Inquiry procedure**

36. Under article 8, paragraph 1, of the Optional Protocol, if the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, it shall invite that State Party to cooperate in the examination of the information and submit observations with regard to these observations. The Committee may authorize one or more of its members to conduct an inquiry and to report urgently to the Committee.

37. In order to give effect to these powers, there are two questions that need to be resolved:

(a) Who should consider whether the grounds exist for conducting an inquiry?

(b) At what level does the request need to be approved?

38. The unanimous recommendation of the working group to conduct an inquiry should, as a matter of practice, be adopted by the Committee. The working group is in a better position than the entire Committee to study the material upon which an inquiry procedure might be called for on a more urgent basis and in more depth. The Committee should approve the working group's recommendation by consensus.

39. There may be instances when it is necessary to take a vote in the Committee, in which case it should lead to the unanimous decision of those members present and voting. The reason for this suggestion is that an inquiry places a particular State Party under intense scrutiny and will attract considerable public interest. It is a step which should not be taken lightly and in any event requires the cooperation of the State Party concerned. That cooperation is more likely to be forthcoming if there is a unanimous decision by the Committee. Moreover, any delay as the result of a requirement that the Committee adopt the working group's recommendation is less likely to be as seriously detrimental as a similar delay in requesting interim measures.

## VI. Disqualification or recusal

40. There should be a rule of procedure requiring a member of the working group or of the Committee to disqualify herself or himself when there is a personal interest in the complaint under consideration or where the member is a national of the State Party concerned. Other criteria for disqualification may well arise, in which case the recommendation of the chairperson of the working group (if the person concerned is a member of the working group) should apply. In other cases the decision of the Committee will be determinative.

41. Where a member of the working group is disqualified from participating in the resolution of a particular complaint or complaints, she or he should be replaced immediately by a member from the same region for the purpose of resolving that complaint.

## VII. Rules of procedure

42. Work should begin immediately on the drafting of the rules of procedure once decisions are made in relation to the present paper.

## VIII. Recommendations

43. I recommend that the Secretariat publish, in composite form:

(a) The Convention on the Elimination of All Forms of Discrimination against Women;

(b) The rules of procedure under the Convention;

(c) The Optional Protocol;

(d) The rules of procedure under the Optional Protocol.

The compilation should be published in such a way that amendments to the rules of procedure can readily be inserted.

44. I also strongly recommend a standing procedure whereby the Committee as a whole would routinely review the rules of procedure under both the Convention and the Optional Protocol.

### Notes

<sup>1</sup> Ms. Cartwright wishes to record her thanks for the research assistance given by Barnaby Stewart, Judges' Clerk, High Court, Auckland, New Zealand.

<sup>2</sup> Note that if a complaint has already been examined under another international complaints procedure, the Committee does not have jurisdiction to consider it: General Assembly resolution 54/4, annex, article 4, para. 2 (a).

<sup>3</sup> This is the practice of the World Trade Organization, which is widely regarded as operating a very effective complaints mechanism.

<sup>4</sup> This is the practice of the European Commission of Human Rights.

<sup>5</sup> There may, however, be complaints in the future involving more than one State Party, for example, on trafficking.

## Annex

### Caseload of United Nations communications procedures

The following data is taken from the report of the Secretary-General entitled "Comparative summary of existing communications and inquiry procedures and practices under international human rights instruments and under the Charter of the United Nations" (E/CN.6/1997/4). The information is current as of 1996.

and 1993, 23,114 applications were registered, although only 1,445 were declared admissible.

	<i>Human Rights Committee</i>	<i>Committee on the Elimination of Racial Discrimination</i>	<i>Committee against Torture</i>
Total number of cases registered	720	8	53
Concluded by views/opinion	239	4	7
Declared inadmissible	224	1	18
Discontinued or withdrawn	115	0	7
Declared admissible, but not yet concluded	41	0	3
Pending, pre-admissibility stage	101	3	18
Others (on file awaiting further clarification by complainant)	Several hundred	0	12

The number of cases registered is an important statistic for judging the value of the communications procedures. Possible reasons for the smaller numbers of cases registered under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination are:

- (a) A lack of awareness of the procedures;
- (b) The fact that some complaints may have been brought under the first Optional Protocol to the International Covenant on Civil and Political Rights because of its greater visibility.

As a matter of comparison, the European Commission of Human Rights registered more than 2,037 individual applications in 1993. Between 1955