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Heidi Gilchrist

Brooklyn Law School, heidi.gilchrist@brooklaw.edu

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The Optional Protocol to the Women's Convention: An Argument for Ratification

This Note examines the significance of the Optional Protocol in securing the human rights of women. It will start by looking at the Women's Convention and the rights secured by it. Then the articles of the Optional Protocol will be examined and compared with existing individual complaints procedures used by the other major treaty bodies. The final sections will detail existing mechanisms for monitoring compliance with the Women's Convention and discuss why the Optional Protocol is so essential.

I. INTRODUCTION

On the last Human Rights Day of the twentieth century, December 10, 1999, the Optional Protocol¹ to the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention) was opened for signature, ratification, and accession, thereby marking a historic breakthrough for the human rights of women. In the words of the Secretary-General of the United Nations,

[w]e can all take pride in the event we are marking today. I can think of no better way to celebrate this last Human Rights Day of a century which has seen great advances in women's rights, than by adding this important instrument to our tool-kit in ensuring women really do enjoy those rights.²

1. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 54/4, U.N. GAOR, 54th Sess., Annex, U.N. Doc. A/RES/54/4 (Oct. 15, 1999), 39 I.L.M. 281 (2000), available at <http://www.un.org/womenwatch/daw/cedaw/protocol/op.pdf> (last visited Mar. 28, 2001) [hereinafter Optional Protocol].

2. United Nations, *Secretary-General Says It Is Duty of All to Be 'Vigilant and Articulate Custodians' of Women's Anti-Discrimination Convention*, <http://www.un.org/>

The Optional Protocol entered into force on December 22, 2000, following the ratification of the tenth state party to the Convention. The Optional Protocol gives individuals and groups of individuals the opportunity to bring individual complaints when any of their rights under the Convention have been violated by a state party to the Women's Convention and the Optional Protocol, and they have exhausted domestic remedies. The Optional Protocol also provides for an inquiry procedure whereby the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) can initiate its own examination, with the cooperation of the state party, of information regarding grave or systematic violations of rights set forth in the Women's Convention by a state party.

By accepting the Optional Protocol, states demonstrate their commitment to the equality of women and the eradication of all forms of discrimination against them by providing their female nationals with the ability to enforce their rights at the international level. Although ultimately women's human rights need to be secured at the national level in order for women to truly enjoy their human rights on a daily basis, a commitment on the international plane will enable states to safeguard more carefully women's rights at the national level. The Optional Protocol stands as a mechanism to secure women's rights as states continue to make the necessary changes in their domestic law to avoid seeing cases brought against them on the international plane.

This Note will first look at the Women's Convention and detail the substantive rights that it provides. It will then look at the Optional Protocol and its individual complaints procedure for enforcing the rights found in the Women's Convention and contrast it to existing individual complaints procedures for enforcing treaty rights provided by other human rights treaties. The last sections will detail what procedures have been available to monitor compliance with the Women's Convention, discuss why the Optional Protocol is so essential, and what it adds to existing means of securing human rights.

womenwatch/daw/news/pressop.htm (Dec. 10, 1999); *see also* Kofi A. Annan, *Preface*, in *THE OPTIONAL PROTOCOL: TEXT AND MATERIALS*, at v (U.N. Division for the Advancement of Women ed., 2000).

II. THE WOMEN'S CONVENTION

The Women's Convention, the culmination of more than thirty years of work of the U.N. Commission on the Status of Women, is the most comprehensive international human rights treaty to focus on women. It notes in its preamble that "extensive discrimination against women continues to exist" and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity."³

The elimination of the discrimination that persists against women and their right to be equal before the law are crucial elements of the Women's Convention. In Article 1, discrimination is defined as

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.⁴

Article 1 requires the elimination of discrimination by both the state and private parties, and dictates that not only should the purpose of potentially discriminatory acts be scrutinized, but also the effects. Article 3 requires all state parties to take "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."⁵ Article 4 notes that acts aimed at accelerating de facto equality between men and women will not be considered discriminatory as long as they are in effect only as long as necessary to achieve the object of bringing about equality between men and women.

State parties commit to suppress the trafficking of women in Article 6. The right to vote and participate in government and in non-governmental organizations (NGOs) is secured by Article 7, and nationality rights are secured in Article 9. Article 10 discusses the

3. Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the U.N. General Assembly Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter Women's Convention].

4. *Id.* art. 1.

5. *Id.* art. 3.

importance of giving women the same educational opportunities as men and various rights in the educational field are outlined, including career and vocational guidance; elimination of stereotypes; and access to scholarships, sports, and family planning. The right to work is secured as an inalienable right of all human beings in Article 11 and provisions are included to facilitate the implementation of this right, such as safe working conditions. The particular problems of rural women, and rights specific to their advancement, are outlined in Article 14. Article 15 pronounces that women shall be equal before the law, whether making a contract, or administering property.

Although securing women's civil rights and legal equality is given priority, it is important to note that the Women's Convention also deals with women's reproductive rights and the role cultural factors play in perpetuating discrimination against women. In particular, Article 5 deals with the social aspect of discrimination. With this article, states are committed to modifying "social and cultural patterns of conduct of men and women" that lead to the idea of the inferiority of women and that place them in the sole role of caregiver of children.⁶ Article 16 secures the right to enter into marriage, including the right to choose a spouse and family name, and the right to decide when and how many children to have.

Currently, there are 165 state parties to the Women's Convention, making it the second most subscribed to human rights treaty after the Convention on the Rights of the Child.⁷ The implementation of the Convention is monitored by the CEDAW Committee, established in 1982 pursuant to Article 17 of the Women's Convention. The CEDAW Committee is composed of twenty-three experts on women's issues from around the world, selected by state parties from among their nationals, although the members serve in their personal capacity.⁸ The CEDAW Committee examines reports submitted by the state parties concerning their progress in implementing the Women's Convention, presented to the Committee by Government representatives, engages in a dialogue with the representatives, and issues comments on these reports.⁹

6. *Id.* art. 5.

7. Although it should be noted that many states have made their ratification of the Women's Convention conditional upon substantial reservations.

8. CEDAW COMMITTEE, CEDAW INFORMATION NOTE 2: COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, U.N. Doc DPI/2049/Rev.1 (Dec. 1999) [hereinafter CEDAW INFORMATION NOTE 2].

9. *Id.*

III. THE OPTIONAL PROTOCOL

Many human rights treaties are complemented by “optional protocols” that provide for procedures relating to the treaty or that address a substantive area relating to the treaty.¹⁰ For example, the International Covenant on Civil and Political Rights (“ICCPR”) has a second optional protocol, the aim of which is the abolition of the death penalty, and the Convention on the Rights of the Child has an Optional Protocol on the Involvement of Children in Armed Conflict, the aim of which is to seek limits on the use of children in armed conflict and to raise the minimum age level for recruitment to participate in hostilities. Relevant here are optional protocols which provide an enforcement mechanism relating to the treaty. A state does not become a party to an optional protocol merely by adhering to the main treaty. Optional protocols are truly optional and are separately open to signature, accession, or ratification by the countries that are already party to the main treaty.

By signing the Optional Protocol, states can show that they believe the human rights of women should be placed on an equal footing with the human rights of men. Until now, the mechanisms developed for enforcement of “women-specific” human rights standards were not as effective as those developed for more general “human rights” standards.¹¹ The first optional protocol to the ICCPR,¹² the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),¹³ and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)¹⁴ each establish a mechanism for the consideration of

10. U.N. Division for the Advancement of Women, *What Is an Optional Protocol?*, at <http://www.un.org/womenwatch/daw/cedaw/protocol/whatis.htm> (last visited Mar. 22, 2001).

11. Andrew Byrnes & Jane Connors, *Enforcing the Human Rights of Women: A Complaints Procedure for the Women's Convention? Draft Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, 21 *BROOK. J. INT'L L.* 679, 683 (1996).

12. Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, 301 [hereinafter ICCPR First Optional Protocol]. The treaty itself entered into force on March 23, 1976. International Covenant on Civil and Political Rights, *adopted by the U.N. General Assembly* Dec. 16, 1966, 999 U.N.T.S. 171, *available at* http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (last visited Nov. 7, 2000) [hereinafter ICCPR].

13. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted by the U.N. General Assembly* Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT].

14. International Convention on the Elimination of All Forms of Racial Discrimination, *adopted by the U.N. General Assembly* Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter CERD].

individual communications. The inquiry procedure found in the Optional Protocol to the Women's Convention is similar to the one found in CAT. States can opt out of the inquiry procedure in the Optional Protocol while still remaining a party to the Optional Protocol.

Before becoming a Party to any of these instruments, states must be truly ready to cooperate at the international level to ensure that their practices at the national level are in accordance with the international human rights standards found in the relevant treaty. By accepting the individual complaint mechanisms of these treaties, a state opens up its implementation of the treaty to international scrutiny whenever an individual finds the state's compliance to be inadequate. States who are parties to the other instruments can, by signing the Optional Protocol to the Women's Convention, show that their commitment to the human rights of women is just as great as their commitment to civil and political rights, the elimination of racial discrimination, and the elimination of torture.

The Optional Protocol, although similar to existing instruments such as the first optional protocol to the ICCPR, the complaints mechanism in CERD, and the complaint and inquiry procedure in CAT, has some key innovations to offer.¹⁵ The Optional Protocol also takes advantage of the experience of these existing instruments and therefore contains explicitly many of the features that have been incorporated into the other instruments via their rules of procedure.

Article 2 of the Optional Protocol allows a communication to be submitted on behalf of individuals or groups of individuals without their consent where the author "can justify acting on their behalf without such consent."¹⁶ No similar provision can be found in the other existing instruments, although the rules of procedure of the Human Rights Committee (HRC) (which monitors the implementation of the ICCPR), the Committee Against Torture, and the Committee on the Elimination of Racial Discrimination allow an individual to submit a communication on behalf of an alleged victim

15. For a complete comparison of existing procedures, see *Comparative Summary of Existing Communications and Inquiry Procedures and Practices Under International Human Rights Instruments and Under the Charter of the United Nations: Report of the Secretary-General*, Commission on the Status of Women, 41st Sess., Agenda Item 5, U.N. Doc. E/CN.6/1997/4 (1997), available at <http://www.un.org/documents/ecosoc/cn6/1997/ecn61997-4.htm> (last visited Mar. 25, 2001) [hereinafter *Comparative Summary*].

16. Optional Protocol, *supra* note 1, art. 2.

who is unable to submit a communication.¹⁷ This is significant, as women in many parts of the world are in a particularly disadvantaged position to bring a complaint. Two thirds of the world's illiterate adults are women,¹⁸ women are frequently more poverty-stricken, may fear reprisals from family or community elders, and may be economically dependent on those who would not want them to bring a complaint. Therefore, concerned individuals who have the resources to lodge a complaint can do so on behalf of such a woman whose human rights have been violated.

The Optional Protocol to the Women's Convention, in Article 5.1, is the only such instrument that explicitly permits the Committee to transmit a request to the state party concerned to take interim measures to avoid "possible irreparable damage to the victim or victims of the alleged violation."¹⁹ This is an important improvement since the HRC noted two instances of noncompliance within the period under its review for its Fifty-fourth Session.²⁰ In both cases, the HRC had requested a stay of execution for the authors of the communications and they were thereafter executed.²¹ By having the request for interim measures in the body of the Optional Protocol, the Optional Protocol is a stronger tool and will hopefully induce greater compliance.

The Optional Protocol is the only such instrument that allows for the information that is to be considered by the CEDAW Committee in assessing the complaint to be submitted "by or on behalf of individuals or groups of individuals," although CAT does allow information to be submitted "by or on behalf" of the claimant.²² Information is key in discovering whether a violation has occurred. It

17. *Rules of Procedure of the Human Rights Committee*, Human Rights Committee, 50th Sess., Rule 90(b), U.N. Doc. CCPR/C/3/Rev.5 (1997) [hereinafter *HRC Rules of Procedure*]; *Rules of Procedure*, Committee Against Torture, 15th Sess., Rule 107(1)(b), U.N. Doc. CAT/C/3/Rev.3 (1998) [hereinafter *CAT Rules of Procedure*]; *Rules of Procedure*, Committee on the Elimination of Racial Discrimination, Rule 91(b), U.N. Doc. CERD/C/35/Rev.3 (1989) [hereinafter *CERD Rules of Procedure*]. The Rules of Procedure for these Committees are available at the website of the U.N. High Commissioner for Human Rights, <http://www.unhcr.ch/tbs/doc.nsf> (last visited Mar. 28, 2001), by selecting "Documents," "by Type," "Basic Reference Document," selecting the relevant committee, and then scrolling through the resulting list of documents.

18. U.N. DIVISION FOR THE ADVANCEMENT OF WOMEN, END DISCRIMINATION AGAINST WOMEN (Dec. 1999).

19. Optional Protocol, *supra* note 1, art. 5.1.

20. *Report of the Human Rights Committee*, U.N. GAOR, 54th Sess., Supp. No. 40, at 81, U.N. Doc. A/54/40 (1999) [hereinafter *1999 HRC Report*].

21. *Id.*

22. Optional Protocol, *supra* note 1, art. 7.1.

is therefore very helpful if the claimant(s) are not the only ones allowed to submit information, as it has already been noted that women may lack the tools or financial resources to make a comprehensive report on their behalf.

The rules of procedure of the Committee Against Torture and of the Committee on the Elimination of Racial Discrimination contain provisions that enable the Committees to obtain from U.N. bodies or specialized agencies any documentation that may assist in the disposal of the case.²³ The usefulness of the ability to consider additional information was proven in *Balabou Mutombo v. Switzerland* when the Committee Against Torture drew on a number of reports prepared for the Commission on Human Rights in order to conclude that a consistent pattern of gross, flagrant or mass violations of human rights existed in the country of origin of the petitioner.²⁴

Theoretically, the submission of a complaint should be inexpensive as an individual only needs to submit a written account of a violation of one of their rights enumerated in the relevant treaty. However, practically speaking, compiling an effective statement of proof is very labor intensive, and many may be unable to submit such a complaint without the help of an attorney. With the ability to use information provided by the United Nations and NGOs, which may have available information crucial to the assessment of a claim, it should be easier and cheaper for an individual to submit a complaint and establish a violation.

Article 7.3 of the Optional Protocol adds to the forwarding of its views to the parties concerned, "its recommendation, if any."²⁵ The existing instruments all state that the Committee shall forward its views, but only CERD refers to "suggestions and recommendations, if any."²⁶ When the treaty bodies find a state party in violation of the treaty, the views they forward to the concerned state party commonly contain recommendations of actions the state party should take.²⁷ Once again, however, it is important to require this practice in the body of the instrument itself. This procedure will only work on a voluntary basis and if the state party cooperates, so it is vital to have

23. *CAT Rules of Procedure*, Rule 111(2); *CERD Rules of Procedure*, Rule 95(2).

24. *Mutombo v. Switzerland*, Communication No. 13/1993, *Report of the Committee Against Torture*, U.N. GAOR, 49th Sess., Supp. No. 44, Annex 5, at 45, U.N. Doc. A/49/44 (1994).

25. *Optional Protocol*, *supra* note 1, art. 7.3.

26. *ICCPR First Optional Protocol*, *supra* note 12, art. 5.4; *CAT*, *supra* note 13, art. 22(7); *CERD*, *supra* note 14, art. 14.7 (b).

27. *See Comparative Summary*, *supra* note 15, ¶¶ 61-66.

the State understand what it is promising when it signs the Optional Protocol to make the procedure more effective later.

Articles 7.4 and 7.5 of the Optional Protocol provide that the state party shall give "due consideration" to the views and recommendations of the Committee and furnish the Committee with information of any action taken.²⁸ The HRC has noted the importance of follow-up on enforcement and described the absence of such a provision as a "major shortcoming in the implementation machinery established by the Covenant."²⁹ Therefore, the HRC established a procedure so that it could monitor the follow-up to its views as mentioned above.³⁰ Follow-up information has been systematically requested in all cases where the HRC found violations of the ICCPR.³¹ The 53rd Committee report contained a detailed country-by-country report of follow-up activities.³² The yearly report now contains a list of countries that were found to be in violation of the Convention, whether they have replied, an overview of follow-up replies received, and the Special Rapporteur's follow-up consultations during the reporting period. These improvements made in existing bodies' procedures highlight the importance of the decision to provide for follow-up within the instrument itself. The mechanism helps assess the usefulness of the procedure, gives states an added incentive to comply, and may aid in discovering problem areas for future development.

The inquiry procedure found in Article 8 of the Optional Protocol is similar to the procedure contained in Article 20 of the CAT. However, Article 9 concerns the ability of the Committee to request the state party to include in its report under Article 18 of the Convention any actions taken in follow-up to the inquiry.³³ This ability has no equivalent in the CAT or in its rules of procedure. Article 9 is an important tool whereby the Committee may see whether its recommendations are being followed and may give the Committee the opportunity to help in problem areas. It also gives the Committee the weight of publicity to urge the country involved into

28. Optional Protocol, *supra* note 1, arts. 7.4 & 7.5.

29. *Follow-up on Views Adopted Under the Optional Protocol to the International Covenant on Civil and Political Rights*, Human Rights Committee, 48th Sess., U.N. Doc. A/CONF.157/TBB/3 (1993), reprinted in *Report of the Human Rights Committee*, 48th Sess., Annex X, at 222, U.N. Doc. A/48/40 (1993).

30. *1999 HRC Report*, *supra* note 20, at 90.

31. *Id.*

32. *Report of the Human Rights Committee*, U.N. GAOR, 53rd Sess., Supp. No. 40, at 70-77, U.N. Doc. A/53/40 (1998).

33. Optional Protocol, *supra* note 1, art. 9.

compliance, and helps define the rights of the Convention for other state parties by seeing how they are assessed in a concrete fashion.

The Optional Protocol is the only one of such instruments to mandate publicity of the Convention and the Optional Protocol. It states in Article 13 “[e]ach 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.”³⁴ This is a crucial development, especially for women, as in many countries women may be unaware of their rights or that there are any means to enforce their rights. Women are also not represented in as great numbers as men on the international plane.

The HRC’s main work revolves around the individual complaints procedure, and the HRC noted that greater public awareness of the procedure was probably an important factor in the recent increase in communications.³⁵ Through seminars, workshops, and via the press, more women and other interested individuals will know that there is an outlet for their complaints that may bring their national system into compliance with their country’s international obligations. The importance of publicity was repeatedly invoked at a panel discussion on the Optional Protocol held in the ECOSOC Chamber at the United Nations in New York, on December 10, 1999, the day the Optional Protocol was opened for signature. At this panel discussion, women working in all different capacities for the advancement of the rights of women, and in all different languages, called for more publicity of mechanisms available to women around the globe to ensure their human rights.³⁶

Article 17 states that reservations are not allowed.³⁷ States should not become party to the Optional Protocol unless they are serious in their commitment to all the human rights of women. The Convention itself already suffers from a great number of reservations. All the human rights of women are vital, and states should not be able to select only some of them or weaken the Optional Protocol in any way.

34. *Id.* art. 13.

35. 1999 HRC Report, *supra* note 20, at 74.

36. Bacre Waly Ndiaye et al., Panel Discussion on the Recently Adopted Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (Dec. 10, 1999) (including an opening statement by U.N. Secretary-General Kofi Annan, and moderated by U.N. Assistant Secretary-General Angela E.V. King).

37. Optional Protocol, *supra* note 1, art. 17.

Twenty-three states expressed their commitment to the human rights of women by signing the Optional Protocol on December 10, 1999.³⁸ As of March, 2001, sixty-five countries have signed the Optional Protocol, and eighteen states have ratified it.³⁹

IV. EXISTING PROCEDURES AND THE IMPORTANCE OF THE OPTIONAL PROTOCOL

Until the Optional Protocol came into force, the only method available to monitor compliance with the Women's Convention was the reporting mechanism. As mentioned earlier, the CEDAW Committee monitors compliance by studying reports submitted by the state parties and commenting on these reports. State parties are obliged to submit reports on their efforts to give effect to the Convention within one year of acceding to or ratifying the Convention and then every four years thereafter.⁴⁰ Based on the report, the discussion of it with the government's representatives, and the information received from NGOs, the Committee may suggest areas for further action by the specific country.

The reporting procedure under the Women's Convention may also be enhanced by the addition of the Optional Protocol. The comments of the Human Rights Committee submitted to state parties under Article 40 of the ICCPR, a reporting mechanism similar to the one in the Women's Convention, have been deemed to be clearly influenced by decisions under the ICCPR's first optional protocol, the individual complaint mechanism of that treaty.⁴¹ The influence of the comments of the HRC on the reports of state parties on later individual cases is "also becoming a matter of course."⁴² The findings in individual cases made under the Optional Protocol may

38. U.N. Division for the Advancement of Women, *Signatures and Ratifications of the Optional Protocol*, at <http://www.un.org/womenwatch/daw/cedaw/sigop.htm> (as of Mar. 14, 2001).

The states who signed the Optional Protocol on December 10, 1999, are: Austria, Belgium, Bolivia, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Greece, Iceland, Italy, Liechtenstein, Luxembourg, Mexico, Netherlands, Norway, Senegal, Slovenia, and Sweden. *Id.*

39. *Id.* The states that have ratified the Optional Protocol are: Austria, Bangladesh, Bolivia, Croatia, the Czech Republic, Denmark, Finland, France, Hungary, Iceland, Ireland, Italy, Mali, Namibia, New Zealand, Senegal, Slovakia, and Thailand.

40. CEDAW INFORMATION NOTE 2, *supra* note 8.

41. Torkel Opsal, *The Human Rights Committee, in THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL* 369, 437 (Philip Alston ed., 1992).

42. *Id.*

influence the thinking of the CEDAW Committee when examining states' reports, leading to more effective questioning of state representatives submitting their country's report. The reporting mechanism may also play an important role in the hearing of individual cases. The more information that is compiled for international scrutiny, and the greater the dialogue between states, the individual, and the international community, the more opportunities there are for changes to be made that will help the situation of women worldwide.

Although criticized as being a weak procedure, as states are typically not willing to give information that would put them in a negative light, the importance of reporting should not be ignored. It is a valuable tool in opening a dialogue about a subject previously not thought to be a part of the international plane. One observer noted, "in fact, it is hard to imagine where else top government officials would find themselves being so closely questioned about their country's law and policies, and needing to justify them."⁴³ A former HRC member reports:

the procedure has proved to encourage implementation of international human rights standards, mutual respect for different systems, conditions and cultures and for different methods of guaranteeing human rights. . . . There are numerous examples that states, as a result of or having been stimulated by the reporting procedure, have changed laws or practices, created procedures and remedies and have spent more attention on the realization of human rights than before.⁴⁴

Although the reporting mechanism is important, the individual complaint procedure is an essential complement. The reports are submitted periodically, according to a set schedule, and the information in the state parties' reports can be general, not providing the type of detailed and precise information that would allow the CEDAW Committee to examine a right or set of rights in depth.⁴⁵

43. Torkel Opsahl, *The Protection of Human Rights in the Council of Europe and in the United Nations*, 26 EUR. Y.B.I.L. 92, 106 (1978) (quoting Ms. Rachel Malcomson, Quaker observer).

44. Bernhard Graefrath, *Reporting and Complaint System in Universal Human Rights Treaties*, in HUMAN RIGHTS IN A CHANGING EAST-WEST PERSPECTIVE 290,312 (Allan Rosas & Jan Helgesen eds., 1990).

45. Donna Sullivan, *The Proposed Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women: Its Relationship to Existing Procedures and Justiciability 4* (unpublished manuscript, on file with the U.N. Division for the Advancement of Women).

Extraordinary or additional reports may be requested, but this would interfere with the review of the periodic reports.⁴⁶ Although the reporting mechanism creates a dialogue in which states can discuss compliance in an automatic, non-adversarial context, it is not a tool to combat individual human rights violations.

The CEDAW Committee may also make general recommendations to the state parties on any issue affecting women that the Committee thinks should be given more attention.⁴⁷ As of June 1999, the CEDAW Committee had adopted twenty-four general recommendations dealing with a range of topics from reporting guidelines to "Women and AIDS."⁴⁸ Over the years this procedure evolved from the Committee issuing short and modest recommendations to a more elaborate procedure whereby the Committee involves NGOs and others in the discussion of the topic of the general recommendation.⁴⁹ The recommendations elaborate the state parties' obligations under the Convention in relation to what the Committee describes as "cross-cutting" themes.⁵⁰ One example of a very important recommendation is General Recommendation 19, adopted in 1992, that requires national reports to the Committee to include statistical data on the incidence of violence against women, information on services available to the victims, and legislative and other measures taken to protect women against violence in their every day lives (e.g., abuse in the family, sexual violence).⁵¹ These recommendations are clearly an important way for the Committee to highlight areas of special concern that are being neglected in a widespread manner or are particularly important. However, as the name indicates, this procedure only involves general recommendations to all state parties and does not work to give relief to particular individuals nor to eradicate wide-spread violations in a specific country.

Rights need to be viewed in the context of their means of enforcement. Ratifying a treaty shows a degree of commitment to the values and rights it espouses. However, if there is no meaningful way to ensure that those rights are being respected at the national level, it

46. *Id.*

47. CEDAW COMMITTEE, CEDAW INFORMATION NOTE 6: CEDAW GENERAL RECOMMENDATIONS, U.N. Doc. DPI/2047/Rev.1 (Dec. 1999) [hereinafter CEDAW Information Note 6].

48. *Id.*

49. *Id.*

50. *Id.*

51. CEDAW INFORMATION NOTE 2, *supra* note 8.

leads us to question whether states are really serious about their commitment to women's rights that have been repeatedly promulgated. We hear the language of women's human rights—in the Women's Convention and the Fourth World Conference on Women (Beijing, 1995)⁵²—but we have little proof of whether this language is being backed up by meaningful action. Accepting the Optional Protocol is one way to prove that action has been taken and will continue to be taken in the future. A State which signs the Optional Protocol is showing its willingness to be held accountable to complaints that it is not adhering to its commitment to the Women's Convention in a way that is open to international scrutiny. A State that accepts the treaty, but not the Optional Protocol, is indicating a reduced level of commitment to women's human rights.

Although other human rights treaties are important tools for fighting human rights abuses in their own areas, they are insufficient to ensure women's rights. Other treaties do have some provisions for women. For example, Articles 2 and 3 of the ICCPR provide that state parties undertake to ensure that women, equally with men, are entitled to the rights set forth in the ICCPR.⁵³ However, these various articles are not enough to safeguard women's rights. "The Women's Convention includes key rights not contained in the ICCPR, including rights in the areas of education, employment and health care," to name a few.⁵⁴ The Women's Convention also analyzes the rights of women in much greater detail. All of the state parties to the Women's Convention are not party to the ICCPR. The importance of expertise in this area cannot be underestimated. For example, the International Criminal Tribunal for Rwanda (ICTR) would not have made certain indictments without the expertise of female judges in the area of sexual violence. "The most poignant example being that of Judge Navanethem Pillay who in the ICTR's Akayesu case, had been instrumental in questioning witnesses and evoking testimony of gross sexual violence, resulting in additional charges being added to the indictment."⁵⁵ Although this took place in the context of a criminal adjudication, it demonstrates that women's issues and rights can even be overlooked by other well-meaning international human rights bodies. The Human Rights Committee does not necessarily have the

52. Report of the Fourth World Conference on Women, A/Conf.177/20 (1995).

53. ICCPR, *supra* note 12, arts. 2, 3.

54. Sullivan, *supra* note 45, at 1.

55. Cate Steains, *Gender Issues, in THE INTERNATIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE* 357, 378 (Roy S. Lee ed., 1999).

expertise required to deal adequately with the particular concerns of women.

Experience has also shown that women's issues are not being addressed by existing procedures. Out of the 597 complaints brought under the First Optional Protocol to the ICCPR as of 1997, only eleven had been brought on grounds of sex discrimination.⁵⁶ As it is obvious that women around the world are not being treated equally with men, it is clear that this procedure is not working adequately to ensure women's rights.

The importance of the Optional Protocol is especially great when we consider that the Women's Convention requires state parties to eliminate discrimination by private individuals.⁵⁷ As women are frequently the victims of discrimination or violence at the hands of private individuals, the Optional Protocol will lead to greater awareness of the violations women suffer at the private level which can then be taken up at the national level.

The Optional Protocol also gives other actors, such as NGOs, a framework within which to work to combat human rights abuses. Amnesty International stated that "[d]espite the flaws, the Optional Protocol is an important tool and Amnesty International will work together with other non governmental organisations to promote a clear and grassroots understanding of how it can be used to protect women's human rights."⁵⁸ The Optional Protocol gives human rights organizations and other interested actors an added avenue to help women around the world.

Not only is it practically very important for women to have a means of enforcing the rights found in the Women's Convention similar to the other main treaties, but it is also important on a symbolic level. Although feminist critiques of rights question whether acquiring legal rights advances women's equality, Hilary Charlesworth, Christine Chinkin, and Shelley Wright note that "despite all these problems, the assertion of rights can exude great symbolic force for oppressed groups within a society and it

56. Lilly Sucharipa-Behrmann, *An Optional Protocol to CEDAW: A Further Step Towards Strengthening of Women's Human Rights 6* (unpublished manuscript, on file with the U.N. Division for the Advancement of Women).

57. Women's Convention, *supra* note 3, art. 2.

58. Press Release, Amnesty International USA, *A Cautious Welcome to the Adoption of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, <http://www.amnesty-usa.org/news/1999/I5100199.htm> (Mar. 12, 1999).

constitutes an organizing principle in the struggle against inequality,"⁵⁹ and they quote from Patricia Williams:

"[r]ights" feels so new in the mouths of most black people. It is still so deliciously empowering to say. It is a sign for and a gift of selfhood that is very hard to contemplate restructuring . . . at this point in history. It is the magic wand of visibility and invisibility, of inclusion and exclusion, of power and no power. . . .⁶⁰

Up until now, the lack of an enforcement mechanism for the Women's Convention marginalized the importance of women's human rights. In fact, the only other major human rights treaty with no enforcement mechanism is the Convention on the Rights of the Child. Why should women have any fewer tools at their disposal to enforce their rights than men? Knowing that one has rights that are recognized at an international level can be empowering, but knowing that one has rights that can be *enforced* at the international level can only be more empowering.

Although there has been criticism of the effectiveness of the individual complaint mechanism as far as the individual making the complaint is concerned, if the procedure is followed, individuals can, in many cases, acquire remedies. Another former HRC member, Bernhard Graefrath, argues "it starts too late, takes too much time, does not lead to binding results and lacks any effective enforcement."⁶¹ The HRC has reported that in many cases its views are not being followed,⁶² but that is a separate issue from whether the procedure *could* give effective relief to individuals. Examining HRC jurisprudence, it appears that if states follow the Committee's recommendation, redress for the individual is available in many cases even though it is true that the procedure may take years to come to completion. For instance, in case No. 592/1994 (*Clive Johnson v. Jamaica*), the author presented a birth certificate showing that he had been under the age of eighteen when he committed the crime for which he was convicted and given the death sentence.⁶³ As Article 6, paragraph 5 of the ICCPR prohibits the imposition of the death sentence for crimes committed by persons below eighteen years of

59. Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 638 (1991).

60. *Id.* (quoting Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401, 431 (1987)).

61. Graefrath, *supra* note 44, at 327.

62. 1999 HRC Report, *supra* note 20, at 90.

63. *Id.* at 82.

age, the HRC found that the imposition of the death sentence upon the author of the complaint constituted a violation of the ICCPR.⁶⁴ Clearly, in cases such as this, if the country follows the views of the HRC, the individual involved would be given relief. In this case, an individual who had been sentenced to death would no longer be subject to the death penalty.

The Committee Against Torture receives complaints involving petitioners who claim that their return to their country of origin or extradition to another country by the country in which they are presently living would violate that country's obligation under Article 3 of CAT. Under Article 3 of CAT, "[n]o state party shall expel, return 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."⁶⁵ If the Committee finds that the individual would be in danger of torture if returned to his or her country of origin or extradited to another country and the country in which he or she is presently living in does not return the individual there, then the individual has clearly been given effective relief.⁶⁶

Whether countries are following the views of the various Committees is obviously very important, but it is a distinct question from whether the procedure itself allows any meaningful relief to the individual involved. Although there are cases in which the remedy for the particular individual would come too late for effective relief, it is evident that there are cases in which the individual's claims of violation could be redressed even if the process is slow. During its thirty-ninth session (July 1990), the HRC instituted a procedure to enable it to monitor the follow-up of its views and created the mandate for a Special Rapporteur for the follow-up on views.⁶⁷ The HRC considered roughly thirty percent of the replies received satisfactory⁶⁸ as they displayed the relevant state party's willingness to implement the HRC's views or to offer the complainant an

64. *Id.*

65. CAT, *supra* note 13, art. 3.

66. For examples of views adopted by the Committee Against Torture in relation to individual communications, see *Report of the Committee Against Torture*, U.N. GAOR, 53rd Sess., Supp. No. 44, ¶¶ 265–286, U.N. Doc. A/53/44 (1998).

67. *1999 HRC Report*, *supra* note 20, at 90. The mandate can be found in rule 95 of the *HRC Rules of Procedure*, *supra* note 17.

68. According to the report, at the beginning of the HRC's sixty-sixth session in July 1999, follow-up information had been received in 152 cases and not received in 84 cases. For nine of the cases for which information had not been received, the deadline for receipt had not passed. *1999 HRC Report*, *supra* note 20, at 90.

appropriate remedy.⁶⁹ This is clearly not an ideal situation. However, the Optional Protocol incorporates many developments that the HRC has established through the years to make its procedure more effective that will hopefully make it an even stronger instrument. The fact that the HRC has noted that its procedure is being widely used, more now than ever, indicates that, although perhaps evolving and working towards greater effectiveness, it is still one important tool that can be utilized to ensure that crucial rights are being respected throughout the world.

Even if the HRC's recommendations are not being met in one hundred percent of the cases, as the Committee strives towards that goal, the other valuable uses of the procedure cannot be forgotten. Although so critical of the individual complaints mechanism as a tool to redress the individual's right, Graefrath seems optimistic of the procedure in other areas, saying "it stimulates the development and improvement of internal remedy systems which cannot be neglected by international supervisory bodies and—what is more important—will have a corrective and preventive effect against human rights violations."⁷⁰ Another former member of the HRC has also suggested that the individual complaints mechanism "may serve as evidence of systematic and/or massive violations of certain rights in a given country."⁷¹ Although the cases that are brought before the Committee are determined by chance (i.e., by who happens to bring a complaint), such individual cases may indicate a larger context of violations.

Another benefit of the individual complaints mechanism is that "[c]onsideration of individual cases provides the supervisory body with an opportunity to interpret human rights guarantees in a manner which general discussions and exegeses do not provide."⁷² The case law can be an important tool in defining the scope of the obligations under the Convention and may lead to changes in domestic level decision making that benefit other individuals. The existence of such a procedure may also lead many states to examine their obligations under international human rights treaties more carefully before declaring a case closed at the national level for fear of having it re-opened at the international level. When the existence

69. *Id.*

70. Graefrath, *supra* note 44, at 322.

71. Rein Müllerson, *The Efficiency of the Individual Complaint Procedures: The Experience of CCPR, CERD, CAT and ECHR*, in *MONITORING HUMAN RIGHTS IN EUROPE: COMPARING INTERNATIONAL PROCEDURES AND MECHANISMS* 25, 27 (Arie Bloed et al. eds., 1993).

72. Byrnes & Connors, *supra* note 11, at 703.

of the procedure and the state's commitment to the treaty involved has not led to the avoidance of a violation, the procedure may allow states the opportunity to re-examine issues in a new light once the case has been re-opened. As the case will have been commented on from the perspective of another body staffed with experts on human rights, the state involved, as well as other states, may be able to see the scope and meaning of their obligations more clearly.

Under the first optional protocol to the ICCPR, it has become apparent that individual complaints generate much more press than reports made under Article 40 of the ICCPR.⁷³ Publicity can be a vital tool in ensuring state compliance. The HRC reported that better public awareness of its procedure, as well as the increasing number of state parties to the OP, has "led to a growth in the number of communications submitted to the Committee."⁷⁴ As states do not want to be embarrassed by any negative publicity, this may help urge them on in their quest to fulfill their international obligations. The more publicity the procedure gets, the more people become aware that there is an international outlet for their complaints and may thereafter come forward if their rights have been violated.

V. THE INQUIRY PROCEDURE

The inquiry procedure whereby the Committee can initiate its own investigations of possible widespread violations in a particular country is similar to that in use by CAT.⁷⁵ This is an important addition to the Women's Convention, as women who may fear reprisals do not have the tools available to bring a complaint, and individual communications may not reflect the systematic nature of violations.⁷⁶

The Economic and Social Council created the Commission on the Status of Women's (CSW) Communications Procedure under which CSW can receive communications that appear to reveal a consistent pattern of injustice or discriminatory practice. However, the CSW, which is composed of state representatives, not independent experts, only has the power to make recommendations to the Economic and Social Council and is not linked to the legal framework of the

73. *Id.* at 704.

74. 1999 HRC Report, *supra* note 20, at 74.

75. There are also similar procedures under the ILO and Res. 1503, but they are outside the scope of the present paper.

76. Byrnes & Connors, *supra* note 11, at 704.

CEDAW Committee.⁷⁷ A 1991 report by the Secretary-General to CSW indicated, in addition to the above, that this procedure is weak as compared to others.⁷⁸ The CSW's reports only reflect trends observed in the communications, not details of the individual complaints.⁷⁹ The inquiry procedure in the Optional Protocol also has the ability "to enhance collaboration between the Committee and NGOs" by enabling the NGOs to highlight "systematic human rights violations."⁸⁰ Clearly, the present system is not an adequate substitute for the inquiry procedure that will be in place when the Optional Protocol comes into force.

The Committee Against Torture, pursuant to its Article 20 inquiry procedure, has conducted an investigation on Turkey.⁸¹ After having received reliable information that torture was practiced systematically in Turkey, the CAT inquiry included a mission to Turkey during which Committee members visited places of detention under the authority of the Ministry of the Interior and the Ministry of Justice.⁸² In the final statement of the report of the Committee Against Torture, the Committee notes with satisfaction "the cooperation of the Turkish authorities during the inquiry, and congratulates them on having acted on many of its recommendations and taken measures intended to reinforce the implementation of the Convention and to improve the human rights situation in Turkey."⁸³ Although the Committee went on to confirm the existence and systematic character of torture in Turkey, changes in the law were made as a result of the inquiry and people working at the national level now have a complete report to use as a weapon if further violations ensue. Although this procedure may not be as widely subscribed to as states are hesitant to allow such "intrusive" methods of ensuring compliance—a mission of experts is actually allowed to investigate a specific country's compliance in detail, and perhaps in person—the CAT report indicates that progress can be made using this procedure.

77. Sullivan, *supra* note 45, at 4.

78. Byrnes & Connors, *supra* note 11, at 690.

79. Roberta Jacobsen, *The Committee on the Elimination of Discrimination Against Women*, in *THE UNITED NATIONS AND HUMAN RIGHTS* 444, 449 (Philip Alston ed., 1992).

80. Ursula A. O'Hare, *Ending the 'Ghettoisation': The Right of Individual Petition to the Women's Convention*, 5 *WEB J. CURRENT L. ISSUES* (1997), at <http://webjcli.ncl.ac.uk/1997/issue5/o'hare5.html#Heading15>.

81. *Report of the Committee Against Torture*, U.N. GAOR, 48th Sess., Supp. No. 44, at ¶ 3, U.N. Doc. A/48/44/Add.1 (1993).

82. *Id.* at ¶ 5–15.

83. *Id.* at ¶ 58.

VI. CONCLUSION

Ultimately, ensuring the rights of women must be done at the national level. The Optional Protocol is a critical means towards reaching that goal.

[T]he Optional Protocol will act as an incentive for Governments to take a fresh look at the means of redress that are currently available to women at the domestic level. This is perhaps the most important contribution of the Optional Protocol. It is action at the national level which will create the environment in which women and girls are able to enjoy all their human rights fully, and where their grievances will be addressed with the efficiency and speed they deserve.⁸⁴

It is clear that no mechanism at the international level will work effectively to ensure all individual rights at the national level. However, states that become party to such enforcement procedures are announcing to the world that they are ready to work with the international community towards full compliance with their international obligations in realization of the importance of human rights that have been overlooked throughout history.

The state of the international community today allows for states to voluntarily submit their national systems to international scrutiny. This benefits the entire international community because these state parties are working now towards clearer definitions of obligations and honing the tools with which to combat violations that may also later be used by states not yet parties to such procedures. By signing the Optional Protocol, states can help women realize their equality, a basic and fundamental human right.

*Heidi Gilchrist**

84. Press Release, Ms. Angela E.V. King, Special Advisor on Gender Issues and Advancement of Women & Mrs. Mary Robinson, U.N. High Commissioner for Human Rights, Joint Statement on the Occasion of the Opening for Signature of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (Dec. 10, 1999), <http://www.un.org/womenwatch/daw/news/akop.htm> (last visited Mar. 25, 2001).

* B.A., Yale University, 1997; Fulbright Fellow, Damascus, Syria, 1998; J.D., Columbia University School of Law, 2001. I wish to thank Jane Connors, Roy Lee, and my sister Carol Gilchrist for their helpful comments while writing this Note.

