CEDAW and the Optional Protocol: First Experiences

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Introduction

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (OP-CEDAW) is a separate treaty that can be ratified or acceded to by States that are already Parties to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). As of March 2007 there are 185 States Parties to the CEDAW and 85 States Parties to the OP-CEDAW, Botswana being the most recent one with its accession on 21 February 2007. The Protocol entered into force on 22 December 2000. It contains two new procedures: an individual communication procedure, through which the CEDAW Committee can review complaints to decide if rights guaranteed by the CEDAW have been violated and identify remedies for victims (Articles 2–7), and an inquiry procedure through which the CEDAW Committee can launch an inquiry into grave or systematic violations of women’s human rights on its own initiative (Articles 8 and 9). In this short chapter we will first briefly discuss the background of the Optional Protocol; we will then focus on some of the main elements of the two procedures and the quasi-jurisprudence developed by the CEDAW Committee under these procedures; and finally we will indicate some of the challenges the CEDAW Committee is facing when it deals with the procedures under the Convention.

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Background

The serious gap between the promise of the Convention and the reality of women’s lives has triggered the creation of the OP-CEDAW in order to help to fill this gap. It is interesting to note that during the drafting of the CEDAW in the 70s of the last century a complaints procedure was suggested, but was not taken up. Arguments were made by some delegates that complaints procedures were needed for “serious international crimes” such as apartheid and racial discrimination rather than discrimination against women. At the World Conference on Human Rights in Vienna in 1993, however, the need for new procedures to strengthen implementation of women’s human rights was acknowledged and a call was made for the examination of the possibility of introducing an Optional Protocol to the CEDAW.²

The Commission on the Status of Women (CSW) established a working group which, with contributions of States, non-governmental organisations and members of the CEDAW Committee, worked from 1996–1999 on the text to the OP-CEDAW, which was adopted by the UN General Assembly and opened for signature by individual States on 10 December 1999.

The OP-CEDAW is the first specialised human rights supervisory mechanism on gender at the international level. The treaty does not create any new substantive rights. The importance of the OP-CEDAW lies in its capacity to be used as a means to safeguard and enhance the realisation of women’s rights. It can be used as a tool to strengthen the implementation of the CEDAW itself. Through the development of jurisprudence it may strengthen the understanding of women’s human rights standards and States’ obligations under the CEDAW. States Parties are encouraged to fully implement the provisions in the Convention and to identify and repeal existing national discriminatory laws and practices. Furthermore the treaty aims at contributing to greater public awareness of human rights standards with regard to discrimination against women.

From a legal point of view the CEDAW and OP-CEDAW have limited means to ensure enforcement. Implementation of decisions and views of the CEDAW Committee is dependent on the willingness of the State to realise women’s human rights. It is expected, however, that States which have ratified the OP-CEDAW will improve their performance in order to meet the obligations set forth in the CEDAW.

Procedures

General

The individual communication procedure under the Optional Protocol is modeled after similar existing individual communication procedures, notably the procedures provided for in the Optional Protocol to the International Covenant on Civil and Political

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