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

## **I. The Convention on the Elimination of All Forms of Discrimination Against Women**

1. The Convention is an extension and unification of previous texts relating to the equal rights of men and women. It guarantees not only recognition of the rights of women to equality but also their enjoyment of those rights. The Convention was adopted in 1979 and came into force in 1982. To date, 168 countries, including 49 African States, have ratified it. The four African countries that have yet to do so are Somalia, Sao Tome and Principe, the Sudan and Swaziland.

2. The Convention plays a major role in promoting the advancement of women in Africa. African countries have taken various measures to improve the economic, political and social status of women as reflected in the country reports submitted to the sixth Africa Regional Conference on the Integration of Women Development and those reports submitted to members of the Committee on the Elimination of Discrimination Against Women (CEDAW). In spite of the progress made in legislation by a number of countries, much still remains to be done in terms of implementation.

3. Indeed, while the proclamation of these rights has been easy for some countries, enforcing them has been quite a different matter. The Convention, like several other treaties, lacks machinery for strict enforcement and provides little recourse in the event of any violation. Because this observation points to a global phenomenon it has been deemed necessary to enhance the Convention's credibility by allowing individuals and groups to prefer charges against violating States through a recourse mechanism (see the recommendations of the World Conference on Human Rights, Vienna, June 1993 and the Fourth Conference on Women, Beijing, September 1995).

4. The recourse mechanism was constituted within the context of what is now called the Optional Protocol to the Convention.

## **II. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women**

5. This document is a multilateral agreement which the States parties can ratify or to which the can accede. It aims at helping to enforce the provisions of the Convention by empowering individuals who live in a State party to the Protocol to lodge complaints with the Monitoring Committee if they feel that their rights have been violated and they have exhausted all national recourse procedures.

6. Several international human rights instruments have optional protocols. Cases in point are the International Charter on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention Against Torture and other Forms of Inhuman and Degrading Treatment or Punishment. The United Nations is also preparing two optional protocols to the Convention on Children's Rights: one has to do with the trafficking of children while the other addresses the use of children in armed conflict.

7. The Protocol is the result of work done by a group set up under the Commission on the Status of Women in 1996. The working group devoted the three sessions of March 1997, 1998

and 1999 to this work which was approved by the United Nations General Assembly on 6 October 1999.

8. Because the protocol is optional, States parties to the Convention are free to accede to it or to choose otherwise. As determined by a number of delegates who discussed the matter seriously during the preparatory work, no reservations are allowed because the Protocol is, in essence, optional. It should be noted that the Convention is one agreement to which signatory States have attached more reservations than other human rights treaties.

### **III. Substance of the Protocol**

9. The Protocol has a preamble and 21 articles by virtue of which any State party recognizes the competence of the Committee to receive and to hear the complaints lodged. Two procedures have been adopted to this effect: complaint notification and inquiries.

#### **(a) Complaint notifications**

10. Under article 2 of the Protocol, complaints may be lodged by or on behalf of individuals or groups of individuals coming under the jurisdiction of a State party who feel victimized by that State party's violation of any of the rights enshrined in the Convention. Under this article, non governmental organizations may lodge complaints on behalf of individual women or groups of women. This provision avails the most vulnerable and destitute women of practical and effective recourse.

#### **(b) Inquiries**

11. When the Committee is reliably informed that a State party has seriously violated or has systematically been violating the rights enshrined in the Convention, it may task one or more of its members to conduct an inquiry and to report on the findings. After considering the findings of the inquiry, the Committee accordingly informs the particular State party of its observations and recommendations.

12. The procedure is important in that it allows international experts to conduct investigations into those abuses and discriminatory practices to which women are subjected in a given country. It also enables the Committee to hear the cases of women who because of their vulnerability (economic situation or fear of reprisal) cannot directly lodge complaints with the Committee. Unfortunately, this is not compulsory because article 10 of the Protocol allows the State party to declare, on the occasion of accession or ratification, whether it recognizes the competence of the Committee in this matter.

#### **(c) Status of signatures and ratifications**

13. By 25 August 2001, 68 countries had signed the Protocol and 25 had ratified it. Among the signatory States are nine African countries, namely: Ghana, Lesotho, Madagascar, Malawi, Namibia, Nigeria, Sao Tome and Principe, Senegal and Sierra Leone but only three, Mali, Namibia and Senegal have ratified it.

#### IV. Why African Countries should Accede to the Optional Protocol

##### 14. Implementation of the Protocol makes for:

- Better understanding of the Convention by States parties. Through the lodging of complaints, the monitoring Committee will both be informed of individual and specific cases of discrimination and of the systematic violation of those rights enshrined in the Convention. In this way, the Committee can assist the State to gain a better understanding of the provisions of the Convention;
- Greater respect for the provisions. States parties will be compelled to take measures to implement those provisions if only to avoid criticism and castigation as human rights violators
- The development of gender-specific jurisprudence. The institution of a recourse mechanism particularly suited to hearing complaints by women will help in developing gender-specific jurisprudence which genuinely addresses their case. This is all the more important since other human rights instruments do not specifically articulate a gender approach. The jurisprudence arising from complaints lodged will provide more clarification and guidelines to women regarding the nature of their rights and to States regarding the commitments into which they have entered;
- Greater awareness of legal standards relating to discrimination against women. The Protocol requires States to publicize its content and recourse procedure. Included here is information on how complaints may be lodged and inquiries conducted. The result will be greater awareness of the Convention and the rights guaranteed as can be observed in the case of complaints lodged within the framework of such protocols as relate in particular to the Convention on Civil and Political Rights.

##### Conclusion

15. Women the world over consider the adoption of the Optional Protocol as the breakthrough of the decade. Indeed, the procedures for lodging complaints and conducting inquiries (provided under the Protocol) constitute essential tools for the operation of the Women's Rights Watch mechanism. It is therefore important for all African countries to accede to the Protocol. Civil society organizations, government officials responsible for women's advancement, justice and foreign affairs should join hands with parliamentarians in ensuring that their country accedes to and ratifies this instrument without restriction.