

A Lever for Change: Using the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women



www.equalityhumanrights.com

Written and researched by Ceri Hayes,
Independent Gender and Human Rights Adviser,
with the help of the Equality and Human Rights
Commission CEDAW project team.
Diagrams provided by IWRAW Asia Pacific.

Contents

Foreword by Professor Geraldine Van Bueren and Kay Carberry	2
Introduction	3
Equality and human rights legislation in Great Britain	4
What is CEDAW?	6
What is the Optional Protocol?	14
Communications or inquiry procedure – which one should I use?	17
What admissibility criteria do I need to meet?	19
Other key considerations before using the Optional Protocol	21
How do I make a complaint using the Optional Protocol?	24
What happens next?	26
Tried and tested – how others have used the Optional Protocol	32
How might the Optional Protocol be used in Great Britain?	36
What other international remedies are available?	38
Who we are and how we can help	41
CEDAW Optional Protocol quick checklist	42
Find out more	43
Contacts	45

Foreword

When we consider the struggle for women's equality in the UK, two truths are undeniable. The first is that over the last century, society has taken great strides.

With huge increases in women's participation in education, in politics, and in the workplace, many of the legislative or cultural barriers that stood in the way of substantive equality for women have begun to fall.

Yet the second undeniable truth is that gender is still at the root of deep-seated and severe inequality in Britain today. Some women in Britain are victims of human trafficking. Some are exploited for the sex trade. Others die at the hands of their husbands or fathers, their brothers or uncles.

Other forms of discrimination are less acute, but more widespread. Even after decades of the Equal Pay Act, we have a gender pay gap that has never even come close to dipping into single figures. And women still do most of the unpaid work that keeps our families and communities going.

The Equality and Human Rights Commission has begun to address the challenges. We have called on local authorities to improve support for women who experience violence; we have carried out an inquiry into sex discrimination in financial services, designed to help close that sector's gaping gender pay gap; and we have launched an inquiry into human trafficking in Scotland. Continuing to fight for equality for women is at the heart of the Commission's plans for the future.

Yet the solutions do not lie solely in the Commission's hands. An extraordinary range of other people – including courageous individuals, lobby groups, representative organisations and support networks – also stand up for women's rights. We seek to enable, encourage and empower them.

This is why we have developed this booklet. It gives an insight into the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol. The Protocol is designed to be a means of holding government to account for what it has done, or indeed what it has failed to do, to ensure that women are treated with dignity. The Protocol has only been in force in the UK since 2005, and its potential as a lever for change here is largely undemonstrated.

This booklet is designed to build understanding and confidence, and highlights further sources of advice and guidance for those who think that the Protocol might be a serious option for achieving their goals. We hope it will enlighten all its readers, and we look forward to working with them to bring genuine equality for women a step closer.

Commissioners: Kay Carberry and Professor Geraldine Van Bueren

Introduction

In the UK, international human rights conventions, such as CEDAW and its supplementary treaty, the Optional Protocol, can seem far removed from the daily realities of women's and girls' lives, especially as we have a range of domestic measures in place to promote and enforce equality between women and men. However, as women's rights advocates in other countries have already shown, international conventions like CEDAW can offer very useful and practical tools for challenging discrimination against women and gender inequality.

This guide explains how the CEDAW Convention and, in particular, its Optional Protocol procedure – a way for individuals and groups to complain about violations of their rights under CEDAW – can be used to guarantee the rights of women and girls in the UK:

- It begins with a brief overview of the **equality and human rights legislation in place in Great Britain**, which is available to use before the CEDAW Convention.
- It sets out the **rights and principles of CEDAW**, before outlining when and how the **Optional Protocol procedure** may be used by individuals and their advocates.
- We also explore the **pros and cons** of using this mechanism, how the Optional Protocol has been used in other countries to strengthen women's rights and alternative international mechanisms that could be used to benefit women in the UK.
- At the end you'll find out where to go for **advice and support** on using CEDAW and the Optional Protocol procedure, as well as a list of **useful resources and websites** that can provide you with more detailed information.
- Throughout this guide key terms are highlighted each time they appear, and an explanation is given when they are first used.

It is early days to assess the overall impact of the Optional Protocol, but the evidence from cases brought so far suggests it has the potential to complement existing national and regional sex discrimination and human rights mechanisms, and enhance the effectiveness of CEDAW for women in the UK.

Equality and human rights legislation in Great Britain

This Part gives you an introduction to the Convention.

Before considering using the CEDAW Optional Protocol, you need to look at the domestic remedies available in the UK, which should be your first port of call when trying to resolve any issues of gender inequality. In Great Britain,⁽¹⁾ these remedies include:

■ The Equality Act 2010

From October 2010 this new Act will incorporate the provisions of the Sex Discrimination Act 1975 and the Equal Pay Act 1970. Under this legislation individuals have the right not to be discriminated against because of their sex, or because of pregnancy and maternity, in employment and in access to and

provision of goods, services and education. The Equality Act also covers discrimination on the grounds of transgender status, and discrimination because of association with a person from a protected group.⁽²⁾ Individuals who feel their rights under equality legislation have been denied can take a claim to an employment tribunal or civil court.⁽³⁾

■ The Human Rights Act 1998

This act, which came into force in the UK in 2000, brings most of the protections in the European Convention on Human Rights into UK law. It sets out the fundamental rights and freedoms that individuals in the UK have access to.⁽⁴⁾ All public bodies (such as courts, police, local governments, hospitals, publicly funded schools, and others) and other bodies carrying out public functions have to comply with these rights. Individuals who feel their rights under the act have

-
- 1** This section discusses legislation in Great Britain. The Human Rights Act applies across the UK, but separate equality legislation is in place in Northern Ireland. To find out more go to: www.equalityni.org
 - 2** For more information on the provisions of the Equality Act 2010, see: <http://www.equalityhumanrights.com/legislative-framework/equality-bill/> and for advice on taking a case using domestic equality legislation see: <http://www.equalityhumanrights.com/your-rights/>
 - 3** More information on taking a case to employment tribunal or county court is available at: <http://www.equalityhumanrights.com/your-rights/> or by calling our helpline (see the 'Contact us' section).
 - 4** For a list of these rights and more information about the Human Rights Act, see: <http://www.equalityhumanrights.com/human-rights/what-are-human-rights/the-human-rights-act/>

been denied by public bodies can take cases to domestic courts.⁽⁵⁾

■ The Gender Equality Duty

The Gender Equality Duty (GED) came into force in Great Britain in 2007, and amended the Sex Discrimination Act, so that public bodies must pay ‘due regard’ to the need to eliminate unlawful sex discrimination and harassment (including for transsexual people), and promote equality of opportunity between men and women. Public bodies’ compliance with the duty can be assessed by the Equality and Human Rights Commission, and individuals and groups can challenge a public authority in court, through judicial review.⁽⁶⁾ At the time of writing, it is expected that the GED will be replaced by a new single equality duty, covering race, disability, age, sexual orientation and religion or belief, as well as gender, from April 2011.⁽⁷⁾

There are also other domestic remedies available to use in Great Britain that are not specifically about sex discrimination, gender equality or human rights; for example if you are experiencing domestic violence, your domestic remedy would be to apply for a non-molestation (protection) order in your local Magistrates or county court. Or if you think that a decision of the local authority

in relation to your housing or welfare benefits is unfair, your domestic remedy might be to apply for judicial review; that is to ask a judge to review the lawfulness of the decision. See the ‘How we can help’ section for where to get more advice on this.

If you exhaust the domestic remedies available to you and the issue has still not been resolved, or you find that domestic remedies are not available to tackle a particular problem, or there is undue delay in the process of using domestic remedies, you can consider the CEDAW Convention and how it applies to you.



-
- 5 For more information on using the Human Rights Act, see: <http://www.equalityhumanrights.com/human-rights/using-your-human-rights/>
 - 6 To find out more about enforcement of the duty, including an enforcement toolkit for individuals, see: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/making-the-duties-work/>
 - 7 To find out more about the progress of the expected single equality duty, see: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/the-new-public-sector-equality-duties/>

What is CEDAW?

The **Convention** on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the United Nations General Assembly. It is commonly referred to as the international bill of rights for women. It defines what constitutes discrimination against women and girls⁽⁸⁾ and sets out a comprehensive framework for tackling gender inequality, underlining how inequality in one area of a woman's life can impact upon another.

CEDAW Articles at a glance

Article 1 – Definition of Discrimination

Discrimination against women includes any distinction, exclusion or restriction made on the basis of sex that affects women's enjoyment of human rights, irrespective of their marital status, on an equal basis with men, in political, economic, social, cultural, civil or any other field.

Article 2 – Duty of States

States must take concrete steps to eliminate discriminatory laws, policies and practices in the national legal framework.

Key terms explained

Convention – a convention, also used interchangeably with 'treaty' or 'covenant' is a legally binding agreement between states.

States – those countries that ratify a Convention are formally known as 'State Parties'.

Article 3 – Equality

States are obliged to take all appropriate measures to uphold women's equality in all spheres of life on a basis of equality with men.

⁸ Where we refer to women in this publication this is taken to include girls too, where appropriate.

Article 4 – Temporary special measures

States are allowed to adopt temporary special measures to accelerate equality for women until **de facto equality** has been achieved.

Article 5 – Stereotyping and cultural prejudices

States are obliged to take appropriate measures to eliminate stereotyping, prejudices and discriminatory cultural practices.

Article 6 – Trafficking and prostitution

States must take all measures to stop all forms of trafficking and the exploitation of prostitution of women.

Article 7 – Political and public life

States must promote women's equal rights to vote, hold public office and participate in civil society.

Article 8 – Participation at the international level

Governments need to ensure women are allowed to work and represent their governments at the international level.

Article 9 – Nationality

Women have equal rights with men to acquire, change or retain their nationality and that of their children.

Article 10 – Education

Women have equal rights with men in education, including equal access to schools, vocational training, curricula and educational resources. States must eliminate stereotypes of the roles of women and men through revising school materials and teaching methods.

Key terms explained

De facto equality – equality in reality, meaning equality of rights, opportunities and responsibilities (**de jure equality** means equality before the law or formal equality).

Article 11 – Employment

Women must enjoy the same opportunities as men in employment, promotion, training, social security, safe working conditions, as well as a right to reproductive health and paid maternity leave.

Article 12 – Health

Women have the right to health care, including reproductive health services.

Article 13 – Economic and social benefits

Women have equal rights to family benefits, bank loans and other forms of financial credit. Women must also be allowed to participate equally and freely in sports and recreational activities.

Article 14 – Rural women

States should take measures to eliminate discrimination against women in rural areas so they can participate in and benefit from health care, education, social security, development planning etc equally with men.

Article 15 – Equality before the law

Women and men are to be treated equally before the law. Women have the legal right to enter contracts, own property and choose their place of residence.

Article 16 – Marriage and family life

Women have equal rights with men during marriage, including reproductive rights, as parents and other aspects of family life.

Articles 17-24

These articles describe the composition and procedures of the CEDAW Committee, the relationship between CEDAW and national and international legislation and the obligation of all States to take all steps necessary to implement the Convention in full.

Articles 25-30 – Administration of the Convention

These articles describe the general administrative procedures concerning enforcement of the Convention, ratification and entering reservations.

Countries that have **ratified** or **acceded** to the Convention are known as State Parties. Once they have ratified or acceded to CEDAW, they are legally bound to implement its provisions, although governments are permitted to enter **reservations**, a type of ‘opt-out’ clause, at the time of ratification.⁽⁹⁾ As of March 2010, 186 countries are party to the Convention.

The UK government **signed** the CEDAW Convention on 22nd July 1981 and ratified it on 7th April 1986.

Key terms explained

Ratified – when a government ratifies a Convention or Treaty, it agrees to be legally bound to it.

Acceded – accession is a process by which a country agrees to become bound by a treaty without having to first sign it.

Reservations – when a State Party signs or ratifies a human rights treaty it can decide to enter a reservation, a type of ‘opt-out’ clause or caveat to its acceptance of the treaty. States can enter reservations to certain CEDAW articles provided they are not incompatible with the object and purpose of the treaty. Reservations to the Optional Protocol are not permitted, although article 10 of the OP allows government to ‘opt-out’ of the inquiry procedure if they choose. The UK government has not exercised this right and recognises the competence of the CEDAW Committee to conduct inquiries.

Signing – the first step in agreeing to be bound by a Convention or Treaty is for a State Party to sign a Convention; the next step is ratification.

⁹ Some States enter reservations to specific articles on the grounds that they are not compatible with national law, tradition, religion or culture, but the CEDAW Committee routinely expresses concern at the entry of reservations, in particular to articles that are seen as contrary to the ‘object and purpose’ of the Convention, such as articles 2 and 16.

It entered a number of reservations at the time of ratification and maintains several of these reservations, including in respect of its Overseas Territories.⁽¹⁰⁾ The CEDAW Committee has since called for the removal of these reservations.

Once governments have agreed to be bound by CEDAW, they are required to submit **periodic reports** on progress every 4 years to the **CEDAW Committee**, a body comprised of 23 experts on women's issues from around the world, on steps they have taken to put CEDAW into practice and improve the situation of women in their country.

The Committee members, who are elected by governments, serve four-year terms. They meet three times a year to review the periodic reports and issue recommendations to individual governments, known as **concluding observations**. The Committee also makes **General Recommendations**⁽¹¹⁾ on any issue affecting women that it believes needs to be addressed by governments or State Parties. General recommendations have addressed a range of issues, including violence against women, women's health, equal pay and women in political life.

Key terms explained

Periodic reports – the reports submitted by State Parties to the CEDAW Committee every four years once they have agreed to be bound by its provisions.

CEDAW Committee – an expert body established in 1982 with responsibility for monitoring and assessing progress on implementation of the CEDAW Convention by State Parties. There are 23 Committee members who serve four-year terms and are elected by State Parties.

Concluding observations – the CEDAW Committee issues written observations following the meeting it has with the State Party to consider its periodic report.

General recommendations – from time to time, the CEDAW Committee issues recommendations that provide guidance on the application of a particular article or theme in the CEDAW Convention.

10 For a full list of the UK government's reservations, see:

<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>

11 The CEDAW Committee's general recommendations can be read in full at:

<http://www2.ohchr.org/english/bodies/cedaw/comments.htm>

CEDAW principles

The promotion and protection of women's rights in the CEDAW Convention is based on three main principles:

- Non-discrimination
- Substantive equality
- State obligation

Taken together, they provide a holistic framework for achieving women's rights.

Non-discrimination

CEDAW requires governments to take steps towards ensuring that their policies, legislation, programmes and activities do not discriminate against women. The Convention's definition of what constitutes discrimination is clearly set out in article 1, the wording of which covers anything that has the 'intent/purpose or effect of nullifying, impairing or denying the enjoyment of rights by women'. So, even if a law does not intentionally (directly) discriminate against women, it is still discriminatory if it results in (indirectly) a failure of the woman to enjoy or exercise her rights.

For example, in Australia a seemingly gender-neutral company policy of 'last hired first fired' was found to be discriminatory against women by the courts, because it did not take account of past discriminatory recruitment practices. The company may not have intended to

discriminate, but because it had previously had a policy of not recruiting women, the women constituted the majority of the 'last hired'.⁽¹²⁾

The principle of non-discrimination covers the actions of both private and public actors – from individuals, communities, businesses, institutions – but it is the responsibility of the State to ensure that the actions or policies of non-State actors do not discriminate against women.

Substantive equality

Substantive equality requires States to guarantee equality of opportunity, access and results. In other words, the Convention recognises that women do not enjoy the same opportunities as men and may have to be treated differently from men to benefit equally.

For example, in some countries public transport arrangements may appear to be 'gender-neutral', but in reality they may be designed and organised around the needs of full-time workers. Women, particularly those with young children, often report finding bus design or the frequency and routing of buses inadequate for their needs. Other women report feeling unsafe waiting at bus stops that are poorly lit at night.

The principle of 'substantive equality' requires the State to take action to ensure that women benefit equally from access to

12 Case cited in IWRAP Asia Pacific Knowledge Portal;
<http://www.iwraw-ap.org/convention/doc/cedaw.pdf>

safe, convenient and affordable public transport.⁽¹³⁾ This may require the introduction of **temporary special measures** to ensure that women-only services, such as Women’s Safe Transport schemes, are available, ring-fenced or special funding is made available. The Convention makes it clear that these measures should be discontinued once the goal of substantive equality is achieved.

This concept is similar to the ‘positive’ obligation now enshrined in Great Britain’s Gender Equality Duty,⁽¹⁴⁾ which requires public bodies to take action to promote gender equality, not just to avoid discrimination.

State obligation

The Convention places legal obligations on States to ensure **de jure** (legislative) equality – through laws and policies – and **de facto** (actual) equality – the practical realisation of equality in everyday life. The State cannot withdraw from these obligations once it has agreed to be held accountable at the national and international levels for implementation of CEDAW. Articles 2-4 spell out the broad State obligations, while articles 5-16 provide the detail and context. The CEDAW Committee’s **General Recommendations** provide further clarification on how specific articles ought to be interpreted and implemented.

Key terms explained

Temporary special measures – policies or actions designed to accelerate the improvement of the position of women to achieve their equality with men and to address the social, cultural and structural changes needed to correct past and existing discrimination (sometimes referred to as affirmative action).

De facto equality – equality in reality, meaning equality of rights, opportunities and responsibilities.

De jure equality means equality before the law or formal equality.

13 Article 14 (h) of CEDAW places an obligation on States to eliminate discrimination against women in rural areas by ensuring that women have access to transport. The CEDAW Committee has also highlighted the absence of convenient and affordable transport as a barrier to accessing health services (General Recommendation No. 24).

14 Which will be replaced in April 2011 by a new integrated public sector duty under the Equality Act 2010

The UK and CEDAW

There is a common perception that CEDAW is more relevant for women in developing countries, as women in developed countries like the UK usually have access to a range of ways to enforce their rights at local or national level (see the ‘Equality and human rights legislation in Great Britain’ section).

However, CEDAW’s articles and principles can help people in all countries to:

- Understand and identify gender discrimination, including the long-standing structural barriers and prejudices that underpin this form of inequality.
- Interpret and apply national laws, policies and practices to ensure they are enabling women to fully exercise their rights and freedoms.
- Recognise the interdependence of different women’s rights.

By ratifying the Convention, the government recognises that inequality and discrimination against women exists in the UK, that it is prepared to put certain measures in place to address it and that it agrees to be held accountable at national and international level.

Roles and responsibilities

1. Governments

The implementation of CEDAW is not only the responsibility of the national machinery for women (in the UK, the Government Equalities Office). All government agencies, local government and parliamentarians have a role to play in ensuring that CEDAW and the Optional Protocol are widely publicised and that sufficient financial and human resources are available for its full and effective implementation. In the UK, this responsibility applies equally to the devolved governments in Wales, Scotland and Northern Ireland.

2. National human rights institutions

The role of the Equality and Human Rights Commission, as an accredited independent National Human Rights Institution, is to persuade the UK government to meet its international, European and domestic equality and human rights obligations⁽¹⁵⁾ and to close the gap between the legal provisions set out in CEDAW and their concrete implementation at local and national level in the UK.⁽¹⁶⁾ The Human Rights Commissions in Scotland and Northern Ireland also have a commitment to act as a bridge between national and international human rights.⁽¹⁷⁾

¹⁵ See sections 8 and 9 of the Equality Act 2006.

¹⁶ For details about the role the EHRC can play in supporting complaints brought under the Optional Protocol procedure, see the ‘Who we are and how we can help’ section.

¹⁷ More details about the role and function of the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission can be found at: <http://www.nihrc.org> and <http://www.scottishhumanrights.com> respectively.

3. Civil society organisations

The voluntary sector and civil society organisations have played and continue to play a vital role in bringing the commitments set out in the Convention to life.

The requirement on States to submit periodic reports to the CEDAW Committee acts as an enforceability mechanism for CEDAW. States will need to show the action they have taken to address the Committee's concluding observations and general recommendations, and public scrutiny can be used to put pressure on governments to fulfil their obligations. Women's organisations can produce **shadow reports** to alert the CEDAW Committee to any gaps or inaccuracies in the official government reports.

Civil society can use the Committee's **concluding observations** at country level to hold their governments to account and force the pace of change.⁽¹⁸⁾ The concluding observations may also be useful when identifying potential cases for consideration using the Optional Protocol procedures.

Key terms explained

Shadow reports – reports produced by women's organisations and statutory bodies such as the Equality and Human Rights Commission to emphasise the main gaps and challenges in their government's implementation of CEDAW. Shadow reports help the CEDAW Committee evaluate the government's performance.

18 To find out more about how women's organisations in other countries have used shadow reports, concluding observations and other CEDAW mechanisms to promote women's rights, visit: <http://www.womankind.org.uk/cedaw30.html>; to find out more about the work of the UK Women's Resource Centre and its members to promote implementation of CEDAW in the UK, see the 'Find out more' section.

What is the Optional Protocol?

The Optional Protocol (OP) is a separate **treaty** that was adopted by the UN General Assembly in 1999 and entered into force on 22nd December 2000. It was introduced after many years of pressure by the international women's movement to address the lack of a complaints mechanism for rights enshrined in the CEDAW Convention.

The entry into force of the Optional Protocol puts CEDAW on an equal footing with other international human rights instruments, including the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of Persons with Disabilities⁽¹⁹⁾ and, most recently, the International Convention on Economic, Social and Cultural Rights, which all have complaints procedures.

The OP does not create new rights, but it seeks to strengthen implementation of the CEDAW Convention by establishing

Key terms explained

Treaty – treaty is used interchangeably with 'convention' or 'covenant' and is a legally binding agreement between States.

two additional measures – the communications procedure and the inquiry procedure – to address violations of women's and girls' rights:

- The communications procedure gives individual women or groups of women the right to complain to the CEDAW Committee about violations of rights contained in the Convention.

¹⁹ Our guide on the UN Convention on the Rights of People with Disabilities is available at: <http://www.equalityhumanrights.com/human-rights/a-guide-to-the-un-disability-convention/>

- The inquiry procedure allows the Committee to investigate serious or systematic violations of women's rights in a particular country.

Only governments that have already ratified CEDAW can agree to be bound by the OP. They may choose to 'opt-out' of the inquiry procedure, but they may not enter **reservations** to the OP. Rights that a government has reserved under the CEDAW Convention cannot however be challenged under the OP.

Ninety-nine States have ratified the OP to date, but it continues to be very under-used. As of March 2010, the Committee had ruled on 13 individual communications and completed one inquiry into the abduction and killing of women in Ciudad Juarez, Mexico. The CEDAW Committee is keen to encourage individuals and groups to bring new cases.

The UK and the Optional Protocol

The UK government **acceded** to the OP on 17th December 2004 and it entered into force on 17th March 2005. Only two international human rights treaty Optional Protocol procedures have been signed or ratified by the UK government to date: those of CEDAW and the Convention on the Rights of Persons with Disabilities.⁽²⁰⁾

In addition, the European Court of Human Rights examines complaints alleging violations of the civil and political rights set out in the European Convention on Human Rights.

On the whole, the UK has robust human rights and equalities machinery (see the 'Equality and human rights in Great Britain' section). This means that in a lot of cases, it should be possible to resolve any claims at the domestic level. But as the CEDAW Committee pointed out in its 2008 **concluding observations** to the UK government's 4th and 5th **periodic reports**, there are still many gaps in the UK's implementation of CEDAW that need to be addressed.⁽²¹⁾

It is also worth remembering that CEDAW focuses solely on women's rights. It builds on some of the human rights principles enshrined in the Human Rights Act and European Convention on Human Rights, developing a comprehensive and nuanced picture of gender equality.

20 The UK government ratified the Convention on the Rights of Persons with Disabilities on 8th June 2009 and ratified its Optional Protocol on 7th August 2009.

21 In 2008 the CEDAW Committee expressed its concerns around a number of gender equality issues in the UK, including stereotypes and negative cultural practices, violence against women and forced marriage, trafficking, women in political and public life, occupational segregation and the gender pay gap, and the situations of vulnerable groups of women such as Gypsy and Traveller and immigrant women.



Communications or inquiry procedure: which one should I use?

Both the communications and inquiry procedures enable the CEDAW Committee to consider and issue recommendations to the national government for addressing violations of women's rights and to strengthen implementation of CEDAW at country level.

The communications procedure has been used most frequently to date, because it allows for individual complaints to be considered by the Committee. The inquiry procedure, on the other hand, offers a means to address more widespread systematic violations of women's rights or may be used where individuals or groups are unable to submit claims for fear of reprisals.

It is important to consider the potential remedies available under each mechanism before deciding which is most appropriate to use.⁽²²⁾ Possible remedies under the communications procedure include:

- Interim steps to end continuing violations.
- Compensation for the complainant.
- Enforcement of domestic court judgments.



22 A model form for submission of communications to the CEDAW Committee can be found at: <http://www.un.org/womenwatch/daw/cedaw/opmodelform.html>

But individual cases can also have implications of wider public interest and the Committee may, in such cases also recommend:

- Review of laws and policies that are disputed in the case and/or enactment of new legislation.
- Adoption of **temporary special measures**.
- Creation of relevant support services for victims of violations.
- Development of guidelines or policies to prevent further violations occurring in the future.

Under the inquiry procedure, the Committee may make more wide-reaching recommendations, such as:

- The creation of a plan of action to implement the Committee's recommendations, including budgetary allocations.
- A general review or amendment of laws inconsistent with the provisions of the Convention.
- Developing programmes to assist women and prevent the repetition of similar violations.
- Capacity-building of government ministries.
- Condemning and sanctioning the actions and policies of private or non-State actors.

Key terms explained

Non-governmental organisations (NGOs) – organisations that operate independently from government.

It is possible for the Committee to consider a communication from an individual and conduct an inquiry based on the same evidence. For example, an individual who has experienced domestic violence could submit a claim seeking compensation from the State for its failure to protect her from the violence; at the same time **non-governmental organisations (NGOs)** in her country could send the Committee evidence of the systematic failure of the State to protect women more generally from domestic violence that could trigger an inquiry procedure.⁽²³⁾

You should take all of these issues into account when deciding which procedure to use. Bear in mind that due to the existence of other remedies in the UK, and the nature of the violations that might occur here, in the majority of cases it is far more likely that the communications procedure would be the most relevant option.

23 The IRAW publication, 'Our Rights Are Not Optional', provides a more detailed analysis of the pros and cons of each procedure – see the 'Find out more' section for details.

What admissibility criteria do I need to meet?

Before proceeding further, it is important to ensure that the case you wish to bring fulfils the strict admissibility criteria set out in the OP.

Communications procedure

The OP's communications procedure allows individuals or groups to petition the UN when:

- All available domestic remedies have been exhausted (unless the remedies available are ineffective or unreasonably delayed).
- The complaint is compatible with the provisions of the Convention.
- The **complainant's** allegations can be substantiated.
- The complaint relates to an event arising after the State Party ratified the OP (17th December 2004 in the case of the UK).
- The complainant(s) was under the **jurisdiction** of the State Party at the time the violation occurred.⁽²⁴⁾
- The same matter is not being or has not already been examined by the UN CEDAW Committee (the case may be about the same or similar issues as

Key terms explained

Complainant – a person who files a complaint in a legal action or proceeding

Jurisdiction – the practical authority granted to a formally constituted legal body to make pronouncements on legal matters and to administer justice within a defined area of responsibility

those previously considered by the Committee, but the same case cannot be presented more than once).

The exhaustion of domestic remedies in a Great Britain context will depend on the nature of the breach/violation that is alleged, and may vary according to whether it happened in England, Scotland or Wales. Complainants should have pursued the domestic remedies that are available and effective to deal with their complaint (see the 'Equality and human

24 Note that if an individual or group is being represented by an organisation or another individual, this person or organisation is not required to be under the jurisdiction of the State Party.

rights legislation in Great Britain' section). This could mean that an appeal to the **Supreme Court** has been either refused or rejected, or is bound to fail because of **legal precedent**. It could mean that a complaint has been exhausted at **employment tribunal** or **county court** level, or that no domestic remedy was available to resolve the complaint. There may be 'special circumstances' where the requirement can be waived (for example, undue delay in legal process; lack of access to legal aid) but it is rare. A complainant does not need to have taken the case to the European level before taking action under the Optional Protocol.

Inquiry procedure

When deciding to bring an inquiry, the Committee needs to receive reliable information that a 'grave' or 'systematic' violation has taken place. Grave can be interpreted to mean violations of the right to life and integrity of person⁽²⁵⁾ and systematic means any violations that are widespread or are committed as part of a policy or scheme.

The Committee does not have to wait to receive a request for an inquiry, but can decide to initiate one whenever reliable information indicating the existence of grave or systematic violations comes to its attention. 'Reliable' means reliable or

Key terms explained

Supreme Court – the final court of appeal for civil cases in the UK.

Legal precedent – precedent or authority is a legal case establishing a principle or rule that a court or other judicial body adopts when deciding subsequent cases with similar issues or facts.

Employment tribunals – are independent judicial bodies that determine disputes between employers and employees over employment rights.

County courts – (or small claims courts) deal with civil matters such as debt, personal injury, divorce or adoption issues and housing disputes.

credible information – this may be evident from NGO reports, media reports or information provided by UN agencies.

The Committee will aim to secure the cooperation of the State Party, but it can conduct an inquiry without its consent. In order for the Committee to carry out a country visit to investigate violations however, the State must consent.

25 In human rights law integrity of person refers to respect for the physical and emotional wellbeing of an individual. In the context of CEDAW, an example of a violation of the integrity of person would be rape or other forms of sexual violence perpetrated against the woman.

Other key considerations before using the Optional Protocol?

The Optional Protocol has the potential to be a very useful tool for human rights advocates, but it's important to be aware of both its strengths and its weaknesses.

On the one hand, the OP can offer:

- Another avenue, alongside national and regional human rights instruments for women to claim and redress their rights.
- A mechanism that requires governments to identify and repeal existing discriminatory laws and policies and to fully implement the provisions of CEDAW.
- A mechanism that can have an impact both in terms of the remedies offered to the individual subject of a violation, as well as implications for other women by influencing changes in government policy and practice.
- An opportunity to clarify the scope and interpretation of rights within CEDAW and develop standards in relation to women's human rights that will benefit women in the long-term.
- Scrutiny at the international level which can be very helpful for raising awareness and mobilising civil society to hold the government accountable

at the national and local level. The inevitable publicity around an adverse finding by the Committee would have a powerful effect on the government, acting as a spur to action.

- A means of promoting greater coherence of policies to address discrimination against women across government.

But it is also worth remembering that:

- Recommendations made by the Committee are not legally binding, although legal experts agree that recommendations of this nature are authoritative and do impose some obligation on governments to implement them. The recommendations depend both on the willingness of governments to implement them and the efforts of human rights advocates to use the decisions in their ongoing work.
- The process can be lengthy – the government initially has six months

to respond to a communication with its arguments about whether the admissibility criteria have been satisfied and the merits of the claim. If the CEDAW Committee invites the State and/or the claimant to provide further evidence or information the process can take much longer. Cases brought to date have taken, on average, between 1-2 years from the initial claim to the date when the Committee's findings were published.

- The Committee is not a Court of Appeal, so it cannot force government parties to overturn decisions made in domestic or regional courts. However, the government can legislate to overturn any such decisions later found to be incompatible with CEDAW.

Other points to consider before proceeding with a complaint include:

- **Ethical considerations** – The best interests of the individual should take precedence over all other factors affecting your decision to bring a case before the CEDAW Committee. Consider the domestic, regional and international remedies available and choose the option that is in your best interests or, if you are a group acting on behalf of an individual/s, in the best interests of the woman or women concerned. If you are an organisation offering to represent a woman or group of women, you must provide the Committee with proof of their informed consent.
- **Legal considerations** – In order to make sure your case is appropriate, contact local and national NGOs,

lawyers and the Equality and Human Rights Commission to discuss the potential risks and gains of bringing a case to the CEDAW Committee. Consider all of your options, for example the European Convention on Human Rights or even other international human rights instruments (note that you can only file one complaint on the same matter with one treaty body at a time), as well as other domestic cases that might be more appropriate for this mechanism. While there is no obligation on you/your organisation to seek legal advice before bringing a case, it is strongly advised that you put forward cases that are properly substantiated and backed up by well-developed legal arguments to ensure the Committee will consider your case (see the 'Who we are and how we can help' section).

- **Funding** – There is no charge for bringing a case before the CEDAW Committee, but it is likely that there will be some financial implications in terms of any awareness-raising activities you may wish to carry out to publicise the case, or in organising and holding meetings with other advocates.
- **Time** – Make sure you have the time available that bringing a case to the Committee will need. Set time aside for obtaining support and advocacy and making preparations to ensure you have a robust legal case.
- **Allies** – Work out who your allies are and consult them to get their views on how to use the OP effectively. This might include human rights lawyers and institutions such as the Equality and Human Rights Commission, the Scottish Human Rights Commission or

the Equality Commission for Northern Ireland, local and national NGOs and supportive parliamentarians. It is also worth linking with women/organisations in other countries as there may be opportunities to draw on their skills, experience and knowledge of the OP.⁽²⁶⁾

- **Publicity** – Promoting awareness of the case and any possible wider implications for domestic procedures and legislation is a good opportunity to improve public understanding of international instruments such as

CEDAW and its OP. Whilst making preparations for your case, you might wish to develop a media and public education strategy. If you are an individual bringing a case, you may wish to seek support from the Equality and Human Rights Commission or an NGO to help publicise your case. If you are an organisation representing an individual or group of women, remember to first discuss with the woman or women concerned whether there is information that should not be disclosed in your publicity of the case.



26 The International Women’s Rights Action Watch Asia-Pacific (see the ‘Find out more’ section), for example, has strong links with women’s organisations around the world and has developed a number of resource materials and tools to help them claim their rights under CEDAW.

How do I make a complaint using the Optional Protocol?

Communications procedure

All complaints under the communications procedure have to be submitted in writing to the CEDAW Committee. They can be submitted in any of the six official UN languages (English, French, Spanish, Chinese, Arabic and Russian).

A communication can be submitted directly by the woman whose rights under CEDAW have been violated, or by other individuals or groups filing 'on behalf of' the complainants. We strongly advise that before submitting, you seek the advice of an expert in international human rights law. This will help you put forward a case that is properly substantiated and backed up by well developed legal arguments, and help to ensure that the Committee will consider your case (see the 'Who we are and how can we help' section).

The complaint must address all of the admissibility criteria and should provide the Committee with the relevant facts, including any supporting documentation, indicating what provisions of the Convention you claim have been violated.

The CEDAW Committee provides a model communication form to be completed when submitting a complaint for

consideration, which can be found at: <http://www2.ohchr.org/english/law/cedaw-one.htm>

Completed forms must be sent to the following address:

The CEDAW Committee
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10, Switzerland

E-Mail: tb-petitions@ohchr.org
Fax: (particularly for urgent matters)
+41 22 917 9022
Tel: +41 22 917 1234

Inquiry procedure

Individuals and/or NGOs are permitted to submit evidence in order to 'trigger' an inquiry procedure. This evidence must be

deemed to be ‘reliable’ or credible, with evidence to back it up, ideally corroborated by other sources.

There are no restrictions on the format in which the information can be received, that is, it can be written or oral and submitted by an individual or group, regardless of the relationship to the violation or the government concerned; neither are there restrictions on the sources of information that can be submitted – this might include anything from personal testimony to media articles, video recordings and NGO reports.⁽²⁷⁾

Evidence for inquiry procedures should be sent to the same address used for the communications procedure (see above), including information about the author/s of the submission (you may remain anonymous, but providing the name and contact details of the author helps to speed up the process and enables the Committee to verify the reliability of the claim). Note that the Committee can continue to receive information, as long as it is accurate and reliable, after an NGO or individual has initially submitted information.

Finally, be sure to specify whether you are submitting information for a communication or an inquiry!



27 The IWRAP Asia-Pacific Publication, ‘Our Rights are not Optional’ (see the ‘Find out more’ section for details) contains some useful guidelines for submission of information under both the inquiry and communications procedures. It is worth reviewing these before submitting your information.

What happens next?

Communications procedure

The CEDAW Committee sends details of the claim to the UK government and it then has six months to respond with its arguments about whether the admissibility criteria have been satisfied and the merits of the claim. At this stage, the Committee may also, if it deems it necessary, request the government to introduce interim measures to protect the individual or group of individuals while it is reviewing the communication.

A working group of the CEDAW Committee then reviews all the information provided by the author of the communication and the government in closed meetings. The Committee's rules of procedure indicate that it may request additional information from the author of the communication and/or the government and seek information from UN sources or 'other bodies', such as regional and national human rights bodies and other non-governmental sources.

Based on their review of all the information provided by both sides, the Committee will adopt 'views and recommendations' deciding whether a violation has occurred and if so, identifying the steps that must be taken to provide a remedy. These 'views and recommendations' will be sent to the author of the communication and the government, published in the Committee's annual report and posted on the website.

The government must give a written response to the Committee's views within six months, describing any remedial steps it has taken. The Committee can request further information from the government in subsequent periodic reports.

Inquiry procedure

Once the Committee has received information alleging grave or systematic violations, it will invite the State Party to examine the evidence and respond. The Committee will then assess the reliability of the information in light of the government's response and all other information available to it.

If the Committee finds that the information is reliable, it can designate one or more of its members to conduct an inquiry into the alleged violation and to report back to the Committee on its

findings. The inquiry may include a visit to the State Party if required and if the State Party agrees to cooperate.

Once its inquiry is complete, the Committee will submit its observations to the State Party and the State Party is then invited to report on measures it will take in response to the findings within six months.

Further details on the administration of both communications and inquiry procedures are set out in the Committee's guidelines known as the **Rules of Procedure**.⁽²⁸⁾ See diagrams one and two for a summary of the different stages of the communications and inquiry procedures.

Key terms explained

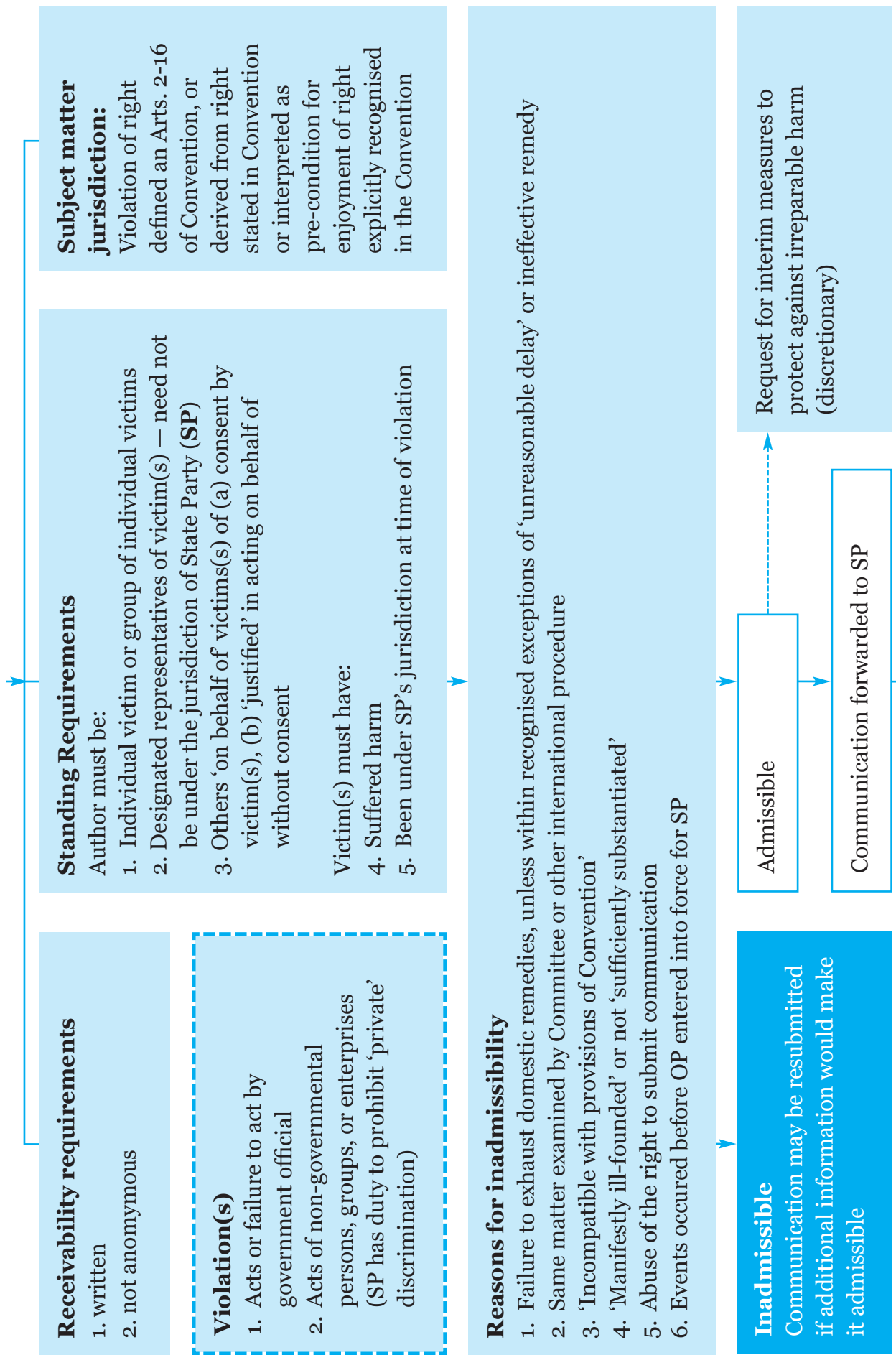
Rules of Procedure – a body of rules and ethics governing the composition, meetings and procedures of the CEDAW Committee.



28 The Rules of Procedure can be found at:
<http://www.un.org/womenwatch/daw/cedaw/cedawreport-a5638-RulesOfProcedure.htm#part3>

Communications procedure – Chart 1

Submitted by “author” (victim, representative or others “on behalf”)



SP responds within 6 months, with: 1. Info about remedy already provided (if any)
2. Legal and factual arguments against author's claim, including info challenging admissibility

- Other sources of info:
1. NGO and NHRI reports
 2. UN reports including reports of Special Rapporteurs
 3. Analysis of national or international law
 4. Documentary evidence including testimonies, videos, photography, etc.

Committee considers communication

Re-examine admissibility in light of SP's and other information

If admissible, Committee considers substance of claims in light of "all available information"

Committee issues views and recommendations

Views determine whether there has been a violation

If found inadmissible, communication is dismissed

Recommendations

If violation is found, Committee may direct SP to provide general and/or specific remedies including:

1. Restitution, compensation, rehabilitation, or other remedy for victim(s)
2. Steps to end ongoing violation against victim(s) and prevent repetition of violation
3. Review or change laws and practices in violation of Convention

SP duties

1. Give 'due consideration' to view and recommendations
2. Written response within 6 months about action taken
3. Good faith obligation to comply, even though not legally bound

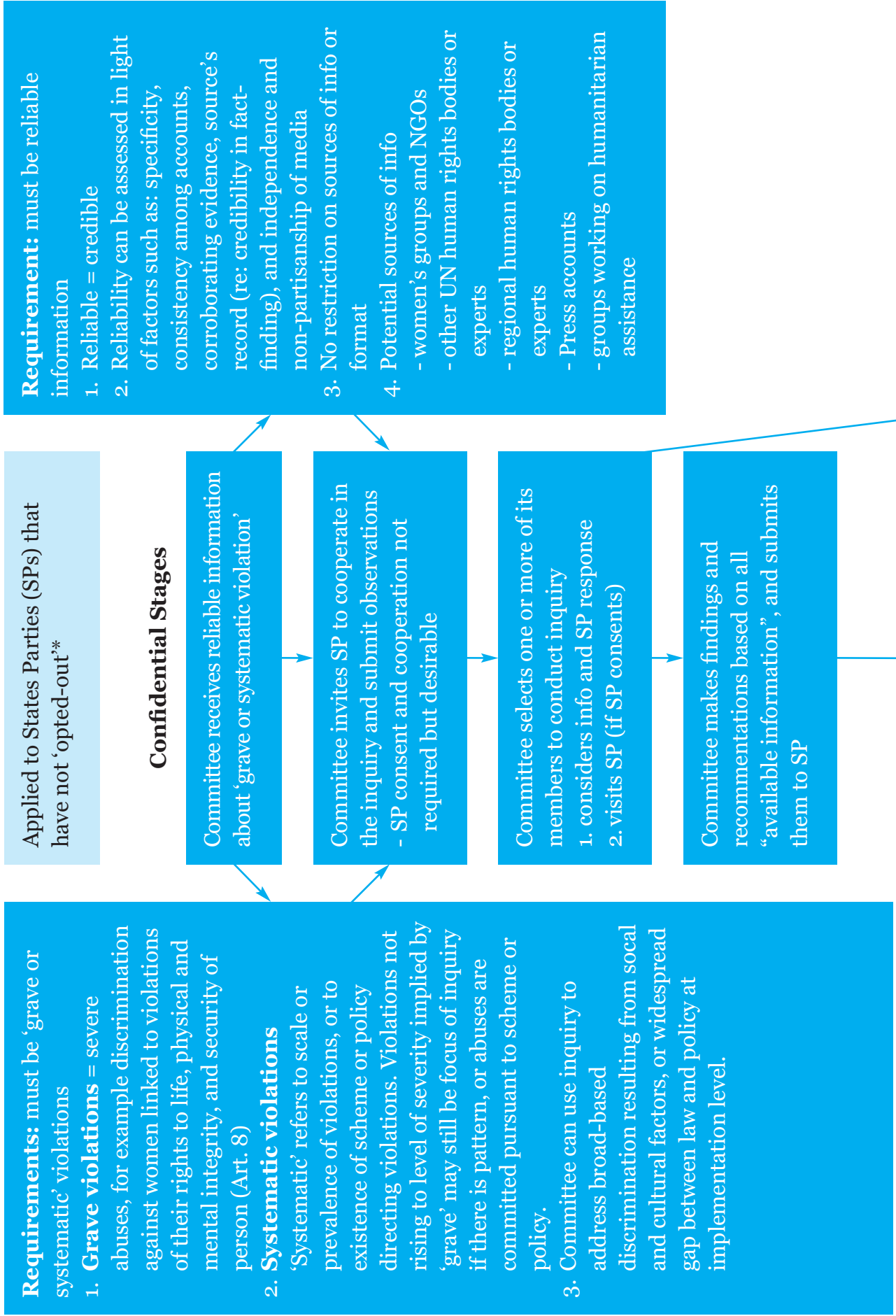
Committee may request follow-up information

Victim, author, or NGOs may submit information on action taken by SP

Key

- Admissible
- Inadmissible
- Procedure

Inquiry procedure – Chart 2



4. Widescale violations, such as trafficking in women for economic or sexual exploitation, may be more effectively addressed through inquiry than through a series of communications from individuals or groups of individuals.

SP must respond to Committee's findings and recommendations within 6 months

On-site visit with consent of SP may include interviews with:

- government officials
- judges
- NGOs
- alleged victims
- witnesses
- other individuals or groups with relevant info

Information Made Public

Follow-Up

1. Committee may invite SP to include info on its responses to inquiry findings (discretionary) in periodic report under Convention
2. After 6 months, Committee may invite SP to inform it of measures taken

NGOs may submit info regarding SP's compliance with recommendations

* Art. 10 allows the SP to exempt itself ('opt-out') from the inquiry procedure at the time of ratification by declaring that it does not recognise the competence of Committee under Art. 8. This declaration may be withdrawn at any time.

Both diagrams – Communications procedure and Inquiry procedure: Produced for IWRAW Asia Pacific by students at the International Human Rights Law Clinic, New York University School of Law (2000/2001)

Our rights are not optional! Advocating for the implementation of CEDAW through its Optional Protocol. A resource guide

Tried and tested: how others have used the Optional Protocol

Before filing a complaint, much can be learned from the decisions of previous cases brought under the Optional Protocol.

Two points in particular emerge from looking at cases using the communications procedure:

- **Admissibility** – Of the 13 cases that have been brought, 8 have been deemed inadmissible by the Committee. While some Committee members have suggested that a more liberal interpretation of the admissibility criteria is required, it is still important to pay attention to all issues related to admissibility before filing a complaint.
- **Evidence** – in some cases, complainants have failed to provide the Committee with enough evidence to substantiate their claims. Past cases show it's really important to state clearly which articles in CEDAW have been violated, to submit case law about previous decisions on the issues in question and to highlight relevant jurisprudence of other international human rights committees.

UK cases

The communications procedure has been used twice by complainants citing violations by the UK government – and both were deemed inadmissible.

- In the first case, the Committee ruled that the complainant, an asylum-seeker who feared her husband would kill her if she was deported to Pakistan, had failed to use specific provisions of the Convention, which would have helped her case.
- In the second case, the Committee did not accept the argument of the claimant, a British citizen and resident of Colombia who wished to transmit her British nationality to her son, that the case was a continuing violation and judged that the violation had taken place before the entry into force of the Optional Protocol.⁽²⁹⁾

29 Full details of the two UK cases and the CEDAW Committee's decisions can be found at: <http://www2.ohchr.org/english/law/jurisprudence.htm> – follow links to CEDAW/C/38/D/10/2005 (Ms NSF vs the United Kingdom of Great Britain and Northern Ireland) and CEDAW/C/37/D/11/2006 (Ms Constance Ragan Salgado vs the United Kingdom of Great Britain and Northern Ireland).

In both cases, the claims would have had a better chance of being found admissible had the women received sound legal advice and developed stronger arguments to substantiate their claims.

However, there have been some important successes using the OP in other countries, from which we can learn useful lessons.

Using the Optional Protocol to address domestic violence: the Austrian experience

In 2004, two Austrian NGOs – the Austrian Domestic Abuse Intervention Centre and the Association for Women’s Access to Justice – filed two CEDAW Optional Protocol cases on behalf of Şahide Goekce and Fatma Yildirim, two Austrian nationals of Turkish descent, who had both suffered years of repeated domestic violence and been killed by their husbands.

Austria has some of the most comprehensive legislation against domestic violence, but the NGOs argued that this law did not provide adequate protection for women from violent men. The women had both brought their husbands’ violence to the attention of the relevant authorities, who had failed to respond appropriately – in both cases the courts had refused to imprison or detain the violent husband, because it would have infringed his right to freedom.

The Committee held that the complaints were admissible and found that the State had violated the women’s rights under

Key terms explained

Article 2a – concerns the duty of States to take concrete steps to eliminate discriminatory laws, policies and practices in the national legal framework.

Article 3 – covers women’s equality in all spheres of life on a basis of equality with men.

General recommendation 19 – covers violence against women.

Article 1 – contains the definition of discrimination against women.

CEDAW articles 2a and c to f and **article 3** read in conjunction with **General Recommendation 19** and **article 1**. It made a number of practical recommendations to the State and asked the Austrian government to respond within 6 months and to translate the Committee’s views into German and publish and distribute them widely.

As a result, a new series of policy measures has since been introduced to improve the responses of the authorities to incidents of domestic violence. The NGOs were able to use the OP to redress the gap between the Austrian government’s **de jure** and **de facto** responses to the issue of domestic violence. The case also established a clear ruling on the hierarchy of rights – the woman’s right to life should have priority over the man’s right to freedom.⁽³⁰⁾

30 Details of the cases of Şahide Goekce Vs Austria (CEDAW/C/39/D/5/2005) and Fatma Yildirim Vs Austria (CEDAW/C/39/D/6/2005) and all other decisions/views of the Committee to date under both the communication and inquiry procedure can be found at: <http://www2.ohchr.org/english/law/jurisprudence.htm>

In another case regarding domestic violence in 2003, a Hungarian woman brought a complaint before the CEDAW Committee, that she and her children had been subjected to severe domestic violence and serious threats by her common-law husband over a number of years. The Committee used its interim powers to call on the state to provide temporary shelter for the woman concerned as domestic legal proceedings had taken over three years during which she continued to experience threats to her life. The Committee's recommendations were implemented by the time of Hungary's next periodic report.⁽³¹⁾

Challenging the practice of coerced sterilisation in Hungary

Also in 2004, the Committee received a communication from an anonymous Hungarian Roma woman, Ms A.S, who was represented by the European Roma Rights Centre and the Legal Defence Bureau for National and Ethnic Minorities.

The complainant claimed that she had been subjected to coerced sterilisation by medical staff at a Hungarian hospital. When she was pregnant with her fourth child, she was taken to hospital with complications where the doctor found that the foetus has died in her womb and she was told it would need to be removed by caesarean section. She was asked to sign a form consenting to a c-section, but was also asked to sign a barely legible form at

Key terms explained

Article 10h – concerns access to educational information on family health and well-being and family planning.

Article 12 – covers the right to healthcare, including reproductive health services.

Article 16e – concerns women's rights to decide freely and responsibly on the number and spacing of their children.

the same time which she later found out, after leaving the hospital, was a request for sterilisation. She contended that the sterilisation had left her severely depressed and asked for compensation.

The Committee found the claim admissible and the State Party in contravention of **CEDAW articles 10h, 12 and 16e**. The Hungarian government was told to introduce several measures to ensure this could not happen again, including a review of domestic legislation on sterilisation and monitoring public bodies and health centres to ensure they do not breach the rules of informed consent on sterilisation set out in the Convention of the Council of Europe on Human Rights and the World Health Organisation guidelines.⁽³²⁾

³¹ See http://www2ohchr.org/english/bodies/inquiry_procedure.htm

³² Details of Ms A.S vs. Hungary (CEDAW/C/36/D/2/2003) can also be accessed at <http://www2.ohchr.org/english/law/jurisprudence.htm>

As a result, in 2008 the government amended the Public Health Act to improve the provision of information and procedures to obtain consent in cases of sterilisation. And in 2009, the government announced that it would be providing financial compensation directly to the complainant.

As we can see from these case studies, the CEDAW Optional Protocol, when used correctly, can be a powerful lever for achieving meaningful change. While the majority of other cases brought under the OP have failed the admissibility test, it is a good idea to review the arguments put forward by State parties, claimants and the Committee in these other cases because they also contain useful lessons for advocates.⁽³³⁾



33 International Women’s Rights Action Watch Asia-Pacific has produced detailed analyses of the cases decided by the CEDAW Committee to date that can help NGOs and lawyers wishing to use the OP: <http://www.iwraw-ap.org/publications/ops.htm>

How might the OP be used in Great Britain?

To date the OP remains little used in Great Britain, and its potential to create change has not yet been realised. Each complaint needs to be reviewed on its individual merits to assess whether it is admissible and which mechanism might be most appropriate, but the following example outlines one issue that could be suitable for examination by the Committee:

Using the communications procedure to challenge inadequate maternal healthcare for Gypsy and Traveller women

Woman X is of Irish Traveller origin. Her baby was stillborn after a complicated pregnancy that left her very unwell. During the pregnancy she found it difficult to access information about ante-natal services and to register with a GP as she did not have a permanent address. She attended an accident and emergency department twice during her pregnancy but follow-up care and monitoring was not available via this route. Her experience is

borne out by research conducted for the Equality and Human Rights Commission, which found that Gypsy and Traveller mothers are 20 times more likely than the rest of the UK population to have experienced the death of a child.⁽³⁴⁾ There is also evidence to suggest that being forced to move on results in a lack of continuity of care, the late detection of abnormalities and, on occasion, the misdiagnosis of maternal and child health complications.⁽³⁵⁾

It is possible that a case could be brought by this woman, or those acting on her behalf, or by a group of women who find

34 Gypsies and Travellers: Simple solutions for living together:
<http://www.equalityhumanrights.com/fairer-britain/good-relations/gypsies-and-travellers-simple-solutions-for-living-together/>

35 Equality and Human Rights Commission research report 12:
http://www.equalityhumanrights.com/uploaded_files/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf

themselves in similar circumstances. There could be a violation of CEDAW article 12, the right to health. In addition, the CEDAW Committee has already called on the UK government, in its concluding observations to the UK's 5th and 6th periodic reports, to address the multiple discrimination faced by Traveller communities. They specifically called for

the allocation of adequate resources to increase access to affordable health services, in particular prenatal, post-natal and obstetric services, as well as other medical and emergency assistance. The communications procedure offers another means of testing the government's commitment to implement these provisions.



What other international remedies are available?

CEDAW and its Optional Protocol are, like other international human rights instruments, most effective when used as part of a broader strategy to protect and promote women's rights at local and/or national level.

The OP is not the only international remedy available to women in the UK and it is worth considering which mechanism is most appropriate and likely to have the greatest impact as part of this strategy.

Other international mechanisms available include:

i. The Commission on the Status of Women Communications Procedure

The United Nations Commission on the Status of Women (CSW) is the principal global policy making body on gender equality and women's rights. It meets annually to evaluate progress on gender equality and formulate concrete policy recommendations to governments.

Any individual, non-governmental organisation, group or network can submit communications or complaints to the CSW containing information relating to alleged violations of human rights that affect the status of women in any country in the world.

The CSW considers such communications as part of its annual programme of work in order to identify emerging trends and patterns of injustice and discriminatory practices against women. Unlike the OP, this communications procedure does not provide an avenue for the redress of individual grievances and cannot respond to urgent situations where individuals are at immediate risk. For further details about how to submit a communication visit:

http://www.un.org/womenwatch/daw/csw/communications_procedure.html

ii. The UN Special Rapporteur on Violence against Women Individual Complaints

The Special Rapporteur (SR) is mandated to seek and receive information on violence against women, its causes and consequences from governments, treaty bodies, UN agencies, other special rapporteurs responsible for various human rights questions and intergovernmental and non-governmental organisations, including women's organisations.

The SR may transmit urgent appeals or allegation letters (communications) to States regarding alleged cases of violence against women that she receives.

Allegations may concern one or more individuals or may convey information relating to a general prevailing situation condoning and/or perpetrating violence against women.

Urgent appeals are very useful in cases which involve an imminent threat to a woman's life, although the CEDAW Committee also has the authority to request governments to put in place 'interim measures' while a case under the OP is pending.

Allegation letters or communications may be used for less urgent action and relate to violations that have already occurred or a pattern of violations.

For details of how to submit cases to the Special Rapporteur, go to:
<http://www2.ohchr.org/english/issues/women/rapporteur/complaints.htm>

It may also be useful to consider making use of the complaints procedures of other Special Rapporteurs, such as the Special Rapporteur on the Right to Health or the Special Rapporteur on Trafficking.⁽³⁶⁾

iii. Optional Protocol procedures of other international human rights treaties

Unlike the CEDAW Committee, the committees of other international human rights treaties are not specifically

mandated to address gender equality concerns, but women can use the procedures set out in other instruments to complain about some violations of their rights. Women's rights advocates have made particular use of the Optional Protocol to the International Covenant on Civil and Political Rights to challenge, for example, laws that discriminate on the basis of sex. However, since the UK government has not ratified the OPs of any other international human rights instrument other than the Convention on the Rights of Persons with Disabilities, individuals from the UK are not currently permitted to submit written communications to any committee other than the CEDAW Committee and the Committee on the Rights of Persons with Disabilities.

iv. The Human Rights Council Complaint Procedure

The Human Rights Council Complaint Procedure, otherwise known as the 1503 procedure, can be used in cases where there are consistent patterns of gross human rights violations or situations that affect large numbers of people over a protracted period of time. Complaints can be submitted by individuals or NGOs and do not necessarily have to be submitted by the victim(s) of the violations. Again, this procedure does not provide for individual remedies, but it can lead to a decision that gross human rights violations have occurred and need to be remedied. The strict confidentiality of the procedure protects victims, but does not allow the

36 For details of the individual complaints procedures of other Special Rapporteurs, see:
<http://www.ohchr.org/EN/Issues/Pages/ListOfIssues.aspx>

procedure to be used for publicity or for advocacy purposes.⁽³⁷⁾

vi. The European Court of Human Rights (ECtHR)

In many regions and particularly Europe, there are regional mechanisms available to protect and promote human rights. The European Court of Human Rights addresses many thousands of individual

complaints each year concerning alleged violations of the civil and political rights set out in the European Convention on Human Rights.⁽³⁸⁾ In the UK, you should first take a complaint under the Human Rights Act to a domestic court. If this case is unsuccessful, then you can lodge your complaint at the ECtHR within six months of the final domestic decision.⁽³⁹⁾



37 To find out more, visit: <http://www2.ohchr.org/english/bodies/chr/complaints.htm>

38 To find out more, visit: http://www.echr.coe.int/ECHR/homepage_en

39 For more information on the ECtHR, see <http://www.equalityhumanrights.com/human-rights/international-framework/council-of-europe/>

Who we are and how we can help

The Equality and Human Rights Commission is a statutory body set up under the Equality Act 2006.

We are a National Human Rights Institution with an ‘A status’ accreditation from the United Nations (UN).⁽⁴⁰⁾

As part of our duties set out on human rights, our job is to:

- Encourage good practice in relation to human rights.
- Promote awareness, understanding and protection of human rights.
- Monitor the effectiveness of laws relating to equality and human rights and monitor and report progress towards identified desired outcomes.⁽⁴¹⁾

The Commission is keen to develop its work relating to Optional Protocols. We can assist complainants in preparing a communication or petition to the CEDAW Committee; for example, assessing whether the OP process is the

best route for your complaint, and if so, helping with the preparation of documents and submissions.

If your case is an appropriate case to be dealt with under the process for petitioning the UN (see the ‘admissibility’ section), we will consider your application for assistance by first assessing whether the case falls within one of the Commission’s strategic priorities.⁽⁴²⁾ Assistance may be either from within our own resources or may include the assistance of external legal or other resources.

See the ‘Contact us’ information at the end of this guide to find out how to get in touch. See the ‘Find out more’ section for a list of women’s organisations that may also be able to support and advise you.

40 In order to gain an ‘A status’ accreditation we must be fully compliant with the Paris Principles. We were assessed according to a number of well established criteria including composition and guarantees of independence and pluralism; having a mandate and adequate staff and budget to effectively protect and promote human rights; encouraging ratification of international human rights instruments; engagement with the international human rights system and co-operation with other National Human Rights Institutions.

41 See section 9 of the Equality Act 2006

42 For information on the Commission’s proposed strategic priorities, see <http://www.equalityhumanrights.com/legislative-framework/legal-strategy-consultations/>

CEDAW Optional Protocol quick checklist

Use this checklist to make sure you have considered some key issues before making a complaint using the OP.

- Have I tried and exhausted all the domestic remedies available?**
- Have I considered other international and human rights procedures as well as CEDAW?**
- Have I obtained advice from an expert in international law?**
- Have I asked for advice and support from NGOs or bodies such as the Equality and Human Rights Commission?**
- Does my complaint meet the admissibility criteria for using the OP?**
- Do I know if the communications or inquiry procedure is more appropriate for my complaint?**
- Do I have the time and other resources needed to take a complaint to the CEDAW committee?**

If you answer no to any of these questions, or are unsure of your answer, we suggest you seek further advice and support from a legal expert (see the 'Who we are and how we can help' and the 'Find out more' sections).

Find out more

You can find out more about CEDAW and its Optional Protocol from the following organisations and institutions:

International

The CEDAW Committee:

<http://www2.ohchr.org/english/bodies/cedaw/index.htm>

UN Women:

<http://www.unwomen.org/>

Women's Resource Centre:

<http://www.wrc.org.uk/>

Rights of Women:

<http://www.rightsofwomen.org.uk/>

Equality Now:

<http://www.equalitynow.org/>

UK

The Equality and Human Rights Commission:

www.equalityhumanrights.com/CEDAW

The Scottish Human Rights Commission:

<http://www.scottishhumanrights.com/>

The Equality Commission for Northern Ireland:

<http://www.equalityni.org/site/default.asp?secid=home>

Women's National Commission:

<http://www.thewnc.org.uk/work-of-the-wnc/internationalarticles/cedaw/163-convention-on-the-elimination-of-all-forms-of-discrimination-against-women-cedaw.html>

You may also find the following resources helpful:

Full text of the CEDAW Convention:

<http://www2.ohchr.org/english/law/cedaw.htm>

Full text of the CEDAW Optional Protocol:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/774/73/PDF/N9977473.pdf?OpenElement>

The UK government's 2008 CEDAW report:

<http://www2.ohchr.org/english/bodies/cedaw/cedaws41.htm>

The CEDAW Committee's concluding observations on the UK government's 2008 CEDAW report:

http://www.iwraw-ap.org/committee/pdf/41_concluding_observations/united_kingdom.pdf

Women's National Commission UK
Shadow Report to the CEDAW Committee
April 2008:

**[http://www2.ohchr.org/english/
bodies/cedaw/docs/ngos/
WNC_UK41.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WNC_UK41.pdf)**

International Women's Rights Asia Pacific
resources on CEDAW:

<http://www.iwraw-ap.org> and on the
Optional Protocol:
**[http://www.iwraw-ap.org/
protocol.htm](http://www.iwraw-ap.org/protocol.htm)**

International Women's Rights Asia
Pacific's Occasional Papers Series with
detailed analyses of cases brought
under the CEDAW OP Communications
Procedure:

**[http://www.iwraw-ap.org/
publications/ops.htm](http://www.iwraw-ap.org/publications/ops.htm)**

'Seizing the Opportunities of CEDAW:
Developing a Women's Sector Strategy
for 2011', report of joint conference
held by Women's Resource Centre
and Equality and Human Rights
Commission, March 2009.

**[http://www.wrc.org.uk/includes/
documents/cm_docs/2009/r/
report_to_ehrc_final.pdf](http://www.wrc.org.uk/includes/documents/cm_docs/2009/r/report_to_ehrc_final.pdf)**

Contacts

England

Equality and Human Rights Commission Helpline
FREEPOST RRLG-GHUX-CTR
Arndale House, Arndale Centre, Manchester M4 3AQ

Main number 0845 604 6610
Textphone 0845 604 6620
Fax 0845 604 6630

Scotland

Equality and Human Rights Commission Helpline
FREEPOST RSAB-YJEJ-EXUJ
The Optima Building, 58 Robertson Street, Glasgow G2 8DU

Main number 0845 604 5510
Textphone 0845 604 5520
Fax 0845 604 5530

Wales

Equality and Human Rights Commission Helpline
FREEPOST RRLR-UEYB-UYZL
3rd Floor, 3 Callaghan Square, Cardiff CF10 5BT

Main number 0845 604 8810
Textphone 0845 604 8820
Fax 0845 604 8830

Helpline opening times:

Monday to Friday: 8am – 6pm

Calls from BT landlines are charged at local rates, but calls from mobiles and other providers may vary.

Calls may be monitored for training and quality purposes.

Interpreting service available through Language Line, when you call our helplines.

If you require this publication in an alternative format and/or language please contact the relevant helpline to discuss your needs. All publications are also available to download and order in a variety of formats from our website

www.equalityhumanrights.com

www.equalityhumanrights.com