

RIGHTS OF WOMEN RESPONSE TO THE WOMEN AND EQUALITY UNIT'S CONSULTATION ON REVIEWING THE UNITED KINGDOM'S POSITION ON THE OPTIONAL PROTOCOL

1. Rights of Women welcomes the opportunity to participate in the Women and Equality Unit's consultation on whether the UK should become a signatory to the Optional Protocol of the Convention on the Elimination of all forms of Discrimination Against Women. We understand that following this consultation the Women and Equality Unit will make recommendations to the Lord Chancellor's Department on this matter.
2. Rights of Women is an industrial and provident society, which was founded in 1975 to promote the interests of women in relation to the law. We run a free, national confidential telephone legal advice help line for women. We specialise in advising in family law, especially domestic violence and Children Act matters. Rights of Women works to attain justice and equality by informing, educating and empowering women on their legal rights. We are a membership organisation and our activities include producing publications, organising conferences and training courses, and doing policy and research work.
3. Rights of Women is indebted to Harriet Samuels, Senior Lecturer in Law at Westminster University, upon whose work this response heavily draws, with her permission. Ms Samuels has also submitted evidence to the Unit in her own name.

Introduction

4. The Women's Convention (The Convention on the Elimination of All Forms of Discrimination Against Women or CEDAW) now has a petition procedure that allows individual women or groups of women to bring complaints alleging that their government has breached the Convention to the Committee on the Elimination of All Forms of Discrimination Against Women (The Committee). All of the European Union partners have signed the Optional Protocol that allows their citizens to petition the committee. The British Government, alone in the EU, refuses to sign the petition procedure. Rights of Women believe that this shows a lack of care for and commitment to women's human rights, and urges the British Government to accede to the Optional Protocol immediately.

The importance of the Optional Protocol

5. The Optional Protocol is important because it provides a means of requesting a remedy for violations of the Convention. It will also give the Committee the opportunity to develop authoritative legal principles on women's rights as they are interpreting the Convention. This

jurisprudence although non-binding could be referred to by committees such as the Human Rights Committee dealing with women's issues in accordance with the International Covenant on Civil and Political Rights.

6. The right of individual petition would make the Women's Convention a more significant instrument for women in the UK as it would enable them to use the Convention to bring test cases and to test UK law against the international standards in the Convention. The importance of individuals being able to have their complaints dealt with directly by international treaty Committees is illustrated by the case of Sandra Lovelace, a Canadian Aboriginal woman, who complained to the UN Human Rights Committee under the International Covenant on Civil and Political Rights. As a result, it was found that s. 12(1)(b) of the Indian Act violated her human rights. This ruling contributed to the reform of the Indian Act¹.
7. The UN Special Rapporteur on Violence Against Women has recommended that all States sign up to the Optional Protocol, and found that:

The International Criminal Court, the Optional Protocol to the Convention and the individual case system of the regional courts are mechanisms that are now available for women seeking justice. It is hoped that the prosecutions and deliberations of these bodies will set standards of jurisprudence for national jurisdictions to follow. The involvement of the international community in cases will strengthen the hand of individual women who have exhausted all local remedies but feel that justice has not been done².

The Committee on the Elimination of all forms of Discrimination Against Women, the UN Division for the Advancement of Women, and three UN Special Rapporteurs jointly recommended in April 2003 that the Optional Protocol should be used as a primary tool to tackle violence against women³. Rights of Women believes that the United Kingdom should demonstrate that it is a nation committed to the progressive development of human rights by fully endorsing this essential human rights standard. By not ratifying the Protocol, the United Kingdom is aligning itself with States whose human rights records it has criticised in the past, including for example China.

¹ Day, S., 2000. The Optional Protocol to CEDAW. www.fafia.org/resources/doc3_2.htm

² Special Rapporteur on Violence Against Women, 2003. *Integration of the Human Rights of Women and the Gender Perspective – Violence Against Women*. Commission on Human Rights 59th session, GE.03-10100 (E) 140103, paras. 81 and 84.

³ Asia Pacific Forum on Women, Law and Development, 10 April 2003, sponsored dialogue with UN special rapporteurs at UNCHR 59th session, available at www.apwld.org/59th_unchr_page2.htm

8. If the Convention had a practical use, it would become a more familiar instrument generally and receive greater publicity. Although, as a treaty, it does not have direct effect it can still be used within the legal system. If lawyers were better acquainted with the Convention it could be used in legal argument and judges may become more familiar with it and perhaps even cite it as persuasive in developing legal principles on issues relating to women's rights. This has been the case in other jurisdictions such as Canada. This is part of the strategy of mainstreaming women's issues into human rights generally.
9. The United Kingdom was one of the countries that supported the introduction of the Optional Protocol and it should now ratify it to demonstrate support for the principles in the Women's Convention and illustrate how the Protocol can work in the context of a liberal democracy. This may encourage other governments to ratify the Convention and would strengthen the Convention in the eyes of the international legal community.
10. The Government's previous argument that it will not consider ratification of the Optional Protocol because of the uncertainty surrounding the introduction of the Human Rights Act 1998 is flawed. The act is no substitute for the Women's Convention as the scope for the protection of women's rights under the European Convention on Human Rights is limited. Article 14 of the European Convention on Human Rights does not provide an independent right to equality.

Conclusion

11. Rights of Women believe that the Optional Protocol should be a vital tool in the ongoing work to secure women's human rights in the United Kingdom. We endorse the view of Mary Robinson, the former High Commissioner for Human Rights:

...in addition to providing an international remedy for violations of women's rights, the Optional Protocol will act as an incentive to 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 OP. 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 seriousness and speed they deserve⁴.

⁴ UN Division for the Advancement of Women, May 2000. *The Optional Protocol: Text and Materials*. Cited in Bazilli, S., 2000. *Women's International Human Rights Guide*. Available at www.yorku.ca/iwrp/women's_international_hr_guide.htm

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