

Women's business: the development of an Optional Protocol to the United Nations Women's Convention

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Introduction

I think it was Karen Engle who — with piercing insight — wrote that 'the international law of human rights has been built largely by its own criticism'.¹ The most recent project of international human rights law relating specifically to women is the Optional Protocol to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW or Women's Convention).

On 12 March 1999, the 43rd session of the Commission on the Status of Women (CSW) adopted the Optional Protocol to the CEDAW.² The Optional Protocol is the result of four years of negotiations in the CEDAW Working Group on the Optional Protocol. It was submitted to the United Nations General Assembly for adoption in late 1999, and has been open for signature, ratification and accession in 2000.³ The Optional Protocol will enter into force once ten State Parties to the CEDAW have ratified or acceded to it. As at 25 February 2000, 26 States were signatories to the Optional Protocol.⁴

The Optional Protocol contains two procedures. The first is a communication procedure allowing individual women, or groups of women, to submit claims of violations of rights under the CEDAW to the Committee on the Elimination of Discrimination against Women (art 2). The second is an inquiry procedure enabling

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1 Engle K 'International Human Rights and Feminism: When Discourses Meet' (1991-1992) 13 *Michigan Journal of International Law* 517 at 520.

2 UN Doc E/CN.6/1999/WG/L.2 (10 March 1999).

3 UN Doc E/CN.6/1999/WG/L.3 (11 March 1999).

4 Signatory States include Austria, Belgium, Bolivia, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Ghana, Greece, Iceland, Italy, Liechtenstein, Luxembourg, Mexico, Netherlands, Norway, Paraguay, Portugal, Senegal, Slovenia and Sweden.

the Committee to initiate inquiries into situations of grave or systematic violations of women's rights under the CEDAW (art 8). In either case, a State must be a party to the Optional Protocol to take part in a communication or to be subject to an inquiry. Both these procedures have parallels in other international and regional human rights instruments.⁵

I have followed the evolution of the Optional Protocol to the CEDAW since October 1994, when a group of non-government experts met at the University of Linburg's Centre for Human Rights in Maastricht, The Netherlands, to draw up the first-ever draft text of such a document. Part of my work in the Commonwealth Office of International Law — where until recently I worked as an adviser on matters of public international law to the Australian Government — has been to advise the Australian Delegation to the CSW on this drafting process.

The Women's Convention

Before we embark on a description and analysis of the Optional Protocol, it is necessary to recall the substantive provisions of the CEDAW. This is because the Optional Protocol derives its scope from the Convention's terms. We can see this from the relevant part of art 2, which states:

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, *claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party.*⁶

Unless a complaint or an inquiry under the Optional Protocol falls within the terms of the CEDAW, it will not be justiciable. The CEDAW Committee will not have the power to examine it. Therefore, it is critical to the operation of the Optional Protocol to identify and analyse the rights set forth in the CEDAW upon which a complainant or an inquirer must rely. It is not the purpose of this paper to detail the substantive provisions of the CEDAW. However, in a nutshell, the Convention can be said to deal to a greater or lesser extent with a woman's right to:

5 In the course of the drafting process, a proposed third procedure which allowed one State Party to the CEDAW to bring a claim that another State Party had violated the CEDAW was dropped. This decision was taken because identical provisions in other international human rights treaties have never been used.

6 Emphasis added by author.

- bodily integrity (art 6);⁷
- political rights (arts 7 and 8);⁸
- nationality (art 9);⁹
- education rights (art 10);¹⁰
- employment rights (art 11);¹¹
- health care and leisure (arts 12 and 13);¹²
- economic rights (arts 13 and 14);¹³
- civil rights (art 15);¹⁴ and
- family and marriage rights (art 16).¹⁵

The Women's Convention places an obligation on State Parties to take positive steps to ensure that any discriminatory practice against women — whether intentional or

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- 7 Article 6 covers all forms of traffic in women and exploitation of prostitution.
 - 8 These articles are based on the 1942 United Nations Convention on the Political Rights of Women, covering the right to vote and to hold public office and to represent one's country in international organisations.
 - 9 A restatement of the 1957 United Nations Convention on the Nationality of Married Women which calls for equal rights for women to acquire, change or retain their own nationality and the nationality of their children.
 - 10 Article 10 calls for equal rights for women and girls in the field of education.
 - 11 Article 11 allows for free choice of profession, employment or training, equal pay for equal work, equity in social security and occupational health and safety.
 - 12 Articles 12 and 13 cover the elimination of discrimination against women in the field of health care and the right to participate in recreational activities, sports and all aspects of cultural life.
 - 13 Article 13 confers on women the same rights as men to family benefits, bank loans and mortgages to enable them to participate in economic life. Article 14 deals with the right of rural women to participate in the development process.
 - 14 Article 15 confers legal capacity on women, on par with men, to enter into contracts, administer property and to be treated equally under the law as well as the right to choose one's domicile.
 - 15 Article 16 grants equal rights with respect to marriage and the family, restating elements of the 1962 United Nations Convention on the Consent of Marriage, Minimum Age for Marriage and Registration of Marriage. It allocates responsibilities during and after marriage.

unintentional — is eliminated.¹⁶ The Convention may be violated if a State Party has either actively violated principles of non-discrimination or passively failed to implement its Convention obligations to eliminate all forms of discrimination against women. We need to remember that at international law, a State Party has a discretion or 'margin of appreciation' in the manner in which these Convention obligations are fulfilled. Bearing in mind this caveat, under the Optional Protocol both allegations of active and passive violations of the CEDAW will be able to be received and considered by the CEDAW Committee.

Because the Women's Convention covers the private actions of individuals as well as public actions of the State,¹⁷ one of the major strengths of the Optional Protocol will be its potential to regulate violations of women's rights in the so called 'private' sphere. This aspect of the Optional Protocol is consonant with general international law principles. Under international law, States may be responsible for private acts if they fail to act with due diligence to prevent violations of rights or fail to investigate and punish acts of violence, and for providing compensation.¹⁸

16 In particular, see Convention art 2(e) and (f), which states:

State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to this end, undertake:

- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise; and
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

17 Zagorka I and Ivanka C 'The Elimination of All Forms of Discrimination Against Women' in *Manual on Human Rights Reporting Under Six Major International Human Rights Instruments* (United Nations, Geneva, 1997) p 305.

18 For example, in the case of *Velusquez-Rodriguez v Honduras* Case 7920, Inter-Am CHR 40, OEA/ser.L/V/II.68, doc 8 rev 1 (1986) a man was violently detained by an unofficial death squad, tortured and accused of committing political crimes. He disappeared and was never found again. The Inter-American Court of Human Rights legally imputed these crimes to the State of Honduras. The court reasoned that the abuse committed by 'private' actors had been systematically tolerated by the State of Honduras.

Outline of the substantive procedures under the Optional Protocol

The complaints procedure

Article 2 states:

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Under the Optional Protocol, individual women or groups of individual women under the jurisdiction of the State Party have standing to submit a communication to the CEDAW Committee. Organisations will not have standing under the Optional Protocol.¹⁹ Before a communication is lodged with the CEDAW Committee, all available domestic remedies must be exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.²⁰

It will be possible for women to bring a class action under the Optional Protocol. A group of individual women, each of whom claims to be a victim of an alleged violation of the same right, will be able to submit a communication to the CEDAW Committee. The group of individuals may or may not have any form of group identification other than the basis of the communication itself. By allowing a group of individuals to have standing, the Optional Protocol creates class actions. An example of a class action under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) is the *Mauritian Women's case*.²¹

The *Mauritian Women's case* was brought before the United Nations Human Rights Committee under the ICCPR. In that case, three married women successfully co-authored a communication against the Mauritian Government following changes to

19 The question of standing was one of the most hotly debated sticking points of the drafting process. Originally, the draft text of art 2 had proposed 'an individual, group or organisation claiming to have suffered a violation of any of the rights in the Convention' (emphasis added by author) should have standing. However, the inclusion of organisations was dropped from the draft text at the CEDAW Working Group on the Optional Protocol in March 1998.

20 Optional Protocol art 4(1).

21 Communication No 35/1978 *Shirin Aumeeruddy-Cziffra and Nineteen other Mauritian Women v Mauritius* UN Doc A/36/40 at 134.

its immigration and deportation laws. Under the new laws, the husband of a Mauritian woman lost his residence status and faced possible deportation. The three women were found to have the standing to bring their action as a group. The Human Rights Committee was ultimately of the view that these new laws violated the right of the three married women to family life (art 17 of the ICCPR). The Human Rights Committee also formed the view that the new laws discriminated against these women on the grounds of sex (art 26 of the ICCPR) because their husbands had to obtain residence permits in order to stay in the country. The same was not true of the wives of Mauritian men.

Communications under the Optional Protocol to the CEDAW may be submitted 'on behalf of individuals or groups of individuals'.²² In other words, the Optional Protocol provides for a representative action. There are several reasons why it was considered necessary to enable an individual to authorise another person (such as a parent, spouse, friend or attorney) to act on her behalf in submitting a communication to the CEDAW Committee. These include the possibility that the individual cannot read or write, the incarceration of the individual woman or insufficient access to financial or other resources which effectively prevents her from submitting her own communication on her own behalf.

Protocol art 2 states that a representative action 'shall be with [the] consent' of the individual or individuals involved whenever possible. Normally, it will be easy to demonstrate the consent of the individual(s) involved. Under similar communication procedures, in a representative action the written complaint contains the concurrent signatures of the individual(s) and the representative.²³ In some extreme cases, an individual may be unable to give her consent. For example, she may be sold into prostitution and removed from the jurisdiction or held in detention incommunicado. Under similar communication procedures, current practice in extreme cases is to allow the submission of a complaint by a representative without the consent of the individual subject to certain conditions. Usually, the condition includes the fact that the representative is a family member of each individual complainant.²⁴ It is likely that similar conditions regarding representative actions in extreme cases will evolve under the Optional Protocol.

22 Optional Protocol art 2.

23 For example, the Human Rights Committee has held that the General Secretary of the Union of Free Thinkers in Finland was able to submit a communication as the authorised representative of other persons because he and the other persons had all signed the communication together. Communication No 40/1978 *Hartikainen v Finland* UN Doc A/36/40 at 147 § 3.

24 For example, Communication No 16/1977 *Mbenge v Zaire* UN Doc A/38/40, at 134 § 5(d).

A communication may only be submitted by an individual or group of individuals who claim to be 'victims of a violation of any of the rights set forth in the Convention'.²⁵ The concept of a 'victim' is a technical one. Under the jurisprudence of the United Nations Human Rights Committee, it has been clearly established that to satisfy the victim test the alleged violation of rights must relate to specific individuals at a specific time. A victim is not hypothetical. To be a victim, the individual or group of individuals must be actually and personally affected by a law or practice which allegedly violated their rights. The law or practice must be to their actual detriment. For example, their family life must be threatened²⁶ or their access to health care and nutrition during pregnancy may be inadequate.²⁷

It is not possible for an interested third party such as a non-government organisation to bring a communication on behalf of an individual or a group of individuals. Public interest complaints under the Optional Protocol were considered but later discarded in the drafting process. In my opinion, this creates a gap in the communication process. A public interest complaint procedure would have had the advantage of raising systemic or structural issues that impact on women generally without needing to prove specific harm to a particular individual. There is considerable regional precedent for extending standing to interested third parties.²⁸ In my opinion, representative actions will not be able to take the place of such interested third-party proceedings. We only need to look at one example to understand the impact that the failure to provide for interested third-party proceedings will have. Article 15(1) of the CEDAW provides that 'State Parties shall accord to women

25 Optional Protocol art 2.

26 Communication No 549/1993 *Hopu and Bessart v France* UN Doc CCPR/C/60/D/549/1993.

27 CEDAW, art 12.

28 Article 25 of the European Convention for the Protection of Human Rights and Fundamental Freedoms entitles the European Commission of Human Rights to receive applications 'from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation'. Article 44 of the American Convention on Human Rights allows petitions to be lodged by any person or group of persons, or any non-governmental entity legally recognised in one or more member states of the organisation. Under the African Charter on Human Rights and Peoples' Rights, no limitation is placed on the identity of the author(s) of complaints to the African Commission on Human and Peoples' Rights as long as they meet the other criteria of the Charter. In practice, this has included several non-government organisations. While the Optional Protocol to the ICCPR only speaks explicitly of individual complaints, in practice the Human Rights Committee has allowed individuals to file claims on behalf of groups of known individuals when these claims reflect the violations and rights common to all individuals within the group.

equality with men before the law'. It has well been documented that women in Australian criminal jurisdictions tend to receive higher sentences than men receive for the same or similar crimes.²⁹ It would have been interesting to seek the views of the CEDAW Committee on this situation in Australia and whether or not our criminal sentencing practices comply with Australia's international obligations under the CEDAW. This is not the sort of matter for which standing will now be possible under the Optional Protocol to the CEDAW.

The inquiry procedure

Article 8 of the Optional Protocol outlines the inquiry procedure under the Optional Protocol.³⁰

The inquiry procedure allows the CEDAW Committee to investigate the situation in a State Party to the Convention if it receives 'reliable information indicating a grave or systematic' violation of Convention rights. The consent of the State Party is not required in order for the CEDAW Committee to proceed with its inquiry. However, a State Party may opt out of the inquiry procedure at the time it ratifies the Protocol.³¹ Furthermore, the State Party in question must not have made a valid reservation to the CEDAW obligation in question.³² It will be within the discretion of the CEDAW Committee to determine whether information on which it might decide to conduct an inquiry is reliable. The provisions for this inquiry procedure are modelled on the powers of the Committee against Torture (art 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

29 *Queensland Law Reform Commission Report* June 1999.

30 See Appendix below for the text of Optional Protocol art 8.

31 Optional Protocol art 10.

32 It will be interesting to learn the CEDAW Committee's views on the validity of certain reservations made to the Convention. For example, reservations by Bangladesh, Egypt, Iraq and Libya relating to the preservation of Islamic law are difficult to reconcile with the text of CEDAW art 2. Turkey, Thailand, New Zealand, Brazil and Tunisia have entered reservations regarding the equality of men and women in matrimonial property and family law. Malawi made a reservation stating that it does not consider itself bound by those provisions of the CEDAW that require immediate eradication of discriminatory practices due to the 'deep rooted nature of some traditional customs and practices'. In my view, these reservations could be held to be incompatible with the object and purpose of the CEDAW and therefore impermissible (art 28, § 2 of the CEDAW states: 'A reservation incompatible with the object and purpose of the present Convention shall not be permitted'). For further discussion see Elizabeth D 'Women's human rights: The twenty-first century' 18 *Fordham International Law Journal* 1748 at 1751.

(CAT)), which in turn draws on other models such as United Nations Economic and Social Council Resolution 1503³³ procedure and International Labour Organisation inquiry procedures.

To date, under the CAT art 20 inquiry procedure, on which the CEDAW Optional Protocol procedure is based, two inquiries have been conducted.³⁴ Both inquiries proceeded on the basis of allegations originating from non-governmental sources that were corroborated by a relevant country report of the United Nations Special Rapporteur of the Commission on Human Rights. In the case of its examination into the systematic practice of torture in Turkey, the CAT Committee visited the country under inquiry with the permission of the government. In the case of its examination into the systematic practice of torture in Egypt, the CAT Committee proceeded with its inquiry despite the failure of the Egyptian Government to either grant or refuse the CAT Committee permission to visit Egypt.

It is likely that the CEDAW Committee will adopt a definition of the meaning of 'systematic violations' of the CEDAW which is similar to the definition adopted by the CAT Committee. Under CAT art 20, a violation is considered to be 'practised systematically when it is apparent that [the events concerned] have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question'. A violation 'may in fact be of a systematic character without resulting from the direct intention of Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration'.³⁵

While there is no express provision under the Optional Protocol to make the results of an inquiry public, there is provision to follow up the results of the inquiry with the State Party concerned in public forums.³⁶

The inquiry procedure was suggested by CEDAW art 14 to overcome possible standing difficulties of the communication procedure. Matters such as dowry-related

33 Economic and Social Council, 48th Session, Resolution 1503 (XLVIII), 27 May 1970.

34 See *Report of the Committee against Torture Turkey 15/11/93 (Inquiry under Article 20)* UN Doc A/48/44/Add.1 and *Report of the Committee against Torture Egypt 03/05/96 (Inquiry under Article 20)* UN Doc. A/51/44, §§ 180-222.

35 *Report of the Committee against Torture Turkey 15/11/93* above note 34 § 39.

36 Optional Protocol art 9.

violence, trafficking of women or massive violations of women's rights during times of armed conflicts will be examinable under an inquiry procedure. Practices of other gender-based violence such as acid attacks and female infanticide would also be covered. So too could issues such as the lack of protection of prostitutes in countries where prostitution is unlawful and prostitutes marginalised.³⁷ With the removal of public interest actions from the Optional Protocol complaints procedure, the inquiry process alone will be focused on the eradication of grave or systematic violations of the rights of women throughout the world. Whether the CEDAW Committee receives enough resources from the United Nations to undertake inquiries of its own motion is as yet unknown.

Some practical observations

The potential scope of the Optional Protocol to bring unsatisfactory aspects of the lives of women on to the international stage is far ranging. Let us take just one example relevant to Australia. In its General Recommendation 19 (1992) on Violence against Women (art 16 and art 5), the CEDAW Committee has stated that gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. The CEDAW Committee continues:

Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.³⁸

Australia, and indeed every party to the Convention, has an international legal

37 In General recommendation No. 19 (Eleventh Session, 1992): Violence Against Women *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies* 15 August 1997 UN Doc HRI/GEN/1Rev.3, the CEDAW Committee stated:

Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be lawful, tends to marginalize them. They need the equal protection of the law against rape and other forms of violence (art 6).

38 General recommendation No 19 (Eleventh Session, 1992): Violence Against Women, above note 37 § 23 at 131.

obligation to 'adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women'.³⁹ Therefore, if Australia were to become a Party to the Optional Protocol to the CEDAW, this may provide an avenue for a woman or a group of women to lodge a complaint about the poor effectiveness of State or Territory domestic violence orders.

However, we must remember that the CEDAW Committee is not a court. Neither the CEDAW Committee's views about an individual complaint nor the Committee's findings following an inquiry will be legally enforceable. Under the Optional Protocol to the CEDAW, State Parties are exhorted to give 'due consideration' to the views of the Committee on the merits of a communication.⁴⁰ The CEDAW Committee may 'invite the State Party concerned' to include its response to inquiry findings in its periodic report to the CEDAW Committee under Convention art 18.⁴¹ The Optional Protocol's effectiveness, ultimately, will rest on the good faith of the State Parties to it.

There is an international law presumption that a State Party to a treaty will act in good faith in performing its obligations under that treaty: *pacta sunt servanda*. However, it is not always prudent or possible to rely on this legal presumption. The issues raised by international human rights law are often too highly charged and political for a national government found to be in violation of its international legal obligations to respond appropriately.⁴²

Conclusion

There are apparent benefits to be gained from the Optional Protocol to CEDAW procedures.⁴³ A procedure that brings the violation of the rights of women under the CEDAW before the world will put the rights of women on a similar footing to the

39 CEDAW art 2(b).

40 Optional Protocol art 7(4).

41 Optional Protocol art 9(1).

42 See, for example, the failure of the Australian Government to respond to the recommendations of the Human Rights Committee in *A v Australia* Communication No 560/1993 UN Doc CCPR/C/59/D/560/1993.

43 Note that the development of an optional protocol to the Women's Convention has been paralleled by the 'mainstreaming' project of the CEDAW Committee. Perversely, the very creation of a parallel complaints procedure under the Women's Convention creates a risk of the further marginalisation of 'women's issues' from the mainstream international complaints processes.

enjoyment of civil and political rights;⁴⁴ the protection of the right to freedom from racial discrimination;⁴⁵ and sanctions for violations to the right to freedom from torture and other cruel, inhuman or degrading forms of treatment or punishment.⁴⁶

In the shorter term, the value of a complaint procedure and an inquiry procedure under the Optional Protocol to the CEDAW will lie in the degree of political leverage that these procedures can produce domestically. In contemporary international human rights law, there is a steady growth of real dialogue between governments, non-government actors, and citizens.⁴⁷ At the national level, the Optional Protocol has the potential to provide redress for individual grievances, to stimulate changes in discriminatory laws and practices, and to create greater public awareness of international human rights standards relating to discrimination against women. Unless these procedures are effective at a local level the impact and benefit of the Optional Protocol to the CEDAW will fail to touch the lives of women.

One of the long term benefits of the Optional Protocol to the CEDAW will be its potential to integrate the voice of women into the normative values of international human rights jurisprudence. The deliberations of the CEDAW Committee under the Optional Protocol to the CEDAW will have the potential to shape the development of international law. Through the communication procedure, women will be able to bring their issues on to the world stage before an independent panel of experts. The resultant jurisprudence may contribute to the international community's understanding of what we mean when we talk about minimum standards of human rights for women in the world. Ultimately, the jurisprudence of the CEDAW

44 The Optional Protocol to the ICCPR entered into force generally on 23 March 1976.

45 The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) entered into force on 4 January 1969. Under art 14, a State Party to the ICERD may at any time 'declare that it recognizes the competence of the Committee to receive and consider communications from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set for in [the ICERD] and who have exhausted other available local remedies'.

46 The CAT entered into force on 26 June 1987. Under art 22(1), a State Party to the CAT may at any time declare that 'it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration'.

47 Strohal C 'The United Nations Responses to Human Rights Violations' in Mahoney K E and Mahoney P (eds) *Human Rights in the Twenty-first Century: A Global Challenge* (Kluwer Academic Publishers, Netherlands, 1999) pp 347-360.

Committee has the potential to feminise and transform international law through the development of the doctrine of State responsibility which itself affects the very notion of statehood at international law.

Only time will tell whether the Optional Protocol — an international instrument that is mandated to deal exclusively with gender⁴⁸ — will become too narrowly focused; whether the inter-relationships that hold between gender, class and culture become unintentionally or intentionally subverted;⁴⁹ and whether an international instrument developed at the turn of the century can give new life to a Convention written some twenty years earlier.⁵⁰ ●

48 See CEDAW art 2(f).

49 In Indonesia, for example, female genital surgery is practised predominantly by women of the lower classes. (See Gunning I 'Arrogant Perception, World-Trevallyn and Multicultural Feminism: The Case of Female Genital Surgeries' (1991-1992) 23 *Columbia Human Rights Law Review* 198. Contrast the view of Gunning with CEDAW General Recommendation 19 (Eleventh Session, 1992): Violence against women, above note 37, § 20 at 131.) Under the inquiry procedure of the Optional Protocol, no single individual woman who has been personally affected by the practice of female genital surgery needs to be involved in initiating the inquiry process. There is no provision for a woman or group of women affected by the practice of female genital surgery to be informed that an inquiry is being conducted, let alone that they be involved in the inquiry process. In my opinion, there is a risk that unless care is taken by the CEDAW Committee women will — once again — become the objects rather than the subjects of international human rights law.

50 The Women's Convention is premised on the attainment of substantive equality between women and men. The Optional Protocol raises the question whether contemporary women's rights discourse can be based on substantive equality but also acknowledge women's uniqueness and difference.

