

How shall the meetings of the CEDAW Committee be conducted?

The meetings of the CEDAW Committee during the conduct of the inquiries are closed to the public.²⁴

May the CEDAW Committee obtain additional relevant information?

Yes, the CEDAW Committee may obtain additional relevant information substantiating the facts of the situation from the following:²⁵

- (a) Representatives of the State party concerned;
- (b) Governmental organizations;
- (c) Non-governmental organizations;
- (d) Individuals;
- (e) United Nations system.

What is the obligation of the State party on individuals communicating with the Committee?

It is the obligation of the State party concerned to take appropriate steps to ensure that individuals under their jurisdiction are not subjected to ill-treatment or intimidation as a consequence of communicating with the CEDAW Committee under the OP CEDAW.

Where the CEDAW Committee receives reliable information that a State party has breached its obligations under article 11, it may invite the State party concerned to submit written explanations or statements clarifying the matter and describing any action it is taking to ensure that its obligations under article 11 are fulfilled.²⁶

¹ The CEDAW Convention entered into force in the Philippines on September 4, 1981 while the Optional Protocol entered into force in the Philippines on February 12, 2004.

² A communication is filed by or on behalf of individuals or groups of individuals.

³ “The Juarez Murders and the Inquiry Procedure” by CEDAW members Maria Regina Tavares Da Silva and Yolanda Ferrer Gomez (hereafter “The Juarez Murders”).

⁴ Anne Bayefsky, *How to Complain to the UN Human Rights System*, 2002, page 147-152.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ The Ciudad Juarez inquiry involved the abduction, rape, and murder of women occurring for years in Ciudad Juarez, Chihuahua, Mexico. Many of the victims were young women who worked in assembly factories in the area.

The CEDAW Committee has already noted the murders of the women in Ciudad Juarez as a matter of serious concern in the concluding comments addressed to the Mexican government following the discussion of Mexico’s fifth periodic

report in the special session of the CEDAW Committee in August 2002. The CEDAW Committee had been alerted to the situation by information provided by the Mexican Commission for the Defense and Promotion of Human Rights, and had raised questions on the issue during the dialogue with the government representatives (see CEDAW Committee review on Mexico in 2002, 210 paragraphs 439-40). See also “The Juarez Murders”, page 300.

¹⁰ In particular, the Special Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights conducted a comprehensive investigation on the situation of women in Ciudad Juarez in 2002.

¹¹ The exclusion must not be contrary to the object and purpose of the treaty as stated under the Vienna Convention on the Law of Treaties.

¹² Article 8.2 of the OP CEDAW; Rule 86. The Committee shall inform the State party concerned of its wishes regarding the timing of the visit and the facilities required to allow those members designated by the Committee to conduct the inquiry to carry out their task; Rule 87. With the consent of the State party concerned, visits may include hearings to enable the designated members of the Committee to determine facts or issues relevant to the inquiry. Any person appearing before the designated members of the Committee for the purpose of giving testimony shall make a solemn declaration as to the veracity of her or his testimony and the confidentiality of the procedure. The Committee shall inform the State party that it shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill-treatment or intimidation as a consequence of participating in any hearings in connection with an inquiry or with meeting the designated members of the Committee conducting the inquiry.

¹³ Rule 89.

¹⁴ Rule 89.

¹⁵ Rule 90.

¹⁶ Rule 90.

¹⁷ Rule 85.

¹⁸ Rule 84.

¹⁹ Except in compliance with the obligations of the Committee under article 12 of the Optional Protocol; See Rule 80 of the OP CEDAW.

²⁰ Rule 84.

²¹ “According to the OP, the whole process must be conducted confidentially until the submission of information on measures taken by the State Party brings the inquiry formally to a close. Of course, such confidentiality, must be strictly respected by the Committee, even if it does not apply to the other participants, namely the NGOs and other people involved who may, legitimately want to make public the fact that an inquiry is taking place” cited on page 302 of “The Juarez Murders”.

²² The article on the UN Division for the Advancement of Women (DAW) website entitled “Why an Optional Protocol?” supports this view. It says that “communications and inquiries under the Optional Protocol will receive publicity which will increase public awareness of CEDAW and the Optional Protocol.”; Former CEDAW expert Heisoo Shin says that the confidentiality rule pertains to the CEDAW members and not to NGOs. See also “The Juarez Murders”.

²³ “The Juarez Murders”, *supra*.

²⁴ Rule 81.

²⁵ Rule 82 & Rule 83.

²⁶ Article 11 of the OP CEDAW; Rule 91.

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This publication was made possible through the funding support of UNIFEM



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A PRIMER ON THE INQUIRY PROCEDURE UNDER THE OP CEDAW



What is the Inquiry Procedure under the OP CEDAW?

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP CEDAW)¹ is a treaty that allows two procedures to seek redress for violations of rights recognized in the CEDAW Convention, namely the communication² and inquiry procedures.

The inquiry procedure is a mechanism where the Committee on the Elimination of Discrimination against Women (CEDAW Committee) can investigate grave or systematic violations of the CEDAW Convention within a State party.

Examples of grave violations are severe violations relating to right to life, physical and mental integrity, and security of person while examples of systematic violations are a pattern of violations resulting from customs or traditions or discriminatory laws or policies.³

An inquiry under Article 8 of the OP CEDAW may include a visit by the CEDAW Committee members. Such visit can only happen with the consent of the State party.

What is the relevance of the Inquiry Procedure?

- It allows investigation of substantial women's human rights abuses by an international body of experts;⁴
- It is effective where individual communications fail to reflect the systemic nature of widespread violations of women's rights;⁵
- It allows widespread violations to be investigated where individuals or groups may be unable to submit communications due to practical reasons or because of fear of reprisals;⁶
- It provides the CEDAW Committee an opportunity to make recommendations regarding the structural causes of violations;⁷
- It allows the CEDAW Committee to address a broad range of issues in the country.⁸

Does the Inquiry Procedure require exhaustion of domestic remedies?

No. There is no requirement of exhaustion of domestic remedies.

Does the Inquiry Procedure require identifiable victims?

No. There is no need to prove identifiable victims.

Is the inquiry procedure strict with forum shopping?

In the Ciudad Juarez inquiry (information submitted to the CEDAW Committee in October 2002 and visit to Chihuahua in October 2003),⁹ there was no finding of forum shopping even if it was already examined by Inter-American Commission on Human Rights (IACHR) in 2003.¹⁰ There is also no issue of forum shopping under the inquiry procedure even if a previous communication has been filed.

Which States may be subject to inquiries?

A State party is subject to inquiries if they have ratified the CEDAW Convention and the OP CEDAW and they have recognized the competence of the CEDAW Committee. States parties may opt out or exclude the competence¹¹ of the CEDAW Committee, at the time of ratification or accession, by making a declaration under article 10, paragraph 1, that it does not recognize the competence of the Committee unless the State party has subsequently withdrawn its declaration in accordance with article 10, paragraph 2, of the OP CEDAW.

What is the step-by-step inquiry procedure?

- receipt of reliable information by the CEDAW Committee;
- the CEDAW Committee invites State party to cooperate by submitting observations;
- the CEDAW Committee designates one or more of its members (also called rapporteurs) to make a confidential inquiry and report to the CEDAW Committee urgently; where warranted and with the State's consent, the inquiry may include a visit by the rapporteurs to the territory of the State party;¹²
- findings of the member(s) are then examined by the CEDAW Committee and transmitted to the State party together with any appropriate comments or suggestions/recommendations;¹³
- six-month deadline for the State party to respond with

its own observations on the CEDAW Committee's findings, comments and recommendations;¹⁴

- the CEDAW Committee may, after the end of the period of six months invite the State party concerned to inform it of any measures taken in response to an inquiry;¹⁵ CEDAW Committee invites State party to include in its report under article 18 of the Convention any measures taken in response to the CEDAW Committee's findings, comments and recommendations;¹⁶
- CEDAW Committee may decide, in consultation with the State party, to include a summary account of the results of the proceedings in its annual report.

Note:

- a) The cooperation of the State party must be sought throughout;¹⁷
- b) During the period of the inquiry, the CEDAW Committee may defer the consideration of any report that the State party concerned may have submitted pursuant to article 18 of the CEDAW Convention.¹⁸

What is the rule on confidentiality?

The confidentiality rule applies to the documents and proceedings of the CEDAW Committee on the conduct of the inquiry¹⁹ and the conduct of the inquiry by a rapporteur designated by the CEDAW Committee.²⁰

The individuals or groups of individuals and NGOs who filed the inquiry may publicize the fact that they have submitted a request for inquiry to the CEDAW Committee and the fact that an inquiry is taking place.²¹ This publicity is also a way to pressure the government to consent to the visit of the CEDAW Committee experts. Furthermore, the publicity will increase public awareness of the CEDAW Convention and the inquiry procedure under the OP CEDAW as a viable means of redress and preventive and investigatory action.²²

At the end of the six-month period upon which the State party has submitted information on the measures taken in response to the CEDAW Committee's recommendations, the confidential part of the process has ended and the CEDAW Committee may publicize the situation and the inquiry, including the CEDAW Committee's Report and Recommendations and the State Party's Response. With publicity, the grave situation that must be urgently addressed is made known and it puts pressure on the government to find solutions.²³