



## **Legal Brief on Optional Protocol**

*5 January 2017*

### **Calling upon the Afghanistan Government to Ratify the Optional Protocol to the Convention on Elimination of Discrimination Against women (CEDAW)**

#### **What is Optional Protocol to CEDAW (OP-CEDAW)?**

The Optional Protocol (“OP-CEDAW”) is an inter-state human rights treaty which supplements the Convention on Elimination of Discrimination Against women (“CEDAW”). Whilst CEDAW provides for substantive rights and obligations, the OP-CEDAW establishes two procedures which individual women and NGOs can take up to address individual cases of gender-discrimination and violence, as well as, grave and systemic violations:

**- The Communications Procedure:** Under the Communications Procedure, individual women who have been denied their rights within domestic courts, can have their claims reviewed by a Committee of independent experts, i.e. the CEDAW Committee. Women in several countries have filed complaints with the CEDAW Committee on a range of issues including sexual harassment at the workplace, forced sterilisation, victim-blaming and harmful-stereotyping in rape cases and State failure to exercise due diligence in the protection of women from violence. CEDAW Committee Decisions are informative. It clarifies what amounts to gender-discrimination under the law. The Decisions are also valuable for national-level advocacy as they identify how the rights guaranteed under the CEDAW Convention have been violated and the appropriate remedies for victims; and

**- The Inquiry Procedure:** CEDAW Committee can commence an inquiry into grave or systemic violations on its own initiative.

The OP-CEDAW can be ratified or acceded to by governments that are already CEDAW Convention States parties. As of December 2013, there are 104 OP-CEDAW States parties.

#### **Why OP-CEDAW?**

##### **1. To improve and add to existing enforcement mechanisms for women's human rights**

If domestic courts fail to provide victims recourse to justice and adequate remedies and assuming all domestic remedies have been exhausted, victims can take up their claim to the CEDAW Committee.

##### **2. To improve the State's and individuals' understanding of CEDAW**

Under the communications procedure, the Committee will interpret CEDAW rights in the context of individual violations. It would be able to state what is required from the State in those circumstances (i.e the State’s legal obligation to exercise due diligence under

CEDAW). This would help the State to better understand the standard and meaning of their obligations in practice.

CEDAW Committee's Decisions will contribute to the young *jurisprudence* women's rights, which serve as a guidance on how to view and adjudicate a violation with gender-lens. Jurisprudence from communications would help the State, Judiciary and lawyers interpret CEDAW rights and the State's obligations to respect, protect and fulfil those rights within national courts.

### **3. To pressure the State to take steps to implement CEDAW**

The State will be pressured to implement CEDAW in order to avoid complaints being made against them. The possibility of complaints being made might also be an incentive for the State to provide more effective local remedies.

### **4. To stimulate changes in discriminatory laws and practices**

The Committee would be able to request the State to take specific measures to remedy violations of CEDAW. Requests might include:

- Amendment of legislation,
- Ending discriminatory practices,
- Implementing affirmative action measures.

### **5. To create greater public awareness of human rights standards relating to discrimination against women**

The Optional Protocol requires that States publicize the Optional Protocol and its procedures. Communications and inquiries under the Optional Protocol will receive publicity which will increase public awareness of CEDAW and OP-CEDAW.