

MANUAL

FOR APPLICATION
OF THE OPTIONAL PROTOCOL
TO THE CONVENTION
ON THE ELIMINATION OF
ALL FORMS OF DISCRIMINATION
AGAINST WOMEN (CEDAW)



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* THIS MANUAL IS INTENDED
FOR LEGAL PRACTITIONERS, CITIZENS' ASSOCIATIONS
AND WOMEN WHOSE RIGHTS GUARANTEED
WITH THE CEDAW CONVENTION
HAVE BEEN VIOLATED.

MANUAL - For application of the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

* this Manual is intended for legal practitioners, citizens' associations and women whose rights guaranteed with the CEDAW Convention have been violated

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FOREWORD

The Republic of North Macedonia is one of the countries that has ratified the Convention on the Elimination on all Forms of Discrimination against Women (CEDAW)¹, and its Optional Protocol, and as a signatory party it is obliged to guarantee, protect and advance the rights of women and girls, and particularly, prevent and eliminate all forms of discrimination against women and girls across its territory.

The most vocal proponents in calling on the state to fulfil its obligations arising from the Convention are the civil society organisations, legal experts and a small number of legal practitioners. We are witnessing daily persistent systemic discrimination and violation of the rights of women and girls in North Macedonia. In practice, before 2019 there has been no individual Communication submitted to the CEDAW Committee, invoking the Optional Protocol to CEDAW.

The Helsinki Committee and other civil society organisations (hereinafter: CSO's) have comprehended the power of this mechanism, available to the state parties, and with the help of donor organisations and international experts they have started identifying cases which could be submitted to the CEDAW Committee as individual Communications.

The process, led by the Helsinki Committee for Human Rights, consisted of trainings and capacity building activities for CSOs, where trainers were international legal experts on the Convention on the Elimination of all Forms of Discrimination against Women. Following the trainings, an analysis and identification of cases meeting the so-called *admissibility criteria*, i.e. conditions for initiating Communication proceedings before the CEDAW Committee took place. This was followed by preparing a Communication and submitting it to the CEDAW Committee and finally briefing the CSOs that participated in the whole process on the submission procedure. The case, which has been identified as suitable for submission before the CEDAW Committee, was previously led before the national courts, with the support of CSO H.E.R.A.- Health Education and Research Association. **The Communication was submitted on 25th of May, 2019 and the CEDAW Committee is expected to deliver its final decision and opinion in due course.**

The final output of the abovementioned process is this informative Manual, intended for the use of other CSOs, experts or legal practitioners, in order to help them in the process of identifying, planning and representing cases of violation of the rights of women and girls and discrimination against them. It will help them make use of the protection mechanisms laid down with the CEDAW Convention.

¹ CEDAW – Convention on Elimination on all Forms of Discrimination against Women.

We would like to express our deepest gratitude to Ms. Natasha Boshkova, a legal expert who has led the process of preparing the Communication and has provided her input to this Manual. In addition, we would like to thank Ms. Milena Kadieva, an international human rights expert who unselfishly provided us with advice and expertise throughout the whole process.

Sincerely,
The authors of the manual

1.

**Introduction -
Convention on the
Elimination of
All Forms of
Discrimination against
Women (CEDAW)**

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is a United Nations document, adopted by the UN General Assembly on the 18th of December, 1979, entering into force on 3rd of September 1981, after twenty states parties had ratified it. Until today, it has been signed and ratified by 187 countries, including the Republic of Northern Macedonia.

Practitioners might wonder why a new legal document for protection of the rights of a certain group of people is needed, when already there are documents universally protecting the rights of all people, including women. We need to understand that women are not a particular group of people, but they are half of the world's population. In this case, the need to protect the rights of women and girls with a special convention comes from the fact that even in most developed democracies in the world, women and girls are not equal to men and boys; traditional division of roles in societies still persists and women and girls are more exposed to violence and exploitation. Although 142 countries in the world have guaranteed equality between women and men in their Constitutions, 52 countries around the world have not done so.²

The CEDAW Committee was established with the adoption of the Convention, and it had had a consultative and advisory role until the adoption of the Optional Protocol in 1999. According to Article 18 of the Convention, within one year of the ratification, state parties are required to submit **initial report** to the CEDAW Committee elaborating the conditions with regards to the obligations deriving from the Convention.

Following the initial report, signatory states have an obligation to submit a four-year periodic report on the progress and implementation of the obligations arising from the Convention, as well as on the recommendations provided by the CEDAW Committee in the previous periodic report.

The submitted reports by all the signatories countries of the Convention can be accessed at the following link <https://tbinternet.ohchr.org/Treaties/CEDAW/SitePages/Home.aspx>. In order to check the report submission by the Republic of North Macedonia one should select the sub-folder MKD.³

2 Women and Sustainable Development Goals, UN Women Publication.

3 <https://tbinternet.ohchr.org/Treaties/CEDAW/SitePages/Home.aspx?RootFolder=%2FTreaties%2FCEDAW%2FShared%20Documents%2FMKD&FolderCTID=0x012000DD93400896704142AD4D9FB3367C6D08&View=%7B7C84768F%2D057C%2D4294-%2D8DFF%2D29C8D154EFF3%7D>

Thus far, the CEDAW Committee, in 5 situations, has called upon certain states parties to submit exceptional reports. However, the exceptional reports are not considered a substitute for the initial and periodic reports that the states parties are obliged to submit to the CEDAW Committee.

So far, the Republic of North Macedonia has submitted one initial and six periodic reports; the latest periodic report was sent in 2017. Following the report submission, the country receives recommendations that are to be implemented by the next reporting period. Regarding recommendations or issues requiring quicker response and more serious approach, the CEDAW Committee provides a shorter reporting period, i.e. a two years' deadline since the key observations have been issued.

The process of reviewing the reports submitted by the state parties happens at scheduled sessions of the CEDAW Committee. For each session, the CEDAW Committee pre-selects which states parties will be subject to review at the next three sessions, and the state party authorities as well as the civil society are informed of it.

Following the submission of each periodic report, the CEDAW Committee compiles a **list of issues** that is forwarded to the states parties and their response is expected. The state party submits written response to the CEDAW Committee. At a scheduled session, the state party and the CEDAW Committee conduct a dialogue. At the so-called dialogue (session), the delegation of state representatives elaborates the submitted report and provides answers to the specific questions posed by the CEDAW Committee.

In addition to the obligation of the state party to submit initial and periodic reports, and the dialogue session with the CEDAW Committee, there is another important parallel process. It is the process of shadow reporting by the civil society. Independent CSOs, or coalitions and networks protecting the rights of women and girls might submit **shadow reports** to the CEDAW Committee.⁴ These submissions are not legally mandatory, however the shadow reporting process is especially important because the CEDAW Committee obtains a clearer picture of the situation and problems with regards to women's rights in a country; but also it receives an independent input regarding the implementation of the CEDAW's provisions and earlier provided recommendations. There is also an opportunity, in accordance with the CEDAW Committee's procedures, representatives of civil society

4 The shadow reports can be found at the following link:
https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=MKD&Lang=EN&fbclid=IwAR1ADr7A8V83IKCalxul___6X2By30GXpuS6ZCs8T7k9EE XD_bOxqrF85FA.

organizations and independent human rights institutions to provide brief statement on their findings and give their recommendations prior to the session between the State and the Committee. CSOs representatives are allowed to attend the dialogue session between the state party and the CEDAW Committee, with no right to speak. During the dialogue, the CEDAW Committee members may ask questions to state party representatives, on issues raised in the shadow reports, and in this way directly address certain issues reported by the civil society organisations.

Respecting the rights guaranteed with the CEDAW Convention and the recommendations provided by the Committee depend mostly on the political will of the state and are not legally binding; however, the practice thus far has shown that using this process, CSOs have managed to place the focus on women's rights, and initiate positive changes in their own countries, due to recommendations provided by the CEDAW Committee.

2.

**The Optional Protocol
to the Convention
on the Elimination on
All Forms of Discrimination
against Women
(OP to CEDAW)**

The fact that, despite ratifying the CEDAW Convention, not all states parties have eliminated all forms of discrimination against women and girls, or that some states have failed to implement recommendations provided by the CEDAW Committee, highlighted the need for a stronger mechanism for protection of women rights, rather than simple, declaratory signing of the Convention.

Due to the aforementioned reasons, on the 10th of December 1999, the United Nations Assembly adopted the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. In this way, it has provided two specific mechanisms for protection of the rights of women and girls guaranteed by the Convention.

The Optional Protocol to CEDAW introduces mechanisms for legal protection of the rights guaranteed with the Convention, and obliges member states to do so. Two procedural protection mechanisms have been introduced, a *Communication procedure* and an *Inquiry procedure*.

Procedure for submission of individual complaints (Communication Procedure)

The procedure for submission of individual Communications to the CEDAW Committee provides direct protection to victims of discrimination or women whose rights guaranteed with the CEDAW Convention have been violated.

The (so-called) *admissibility criteria* must be met in order for a Communication to be submitted to the CEDAW Committee. The *admissibility criteria* are as follows:

1. The case must have exhausted all effective legal, domestic remedies.
2. Submit the Communication within 6 months of the exhaustion of all domestic, legal remedies.
3. The victim has invoked gender discrimination in the proceedings before the national courts and authorities.
4. The Communication has to refer to violation/s of women's rights guaranteed with the Convention.
5. The right of appeal to the Committee has not been previously exercised, or no proceedings have been initiated before any other international body or authority simultaneously.
6. The victim needs to be motivated to submit a Communication (anonymous complaints or complaints on behalf of another person are not admissible).
7. Submit the Communication in one of the official languages of the United Nations (the overall communication with the CEDAW Committee will be conducted in one of these languages).

If the CEDAW Committee reaches a decision that violations of rights and discrimination took place, it will provide recommendations to the authorities to remedy the violations and eliminate the consequences. The Communication can be used as a legal instrument, and the complainant/s could ask the Committee to impose interim measures against the state party, and prevent irreparable further damages.

Inquiry Procedure

In addition to individual Communication, there is another mechanism dealing with violations and/ or cases of discrimination. If there is a credible information about systemic, long-term, serious and grave violations of women's rights in a state party, there is a possibility for initiation of an Inquiry procedure. The Inquiry procedure aims to verify the above-mentioned claims. Such a procedure may be initiated ex-officio by the CEDAW Committee, or also upon a request by a third party.

A victim, a group of women affected by systemic abuses, or civil society organizations and coalitions protecting women's rights in general may file a request for an inquiry procedure.

Requirements for an Inquiry to be submitted to the CEDAW Committee are:

8. There should be serious and grave violations of women's rights, or
9. There has to be systemic violation of women's rights in a state party.

With the Inquiry procedure, the CEDAW Committee verifies the received information and if it finds the information truthful, it may initiate an investigation. The investigation is a process through which the Committee obtains information on violations of women's rights in the state party.

In the process of Inquiry, the Committee will verify the information, send its representatives to the state party, establish contacts with some of the victims, and with relevant organizations and institutions in the country, as well as with other stakeholders who could provide useful information on the specific violation. Until today, the CEDAW Committee has conducted 3 inquiry procedures in total, in 3 states: Canada, Mexico and the Philippines.

In 2017, CSOs from the Republic of North Macedonia submitted a request for an inquiry procedure, however it was rejected by the CEDAW Committee without a clear explanation of the reasons for not initiating an investigation i.e. inquiry procedure.⁵

⁵ HOPS – Healthy Options Project Skopje. www.hops.org.mk.

3.

**Strategic litigation,
in order to use the
mechanism of submitting
Communication(s) to the
CEDAW Committee**

The previous Chapter listed the criteria for submission of a Communication to the CEDAW Committee. One of the conditions was exhaustion of all effective domestic, legal remedies; the other is that the claim brought before national courts and authorities had to refer to discrimination and gender-based violation(s). A third condition is that the right to protection is not sought simultaneously or have been sought before any other international bodies and legal authorities (e.g. before the European Court of Human Rights or another UN body). Due to the above-mentioned reasons, strategic planning is needed when conducting proceedings before national courts and authorities.

However, one needs to explain first what strategic litigation is. Strategic litigation is aimed at instigating a broader social change, through initiating and leading individual cases of violation of certain rights. The aim is to use legal remedies to fight injustice created by inadequate laws, policies or practices. Hence, one of the strategies for eliminating persistent systemic discrimination against women is to prepare court cases for protection and promotion of women's rights and elimination of gender-based discrimination.

It is recommended that there is a team-approach to strategic litigation in cases of systemic discrimination or violations of women's rights. The team should be consisted of good lawyers or legal practitioners; the victim(s) should also have an active role; there should be professionals with necessary skills to provide psycho-social support to the victims, as well as civil society organisations or foundations having expertise and in cases, financially supporting and facilitating the whole process. The process of strategic litigation might be slow, expensive and tedious. Strategic litigation is not only court representation of a case, but it comprises of other type of activities, such as: lobbying, advocacy, campaigns, community empowerment, etc. This is the reason why it differs from standard court representation, which does not always imply teamwork.

There are cases where strategic litigation results have been successfully implemented and have affected public policy creation, have initiated changes in legislation, and have changed practice. In order to be certain that particular case is suitable for submission to the CEDAW Committee, the following needs to be done:

- identify an appropriate case;
- motivate victim/s to initiate proceedings and help them persevere throughout the case;
- provide all of the evidence;
- establish and conduct a case based on provisions from the Convention and other international or regional human rights instruments;
- exhaust all effective legal remedies at national level;
- prepare the Communication in a template provided by the CEDAW Committee;
- maintain timely and proper communication with the CEDAW Committee, and
- monitor the implementation of the recommendations provided in the Committee's decision.

3.1. IDENTIFYING A CASE

If the proceedings are to be successful, it is necessary to select the case carefully. It is essential to create a strategy for leading the case from the very beginning, and identify all internal and external risks; to identify strengths and weaknesses of the case and likelihood to succeed in the proceedings before national courts; to build up strong evidence; to look for case law of the CEDAW Committee or other international or regional human rights bodies etc. It is also very important to build and lead the case in a way that it invokes regional and international mechanisms, and the mechanism for initiating Communication defined by the Optional Protocol to CEDAW. The case should be presented in front of national courts in a way that fulfils the criteria laid down with CEDAW, and thus, Communication can be initiated after exhausting all national legal remedies.

3.2. MOTIVATING THE VICTIM/S

When conducting strategic litigation, especially when victims are marginalized and vulnerable women, the risk of lack of motivation among the victim/s or loss of motivation to pursue the proceedings is persistent. This is especially evident when the proceedings are long; and victims have lost their cases before the national courts. Often, victims during the proceedings before national courts and authorities are additionally victimized. Hence, it is necessary, from the very outset, to devise a plan and strategy to motivate the victims, and the best way to do so is with a team of professionals who will provide psycho-social and all necessary support to the victim/s when need arises.

3.3. PROVIDING EVIDENCE

To build a successful case, timely collection, securing and storing of all available evidence is essential. Therefore, even before the formal start of proceedings before national courts, all evidence needs to be collected (for example, in cases of domestic violence, victims do not always report all situations of violence, do not retain medical records or photographs of injuries or other proof). As soon as the case has been identified, victims should be properly advised and evidence collected, thus valuable evidence is not lost in the process.

3.4. EXHAUSTING ALL NATIONAL LEGAL REMEDIES

Once the case has been identified, the victim is motivated and the necessary evidence is provided, all domestic legal proceedings need to be initiated and completed. They are the procedures considered to be effective legal remedies for protection of the specific right that was violated. In case when all of the effective legal remedies before national courts and authorities are not exhausted, the CEDAW Committee may reject the Communication as inadmissible.

One should have in mind that the proceedings before national courts should refer to gender-based discrimination and violation/s of the rights guaranteed by the Convention on the Elimination of All Forms of Discrimination against Women.

If the proceedings before national courts fail to refer to gender-based discrimination or a gender-based violation of certain right(s) guaranteed with the Convention, the Communication might be rejected by the CEDAW Committee as inadmissible. It is very important to estimate at an early stage if the case will fail before the national courts and authorities.

Thus, it is necessary to assess, in accordance with the existing practice and the case law of international courts and bodies, if a certain case is more suitable to be submitted to the European Court of Human Rights in Strasbourg or to the CEDAW Committee invoking the Convention.

When there is a case of a violation of a right guaranteed by the CEDAW Convention, the case should be built in a way to be represented not only before the national courts, but also before the CEDAW Committee. Namely, the practice shows that the procedure before the CEDAW Committee is considerably shorter than the ECHR, and the Committee can recommend that the victims receive financial compensation in addition to other remedies for the damage. Therefore, there are no general applicable recommendations, however deciding which international mechanism will be used further, if the national courts fail to do so, is to be decided individually for each case and in a timely manner.

Using two or more international protection mechanisms for a same case is not permitted. The Committee shall reject a Communication as inadmissible, if the case has already been initiated or is pending before other international courts or body bodies.

When building the case, one should pay attention to the date when the international protocol or mechanism entered into force. Thus, regarding the OP to CEDAW, one must take into account whether the case occurred after the Optional Protocol entered into force into the particular country.

3.5. PREPARATION OF A COMMUNICATION

It is of particular importance that the Communication is well written and structured, is based on provisions of the CEDAW Convention, and substantiated by facts and evidence. Otherwise, it could be rejected by the CEDAW Committee as inadmissible.

The Communication is written in a template form defined by the Optional Protocol and it must comprise of all the elements accordingly. The template can be downloaded at the following link: https://www.ohchr.org/documents/HRBodies/CEDAW/InfoNote_OP_en.doc

The documentation should be sent by post at the following address:

Petitions Team
Office of the High Commissioner for Human Rights

United Nations Office at Geneva
1211 Geneva 10, Switzerland
E-Mail : petitions@ohchr.org

In addition, Communication is always submitted in one of the six official languages of the United Nations, and the relevant parts of the accompanying evidence must be also translated into the same language. Thus, if a Communication is written and submitted in English language, all annexes, evidence and supporting documents must be translated and submitted into the same language.

Communication can be submitted individually or a group of women whose rights have been violated, or through a representative with a power-of-attorney. The CEDAW Committee does not take into consideration anonymous complaints, but due to the likelihood of further victimization and protection of victims' private and family life, the personal data of the complainants may be anonymous when the decision is published. This is done by request of the complainants. The full personal details are disclosed to the members of the CEDAW Committee. If anonymous Communication is filed, or there is no power-of-attorney provided by the victims, it could be rejected as inadmissible by the CEDAW Committee.

Furthermore, a Communication can be submitted against a state party that is a signatory to the Convention and to the Optional Protocol. If a state has ratified the Convention, but has not signed and ratified the Optional Protocol, then no Communication can be initiated against it before the CEDAW Committee. The Communication procedure cannot apply to private entities or individuals, and as such, it will be rejected as inadmissible by the CEDAW Committee.

3.6 THE COURSE OF THE PROCEEDINGS AND COMMUNICATION WITH THE CEDAW COMMITTEE AND MONITORING IMPLEMENTATION OF THE RECOMMENDATIONS PROVIDED BY IT

After the CEDAW Committee reviews the Communication in line with the admissibility criteria, the Committee informs the state party that Communication, invoking the Optional Protocol, has been submitted against it (please see above how admissibility criteria are defined). In accordance with Rule 69, from the Committee's Rules of Procedure, a copy of the Communication is sent to the state party, with request that any information or observations required should reach the Committee within six months.

After the CEDAW Committee receives the response from the state party, at meetings closed for the public, it will review the Communication, the response from the State and any additional information provided by the involved parties, and it shall decide whether or not there have been violations regarding CEDAW Convention provisions. The Committee will submit its recommendations and observations to the parties involved (the individual complainant and the state party).

According to the Optional Protocol, the state party is obliged to pay due attention to the observations and the recommendations by the CEDAW Committee. The state party is obliged to submit a written response to the CEDAW Committee within six months after observations and recommendations have been received. The response should contain information about the activities undertaken to address the observations and recommendations provided by the Committee.

Having in mind these deadlines, one should emphasize that this mechanism may sometimes be more effective than cases brought before other international committees or courts, however this should be decided on each case individually.

On the other hand, the complainants and the CSOs have the opportunity to use the observations and the recommendations provided by the CEDAW Committee to advocate for broader social changes and advocate for greater systemic changes to improve women's rights and work towards elimination of all forms of discrimination against women.

4.

**Benefits and
disadvantages
of using this
mechanism**

The benefits of using this mechanism for protection of the rights of women and girls are:

- Opportunity for review of individual cases where a state has violated women's rights;
- Access to international authority body when national authorities and courts have failed to protect women's rights;
- Instigate systemic changes;
- The instrument is focused on promoting women's rights;
- The likelihood that an individual complaint procedure might be completed within a reasonable time (one and a half years at the earliest);
- Changing (court) practice after a positive decision by the CEDAW Committee has been issued;
- The procedure is free of charge;
- Promote the CEDAW Committee as a mechanism for protection of women's rights.

Disadvantages of using this mechanism for protection of the rights of women and girls are:

- Limited access due to language barriers;
- Greater financial burden to the complainant due to the need to translate all documents into one of the official UN languages (English, French, Spanish, Russian, Chinese, Arabic);
- Weak monitoring mechanism by the CEDAW Committee to monitor the implementation of its decision by the state party.



5.

**Recommendations
for Legal Practitioners,
CSOs and women whose
rights have been violated**

- Prior to initiating a case, assess well whether the CEDAW Convention and the Optional Protocol are appropriate international protection mechanisms.
- Prepare strategic approach in planning and leading the case before national courts and authorities.
- Estimate which national remedies are most effective and efficient in particular case (civil procedure, administrative, or a criminal procedure).
- Carefully read the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol, the General Recommendations on the Convention and the existing CEDAW Committee's case law which could be relevant to the case.
- Always bear in mind and respect deadlines, grounds and admissibility of the appeal.
- The practice has shown that sometimes success can be achieved before national authorities and courts, by indicating to them obligations arising from ratification of the Convention or pointing the existing case law by CEDAW.
- When possible cooperate with civil society organizations working in the field of protection of women's rights.
- Ensure sufficient funds to conduct all procedures, including the procedure before the CEDAW Committee.
- Victims should be contacted and motivated continuously, regularly informing of the stages of the proceedings, including the procedure before the CEDAW Committee.
- Received opinions and recommendations to be communicated to the public and monitor their implementation by the state party authorities. When necessary, inform the CEDAW Committee if the state party fails to implement them.
- Use the recommendations for systemic change campaigns, and not only for changes related to the specific case.

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