

Protecting and Promoting Women's Rights



pilch

promoting law in the public interest



**Australian
Human Rights
Commission**

everyone, everywhere, everyday

Introduction

- Seminar on the Optional Protocol to CEDAW for legal profession
- Purpose:
 - improve understanding of CEDAW and the Optional Protocol
 - develop capacity of the legal profession to use these instruments
 - strengthen women's rights network
 - improve access to justice for women
- Supported by the Victorian Women's Trust

Women's Rights in Australia

Dr. Cassandra Goldie
Sex Discrimination Unit
Australian Human Rights Commission

CEDAW

- International Bill of Rights for Women
- Adopted by UN General Assembly in 1979
- Entered into force in 1981
- Introduced because, despite existence of other human rights treaties, extensive discrimination against women persisted

CEDAW

- Object and purpose: to eliminate all forms of discrimination against women, with a view to ensuring substantive equality
- Discrimination against women is defined in art 1 as:
 - any distinction, exclusion or restriction
 - made on the basis of sex
 - which has the purpose (direct) or effect (indirect) of
 - impairing or nullifying the
 - recognition, enjoyment or exercise by women
 - irrespective of their marital status
 - on a basis of equality of men and women of
 - human rights and fundamental freedoms

CEDAW

- Wrongful gender stereotyping (art 5)
- Trafficking (art 6)
- Representation in Political and Public Life (arts 7-8)
- Nationality (art 9)
- Education (art 10)
- Employment (art 11)
- Reproductive and sexual health (art 12)
- Socio-economic life, sport and culture (art 13)
- Rural women (art 14)
- Equality before the law / civil matters (art 15)
- Marriage and family relations (art 16)

CEDAW

- Australia ratified CEDAW in 1983
- SDA introduced in 1984 to give domestic effect to certain provisions of CEDAW
- Reporting procedure (art 18)
- Reservations:
 - paid maternity leave
 - women's participation in direct, armed combat

Optional Protocol

- 22 December 2000: OP entered into force
- Introduced to strengthen protection of CEDAW rights
 - communication procedure (arts 1-7)
 - inquiry procedure (arts 8-10)
- 4 Dec 2008: Australia acceded to OP
- 4 March 2009: OP entered into force for Australia

Communication Procedure: Overview

- Committee empowered to consider communications that allege violations by a State Party of CEDAW
- Key elements:
 - standing (art 2)
 - admissibility criteria (arts 3-4)
 - interim measures (art 5)
 - merits, recommendations and follow-up (art 7)

Communication Procedure: Admissibility Criteria

- Failure to comply with the OP's admissibility criteria will:
 - render a communication inadmissible on procedural grounds
 - prevent the Committee from assessing its substantive allegations
- A communication will be declared *prima facie* admissible if it:
 - is in writing
 - is not anonymous
 - concerns a State Party (art 3)

Communication Procedure: Admissibility Criteria

Standing: art 2

- Communications may be submitted by or on behalf of:
 - individual victims
 - groups of individual victims
- If acting on behalf of victims, must obtain their consent
- If victim does not consent, author must justify why they are entitled to submit a communication
 - Eg, *Yildirim*; *Goekce*

Communication Procedure: Admissibility Criteria

Exhaustion of domestic remedies: art 4(1)

- All available domestic remedies must have been exhausted at the time the Committee considers the communication
- Refers primarily to judicial remedies (court of first instance and highest appellate review)
- May also include:
 - administrative remedies
 - extraordinary remedies
- Substance of the claim should be raised in domestic courts

Communication Procedure: Admissibility Criteria

Exhaustion of domestic remedies: art 4(1)

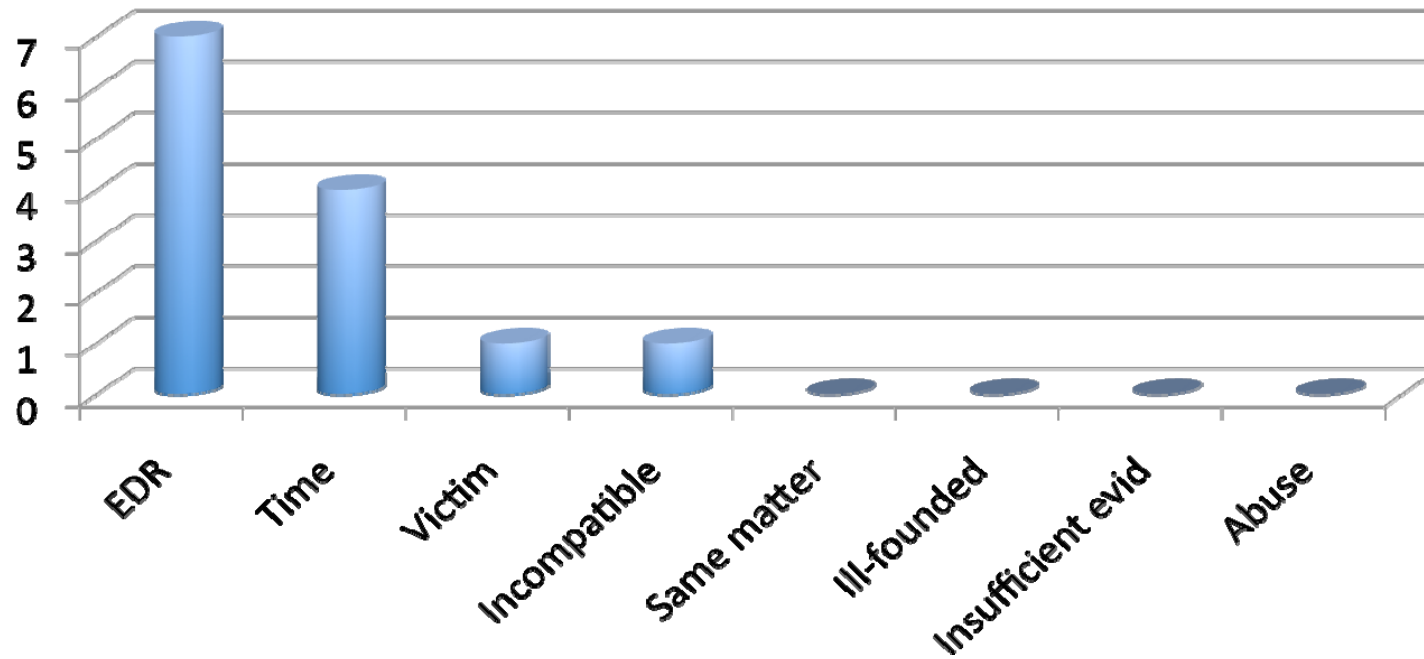
- EDR may be waived if domestic remedies were:
 - unavailable
 - unreasonably prolonged
 - unlikely to bring effective relief (i.e. remedies inadequate to redress harm)
- Decision regarding waiver will be determined with reference to the particular circumstances of the communication

Communication Procedure: Admissibility Criteria

- Must allege violation after entry into force date: art 4(2)(e)
 - exception: violation or its effects are ongoing: eg, *AT v Hungary*; *AS v Hungary*
- Same matter has not already been examined: art 4(2)(a)
 - Eg, *Kayhan v Turkey*
- Must be compatible with CEDAW: art 4(2)(b)
 - Eg, *Cristina Muñoz-Vargas y Sainz de Vicuña*
- Must not be manifestly ill-founded, insufficiently substantiated or an abuse of the right to submit a communication: arts 4(2)(c)-(d)

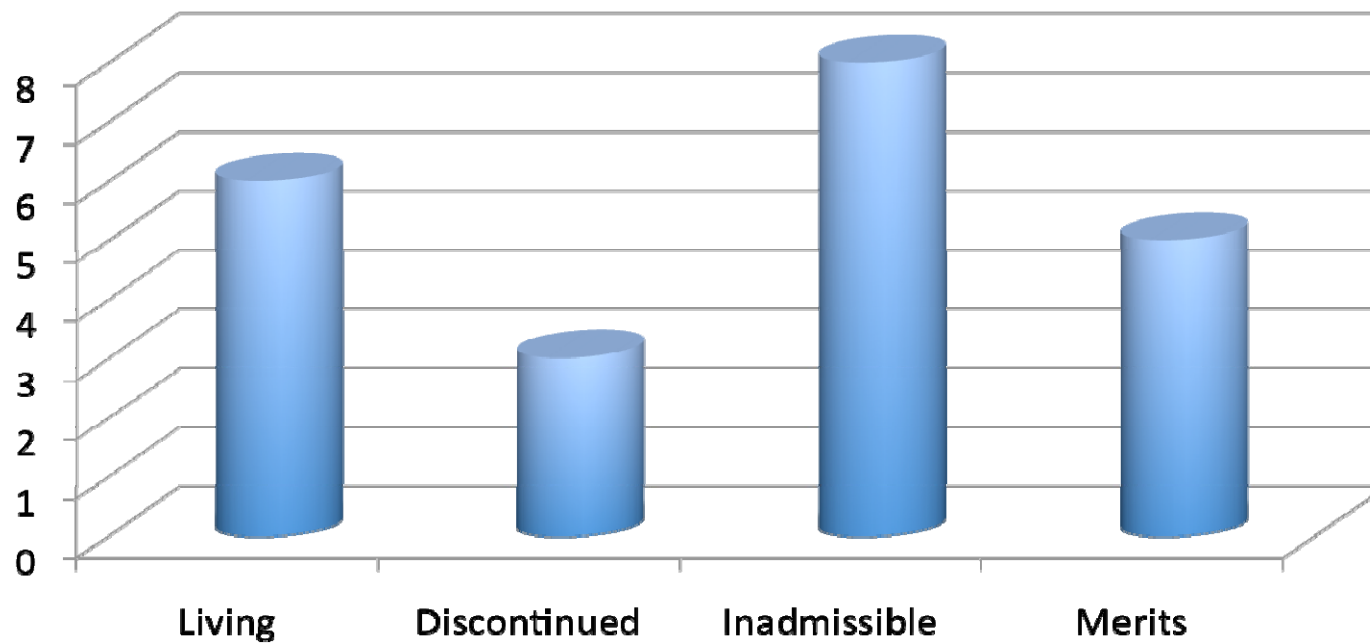
Communication Procedure: Admissibility Criteria

Grounds of inadmissibility



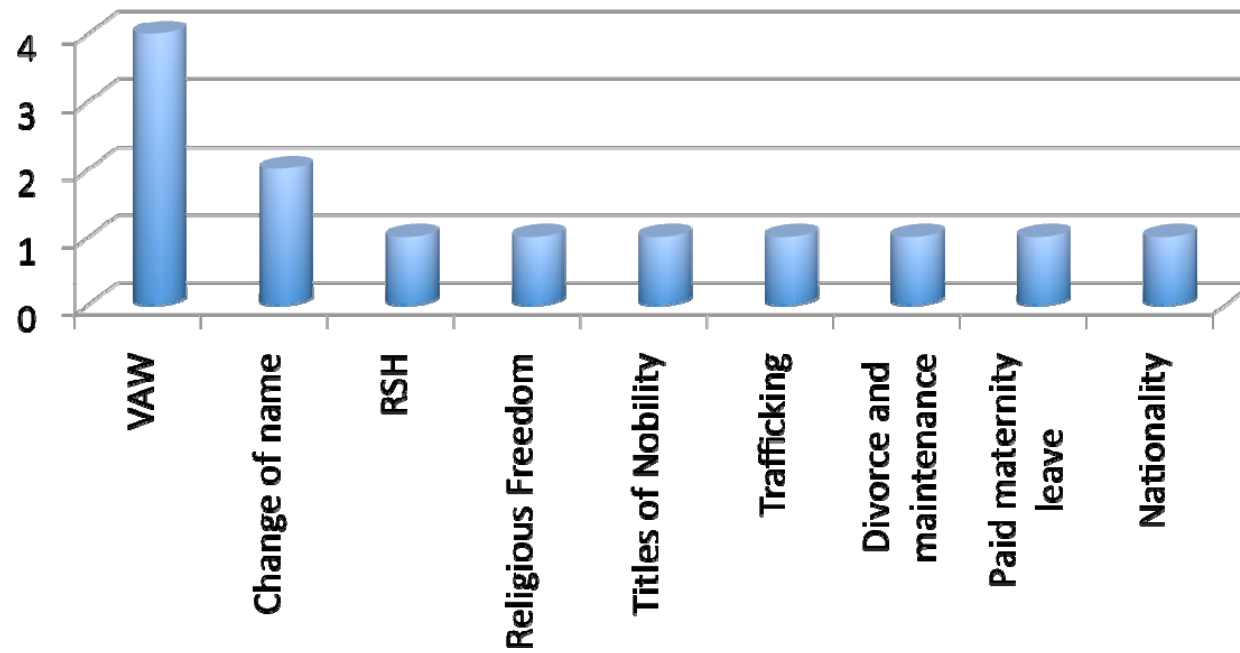
Communication Procedure: The Story So Far

Communications (as of 7 Aug 09)



Communication Procedure: The Story So Far

Subject Matter of Communications



Communication Procedure: The Story So Far

AS v Hungary

- AS, a Hungarian woman of Roma origin, had a caesarean for a miscarriage at a public hospital
- Prior to the surgery, but whilst on the operating table, AS was asked to sign a form consenting to the procedure
- Form included a barely legible hand-written note re sterilisation
- Latin term for sterilisation, which was unknown to AS, was used
- At the time the form was signed, AS was in poor health
- Only after surgery did AS realise that she had been sterilised

Communication Procedure: The Story So Far

AS v Hungary

- AS submitted a communication to the CEDAW Committee
- She alleged that the sterilisation had been performed without her full and informed consent and that Hungary had violated her rights to:
 - health (art 12)
 - access to information on health and family planning (art 10(h))
 - decide freely and responsibly on the number and spacing of children (art 16(1)(e))
- Hungary submitted that:
 - AS had not exhausted domestic remedies
 - the alleged facts occurred prior to the entry into force of the OP for Hungary

Communication Procedure: The Story So Far

AS v Hungary

- Decision:
 - Forced sterilisation impairs women's physical and mental health, and infringes their right to decide on the number and spacing of their children
 - Hungary had failed to:
 - provide AS with appropriate information and advice on family planning
 - ensure that AS had given her fully informed consent to the operation
 - Violation of articles 10(h), 12, and 16(1)(e) of CEDAW
 - First time an international human rights committee has held a government accountable for failing to provide necessary information to a woman to enable her to give informed consent to a reproductive health procedure

Communication Procedure: The Story So Far

AS v Hungary

- Recommendations:
 - compensation
 - ensure all relevant health professionals comply with CEDAW
 - review domestic law on informed consent in sterilisation cases
 - monitor sterilisations so as to ensure fully informed consent is being given
 - impose sanctions for violations
- Action:
 - in 2008, Hungary amended the *Public Health Act* to improve the provision of information and procedures to obtain consent in cases of sterilization
 - in 2009, Hungary announced that it would compensate AS

Inquiry Procedure

Empowers the Committee to undertake inquiries into:

- reliable information
- indicating *grave* or *systematic* violations
- by a State Party
- of CEDAW rights

Inquiry Procedure

Key Elements

- threshold requirements: art 8(1)
- inquiry, including onsite visit: art 8(2)
- findings and recommendation: art 8(3)
- follow-up: art 9
- opt-out procedure: art 10

Inquiry Procedure: Threshold Requirements

- **Reliable information**
 - is the information consistent?
 - is there corroborating evidence?
 - are the sources of the information credible?
- **Grave violations of CEDAW**
 - severe abuse of fundamental human rights
 - eg, femicide, torture, disappearances, trafficking
- **Systematic violations of CEDAW**
 - widespread abuse of human rights
 - eg, violence against women, discrimination in law

Inquiry Procedure: Ciudad Juárez

Findings:

- In failing to protect women against gender-based violence against women, Mexico violated, *inter alia*, the:
 - right to non-discrimination on the ground of sex (art 1)
 - freedom from wrongful gender stereotyping (art 5(a))
 - right to equality before the law (art 15)

Inquiry Procedure: Ciudad Juárez

- Violation of women's basic rights; most radical expressions of discrimination
- Acts not isolated cases of violence; represented a structural situation rooted in customs and mindsets
- Culture of violence and discrimination based on women's alleged inferiority
- "While there is now a greater political will ... to deal with discrimination and violence ... the measures taken ... have been ineffective and have fostered a climate of impunity and lack of confidence in the justice system ..."
- "The campaigns aimed at preventing violence ... have focused not on promoting social responsibility, change in social and cultural patterns of conduct of men and women and women's dignity, but on making potential victims responsible for their own protection by maintaining ... stereotypes"

Inquiry Procedure: Ciudad Juárez

Recommendations included:

- General recommendations
 - Eg, Incorporate a gender perspective into all investigations, policies to prevent and combat violence, and programmes to restore the social fabric
- Investigation of the crimes and punishment of the perpetrators
 - Eg, Investigate thoroughly and punish the negligence and complicity of public authorities in the disappearances and murders of women, and the fabrication of confessions under torture
- Prevention of violence and protection and promotion of women's rights
 - Eg, Implement a strategy aimed at transforming existing sociocultural patterns, especially with regard to eradicating the notion that gender violence is inevitable

Inquiry Procedure: Ciudad Juárez

Inquiry into Ciudad Juárez, Mexico

- Action taken includes:
 - enactment of *General Act on Equality between Men and Women* (2006)
 - enactment of *General Law on Women's Access to a Life Free From Violence* (2007)
 - many Mexican states have approved similar legislation, but have been slow to introduce measures to ensure that the law is enforced
 - establishment of a Special Attorney's Office to monitor investigations into femicide
- However, Mexico has been criticised for failing to take adequate measures to address gender-based violence against women and such violence remains socially pervasive

Inquiry Procedure: Manila City

Inquiry into the Philippines (2009)

- The Committee is currently considering whether or not to undertake an inquiry into Manila City's ban on artificial contraceptives



[Map source: CIA World Factbook]

Inquiry Procedure

- Can address individual *and* systematic violations
- Victims don't have to exhaust domestic remedies
- Victims can remain anonymous
- Don't need to identify a specific victim
- On-site visits raise awareness of issues and women's rights

Using the Optional Protocol

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Using CEDAW Jurisprudence

- In litigation
- In policy and law reform work
- In education
- In funding applications

Further Information

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