Fact Sheet: Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") (the “CEDAW Optional Protocol”)

**Law’s Current Status:** Entered into force in Cambodia on 12 January 2011

**Summary:** By ratifying the CEDAW Optional Protocol, the Royal Government of Cambodia (the “RGC”) has paved the way for individuals and groups of women who believe their rights have been violated to submit complaints to the United Nations committee dealing with women’s rights, providing women in Cambodia with an additional means to seek redress for violations of their rights.

**Introduction**

This factsheet provides an overview of the CEDAW Optional Protocol, which Cambodia ratified on 13 October 2010, and which came into force on 12 January 2011. The coming into force of the CEDAW Optional Protocol allows individuals and groups who believe their rights under CEDAW have been violated to submit a complaint to the United Nations Committee on the Elimination of All Forms of Discrimination Against Women – the body of independent experts that monitors the implementation of CEDAW - (the “Committee”). This factsheet is written by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”).

**What is the CEDAW Optional Protocol?**

CEDAW is considered the “international bill of rights” for women. It is the most comprehensive document relating to violations of human rights committed on discriminatory grounds on the basis of gender. It gives positive affirmation to the principle of equality by requiring that state parties take “all appropriate measures...to ensure the full development and advancement of women, for the purposes of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of guaranteeing men.”

The CEDAW Optional Protocol is a means of holding states accountable to their commitment to guarantee the enjoyment of the rights set out in CEDAW. It is a treaty in its own right and as such state parties who are party to CEDAW need to sign, accede or ratify the CEDAW Optional Protocol in order for petitions and complaints regarding the violation of women’s rights to be considered. The CEDAW Optional Protocol has two key procedures through which violations of women’s rights can be considered on the international stage:

1. The Communication Procedure – The Communication Procedure provides individuals and groups an avenue to petition or complain directly to the Committee (Article 2 of the CEDAW Optional Protocol).

2. The Inquiry Procedure – The Inquiry Procedure enables the Committee to conduct inquiries into serious and systematic abuses of human rights in countries that are state parties to the CEDAW Optional Protocol (Article 8 of the CEDAW Optional Protocol).

**The Communication Procedure**

In order for an individual or group in Cambodia to access the Communication Procedure, a complaint must be made in writing to the Committee. Pursuant to Article 3 of the CEDAW Optional Protocol, the complaint cannot be made anonymously, and thus needs to include the name(s) of those making the complaint. Before the Committee can consider the merits of the complaint, it must determine that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief (see Article 4 of the CEDAW Optional Protocol). Jurisprudence from the Committee and other United Nations human rights committees with complaints mechanisms suggests that in order to be considered to have exhausted all available domestic remedies, the victim(s) must have exhausted judicial remedies i.e. court of first instance and highest level of appellate review, but also administrative remedies, such as appeals to national human rights commissions, to the extent they are available, adequate and effective. In *Salgado v the United Kingdom*, the Committee found that domestic
remedies had not been exhausted as the victim had only sought redress through administrative procedures rather than judicial procedures. A communication to the Committee is also considered inadmissible where (1) the same matter has already been examined by the Committee; (2) it is incompatible with the provisions of CEDAW; (3) it is manifestly ill-founded or not sufficiently substantiated; (4) it is an abuse of the right to submit a communication; or (5) the facts are in relation to events that occurred prior to the entry into force of the protocol, unless the facts continued after that date. At any time after the receipt of a communication and before a determination on its merits, the Committee may request that the state party take interim measures to avoid "irreparable damage to the victim or victims of the alleged violation" (Article 5(1) of the CEDAW Optional Protocol).

Unless the Committee considers a communication to be inadmissible without reference to the state party concerned, and provided there is consent by those making the communication that their identity can be disclosed to the state party, the Committee can begin consider the communication and will bring the communication to the attention of the state party. The Committee will consider information made available to it by or on behalf of the individual or groups of individuals, and the state party, holding closed meetings to examine the communications. It will then transmit its views together with recommendations, if any, to the parties concerned. Possible recommendations could include compensation and measures aimed at terminating ongoing violations of the victim’s right. The state party has six months within which to submit a written response including information on any action taken in light of the views and recommendations of the Committee. The Committee’s decision is not legal binding as such, however, it can use its procedures and influence to convince the state to implement the recommendations.

Inquiry Procedure
The Inquiry Procedure allows for the Committee to undertake an examination of a state party where it receives reliable information indicating grave or systematic violations of rights set forth in CEDAW. Taking account of information made available, the Committee may ask one or more of its members who sit on the Committee to conduct an inquiry and report back to the Committee. Where warranted, but only with the consent of the state party concerned, the inquiry may include a visit to the territory of the state in question (Article 8(2) of the CEDAW Optional Protocol). The Committee shall then provide its findings to the state party concerned together with comments and recommendations. The state party concerned has six months within which to submit its own observations to the Committee. The Committee may, if necessary, after the end of the six months, invite the state party to provide information on the measures it has taken in response to the inquiry.

Conclusion
The RGC’s ratification of the CEDAW Optional Protocol represents an important additional means through which individual women and girls, as well as groups of women and girls, can seek redress for violations of their human rights. It has been just over a year since the CEDAW Optional Protocol came into force in Cambodia, and to date no petitions or complaints in relation to possible violations of CEDAW by Cambodia have been made public. It is important for women in Cambodia to be aware of the avenues that are available to them in terms of seeking redress for violations of their rights. To this end, the CEDAW Optional Protocol, particularly through its Communication Procedure, not only represents a means through which to ensure remedies for violations of the rights of women and girls but also as a means to hold the RGC to account to its international obligations. CCHR considers the ratification by the RGC of the CEDAW Optional Protocol to be a progressive step in the realization of women’s rights in Cambodia. We hope that it indicates the RGC’s willingness to continue to work towards ensuring the protection and promotion of women’s human rights in Cambodia.

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