



Nagoya Univeristy

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FINAL REPORT FOR INTERNATIONAL HUMAN RIGHTS LAW

Cambodia Under CEDAW Reporting System (Report of 2013)

Student: DANY Channraksmeychhoukroth
ID: 231304447

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Introduction

As a small country located in Southeast Asia, bordering with Lao, Thailand, Vietnam and the Gulf of Thailand, Cambodia is one of the state parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹ Under Article 18 of the Convention, state party has an obligation to report to the CEDAW committee about women rights' situation and the progress of women rights' protection. Since 1992, Cambodia had submitted five reports to the committee and the sixth report is due in 2016.² However, this paper will discuss the fourth and fifth periodic report of Cambodia, which has been submitted and received concluding observations in 2013. This paper covers the issues in women rights' protection as reflected by the committee and the responses by Cambodia. It also briefly discusses the concluding observation by the committee after receiving the final report and conducting the meeting with Cambodia's representative. Since there are numerous issues raised up by the committee, this paper examines only key issues, which the author believe to be the important problems encountered by Cambodian women. Finally, this paper ends with a conclusion reflecting the author's comment on the discussed issues.

Issues Challenged by the committee and the response by Cambodia

The committee has requested Cambodia to provide the relevant information for 14 huge issues faced by Cambodia in the field of women rights. These issues include: constitutional, legislative and institutional framework, definition of discrimination, national machinery for the advancement of women, access to justice, stereotypes and harmful practices, violence against women, trafficking and exploiting of prostitution, participation in political and public life and decision making, education, employment, health, rural women, disadvantaged groups of women, and marriage and family relations. Among these issues, violence against women seem to be the most serious issue since the committee has placed a great concern on the issue by posing a lot of questions to the state party. This, however, does not mean that the committee neglected the other issues. On the other hand, this paper explores only five issues among the 14 issues raised by the committee, including stereotypes and harmful practices, violence against women, trafficking and exploitation of prostitution, disadvantaged groups of women, and marriage and family relations.

¹ Accede to CEDAW in 1992

² Working Group on the Universal Periodic Review, *Compilation Prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15 (b) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21*, A/HRC/WG.6/18/KHM/2, November 7, 2013, 4.

Before proceeding to the main issues, the committee has begun inquiry on the application of the Convention by the courts of Cambodia. This question has appeared in almost every report submitted to the United Nations international instruments in the field of human rights. The committee also concerned with the measures, where the state party used to promote dissemination of the Convention among judicial officers, and whether women were aware of their right under the Convention.³

With regard to this general question, Cambodia has replied that Ministry of Justice (MoJ) has formulated provisions of domestic laws by integrating the content of CEDAW in the domestic laws and made sure that the domestic laws is consistent with CEDAW. Furthermore, MoJ has provided training courses on CEDAW and relevant domestic laws for judges, prosecutors, and court clerks from the court of first instances across the country, staffs of provincial department of women's affairs and law enforcement officers from the capital and provinces. In addition to the work of MoJ, Ministry of Women's Affairs and the Cambodian National Council for Women have cooperated with the National Training Institutions such as the Royal School of Administration and the Academy of Cambodian Police School incorporating the content of CEDAW into their curricula. Cambodian Human Rights Committee has also helped promoted CEDAW to students and trainers.⁴

The committee concerned with the impact of *Chbab Srey*, which has strong influence on women. The committee asked the state party to provide information on planned or taken measures to address the root causes of discrimination and the impact of *Chbab Srey* in order to change social and cultural patterns leading to stereotypes, reproducing the traditional roles of women and men in the family and society.⁵ Under the CEDAW Article 5(a) and 2(f) oblige Cambodia to modify and abolish social attitude and cultural practices based on the inferiority or superiority of either sex which hinder the enjoyment of equality of men and women.⁶

Cambodia has responded that the Royal Government of Cambodia (RGC) has made significant efforts in changing attitude and behavior towards women by laying out measures in all sectors such as legal measures, and educational measures. Moreover, in all ministries and

³ Committee on the Elimination of Discrimination against Women, *List of Issues in Relation to the Combined Fourth and Fifth Periodic Reports of Cambodia (Note by the Committee)*, CEDAW/C/KHM/Q/4-5, March 19, 2013, 1 para. 1-2.

⁴ Committee on the Elimination of Discrimination against Women, *Replies of Cambodia to the List of Issues*, CEDAW/C/KHM/Q/4-5/Add.1, August 26, 2013, 2-3.

⁵ Committee on the Elimination of Discrimination against Women, *List of Issues in Relation to the Combined Fourth and Fifth Periodic Reports of Cambodia (Note by the Committee)*, 3 para. 8.

⁶ Cambodia Defenders Project, *List of Critical Issues Submitted to the Committee on Elimination of Discrimination Against Women by Cambodian Defenders Project (CDP) Regarding Sexual and Gender-Based Violence (SGBV) in Conflict in Cambodia*, January 2013, 6.

governmental institutions, there are Gender Mainstreaming Action Groups, which always disseminate CEDAW text to their staff.⁷

With regard to the problem of violence against women, the committee required the state party to provide information on whether women victims of domestic violence receive adequate protection including the effectiveness of protection orders, access to justice, shelters, psychological support and other necessary services. In addition, the problem of rape and sexual assault is still one of the problems occurring in the state party. There are obstacles impeding women from reporting the crimes, including the high cost of medical certificate. Moreover, the committee requested the state party to provide information on the number of complaints, investigations, persecutions and penalties imposed on the perpetrators of such crimes. Finally, the committee wanted to know the measures taken by Cambodia to address the situation of female victims of sexual gender-based violence during the Khmer Rouge regime.⁸

In stead of responding back on whether female victims have received adequate protection, Cambodia reacted that female victims of domestic violence always receive support services such as: legal services and protection order. There is no mention of whether women victims of domestic violence receive proper and adequate shelter or psychological support.⁹

For the barrier impending women from reporting the crime of rape and sexual assault, the government has stated that there were 191 cases, which have been punished in 2012. In addition, the head of the government recommended in 2006, outlining the exemption of charges for all forensic examination of rape victims with an intention to provide access to justice for victims.¹⁰ The RGC has tackled the problem of rape through strengthening the implementation of law, raising awareness on the crimes, and issuing orders to not allow facilitation or mediation to end the case at local level.¹¹ On the other hand, for the issue of female victims of sexual gender-based violence during the Khmer Rouge regime, Cambodia answered that the Extraordinary Chambers in the Courts of Cambodia (ECCC) has operated in accordance with legal procedures focusing on the crimes of genocide, crimes against humanity, and war crime, including the gender-based violence during the Khmer Rouge regime.¹² The rape cases had been heard by the court of first instance and it will refer to subsequence procedures of

⁷ Committee on the Elimination of Discrimination against Women, *Replies of Cambodia to the List of Issues*, 6.

⁸ Committee on the Elimination of Discrimination against Women, *List of Issues in Relation to the Combined Fourth and Fifth Periodic Reports of Cambodia (Note by the Committee)*, 3 para. 9-11.

⁹ Committee on the Elimination of Discrimination against Women, *Replies of Cambodia to the List of Issues*, 7.

¹⁰ *Ibid.*

¹¹ *Ibid.*, 8.

¹² *Ibid.*

the ECCC.¹³ Once the accused person was convicted, the Chambers could award collective and moral reparation to civil parties.¹⁴

Trafficking and exploitation of prostitution is one of the problem worried by the committee, even if NGO-CEDAW has recognized the effort made by Cambodia on reducing the issues.¹⁵ The committee asked the state party to give updated information and statistics on the number of victims of human trafficking, the compensation they have received, the number of complaints, investigations, prosecutions, convictions and penalties imposed on the perpetrators of such crimes, and the number of female victims of trafficking who have successfully reintegrated.¹⁶

Cambodia responded that in 2012, Ministry of Social Affairs, Veterans and Youth Rehabilitation have reintegrated victims in their families in Phnom Penh and seven other provinces, in which 458 victims have been followed up and over 285 cases were closed. In addition, the Drop-In Centre in Poi Pet received 205 trafficked children, who were sent back from Thailand, of whom 123 were reintegrated into their families and communities and 23 were referred to NGO partners.¹⁷ The response by Cambodia was broad, and did not really responded back to what the committee has questioned.

Disadvantaged groups of women are referred to disabled women, women from ethnic minority groups, and the lesbians, bisexual, and transgender (LBT) women. These groups of women face a lot of problem with regard to their access to education, employment, and health care. Furthermore, the committee is also concerned with the measures used to improve and monitor the prison conditions, drug rehabilitation, and youth rehabilitation centres. Cambodia needs to provide information and data on the proportion of women working in prison management and measures taken to increase such proportion.¹⁸

Cambodia addressed the disadvantaged groups of women as vulnerable women. In response to the committee's question, Cambodia provided answer for the problem of education, employment and health care for the disabled women and women from ethnic minority groups, but not the LBT women. Furthermore, the solution for these groups of women was not really different from the solution provided by Cambodia in response to the issue of rural women, education, health care, and employment. These made the response for this specific question very limited and not really

¹³ Committee on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention*, CEDAW/C/SR.1170, October 31, 2013, 2 para. 3.

¹⁴ *Ibid.* para. 3.

¹⁵ The Cambodian NGO-CEDAW Committee, *Submission to Pre-Session Working Group on CEDAW*, February 1, 2013, 2.

¹⁶ Committee on the Elimination of Discrimination against Women, *List of Issues in Relation to the Combined Fourth and Fifth Periodic Reports of Cambodia (Note by the Committee)*, 3–4 para. 12.

¹⁷ Committee on the Elimination of Discrimination against Women, *Replies of Cambodia to the List of Issues*, 9.

¹⁸ Committee on the Elimination of Discrimination against Women, *List of Issues in Relation to the Combined Fourth and Fifth Periodic Reports of Cambodia (Note by the Committee)*, 5 para. 19.

responding. Cambodia failed to provide the measures to improve and monitor the prison conditions, the number of women working in prison management, and measures taken to increase the participation of women in such facility.¹⁹

Finally, the committee was interested in the meaning of “powerful persons” stipulated in Article 948 of the Civil Code. The committee also concerned with the application of Article 9 of the Law on Marriage and Family, which specified 120 days for women to remarry after the death of the husband or after the judgment that grants a divorce.²⁰

Cambodia replied, “Any person who has parental authority as stated in Article 948 of the Civil Code refers to the person, who has parental authority of the child.”²¹ This reply is not responding back to the committee’s question about the meaning of “powerful person”. With regard to the question on Article 9 of the Law of Marriage and Family, Cambodia answered that the law was revoked based on the provision of Article 78 of the Law on Implementation of Civil Code; however, Article 950 of the Civil Code contains similar provision.²² According to Cambodia, this provision applies only to women not men since this provision is necessary to identify paternity, it does not aim at restricting marriage right of women.²³ In addition, Cambodian delegates response that provisions allowing women to remarry before the 120 days has been included in that Article.²⁴

Concluding Observation

After the CEDAW committee received reply from Cambodia, the committee conducted a meeting with the delegation of the state party to inquire additional information on the state party’s reply. After that, the committee releases the concluding observation on the report provided by Cambodia. The concluding observation provided two important aspects: positive aspects and principle areas of concerns and recommendations. Again, in the principle areas of concerns and recommendations, this report discusses only the five issues mentioned earlier.

For the positive aspects, the committee welcomed the state party’s commitment in adopting and revising its legislations to protect women rights. The committee also appreciated Cambodia’s accession to or ratification of international treaties since the consideration of its previous report. This includes the accession to and ratification of the Convention on the Rights of Persons with Disabilities

¹⁹ See more information about this issue at Committee on the Elimination of Discrimination against Women, *Replies of Cambodia to the List of Issues*, 21–22.

²⁰ Committee on the Elimination of Discrimination against Women, *List of Issues in Relation to the Combined Fourth and Fifth Periodic Reports of Cambodia (Note by the Committee)*, 5 para. 20.

²¹ Committee on the Elimination of Discrimination against Women, *Replies of Cambodia to the List of Issues*, 22.

²² *Ibid.*

²³ *Ibid.*

²⁴ Committee on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention*, 7 para. 31.

(20 December 2012), Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (13 October 2010), and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (30 March 2007).²⁵

Along with these positive aspects, the committee is still concerned about the stereotypes existed in Cambodian culture regardless of its effort to revise the school curricula and textbooks with a view to eliminating gender stereotypes. With this concern, the committee urged the state party to include *Neary Rattanak IV*, which is an effective and comprehensive strategy aimed at modifying or eliminating patriarchal attitudes and stereotypes that discriminate against women, including those based on the *Chbab Srey*.²⁶ In addition, the state party needs to conduct national public information and awareness raising campaign and exploring the use of information and communication technologies to disseminate of information on women's rights and gender equality.²⁷ Cambodia also has to establish an effective monitoring and evaluation mechanism to evaluate progress made in eliminating existing gender stereotypes.²⁸

For the problem of violence against women, the committees acknowledged the effort made by Cambodia to solve the issue. However, the committee regretted that there are problems of public trust in justice system and the negative attitude of judicial officers continue to impede the effective prosecution of the case. Moreover, Cambodia failed to provide sufficient data on the number of protection orders and the shelters available for women victims of domestic violence.²⁹ To solve this issue, the committee urged Cambodia to intensify efforts in training judicial officers on the strict application of the law, to encourage women to lodge formal complaints against the perpetrators by raising awareness about the criminal nature of such act, and to provide information in the next periodic report on the number of protection orders and the number of shelters available for women victims of violence.³⁰ In addition, Cambodia needs to take further steps on combatting corruption and promoting transparency and accountability.³¹

Trafficking and exploitation of prostitution is still a main concern by the committee due to the lack of information on the support provided to the victims.³² Additionally, the problem was even more serious since law enforcement officers had sexually assaulted women engaged in prostitution when

²⁵ Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Cambodia*, CEDAW/C/KHM/CO/4-5*, October 29, 2013, 2 para. 6.

²⁶ *Ibid.*, 4 para. 19.

²⁷ *Ibid.*, 5 para. 19.

²⁸ *Ibid.* para. 19.

²⁹ *Ibid.* para. 20.

³⁰ *Ibid.* para. 21.

³¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, A/HRC/26/16, March 27, 2014, 10.

³² Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Cambodia*, 6 para. 24.

they are taken into custody.³³ The committee recommended the state party to take all necessary measures to protect the victim of trafficking by providing adequate support and protection from trafficking.³⁴ Furthermore, state party needs to take effective measures to tackle the root causes of prostitution, and should investigate and prosecute cases of sexual assault by law enforcement officers committed against women engaged in prostitution.³⁵ The committee also encouraged the state party to consider adopting the use of sanctions against purchasers of sexual services.³⁶

The CEDAW committee is worried about the discrimination against older women, especially in access to health care and social security.³⁷ The committee has no more concern about the LBT groups even though Cambodia failed to provide sufficient information about this group in its report. Moving back to the issue of discrimination against older women, the committee encouraged the state party to collect and analyze data disaggregated by age and sex to inform policymaking and to adopt a life cycle approach towards addressing this discrimination problem.³⁸

Lastly, the committee placed concern on Article 9 of the Law of Marriage and Family since this provision of 120 days after the death of the husband or after a judgment of court granting an order for divorce does not apply to men.³⁹ As a result, the committee urged Cambodia to repeal this provision, giving that paternity can easily be established by less restrictive means in the field of medicine. The committee also worried about the difficulties faced by the couples that are married under customary law in formalizing their marriages.⁴⁰ With this, the committee recommended the state party to take measures to facilitate the formalization of marriages contracted under customary law by ensuring that the registration is affordable and convenient.⁴¹

Conclusion

To sum up, CEDAW committee has raised several issues faced by Cambodia in the field of women rights protection. However, this is doubtful about the means of organizing the order of the issues. Apparently, the order of the issues is not chronological order. This is a matter of procedure, which might not have a great impact on the understanding of the problem faced by Cambodia in women's rights protection. On the other hand, the author has doubts and comments on the substance of the five issues raised in this paper.

³³ Ibid. para. 26.

³⁴ Ibid. para. 25.

³⁵ Ibid., 6–7 para. 27.

³⁶ Ibid., 7 para. 27.

³⁷ Ibid., 10 para. 44.

³⁸ Ibid.45.

³⁹ Ibid., 10–11 para. 46.

⁴⁰ Ibid., 11 para. 46.

⁴¹ Ibid. para. 47.

The author agrees with the committee that *Chbab Srey* is one of the root causes of discrimination against women since it shapes the role of women in family and society. This code of conduct was drafted during the non-modernized time, at which the issue of discrimination against women was unfamiliar to the public. In addition, some of the underlying concept in *Chbab Srey* is no longer suitable for women to follow in this modern time of globalization. However, the author admitted that *Chbab Srey* contains some ideas, which help control women's behavior and prevent women from attitude or behavior that is harmful to their family, culture, and their own dignity and reputation.

Violence against women is surely one of the main problems faced by Cambodian women. This problem is partially caused by the stereotypes that define women in an inferior position to men. Additionally, the issue is getting worse as there is no proper method to rescue women from this harmful situation. Women have fear in reporting the case, and there is no sufficient support and encouragement for them. For instance, there is insufficient amount of money to provide access to justice and shelters for them to escape from the perpetrators. Because of the belief that women need to be patient, female victims of domestic violence are reluctant to report the case or even discuss it with another person. Therefore, there are a lot of things that Cambodia has to do in order to tackle the problems and successfully solve these puzzles.

This author was shocked knowing that women engaged in prostitution were sexually assaulted by the authority when they were in custody. They should not face such conducts as they are seeking for help from the officers. The RGC really needs to address this problem seriously as sexually assault by the officers will impede women engaging in prostitution to seek for help. In addition, the government should consider making it legal for prostitution since this will help to protect women engaged in prostitution to receive full protection. The RGC should consider the recommendation by the committee in establishing a measure to prevent trafficking by investigating the case even before it has happened.

The committee seems to neglect the problem of LBT group even if the Cambodia has failed to provide sufficient information about this issue. In addition, the concluding observation provided by the committee is not corresponding to what the committee has raised up in its list of issue, where they have focused mainly on disabled groups, ethnic minority groups, and LGB groups. The concluding observation shifted the focus to the problem faced by older women. The author is doubtful on the change of the committee view. In addition, the concluding observation ignored the lack of data provided by the state party with regard to the number of women working in prison and the measures to increase such proportion.

With regard to the issue of marriage and family, the authors agrees with Cambodian delegates that the modern testing procedure is not available in the state party; therefore, if we consider repealing

Article 950 of the Civil Code, it will deprive the right of the children to know who is their father. Even if the modern testing is available in the state party; however, the price of the method will be relatively high, and poor people would not be able to benefit from such method. On the other hand, the reply by Cambodia about the meaning of “powerful person” is not acceptable as there is no clear distinction between the term powerful person and parental authority of the child. If the term “powerful person” means the person having parental authority, so why the civil code contains the term parents or guidance subsequently after the term “powerful person”.

The author would like to conclude that with all the measures suggested by the committee, the enforcement of such measures might not be effective if corruption still highly exists in the country.

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