COMPLAINT PROCEDURE UNDER CEDAW OPTIONAL PROTOCOL

1. SUBMISSION

Communications submitted by or on behalf of individuals or groups of individuals claiming to be victims of a violation of any of the rights set forth in the Convention by the relevant State Party

If complaint contains essential elements, case is formally listed for consideration and author receives advice of registration

Possibility of irreparable damage to victim/s of alleged violation?

YES

INTERIM MEASURES

At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request for interim measures

* This does not imply a determination on admissibility or on the merits of the communication

NO

2. COMMUNICATION TO STATE

Committee brings communication confidentially to the attention of the State Party concerned

- *Unless* deemed inadmissible without reference to the State Party
- AND provided that author/s consent to disclosure of their identity to State Party ie complaints cannot be anonymous

3. RESPONSES

Within six months, the receiving State Party must submit written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party

Once the State replies, the author is offered an opportunity to comment within a fixed timeframe

4. CONSIDERATION BY COMMITTEE

a) The Committee considers communications received under the Protocol in the light of all information made available to it by or on behalf of individuals /groups and by the State Party. This information is transmitted to all parties concerned
b) The Committee holds closed meetings to examine communications
c) The Committee transmits its views on the communication, together with its recommendations (if any), to the parties concerned

5. FOLLOW UP PROCEDURES

State Party gives due consideration to the views and recommendations of the Committee and submits a written response (within six months), including information on any action taken in light of decision

The Committee may invite the State Party to submit further information about any measures taken in response to its views or recommendations, including as deemed appropriate by the Committee, in the State Party's subsequent reports

INQUIRY PROCEDURE UNDER CEDAW OPTIONAL PROTOCOL

The Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention

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The Committee invites that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned

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Action by the Committee
The Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory

After examining the findings of such an inquiry, the Committee transmits these findings to the State Party concerned together with any comments and recommendations

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The State Party's Response
The State Party concerned must, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

- *The inquiry is conducted confidentially*
- *The cooperation of the State Party is sought at all stages of the proceedings.*

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The Committee's Findings
The Committee may invite the State Party concerned to include in its report details of any measures taken in response to the inquiry

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Follow-up
If necessary, after the period of 6 months, the Committee may invite the State Party concerned to inform it of the measures taken in response to such an inquiry

JURISDICTION & ADMISSIBILITY

State must be party to CEDAW **AND** the Optional Protocol

Article 1 provides: A State Party to the present Protocol recognises the competence of the Committee to receive and consider communications in accordance with article 2

NB: Protocol includes 'opt-out' clause allowing States to declare they do not accept inquiry procedure

Individuals/Groups must be under jurisdiction of State Party

Communications must be submitted by or on behalf of individuals/groups under the jurisdiction of that State Party

If acting on behalf of other individual/group, the author must demonstrate sufficient authorisation or justification for doing so

Must exhaust domestic remedies

Committee will only consider if all domestic remedies must be exhausted UNLESS application of such remedies is unreasonably prolonged or unlikely to bring effective relief

Grounds of Admissibility

(a) Must demonstrate that author (or individual/group on whose behalf the author is bringing the complaint) is personally and directly affected by the law, policy, practice, act or omission of the State Party who has allegedly violated or is violating rights in the Convention. (It is not sufficient to simply challenge a law or State policy/practice in the abstract)

(b) The same matter MUST NOT have already been examined by the Committee or have been or be being examined under another procedure of international investigation or settlement

(c) Complainant must demonstrate that the matter is compatible with the provisions of CEDAW

(d) The matter must be sufficiently substantiated. (ie facts of complaint and/or arguments for a violation of CEDAW must be sufficiently developed)

(e) The complaint must not be an abuse of the right to submit a communication (eg frivolous, vexatious or otherwise inappropriate use of the complaints procedure)

(f) The facts that are the subject of the communication must have occurred AFTER the entry into force of the present Protocol for the State Party concerned. As a rule, the Committee does not examine complaints dating from a period prior to this date. However, where the effects of the event in question have extended into the period covered by the Protocol, the Committee may consider the overall circumstances.

NB: In exceptional cases, submission after a protracted period may result in inadmissibility finding