



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 146/2019^{*,**}

<i>Communication submitted by:</i>	X. (represented by A.)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Cambodia
<i>Date of communication:</i>	17 October 2018
<i>References:</i>	Transmitted to the State party on 27 August 2019 (not issued in document form)
<i>Date of adoption of views:</i>	19 May 2023

1. The communication is submitted on behalf of the author, a Cambodian national born in 1979. She claims that the State party has breached her rights under articles 2 (c)–(e), 3, 14 (1) and (2) (a), (g) and (h) and 15 (1) of the Convention. The State party acceded to the Convention on 15 October 1992 and ratified the Optional Protocol thereto on 13 October 2010. The author is represented by counsel.

Facts as submitted by the author

2.1 The author resides in La Peang village, in the Ta Ches commune of Kampong Chhnang Province. For a decade, she and her community have been involved in a land dispute with KDC International, a development company owned by the wife of the then Minister of Mines and Energy. The author has been at the forefront of the community's efforts to stop the acquisition of her land by KDC International and claims to have suffered harsh consequences as a result.

* Adopted by the Committee at its eighty-fifth session (8–26 May 2023).

** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Nicole Ameline, Marion Bethel, Leticia Bonifaz Alfonzo, Rangita De Silva de Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Hilary Gbedemah, Yamila González Ferrer, Dafna Hacker Dror, Nahla Haidar, Dalia Leinarte, Marianne Mikko, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Genoveva Tisheva.



2.2 According to the author, tensions with KDC International began in 1996, when, owing to the company's plans to buy land in the commune, residents of La Peang were first pressured to sell their land. The author moved to La Peang in 2004 to join her husband. They held an official land title. In 2006, KDC International representatives, accompanied by police officers but without any proof of ownership, visited the area and dug a ditch around the disputed land, thus preventing the residents from farming their land. The land was mostly agricultural but also included 14 houses. In 2007, KDC International filed a complaint against the inhabitants of the houses for illegally occupying the land it owned. On 9 January 2008, KDC International workers destroyed the houses and the surrounding farmland, without any prior notification. The house and some of the farmland belonging to the author and her husband, where they had grown rice and various kinds of fruits, were destroyed. Her family's land title documents were lost in the process.

2.3 Following the death of the community representative, the author became her successor. In this role, the author has led protests against the "land grab", approached non-governmental organizations and sought financial and legal support in the dispute, including from the authorities. In a petition dated 20 May 2009, the author and representatives of 64 families requested the Member of Parliament of Kampong Chhnang to intervene. However, they never received a response. In September 2009, residents of La Peang, including the author, requested the Ministry of Justice in writing to intervene in the dispute. The Ministry rejected the letter because it lacked the necessary documentation.

2.4 KDC International filed a complaint against the author because of her attempts at obtaining a remedy. On 20 August 2008, the author was interrogated at the Kampong Chhnang Provincial Court concerning "groundless" accusations of incitement to violence during protests. On 8 June 2009, she petitioned the Ministry of Justice for its intervention and for the charges to be dropped. However, the prosecutor transferred the case to an investigative judge. The author was therefore questioned at the Provincial Court. Her request for a postponement of the second hearing because she lacked legal representation was denied, in breach of her fair trial rights. Fearing arrest, she did not attend the second hearing. Her case was then transferred to the Phnom Penh Court of First Instance. The Court of First Instance invited her to a hearing on 20 October 2009 concerning accusations of incitement.

2.5 In December 2009, the author and her family fled to Thailand, fearing arrest and death, given the atmosphere of fear in the State party concerning rural women defending human rights in land disputes. However, they were forcibly returned to the State party on 8 December 2011.

2.6 Following her return, the author initially kept a low profile but continued to conduct meetings with residents. In a complaint submitted to the Phnom Penh Court of First Instance on 27 September 2012, she claimed back her land and requested that KDC International be ordered to prove its ownership of the land and pay compensation. However, she never received a response.

2.7 On 6 October 2013, an anonymous letter was posted on the wall of the house of the author and her husband. Showing a picture of a gun, it stated that, if she continued protesting, she would end up dead and "go the same way as her sister". Her sister-in-law had died in a traffic accident in suspicious circumstances. The same day, the author complained about this and another letter to the Kampong Chhnang Provincial Court. However, she never received a reply.

2.8 On 3 March 2014, the Ministry of Interior established a multi-provincial land dispute commission in the commune with the mandate to verify land-related documents, organize discussions between the families and KDC International and draft a report with the aim of resolving the conflict. However, the commission was

criticized because many of its members were aligned with KDC International. In April 2014, families met with KDC International, which forced them to accept what they felt was a far too low compensation. The families later filed a complaint to a court, claiming that they had not given their prior informed consent, but the court never responded. On 30 April 2014, the commission, in its report, concluded that none of the 52 families had documents proving their land ownership, that KDC International possessed title for 512 ha, that all but 16 families had accepted compensation and that the community members had “made the work difficult and like to cause trouble for the government in order to claim some political benefit for their group”. Community representatives, including the author, thereupon complained to the National Assembly, asking it to dismiss the report.

2.9 The dispute has resulted in several episodes of violence, particularly after KDC International workers started constructing a concrete wall around the disputed land in April 2014, fencing off 1.5 ha of the author’s land. Clashes occurred several times in July 2014, including when community members prevented police officers from arresting the author on the basis of an arrest warrant charging her with incitement. A press conference held that month in her house resulted in KDC International workers throwing stones at the house. Both sides attacked each other, which resulted in multiple injuries. The next month, several residents, including the author, marched to the Provincial Court to demand the release of two men arrested for damaging property. The author led residents on a march to Phnom Penh to take their case to the national level, but police officers blocked and violently dispersed the group. Several participants, including the author’s husband, were arrested and beaten. On 22 August 2014, several United Nations experts sent a letter of allegation to the State party drawing attention to the “land appropriation, denial of justice, judicial harassment, intimidation and frequent attacks on residents of Lor Peang and Boeung Kak villages in Ta Ches commune”.¹

2.10 On 25 August 2014, the author and other community representatives complained to the Ministry of Justice and the President of the National Assembly, requesting that they pressure the Government to release the land activists, resolve the land dispute and terminate all accusations against the activists. The detainees were released four days later. On 26 October 2014, the author and other residents attempted to file a petition with the Kampong Chhnang Provincial Governor, which led to additional violent scuffles. On 12 November 2014, they petitioned the President of the First Commission of the National Assembly to accelerate the negotiations to resolve the land dispute. However, despite assurances from the Human Rights Commission of the National Assembly, no decision was rendered.²

2.11 On 28 January 2016, a meeting took place between the National Assembly and 16 families that had not accepted compensation. According to the author, the representatives of the National Assembly spoke on behalf of KDC International and informed the families of its compensation policy. On 8 August 2016, in the absence of an agreement, the First Commission of the National Assembly transferred the case to the Ministry of Land Management, Urban Planning and Construction, which declined to intervene, as land titles had already been issued, and stated that the courts were competent to deal with the matter. Since then, there has not been any progress in the authorities’ work to solve the dispute.

¹ [A/HRC/30/58](#), para. 8.

² The author notes that the Human Rights Commission has claimed that the residents obtained their titles in 1997 and that KDC International bought the land in 2007, purchasing 105 plots of 5 ha each. According to the author, this contradicts the community members’ claims that the land was allocated to each family in differently sized plots in 1979 and seized by KDC International in 2006.

2.12 On 7 April 2017, the author was summoned to court in a defamation case, ignorant of the factual basis for the charges. Unable to attend the trial in the absence of her lawyer, the author received another summons to appear in court. Her request for a postponement has remained unanswered. She notes that defamation is a criminal offence in Cambodia punishable by 100,000 to 10 million riel and is often used to silence dissents. The land walled off by KDC International remains empty and underdeveloped. The dispute has affected the author's economic life, particularly her ability to earn a sustainable living, as she had to leave her teaching job when she fled to Thailand and, unable to return to that job, is now working as a construction worker. Living conditions in the village have worsened: farmers have lost their livelihoods; some are forced to collect and sell frogs and snails; and water is lacking in quality and quantity. The author has stopped protesting, as an ultimatum presented to her "due to the court pressure" forced her to choose between ceasing her protests and having the charges of incitement and defamation resumed. She is currently raising chickens on a small plot in Kampong Chhnang Province, too fearful to take to the streets to demand her land back.

2.13 The author submits that, although the events described started before the Optional Protocol entered into force for the State party, the violations of her rights have continued thereafter. The communication focuses on breaches that occurred after the author returned to Cambodia in 2011, after the Optional Protocol entered into force for the State party. She submits that article 4 (2) (e) of the Optional Protocol therefore does not preclude the Committee from examining the communication.

2.14 The author submits that she has exhausted all available domestic remedies. She argues that her repeated efforts to obtain a remedy have demonstrated the futility of undertaking any further legal action, given the inaction of the State party's judiciary. As the authorities have not processed any of her claims, the domestic remedies must be considered to be unreasonably prolonged. The remedies are also ineffective, as the implementation of the dispute resolution system in Cambodia is unreliable and inconsistently applied. The Cambodian judicial system lacks independence, and women human rights defenders are particularly vulnerable to judicial harassment and judicial injustice.

Complaint

3.1 The author submits that she is a rural woman within the meaning of article 14 of the Convention and a human rights defender. However, rather than protecting her, the State party has failed to remedy the discrimination she faced as a rural woman human rights defender and the land-related human rights breaches. Moreover, the State party's judiciary took active steps to impair her work as a human rights defender. The author also submits that the discriminatory impact of the land conflict and the State party's failure to address it constitute discrimination within the meaning of article 1 of the Convention.

3.2 Under article 2 (e) of the Convention, the author submits that the local, provincial and national authorities of the State party failed to ensure that KDC International did not discriminate against her.³ They ignored the Committee's recommendations to ensure that land acquisitions follow due process, and that adequate compensation is provided following sufficient consultative processes.⁴ The State party's failure to prevent the violent seizure of her land resulted in forcible evictions. Owing to endemic gender inequality, land right violations by corporate actors have a disproportionate effect on women in Cambodia, particularly on women

³ The author refers to general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 9.

⁴ CEDAW/C/KHM/CO/4-5, para. 43 (a).

representing affected communities.⁵ The State party's failure to address the actions of KDC International therefore constitutes indirect discrimination against the author as a woman. She argues that forced evictions are not a gender-neutral phenomenon.⁶ As a mother, a rural woman and a human rights defender, the author was adversely affected by the State party's inaction, given that she lost her property and the home for her children and was unable to continue working. Furthermore, her relocation led her to live in a place lacking basic infrastructure and access to essential services, including sanitation and basic health care. The author also argues that the State party breached her rights under article 14 (2) (a) of the Convention, as it failed to take all appropriate measures to ensure her participation in the elaboration and implementation of KDC International's project. Moreover, the State party breached her rights under article 14 (2) (a), (g) and (h) by failing to take appropriate measures to ensure that she could participate in development, be treated equally in land resettlement schemes and enjoy adequate living standards.

3.3 The author argues that the State party failed to provide effective and timely access to remedies for the breaches to which she was subjected. All her petitions and legal actions were ignored, even though she was significantly more adversely affected by the land rights breaches. Through this failure, the State party's administrative procedures and institutions indirectly denied the author's equal enjoyment of her economic rights and denied her access to justice and compensation.⁷ The author submits that these facts amount to breaches of her rights under article 2 (c)–(e) of the Convention. She also submits that the State party's failure to take measures to eliminate the indirect discrimination that unresolved land disputes created for women amounted to violations of its obligations under articles 2 (e) and 3 of the Convention.

3.4 The author submits that the State party failed to take all appropriate steps to ensure rural women's enjoyment of adequate living conditions, including regarding housing, in breach of article 14 (2) (h) of the Convention. She submits that the State party failed to ensure her equality before the law and instead discriminated against her because of her status as a rural woman human rights defender, in violation of article 15 (1) of the Convention.

3.5 The author argues that the State party's judiciary targeted, harassed, intimidated and discriminated against her because of her position as a rural woman human rights defender to prevent her from exercising her rights and from advocating for respect for the rights of her community. According to the author, she had criminal charges filed against her because she is a rural woman human rights defender. She argues that the State party's authorities often specifically target rural women and women human rights defenders because of their gender. Women are often more significantly affected than men, given the generally held view that women are "weaker" than men and more easily and "effectively" intimidated. By targeting women, the State party also prevents other women from advocating for their rights. The author submits that these acts constitute violations of article 2 (c) and (d) of the Convention. She also affirms a violation of article 15 of the Convention, as her complaints were disregarded and she was herself the object of judicial complaints.

3.6 The author submits that the State party breached article 2 (c)–(e) of the Convention by failing to act on the threatening letters addressed to her, which she

⁵ The author refers, inter alia, to general recommendation No. 34 (2016) on the rights of rural women, paras. 24 and 25 (e); [CEDAW/C/KHM/CO/4-5](#), para. 43 (c); and [A/70/217](#), paras. 61, 62 and 64.

⁶ [CEDAW/C/KHM/CO/4-5](#), para. 43 (b).

⁷ The author refers to general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 9; and to general recommendation No. 34 (2016), para. 25 (c).

argues were addressed to her because she is a woman and because of her actions as a human rights defender.⁸ She also argues that this failure constitutes a breach of article 15 (1) of the Convention, as she was prevented from having equal access to the judicial system and equal treatment before the law owing to her status as a rural woman human rights defender.

Absence of State party's observations

4. On 27 August 2019 and 29 January, 28 April and 25 August 2021, the State party was invited to submit its observations on the admissibility and merits. The Committee regrets that no submissions were received. The Committee must therefore base its decision on the information provided by the author and give it due weight, insofar as it has been sufficiently substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 In accordance with rule 64 of its rules of procedure, the Committee is to decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4), it must do so before considering the merits of the communication.

5.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

5.3 In accordance with article 4 (1) of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. The Committee notes that the author has been attempting to obtain a remedy since 2009 and has since brought multiple petitions and complaints to the State party's judicial and legislative organs. The Committee notes that most of these claims have remained without any response and that none have resulted in the initiation of an investigation or judicial proceedings. Therefore, and in the absence of any submissions from the State party, the Committee finds that domestic remedies must be deemed unreasonably prolonged and concludes that it is not precluded from considering the author's claims under article 4 (1) of the Optional Protocol.

5.4 The Committee notes that the facts presented by the author started before the Optional Protocol entered into force for the State party. The Committee notes, however, that the facts presented and the effects thereof on the author continued after the Optional Protocol entered into force for the State party. Therefore, the Committee considers that article 4 (2) (e) of the Optional Protocol does not preclude it from examining the communication insofar as the facts presented have continued after the entry into force of the Optional Protocol for the State party.

5.5 The Committee considers that the author has sufficiently substantiated her communication, for purposes of admissibility. The Committee therefore declares the communication admissible, as raising issues under articles 2 (c)–(e), 3, 14 (1) and (2) (a), (g) and (h) and 15 (1) of the Convention, and proceeds with its consideration on the merits.

Consideration of the merits

6.1 The Committee has considered the present communication in the light of all the information placed at its disposal by the author, without the benefit of the State party's

⁸ The author refers to general recommendation No. 34 (2016), para. 25 (b).

observations, despite several reminders, in accordance with the provisions of article 7 (1) of the Optional Protocol.

6.2 The Committee notes the author's argument that the State party's authorities failed to ensure that KDC International did not discriminate against her, including by destroying her house, some of her farmland and her family's land title documents, building a concrete wall and thereby fencing off a part of her land. The Committee also notes that, in July 2014, KDC International workers threw stones at her house during a press conference. The Committee further notes that the author's forced relocation compelled her to live in a place lacking basic infrastructure and access to essential services, including sanitation and basic health care. The Committee recalls, moreover, that forced eviction is not a gender-neutral phenomenon, but that it disproportionately affects women.⁹ In the present case, the Committee notes that the author argues that she was adversely affected by the inaction of the State party's authorities as a rural woman, a human rights defender and a mother, given that she lost her property and the home for her children, was unable to continue working and was forcibly relocated to inadequate housing. The Committee notes that, despite her many claims and petitions, the State party's authorities took no action to protect the author from the violence committed against her and her dwelling and land by KDC International. The Committee further notes that the State party's authorities did not respond to the author's complaint regarding threatening letters addressed to her and her husband. In this regard, the Committee notes that one of the letters addressed to the author threatened that she would end up dead and "go the same way as her sister". Given the absence of any measures undertaken by the State party in this context, the Committee finds that the State party breached the author's rights under articles 2 (c) and (e) and 3 of the Convention.

6.3 The Committee notes the author's claims under article 14 (1) and (2) (a), (g) and (h) of the Convention that, despite her status as a rural woman human rights defender, the State party's authorities failed to take all appropriate measures to ensure her participation in the elaboration and implementation of KDC International's project and to take appropriate measures to ensure that she could participate in development, be treated equally in land resettlement schemes and enjoy adequate living standards. The Committee recalls that sale and leasing of land to local, national and foreign investors, often accompanied by expropriations, have put rural women at risk of forced eviction and increased poverty and have further diminished their access to and control over land, territories and natural resources. Involuntary displacement negatively affects rural women in multiple ways, and they often suffer gender-based violence in that context.¹⁰ The Committee further recalls that rural women human rights defenders are often at risk of violence when working, for example, to protect victims, transform local customs or secure natural resource rights.¹¹ The Committee recalls its recommendation to the State party to improve women's access to land and tenure security, and to ensure that acquisitions of land for economic and other concessions follow due process, and that adequate compensation is provided following sufficient consultative processes.¹² In this light, the Committee notes that, according to the information on file, the State party's authorities failed to take any measures to ensure the author's adequate living standards, which compelled her to relocate to a place lacking basic infrastructure and access to essential services, and her participation in the elaboration and implementation and the planning of KDC International's project. The Committee further notes that the author's livelihood was disrupted in the light of the authorities' inaction in relation to KDC International's

⁹ CEDAW/C/KHM/CO/4-5, para. 43 (b).

¹⁰ General recommendation No. 34 (2016), para. 61.

¹¹ Ibid., para. 24.

¹² CEDAW/C/KHM/CO/4-5, para. 43 (c).

activities in La Peang. The Committee further notes the author's argument that she never received a reply from the Phnom Penh Court of First Instance concerning her requests that KDC International be ordered to prove its ownership of the land, that the community's land be returned and that KDC International pay proper compensation to the affected communities. The Committee therefore finds that the State party breached the author's rights under article 14 (1) and (2) (a), (g) and (h) of the Convention.

6.4 The Committee notes the author's claim that the judiciary institutions of the State party harassed and discriminated against her because of her position as a rural woman human rights defender. The Committee notes that the author was charged with the crime of incitement to violence and, subsequently, the crime of defamation. The Committee notes the author's uncontested argument that these charges were groundless and illustrate that the State party's authorities target rural women and human rights defenders because of their gender. The Committee notes, moreover, the uncontested allegation of the author that she was forced to stop protesting following an ultimatum presented to her "due to the court pressure" and that other women are therefore also prevented from advocating for their rights. The Committee finds that the criminal proceedings against the author constituted reprisals against her for her activism, which prevented her from continuing to defend the interests of her community in the land dispute in a context of intimidation and harassment of female human rights defenders who advocate for women's land rights.¹³ The Committee therefore finds that the State party's authorities breached the author's rights under articles 2 (c) and (d) and 15 (1) of the Convention.

6.5 The Committee notes the author's claim that she was not provided with equality before the law or an effective remedy for the breaches of her human rights. In this regard, the Committee notes that none of the author's petitions concerning the land dispute were answered, except for the decision of the Ministry of Justice refusing to intervene. These included a complaint to the Phnom Penh Court of First Instance requesting the return of her land and a complaint to the Kampong Chhnang Provincial Court against the threatening letters, as well as petitions submitted by community representatives, including the author, which included a complaint to the National Assembly requesting the withdrawal of trust in the Ministry of Land Management, Urban Planning and Construction, a request to the President of the National Assembly to advocate with the Government for the release of land activists, for a resolution of the land dispute and for a stop to the accusations against community representatives, complaints to the Ministry of Justice and the Provincial Governor of Kampong Chhnang to intervene to resolve the land dispute, and a request to the President of the National Assembly to accelerate negotiations to resolve the land dispute. The Committee recalls that the obligation of States parties under article 2 (e) of the Convention to eliminate discrimination by any public or private actor includes the obligation to ensure that women are able to make complaints about violations of their rights under the Convention and have access to effective remedies.¹⁴ The Committee also recalls that article 15 of the Convention provides that women and men must have equality before the law and benefit from equal protection of the law.¹⁵ In the present case, the Committee notes that the failure of the State party's authorities to respond to the author's petitions resulted in the lack of equal protection of the law and of any remedy for the breaches of her rights under the Convention. The Committee therefore finds that the State party has breached articles 2 (e) and 15 (1) of the Convention.

¹³ Ibid.

¹⁴ General recommendation No. 28 (2010), para. 36.

¹⁵ General recommendation No. 33 (2015) on women's access to justice, para. 6.

7. In accordance with article 7 (3) of the Optional Protocol and taking into account all of the foregoing, the Committee finds that the State party has breached the author's rights under articles 2 (c)–(e), 3, 14 (1) and (2) (a), (g) and (h) and 15 (1), taking into consideration the Committee's general recommendations No. 28 (2010), No. 33 (2015), No. 34 (2016) and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19.

8. The Committee makes the following recommendations to the State party:

(a) Concerning the author:

(i) Provide full reparation, including adequate compensation, to the author, commensurate with the gravity and the ongoing consequences of the violations of her rights;

(ii) Take effective measures to ensure that the author can enjoy her rightful access to land;

(iii) Take all appropriate measures to ensure that the author can defend the interests of her community safely and freely;

(b) In general:

(i) Take legislative and policy measures to ensure the effective enjoyment by rural women of their right to access to land and tenure security and eliminate discrimination against rural women in this context;

(ii) Ensure that acquisitions of land for economic and other concessions follow due process, including free, prior and informed consent and thorough and impartial reviews of any claims of ownership made by women following sufficient consultative processes, taking into account that, depending on the circumstances, furnishing documents relating to title to property may be impossible, and that adequate compensation is provided;

(iii) Ensure that claims concerning discrimination against women in the context of forced evictions, as well as claims of intimidation of or discrimination against rural women and human rights defenders, are addressed and investigated promptly and thoroughly and that, wherever appropriate, perpetrators are investigated, prosecuted and sanctioned;

(iv) Ensure that evicted communities are relocated to sites that enable women to have access to their places of employment, schools, health-care centres (including sexual and reproductive care), community centres, and other services and amenities necessary to ensure the realization of their rights under the Convention;

(v) Take specific and effective measures to ensure a safe and enabling environment for rural women and human rights defenders;

(vi) Provide training to judicial institutions on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular general recommendations No. 28 (2010), No. 33 (2015), No. 34 (2016) and No. 35 (2017), to apply a gender lens and raise awareness of the human rights of rural women and women human rights defenders.

9. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations. The State party is requested to have the Committee's views and recommendations translated into the official language of the State party, to publish them and to have them widely disseminated, in order to reach all sectors of society.