



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination

Views adopted by the Committee under the Optional Protocol, concerning Communication No. 187/2022***

<i>Communication submitted by:</i>	C.Y. and B.Y. (represented by the Cambodian League for the Promotion and Defense of Human Rights)
<i>Alleged victim:</i>	C.Y.
<i>State Party:</i>	Cambodia
<i>Date of communication:</i>	19 September 2022
<i>References:</i>	Transmitted to the State Party on 26 September 2022 (not issued in document form)
<i>Date of adoption of decision:</i>	20 February 2026
<i>Subject matter:</i>	Failure of the State Party to exercise due diligence in investigating, prosecuting and remedying a case of sexual violence against a girl child with a perceived disability
<i>Procedural issues:</i>	
<i>Substantive issues:</i>	Gender-based violence; effective investigation; best interests of the child
<i>Articles of the Convention:</i>	1, 2, 3, 5 (a) and 15 (1)
<i>Article of the Optional Protocol:</i>	4 (1) and (2)

* Adopted by the Committee at its ninety-second session (2 – 20 February 2026).

** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Hamida Al-Shukairi, Violet Eudine Barribeau, Rangita de Silva de Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Yamila González Ferrer, Nahla Haidar, Madina Jarbussynova, Marianne Mikko, Hong Mu, Ana Peláez Narváez, Jelena Pia Comella, Bandana Rana, Rhoda Reddock, Elgun Safarov, Natasha Stott Despoja, Genoveva Tisheva and Patsilí Toledo Vásquez.



1.1 The communication is submitted by C.Y. and her father B.Y., both nationals of Cambodia born on 4 April 1999 and 1 March 1963, respectively. The authors claim that the State Party violated C.Y.'s rights under articles 1, 2, 3, 5 (a) and 15 (1) of the Convention, as interpreted by the Committee in its general recommendations No. 19 (1992) on violence against women, No. 28 (2010) on the core obligations of States Parties under article 2 of the Convention, No. 33 (2015) on women's access to justice and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19. The Optional Protocol entered into force for the State Party on 13 January 2011. The authors are represented by counsel.

1.2 On 26 September 2022, the Committee, acting through its Working Group on Communications under the Optional Protocol, requested the State Party to ensure that meaningful protections are put in place to guarantee the safety of the victim and her family and to take all measures necessary to protect them against any form of retaliation while their communication is under consideration.

Factual background

Normative framework regulating the crime of rape

2.1 Article 239 of the Criminal Code defines rape as "any act of sexual penetration with a sexual organ or an object committed against another person of either sex by violence, coercion, threat or by being opportunistic"; it establishes that it shall be punishable by imprisonment from 5 to 10 years and that the age of sexual majority shall be 15 years of age. In addition, Article 240 defines "Aggravating circumstances (means used or status of the perpetrator)" and provides penalties from 7 to 15 years if the rape is committed, inter alia, "by any person having authority over the victim". Article 5 of the Law on Aggravating Circumstances of Crimes, in its turn, defines rape as "any penetration of the genital organ or other means carried out through cruelty, coercion, or surprise" and provides for prison sentences from 10 to 15 years.

C.Y.'s case

2.2 Between July and August 2010, when C.Y. was 11 years old, she was raped four times by a 48-year-old man in Village 3, Sangkat 3, Preah Sihanouk Municipality, Preah Sihanouk Province. The perpetrator, a police officer with the Police Commissariat of Preah Sihanouk Province, instructed her not to tell her parents. He would sometimes give her 500 riel (about \$0.12) or a fruit after raping her. However, C.Y. told a coffee seller about being raped, and he informed her father on 15 August 2010. The authors indicate that C.Y. is perceived by people in her family and community as having an intellectual disability.¹

2.3 On 16 August 2010, the father filed a criminal complaint to the Anti-Human Trafficking and Juvenile Protection Department of the Royal Gendarmerie in Preah Sihanouk Province² against the police officer for rape. The same day, C.Y. underwent a medical examination at Preah Sihanouk Referral Hospital. The perpetrator was arrested that afternoon.

2.4 In the following days, the perpetrator's family, friends and members of the military police attempted to persuade C.Y.'s family to accept monetary compensation in exchange for withdrawing the complaint and changing C.Y.'s statement. The father refused.³

¹ She has not received a professional evaluation.

² Military police that also have civil jurisdiction in Cambodia.

³ The authors explain that out-of-court settlements are commonly used to resolve rape cases and improperly end criminal proceedings in Cambodia.

2.5 On 18 August 2010, the military police filed a report detailing the father's complaint, C.Y.'s statement and the accused's statement.⁴ This report is outlined in the judgment of the Court of First Instance of Preah Sihanouk Province (Preah Sihanouk Court).⁵ According to the judgment, in the military police report, it was documented that the accused denied the accusations and asserted that the victim was mentally unfit. The military police report concluded that the accusation was untrue based on the lack of witnesses and clear evidence; the victim being mentally unfit because her verbal expression was not understandable; and the medical examination not demonstrating any damage. The same day, the case was sent to the Preah Sihanouk Court and a criminal case was opened.⁶

2.6 The same day, the Deputy Commissioner of the Police Commissariat of Preah Sihanouk Province wrote to the Prosecutor of the Preah Sihanouk Court requesting that the accused be released on bail. The accused was released from custody that day.

2.7 On 20 August 2010, C.Y. moved to a safe shelter where she remained for approximately 10 years. On 27 December 2011, the father filed a complaint with the Anti-Corruption Unit of Cambodia, requesting its intervention to provide justice for the rape of C.Y. He alleged that the accused and the Deputy Commissioner had bribed the Prosecutor and the Investigating Judge in charge of the case.

2.8 On an unspecified date, the Investigating Judge indicted the perpetrator on charges of rape under article 5 of the Law on Aggravating Circumstances of Crimes., On 29 March 2012, the Prosecutor in charge of the case issued an introductory note to the Investigating Judge recommending that the charges be dropped.

2.9 On 5 April 2012, the Investigating Judge referred the case to trial. On 3 and 11 May 2012, the father filed complaints to the Minister of Justice and again to the Anti-Corruption Unit, respectively, requesting their intervention. On 18 September 2012, the Minister of Justice responded that the Investigating Judge had issued a committal for trial dated 5 April 2012 and that a trial would be scheduled soon.

2.10 The Preah Sihanouk Court conducted a non-public hearing on 8 May 2013 and public hearings on 9 and 30 October 2013.⁷ A verdict was not issued until almost 18 months after the third hearing. On 24 April 2014, the father filed complaints again to the Minister of Justice and the Anti-Corruption Unit, requesting their intervention because the case had stalled while waiting for the submission of additional medical evidence and health records from the referral hospital.

2.11 On 10 November 2014, the Minister of Justice wrote to the President of the Preah Sihanouk Court, requesting information about the status of the case. On 21 January 2015, the Anti-Corruption Unit responded with an outline of the proceedings to date.

2.12 On 9 April 2015, over 4.5 years after the complaint was filed, the Preah Sihanouk Court issued a judgment convicting the accused in absentia.⁸ The Court

⁴ The authors do not have a copy of the report.

⁵ Anti-Human Trafficking and Juvenile Protection Department of the Royal Gendarmerie in Preah Sihanouk Province, Report 16/010, dated 18 August 2010. Cited in: Court of First Instance of Preah Sihanouk Province, Criminal Case No. 311, dated 18 August 2010. Verdict No. 01, dated 9 April 2015.

⁶ Court of First Instance of Preah Sihanouk Province, Criminal Case No. 311, dated 18 August 2010. Verdict No. 01, dated 9 April 2015.

⁷ Court of First Instance of Preah Sihanouk Province, Criminal Case No. 311, dated 18 August 2010. Verdict No. 01, dated 9 April 2015.

⁸ Court of First Instance of Preah Sihanouk Province, Criminal Case No. 311, dated 18 August 2010. Verdict No. 01, dated 9 April 2015.

however changed the charge of rape,⁹ and convicted the perpetrator for the crimes of “purchase of child prostitution” and “sexual intercourse with a minor under 15 years”.¹⁰ Purchase of child prostitution involving a minor under 15 years is punishable by 7 to 15 years in prison. Sexual intercourse with a minor under 15 years is punishable by 5 to 10 years in prison under Article 239 of the Penal Code. The court sentenced the accused to 5 years in prison and ordered him to pay 40 million riel (about \$10,000) in civil compensation to the father of C.Y. The Court changed the charge on the grounds that the offence fell under the scope of the Law on Aggravating Circumstances of Crimes at the time that it was committed, but under the scope of the Criminal Code and the Law on Suppression of Human Trafficking and Sexual Exploitation at the time that the case was adjudicated. The punishments in the latter were less severe and applied based on the principle of the defendant’s benefit. While the Court found evidence that the accused had had sexual intercourse with the victim, it found no evidence that it had been committed by “violence, coercion, threat or by being opportunistic”, which are required elements of rape under the Criminal Code. Therefore, the Court applied the charge of sexual intercourse with a minor under 15 years. The Court found that the accused gave the victim 500 riel or fruit, which was therefore considered purchase of child prostitution. The minimum sentence was applied due to the “nature of the accusation, circumstances, and the accused’s personality”. The same day, the accused appealed all elements of the judgment.¹¹

2.13 On 27 August 2015, the authors filed a complaint with the Minister of Women’s Affairs, requesting that she intervene with the Appeal Court to obtain justice. On 16 November 2015, the Ministry of Women’s Affairs submitted an intervention letter to the Appeal Court requesting justice for the victim. On 5 January 2016, the Cambodian Human Rights Committee submitted an intervention letter to the Appeal Court following a request from the father of the victim. In the letter, the Cambodian Human Rights Committee highlighted that the accused remaining at liberty was an injustice to the victim.

2.14 On 13 January 2016, the Appeal Court conducted a public hearing. On 26 January 2016, the Appeal Court upheld the judgment of the Preah Sihanouk Court, except for the decision to change the charge from rape to purchase of child prostitution and sexual intercourse with a minor under 15 years.¹² Therefore, the Appeal Court applied the initial charge of rape under article 5 of the Law on Aggravating Circumstances of Crimes.¹³ The Appeal Court noted several inconsistencies in the accused’s testimony. The Court also found no evidence that the victim, her parents or any other party was engaged in the sale of child prostitution, making the purchase of child prostitution unfeasible. Rather, giving the victim 500 riel or fruit was an act of persuasion and concealment of rape. The Court found sufficient evidence to find the accused guilty of rape.

2.15 The Appeal Court found that the accused living at liberty could pose a risk to the safety and security of the victim and her family and therefore ordered his arrest and detention. The accused was not present at the announcement of the judgment. The judgment was appealed by the accused and by the Prosecutor General on 2 and 23

⁹ Under article 5 of the Law on Aggravating Circumstances of Crimes.

¹⁰ Under articles 34 (2) and 42 of the Law on Suppression of Human Trafficking and Sexual Exploitation.

¹¹ Appeal No. 14, dated 9 April 2015, submitted by the accused. Cited in: Appeal Court, Phnom Penh. Criminal Case No. 761, dated 11 August 2015. Verdict No. 03, dated 26 January 2016.

¹² Appeal Court, Phnom Penh. Criminal Case No. 761, dated 11 August 2015. Verdict No. 03, dated 26 January 2016.

¹³ In accordance with article 407 of the Code of Criminal Procedure.

February 2016 respectively.¹⁴ On 17 February 2016, the Appeal Court issued an arrest and detention warrant for the accused.

2.16 On 2 May 2016, the authors filed letters with the Minister of Justice, the Anti-Corruption Unit and the Chief of the Cabinet of the Prime Minister, Hun Sen, requesting an investigation into the execution of the arrest and detention warrant. The letters outlined that the Prosecutor's Office had ordered the Police Commissariat of Preah Sihanouk Province to execute the arrest warrant on 10 March 2016. On 23 March 2016, the Police Commissariat reported that the accused remained at large. B.Y. questioned why the Prosecutor had ordered the Police Commissariat to execute the warrant rather than other relevant authorities, considering that the accused was still a police official within that unit. He also questioned why the accused had not been arrested given that he continued to be seen at his home until 14 March 2016, which was after the arrest warrant had been issued.

2.17 On 4 August 2016, the Ministry of Interior dismissed the accused from the national police for violating national police rules, with no salary or benefits paid beyond October 2016. At the time of dismissal, the accused held the rank of lieutenant and was deputy head of a bureau at the Internal Security Office of the Police Commissariat of Preah Sihanouk Province.

2.18 On 10 October 2016, the Supreme Court conducted a public hearing. On 17 October 2016, the Supreme Court announced a judgment in which it upheld the judgment of the Appeal Court, except for the decision to arrest and detain the accused, and it therefore overturned the warrant that had been issued on 17 February 2016.¹⁵ The Supreme Court found that the victim's testimony was consistent, while the accused's testimony was not. It found sufficient reasoning to uphold the conviction of rape. The Supreme Court found that the Appeal Court was incorrect in ruling that the accused should be arrested and detained because the accused had appealed the judgment of the Preah Sihanouk Court judgment. Therefore, in accordance with article 399 of the Code of Criminal Procedure, the judgment could be modified only in favour of the accused.

2.19 On 23 November 2016, the Prosecutor's Office of the Preah Sihanouk Court issued an arrest warrant against the perpetrator, ordering the judicial police to arrest and detain him, on the grounds that he had been convicted of rape and the Supreme Court verdict had come into full effect. At the time of the submission of the communication to the Committee, the perpetrator had not been arrested or detained.

2.20 On 28 November 2016, the Preah Sihanouk Provincial Governor met with the father after the latter posted about the case on Facebook. That evening, the Chief of the military police in Preah Sihanouk Municipality informed the father about the arrest warrant and instructed him to be quiet so as not to alert the perpetrator. On 23 January 2017, the authors requested the President of the Preah Sihanouk Court to implement the judgment through the seizure and sale of the perpetrator's house and land to pay the civil compensation owed. The Preah Sihanouk Court requested the authorities to assess any property owned by the perpetrator.

2.21 On 19 June 2017, the Commune Chief of Sangkat 3 in Preah Sihanouk Municipality issued a certificate and shared a sale contract documenting that the perpetrator had transferred the assets to another person on 29 December 2015. At the

¹⁴ Appeal No. 29, dated 2 February 2016, submitted by the accused; Appeal No. 54, dated 23 February 2016, submitted by the Prosecutor General attached to the Appeal Court. Cited in: Supreme Court, Phnom Penh. Criminal Case No. 72, dated 16 March 2016. Verdict No. 364, dated 17 October 2016.

¹⁵ Supreme Court, Phnom Penh. Criminal Case No. 72, dated 16 March 2016. Verdict No. 364, dated 17 October 2016.

time of the submission of the communication to the Committee, no compensation had been paid.

Complaint

3.1 The authors claim continuing violations of C.Y.'s rights under articles 1, 2, 3, 5 (a) and 15 (1) of the Convention, as interpreted by the Committee in its general recommendations Nos. 19, 28, 33 and 35, owing to the State Party's failure to exercise due diligence in effectively investigating the case, punishing the perpetrator and providing remedies and reparation to the victim, as well as in ensuring the effectiveness of the justice system.

3.2 Specifically, the authors claim that the State Party failed to guarantee independence and impartiality in providing justice. Military police attempted to persuade C.Y.'s family to accept out-of-court payments and forgo criminal proceedings. The perpetrator's role within the Police Commissariat was likely to have influenced proceedings, including his pretrial release and the failure to execute the arrest and detention warrants. No evidence suggests that the authors' allegations of bribery of magistrates were investigated.

3.3 The authors claim that law enforcement and courts applied unreasonable evidentiary standards. All proceedings relied excessively on establishing physical injury and medical evidence, even though these elements are not required to meet the definition of rape established in the Criminal Code. The State Party failed to ensure timely remedies thereby causing unreasonably prolonged proceedings without sufficient justification. The victim had sought reparation for over 12 years by the time of the submission of the communication to the Committee. Almost five years passed before the Preah Sihanouk Court announced a judgment, which is excessively slow compared with similar cases. In the meantime, the perpetrator kept his position for over six years. Failure to enforce the final judgment displays an additional unreasonable delay.

3.4 The authors further claim that the courts failed to impose adequate penalties. They applied an unreasonably low sentence of five years, failing to consider the victim's testimony, age or perceived disability status and the power imbalance between the victim and the perpetrator. Purchase of child prostitution carries a sentence of 7 to 15 years, and sexual intercourse with a minor under 15 years carries a sentence of 5 to 10 years. Although the Appeal Court changed the charge to rape, the sentence was not adjusted to match the corresponding sentence of 15 to 20 years if committed against someone under 14 years or a person with a disability, or by a person in a position of power.

3.5 The authors claim that the State Party failed to enforce remedies. The final judgment issued in 2016 has not been enforced yet. The perpetrator has not served his sentence or paid civil compensation. Unreasonably prolonged proceedings enabled the perpetrator to transfer assets, thereby evading payment. The State Party does not have specific reparation funds to support people harmed by gender-based violence.

3.6 The authors also claim that the State Party failed to protect C.Y. and her family before, during and after the legal proceedings. No measures were implemented to protect the victim from additional violence, harassment or other pressure and she remained at risk of ongoing harm due to impunity.

3.7 Stereotypes regarding C.Y.'s gender, age and perceived disability status negatively affected the weight given to her testimony by the military police and likely the prosecutor. The report of the military police and a statement made by the prosecutor relied on stereotypes and bias. The authors request that the State Party's authorities immediately provide meaningful protection to block the perpetrator and

his relatives from all contact with them and their relatives. The perpetrator's family has previously pressured C.Y. to accept out-of-court monetary compensation to avoid the perpetrator being held criminally responsible. Pressure and harassment from the perpetrator and his family are humiliating and a continuation of the harms related to the original act of rape. They cause irreparable harm to the victim's psychological well-being.

3.8 Lastly, the authors request that the State Party immediately enforce the Supreme Court judgment, including the perpetrator's arrest and detention and full payment of civil compensation; prevent further asset transfers from the perpetrator until the civil compensation has been fully paid; grant the victim appropriate reparation, including compensation commensurate with the seriousness of the rights violations; ban use of non-judicial resolutions in sexual assault cases, including reconciliation, mediation and other alternative methods of dispute resolution; ensure that all responses to sexual assault are survivor-centred, emphasizing that perpetrators' rights cannot supersede women's human rights to life and physical and mental integrity.

Lack of cooperation by the State Party

4. In notes verbales sent on 26 September 2022, 23 January 2024 and 24 February 2025, the Committee requested the State Party to provide information and observations on the admissibility and the merits of the present communication. The Committee regrets the State Party's failure to provide any information with regard to the admissibility or the merits of the authors' claims. It recalls that article 7 of the Optional Protocol obliges States Parties to examine in good faith all allegations brought against them and to make available to the Committee all information at their disposal. In the absence of any observations from the State Party, due weight must be given to the authors' allegations, to the extent that they are properly substantiated.¹⁶

Issues and proceedings before the Committee

Consideration of admissibility

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

5.2 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. In the present case, the Committee notes the authors' contention that they have exhausted all available domestic remedies.

5.3 The Committee observes that the State Party has not provided any information to challenge the authors' assertion and that, at the time of the submission of the present communication, more than a decade following the repeated rape of C.Y., and despite the fact that the case has been appealed all the way to the Supreme Court, the perpetrator has remained at large following the final judgement of the Supreme Court, and no reparation has been received by the victim. In the absence of any submissions from the State Party to the contrary, in particular to identify any remedy that would have been effective and available to the authors to raise the claims brought before the Committee, the Committee considers that it is not precluded under article 4 (1) of the Optional Protocol from considering the communication.

¹⁶ *X. v. Timor-Leste* (CEDAW/C/69/D/88/2015), para. 4.

5.4 The Committee takes note that in terms of crime-classification, the Appeal Court remedied the trial court decision and that the rape conviction was upheld by the final judicial decision issued by the Supreme Court. The Committee considers, however, that these decisions cannot be considered an effective remedy in light of the non-execution of the final decision in contempt of court and the absence of recognition of discrimination in judicial proceedings. The Committee also observes that the State party has failed to address the delay in the trial court's adjudication of the case and the Appeal Court's sentence which was not commensurate with the full range of violations alleged and the non-enforcement of the final decision, which is tantamount to a contempt of court.¹⁷

5.5 The Committee notes the authors' claims that the State Party failed to ensure justice and protection for C.Y. after the sexual violence to which she was subjected, citing systemic delays, inadequate penalties, non-enforcement of judgments, lack of victim protection, and bias rooted in stereotypes based on gender and disability. The Committee further notes the lack of cooperation by the State Party in the present case. The Committee considers that, for the purposes of admissibility, the authors have sufficiently substantiated their claims under articles 1, 2, 3, 5 (a) and 15 (1) of the Convention. It also notes that no information has been received from the State Party in the present case. Accordingly, the Committee decides to give due weight to the authors' allegations, to the extent that they have been sufficiently substantiated. Accordingly, it decides that the communication is admissible under article 4 (2) (c) of the Optional Protocol and proceeds with its consideration of the merits.

Consideration of the merits

6.1 The Committee has considered the present communication in the light of all the information made available to it by the authors [and by the State Party], in accordance with the provisions of article 7 (1) of the Optional Protocol.

6.2 The questions before the Committee are as follows: whether the State Party discharged its duty of due diligence in investigating, prosecuting and remedying the rape that C.Y. endured; and whether the judiciary and other organs in the State Party carried out their mandates in order to ensure that the author received a fair trial, without bias, discrimination or stereotyping based on gender and disability. The Committee takes note in this regard of the authors' allegations that justice was compromised by a lack of independence and impartiality, undue influence as a result of the perpetrator's position within the Police and the unaddressed bribery allegations, that proceedings were marred by unreasonable evidentiary standards, excessive delays – over 12 years without enforcement of the final judgment– and inadequate penalties that reflected a disregard for such aggravating factors as C.Y.'s age and perceived disability status and the power imbalance between victim and perpetrator holding high official authority and a law enforcement position. The Committee notes that under Article 240 “any person having authority over a person” constitutes an aggravated circumstance.” The Committee further notes the authors' assertions that the State Party also failed to enforce civil compensation, as well as to protect C.Y. and her family from harassment, and address harmful stereotypes based on gender and disability that undermined her testimony. The Committee will determine whether the above amounted to a violation of C.Y.'s rights and a breach of the corresponding obligations under articles 1, 2, 3, 5 (a) and 15 (1) of the Convention.

¹⁷ See *Lula Da Silva v Brazil* (CCPR/C/134/D/2841/2016 (Final proceedings), where the Human Rights Committee was of the view that although the Supreme Federal Court vacated Lula's conviction and imprisonment in 2021, these decisions were not timely and effective enough to avoid or redress the violations.

6.3 The Committee first recalls that gender-based violence against women, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.¹⁸ The Committee further recalls that gender-based violence affects women throughout their life cycle¹⁹ so any reference to women includes girls. The Committee has stated that “discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence [...] has an adverse impact on the ability of women to gain access to justice on an equal basis with men” and that “discrimination against women is compounded by intersecting factors”, including age and disability, among others. These intersecting factors make it more difficult for women from those groups to gain access to justice.²⁰ In this regard, the Committee has called on States to “ensure that all legal systems [...] protect victims/survivors of gender-based violence against women and ensure that they have access to justice and to an effective remedy.”²¹

6.4 With regard to the authors’ claim in relation to article 2 of the Convention, the Committee recalls that the right to effective protection, which also includes the right to an effective remedy, is inherent in the Convention.²² It falls within the ambit of article 2 (c), whereby States Parties are required “to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination”, in conjunction with paragraph 24 (b) and (i) of general recommendation No. 19, whereby States Parties should “ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity” and provide “effective complaints procedures and remedies, including compensation”, in order to overcome all forms of gender-based violence. The Committee also recalls that, for a remedy to be effective, adjudication of a case involving rape and sexual offences claims should be dealt with in a fair, impartial, timely and expeditious manner.²³ It further recalls its general recommendation No. 18 (1991), in which it observed that women with disabilities “suffer from a double discrimination linked to their special living conditions”. In this context, the Committee emphasizes that it is crucial to ensure that women and girls with disabilities enjoy effective protection against sex- and gender-based discrimination by States Parties and have access to effective remedies²⁴ on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants in all legal proceedings.²⁵

6.5 The Committee notes the authors’ assertion that the State Party failed to guarantee impartial justice and effective remedies. The Committee notes, in particular, the attempts by military police to pressure C.Y.’s family into out-of-court settlements,

¹⁸ General recommendation No. 19, para. 7.

¹⁹ See general recommendation No. 27 and joint general recommendation No. 31/general comment No. 18, general recommendation 35, on gender-based violence against women, updating general recommendation No.19, para.14, as well as jurisprudence, *L.C. v. Peru* (CEDAW/C/50/D/22/2009), where the Committee addresses violations of girl survivor of sexual violence rights, in particular right to life, health, and freedom from discrimination.

²⁰ General recommendation No. 33, para. 8.

²¹ General recommendation No. 35, para. 29 (b).

²² See, for example, *Vertido v. Philippines* (CEDAW/C/46/D/18/2008), para. 8.4; and *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 8.3.

²³ *Vertido v. Philippines*, para. 8.3.

²⁴ See *B.P.M. v. Philippines*, para. 8.3. See also CRPD General comment No. 3 (2016) on women and girls with disabilities (CRPD/C/GC/3), para. 33.

²⁵ See article 13 of the Convention on the Rights of Persons with Disabilities.

combined with the perpetrator's influence over law enforcement, prosecutorial and judicial authorities. The Committee observes that these factors demonstrate institutional bias that led to excessive delays at the level of the first instance trial court, non-enforcement of judgments and lack of reparations and reflect a failure of the State Party to exercise due diligence in addressing gender-based violence, thereby perpetuating impunity and discrimination.

6.6 With regard to the authors' claim under article 2 (f) of the Convention, the Committee recalls that the Convention places obligations on all State authorities and that States Parties are responsible for judicial decisions that violate the provisions of the Convention. It notes that, under this provision of the Convention, the State Party is to take appropriate measures to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women. In this regard, the Committee stresses that stereotyping affects the right of women and girls to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim.²⁶

6.7 In the present case, the compliance of the State Party's obligation to banish gender stereotypes on the grounds of article 2 (f) needs to be assessed in the light of the level of gender, age and disability sensitivity applied in the prosecutorial and judicial handling of C.Y.'s case. In this regard, the Committee notes that the Preah Sihanouk Court convicted the accused over 4.5 years after the complaint had been filed, changed the charge from rape to purchase of child prostitution and sexual intercourse with a minor under 15 years, which are punishable by prison sentences of 7 to 15 years and 5 to 10 years, respectively, and proceeded to impose the minimum possible sentence for the minor crime, namely, 5 years, whereas under the initial classification of rape the sentence would have been 15 to 20 years. Furthermore, the court found evidence of sexual intercourse, but instead of reasoning on that basis and taking into account C.Y.'s age, it required express evidence of violence or coercion as elements of rape. The court further deemed the offer of a fruit or 500 riel as an element establishing the purchase of child prostitution. Regarding the issue of consent, the Committee notes that both article 239 of the Penal Code as well as Article 5 of the Law on Aggravating Circumstances include provisions that are gender discriminatory. The court of first instance relied on what was considered the consent of the victim under Article 239 of the Penal Code which permeated the ruling of the trial court to convict the defendant on the basis of prostitution rather than rape. Although the Appeal Court and Supreme Court changed the sentence to rape, the sentence of the trial court based on false and stereotypical understandings of rape was maintained. The Committee recalls that as stated by the UN Special Rapporteur on violence against women, its causes and consequences consent to sexual intercourse must be given voluntarily and must be genuine and result from the person's free will, assessed in the context of the surrounding circumstances, and can be withdrawn at any moment. While consent need not be explicit in all cases, it cannot be inferred from: (a) silence by the victim; (b) non-resistance, verbal or physical, by the victim; (c) the victim's past sexual behavior; or (d) the victim's status, occupation or relationship to the accused.²⁷

6.8 The requirement that the victim display evidence of resistance or 'she must fight back' is one of the popular myths in rape trials. The Committee considers that, by disqualifying the sexual intercourse as rape for absence of physical violence, the trial court not only reinforced the stereotypical myth of consent based on lack of physical

²⁶ *Vertido v. Philippines*, para. 8.4; and *R.P.B. v. Philippines*, para. 8.8.

²⁷ See UN Doc. A/HRC/47/26/Add.1 (2021), p. 7.

resistance²⁸ but it also failed to consider important factors of the power difference between the parties such as the victim’s young age and disability, as well as the perpetrator’s position of military authority. Furthermore, the State Party failed to apply its own Penal Code, which explicitly states that “Legality of sexual intercourse is determined from the age of 15 years old” and rape carries a higher penalty (7–15 years) when committed “on a person particularly vulnerable due to his/her age”.²⁹ Under 15, a child cannot legally consent to sexual intercourse.

6.9 With regard to the authors’ claims under article 3, the Committee recalls that State Parties must ensure women’s enjoyment of fundamental rights, including security and protection from violence. In case of girls, States have a positive obligation to adopt measures to protect them from all forms of physical and mental violence, including sexual abuse.³⁰ The Committee notes the authors’ argument that the State Party failed to implement protective measures before, during and after the legal proceedings. In this regard, far from protecting C.Y. as a child victim of sexual abuse and violence, the State party exposed her to ongoing harassment and intimidation, causing irreparable psychological harm and revictimizing her.³¹ Further, the SP’s failure to exercise due diligence in guaranteeing effective delivery of justice resulted in forcing C.Y. to seek shelter thereby depriving her of her right to liberty and freedom of movement and association.

6.10 With regard to the authors’ claim under article 5 (a) of the persistence of gendered and ableist stereotypes in official reports and prosecutorial statements, the Committee recalls that, under articles 2 (f) and 5 (a) of the Convention, States Parties have the obligation to adopt appropriate measures to amend or abolish not only existing laws and regulations but also customs and practices that constitute discrimination against women. The Committee notes that stereotypes regarding C.Y.’s gender, age and perceived disability status negatively affected the weight given to her testimony by the military police, the prosecutor and ultimately the courts.³²

6.11 Lastly, the Committee notes the authors’ claims concerning equality before the law, unreasonable evidentiary requirements, sentencing disproportionate to the crime, and failure to enforce judgments, in violation of article 15 (1) of the Convention. In this regard, the Committee observes that by prioritizing (lack of) physical injury and medical evidence – elements required to meet the definition of rape established in the Criminal Code – the courts have imposed barriers to C.Y.’s access to justice. The Committee takes note that the Appeal Court reclassified the crime as rape, which was upheld by the Supreme Court, yet since the Prosecutor did not appeal, the procedural principle of appellate criminal law “*reformatio in peius*” applied and the Supreme Court could not sentence the defendant to a harsher penalty. The Committee observes, however, that while the failure to appeal nor the sentence per se could not amount to a violation of the author’s rights under the Convention, the broader procedural failures (lack of prompt, impartial and thorough investigation, lack of independent prosecution free from institutional bias and influence, lack of accountability of a perpetrator who continues to be a serving police officer (State agent), intersectional discrimination based on sex, gender, age, and disability) tantamount to a failure of justice. A sentence incommensurate to the crime compounded by prosecutorial negligence and the absence of reparation for a child victim in the present case amounts to a denial of effective justice. The Committee concludes that in issuing such a sentence below the jail-time required in the criminal code's aggravated offenses, the

²⁸ See *Vertido v. the Philippines*, para. 8.5, and *B.P.M. v. Philippines*, para. 8.10.

²⁹ See Cambodia Criminal Code, Articles 239–241.

³⁰ See article 19 of the Convention of the Rights of the Child.

³¹ See the Views of the Committee on the Rights of the Child in *Camila v. Peru*. (CRC/C/93/DR/136/2021), para. 11.10.

³² See Article 8 of the CRPD.

courts disregarded aggravating factors such as age (C.Y. was 11 years old at the time of the crime) and disability status and the power imbalance between her and the perpetrator, while non-enforcement of the Supreme Court judgment eroded the principle of equality before the law, and fair trial and due process of the law, leaving the victim without effective remedy and the perpetrator at large.³³

6.12 The Committee recalls that it is not in a position to review the assessment of facts and evidence by domestic courts and authorities unless such assessment was in itself arbitrary or otherwise discriminatory.³⁴ The Committee observes, however, that, in the present case, the authors have sufficiently demonstrated that the trial court failed to duly consider crucial elements and that its assessment and decision were arbitrary and discriminatory on the basis of sex, gender and disability status. The Committee considers that the authors have demonstrated that the courts' assessments were manifestly arbitrary and that the lack of enforcement of the Supreme Court judgment amounted to a denial of effective justice.³⁵

7. Acting under article 7 (3) of the Optional Protocol to the Convention, and in the light of all the above considerations, and the lack of cooperation by the State Party, the Committee is of the view that the State Party has failed to fulfil its obligations and has thereby violated the rights of C.Y. under articles 2, 3, 5 (a) and 15 (1), read in conjunction with article 1, of the Convention. The Committee makes the following recommendations to the State Party:

- (a) Concerning the authors of the communication:
 - (i) Immediately enforce the Supreme Court judgment, including the perpetrator's arrest and detention and full and adequate compensation to C.Y. commensurate with the nature of crime of an aggravated circumstances;
 - (ii) Ensure that C.Y. is provided **Reparative Justice** by the state party for physical, psychological and moral harm taking into account her loss of liberty in the ten years that she was in a protective shelter with limited access to the rights to education, freedom of association and movement, and that B.Y. is provided restitution of full financial damages.³⁶;
 - (iii) Restore C.Y.'s dignity through reintegration into the community and participation in income-generating activity with a view to **ameliorate her social isolation of ten years**; Provide free-of-charge psychological counselling and therapy for C.Y. as needed.
- (b) General:

³³ See *Tholal and Mahmood v. Maldives*, (CCPR/C/130/D/3248/2018). In this case regarding the dismissal of two National Human Rights Commission members in the Maldives, while the initial individual communication focused on the retaliatory dismissal, the Human Rights Committee addressed related broader issues, such as the independence of the judiciary

³⁴ See, for example, *R.P.B. v. Philippines*, para. 7.5; *T.N. v. Denmark* (CEDAW/C/59/D/37/2012), para. 12.7; *G.D. v. Bulgaria* (CEDAW/C/80/D/142/2019), para. 6.5; and *V.K. v. Bulgaria* (CEDAW/C/49/D/20/2008), para. 9.6. See also *S.V.P. v. Bulgaria* (CEDAW/C/53/D/31/2011).

³⁵ See *RSAA et al v Denmark*, (CEDAW/C/73/D/86/2015), para.8.4., where the Committee elaborated that deference to domestic courts can be waived if it can be established that "the evaluation was: 1) biased or based on gender stereotypes that constitute discrimination against women, 2) was clearly arbitrary or 3) amounted to a denial of justice.

(a) ³⁶ **Article 39 of the Constitution-**

Khmer citizens have the rights to denounce, make complaints, or claim for compensation for damages caused by any breach of the law by institutions of the state, social organizations or by members of such organizations.

- (i) Review the legislation as to statutory rape concerning child victims, in which case consent is irrelevant. Review the law so as to remove any requirement that sexual assault be committed by force or violence, or that consent is implied by a lack of physical injury, or visible signs of resistance or silence on the part of the victim; moreover, the revisions to the law and judicial interpretation must recognize that affirmative consent protects women and girls in situations where they feel they might not be able to say no, i.e. when there is a threat of violence, fear of retribution, or a power imbalance or strength asymmetry;³⁷
- (ii) ; In cognizance of Article 240 of the Criminal Code, in a crime concerning the abuse or misuse of authority vested in him or her, ensure the strict application of the penalty prescribed in the Code; Prohibit the use of non-judicial resolutions in sexual assault cases, including reconciliation, mediation and other alternative methods of dispute resolution; Shift the shame and stigma of sexual abuse to the perpetrator through a policy of zero tolerance for sexual violence.
- (iii) In line with Article 31 of the Constitution,³⁸ ensure effective and gender-sensitive access to justice, fair trial, and exercise of due process in the criminal justice system, including that all criminal proceedings involving rape and other sexual offences are conducted in a safe, impartial and fair manner and free from prejudices, compounded discrimination and stereotypical notions regarding the victim's gender, age and disability status **or other intersectional identity** within a victim-centred and trauma informed justice system. In cases of child victims, provide child-

³⁷ Rule 70 of the ICC Rules of Procedure and Evidence (outlining the principles of evidence in cases of sexual violence) provides that consent cannot be inferred 'by reason of any words or conduct of a victim where force, threat of force or coercion, or taking advantage of a coercive environment, undermined the victim's ability to give voluntary and genuine consent;' 'by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;' and 'by reason of the silence of, or lack of resistance by, a victim alleged to sexual violence.' See Rule 70(a)-(c) (V1).

The ICC Prosecutor's Office 2023 Policy Paper on Gender Based Violence: "... consent cannot be inferred in any situation where force, threat of force, coercion or taking advantage of coercive circumstances undermines the victim's ability to give voluntary and genuine consent. Likewise, consent cannot be inferred by reason of silence or lack of resistance to the act of sexual violence, or when the victim, such as a child, is incapable of giving genuine consent" (V1).

(b) ³⁸ Article 31

The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights, women's rights and children's rights.

Khmer citizens shall be equal before the law, enjoying the same rights and freedom and obligations regardless of race, color, sex, language, religious belief, political tendency, national origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.

protection officers and victim and witness protection procedures and ensure the safety and security of the victim and her family. Ensure that evidentiary standards are fair and in line with due process as well as with new forensic and medical protocols and do not over burden the victim;

(iv) ;;

Convene regular judicial colloquia on the Convention, the Optional Protocol thereto and the Committee's general recommendations and jurisprudence to the judiciary and the legal profession;

8. 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 shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State Party is also requested to publish the Committee's views and recommendations and to have them translated into Khmer, and widely disseminated in order to reach all relevant sectors of society.
