



A GLOBAL FUND FOR SURVIVORS OF
CONFLICT-RELATED SEXUAL VIOLENCE

CAMBODIA STUDY ON OPPORTUNITIES FOR REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE

Left without Calla



CAMBODIA



In Cambodia, the calla lily flower, a sign of good luck, plays an important role in the rituals of weddings. Wedding ceremonies typically last three days during which the couple gets married surrounded by family and members of the community. Couples who were forcefully married outside the Cambodian wedding traditions during the Khmer Rouge regime are said to have been married "without calla". This is considered a sign of bad luck, resulting in long-lasting stigma to the survivors, their families, and communities.

REDRESS

Ending torture, seeking justice for survivors



GLOBAL SURVIVORS FUND

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TABLE OF CONTENTS

ACRONYMS	5
EXECUTIVE SUMMARY	6
I. BACKGROUND AND METHODOLOGY	9
1. About the project, project partners and acknowledgments	9
1.1. About the project	9
1.2. About project partners	9
1.3. Acknowledgments	10
2. Methodology	10
2.1. Aim of the Cambodia Reparations Study	10
2.2. Specific objectives of the Cambodia Study	11
2.2.1. Study methods	11
II. INTRODUCTION	15
III. CONFLICT-RELATED SEXUAL VIOLENCE	16
1. Context	17
2. Nature and scope of conflict-related sexual violence	18
2.1. Scale, scope, forms and pattern of crimes	18
2.2. Profile and mapping of victims	21
2.3. Profile of perpetrators	23
IV. SURVIVORS' PERCEPTIONS, NEEDS, PRIORITIES AND RISKS	25
1. Impacts on victims, families and communities	25
1.1. Physical impacts	25
1.2. Psychological impacts	27
1.3. Socio-economic impacts	28
1.4. Impact on the family and intergenerational harm	29
2. Survivors' current needs	30
3. Survivors' agency and perceptions	32
3.1. Survivors' agency	32
3.2. Survivors' perceptions	34
4. Survivors' views and priorities on forms and modalities of reparations	35
4.1. Individual monetary compensation	35
4.2. Rehabilitation – Access to medical care	38
4.3. Memorialisation	38
4.4. Reparations for children of survivors	38
4.5. ID-Cards	39
5. Main risks and security assessment faced by CRSV survivors	40
5.1. Risks faced by those confronting the regime about the past, justice, and reparations	40
5.2. Personal and community risks	40
6. Mitigating measures	41

V.	ACCESS TO ASSISTANCE OR INTERIM RELIEF	41
VI.	AVENUES FOR REPARATIONS	43
	1. International human rights obligations, legal and policy frameworks for reparations	43
	2. Relevant domestic legal and policy frameworks	44
	2.1. General Cambodian domestic legal and policy frameworks relevant to CRSV	44
	2.2. Domestic legal and policy frameworks relevant to reparations (including for CRSV)	52
	2.3. (Lack of) Formal demobilisation and reintegration programmes for former Khmer Rouge	52
	2.4. Lack of security sector reforms	53
	2.5. The ECCC	54
VII.	STATUS OF IMPLEMENTATION OF REPARATIONS	57
	1. Government and other duty-bearers' position	57
	2. Access to reparations	58
	2.1. Access to full reparations to date	58
	2.2. CSO-run reparative projects	62
	3. Key challenges and obstacles faced in accessing remedies	63
	3.1. Lack of sustainability and doubts as to the reparative nature of "Reparations Projects"	63
	3.2. (Lack of) Survivor consultation	64
	3.3. (Lack of) Gender sensitivity of the ECCC	65
VIII.	ANALYSIS OF OPPORTUNITIES AND THREATS FOR REPARATIONS	69
	1. Mapping of key stakeholders	69
	1.1. Key stakeholders	69
	1.2. Main CRSV documentation efforts	69
	2. Reparations advocacy initiatives and opportunities for reparations	70
	3. Threats to effective reparations for CRSV	71
IX.	RECOMMENDATIONS	73
X.	CONCLUSION	77
	BIBLIOGRAPHY	78



ACRONYMS

ASEAN	Association of Southeast Asian Nations	ICC	International Criminal Court
AusAID	Australian Agency for International Development	ICCPR	International Covenant on Civil and Political Rights
CAT	Convention against Torture	IDP	Internally Displaced Person
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women	KdK	Kdei Karuna
CERD	International Convention on the Elimination of All Forms of Racial Discrimination	LDC	Legal Documentation Centre
CDP	Cambodian Defenders Project	LGBTIQ+	Lesbian, gay, bisexual, transgender, intersex, and queer
CPK	Communist Party of the Kampuchea	NGO	Non-Governmental Organisation
CRC	Convention on the Rights of the Child	OPCAT	Optional Protocol of the Convention against Torture
CSO	Civil Society Organisation	PTSD	Post-Traumatic stress disorder
CRSV	Conflict-Related Sexual Violence	SGBV	Sexual and Gender-Based Violence
DC-Cam	Documentation Center of Cambodia	SOGIESC	Sexual Orientation, Gender Identity and Expression and Sex Characteristics
DDR	Disarmament, Demobilisation and Reintegration Programme	UN	United Nations
DK	Democratic Kampuchea	UNAKRT	United Nations Assistance to the Khmer Rouge Trials
ECCC	Extraordinary Chambers in the Courts of Cambodia	UNTAC	United Nations Transitional Authority in Cambodia
EU	European Union	USAID	United States Agency for International Development
GSF	Global Survivors Fund	TPO Cambodia	Transcultural Psychosocial Organization Cambodia
GBV	Gender-Based Violence	VSS	Victims Support Section at the ECCC
GBVKR	GBV under the Khmer Rouge Information Platform	YFP	Youth for Peace
HBS	Heinrich Böll Stiftung Cambodia		



EXECUTIVE SUMMARY

During the 1960s, Cambodia began to experience a period of instability due to the war between Vietnam and the United States. Throughout this time, the Communist Party of Democratic Kampuchea, popularly known as the Khmer Rouge, was formed as a communist guerrilla group in the Cambodian jungles. Former King Norodom Sihanouk was ousted in a military coup by US-backed forces led by then-Prime Minister Lon Nol in 1970. This coup triggered a civil war in which deposed King Norodom Sihanouk relied on the Khmer Rouge for assistance. The Khmer Rouge captured Phnom Penh on 17 April 1975 and declared the end of the civil war. This marked the commencement of Khmer Rouge power and the Democratic Kampuchea dictatorship, which came to an end on 6 January 1979, when Vietnamese soldiers arrived in Cambodia.

The Khmer Rouge regime (1975-1979) was characterised by total centralisation and control of Cambodian society under Pol Pot's Khmer Rouge nationalist, communist rule. Conflict-Related Sexual Violence (CRSV), in various forms, was prevalent, and the preponderance and number of survivors of CRSV in Cambodia are still understudied. Contrary to the popular belief that the Khmer Rouge regime did not entail considerable CRSV, research has shown that CRSV was widespread during the Khmer Rouge regime and affected all genders, with victims in all provinces of the country.

The impacts of CRSV are complex and affect survivors, families, and communities in varied ways. They are among the most lasting effects of the Khmer Rouge regime. Many survivors are now elderly and continue to suffer from various long-term physical and psychological ailments. These include permanent physical injuries and disabilities, greatly impacting their quality of life, physical well-being, and sexual health; as well as trauma-related mental health issues such as anxiety, depression, panic attacks, flashbacks, and insomnia, among other impacts. Feelings of shame are also common amongst survivors and their families. CRSV in the form of forced marriage has had a broad impact on survivors' families, with many reporting that they are discriminated against in their communities and that their children suffer from social exclusion that prevents them from accessing opportunities. Forced marriages often lead to intergenerational trauma and

complicated family dynamics. CRSV has further caused material loss amongst survivors whose lives were derailed by their experiences, and some of them are currently experiencing poverty, which compounds the difficulty of accessing health, legal assistance, and other support services.

Victims articulate their expectations for reparations with their current needs. Today, many CRSV survivors live in poverty and do not have their basic needs met, struggling for survival. Many victims need access to medical and psychosocial care to manage the long-term physical and mental health impacts of what they have endured. Furthermore, many survivors in Cambodia lack the agency to advocate for their rights. In fact, most survivors have never been in a position where they could fully discuss reparation processes or freely express which forms of reparations they want. Despite the challenges experienced so far, survivors of CRSV in Cambodia are still strongly voicing their demand to receive adequate reparations. In this regard, survivors' views on what reparation means for them today include memorialisation, rehabilitation, particularly the wish for access to medical care, access to individual monetary compensation in the form of stipends, and programmes for their children, such as scholarship programmes and vocational training.

In theory, various venues and resources are available to survivors for accessing reparations. Cambodia has ratified various core international human rights treaties and has joined relevant regional commitments. Both regional and international instruments require the State to guarantee victims of human rights violations the right to an effective remedy. Likewise, Cambodia ratified the Rome Statute of the International Criminal Court (ICC) and is a party to the Geneva Conventions and its additional protocols I and II. At the domestic level, Cambodian legislation, including the Constitution, the Criminal Code, and several laws, address discrimination and violence against women, promote gender equality, and allow for prosecutions and victims' participation as civil parties. Nevertheless, victims of CRSV still face significant barriers to accessing justice and effective remedies. The main relevant judicial body concerning CRSV in the context of the Khmer Rouge era is the Extraordinary Chambers in the Courts of Cambodia (ECCC or Khmer Rouge Tribunal).

The ECCC has sentenced a handful of senior leaders of the Khmer Rouge regime to life imprisonment. It also ordered reparations, which were limited by its internal rules to collective and symbolic reparations. As such, many survivors of CRSV remain without access to justice or reparations in Cambodia.

Reparations were awarded by the ECCC in very different and limited ways in Cases 001, 002/01 and 002/2. Only Case 002/02 involved a CRSV-specific reparations project. Yet, these reparations projects lack gender sensitivity and have failed to adequately recognise or provide redress to victims of CRSV committed during the Khmer Rouge regime, including sexual violence committed outside of forced marriage. The ECCC has awarded reparation measures that have little connection with those responsible for the harm, thus failing to provide a sense of acknowledgement for the violations and lack the support of the Cambodian government. Moreover, given that survivors were not sufficiently consulted in the reparations process, the ECCC measures often fail to deliver a sense of recognition, reflect the needs, and wishes of the recipients, provide material benefit, or attain symbolic significance. Most of the ECCC-sanctioned reparations projects had a narrow focus on raising awareness within Cambodian society of victims' suffering.

Survivors face a myriad of challenges for accessing reparations, including lack of government interest and political will, lack of established administrative reparation programmes, lack of sustainability and doubts as to the reparative nature of the "Reparations Projects" already implemented by the ECCC, lack of survivors' consultation, among others.

This study includes key recommendations to relevant actors on reparations which focus on meeting the most urgent needs identified by survivors and highlight the existing opportunities for the relevant stakeholders to ensure the rights of CRSV survivors to reparation. As the primary duty-bearer, the government of Cambodia should consider the establishment of an inter-ministerial body or administrative reparation programme to respond to the urgent needs of CRSV survivors, including through the allocation of individual lump sum payments or pensions, access to medical and psychosocial assistance, and access to scholarships and vocational training for the children of survivors. Further, the government should conduct legal and policy reforms to ensure the protection and non-repetition of SGBV in the country, ensure the principle of non-discrimination and strengthen access to justice for all victims. Ultimately, the Cambodian government should also support Civil Society Organisations (CSO)-run projects to improve mental health and family relations and promote intergenerational dialogue.

Moreover, the ECCC should work closely with the government of Cambodia and with CRSV survivors' groups to ensure its residual functions contribute to filling the gap left by the ECCC reparations scheme. In this regard, the ECCC has the potential to contribute to memorialisation and acknowledgement in relation to CRSV during the Khmer Rouge regime. Additionally, the international and donor community has an important role to play by supporting projects designed by the government of Cambodia, the ECCC and civil society groups working to ensure the rights of CRSV survivors to redress.



Bou Meng, one of only seven known adult survivors of the Khmer Rouge imprisonment in the Security Prison 21 (S-21), 2018.
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I. BACKGROUND AND METHODOLOGY

1. About the project, project partners and acknowledgments

1.1. About the project

As part of a Global Reparations Study, REDRESS Trust and Kdei Karuna (KdK), in collaboration with the Global Survivors Fund (GSF), have conducted a study to identify the reparations' needs of survivors of conflict-related sexual violence in Cambodia, as well as the opportunities for delivering reparations to survivors through judicial and administrative processes. This study presents and analyses survivors' perceptions, and expectations for reparations, and offers practical, concrete and context specific recommendations to policy makers and other relevant actors at national and global levels to inform the design and delivery of survivor-centred reparations in Cambodia. This Cambodia study also seeks to establish whether survivors of CRSV have already received any form of assistance, and/or reparation through government programmes or from civil society initiatives, and if so, what lessons can be learned from those experiences, to inform the design and delivery of comprehensive reparations in the future, including the potential delivery of interim reparative measures by GSF. As an objective in itself, the Cambodia Study process further aimed to increase the understanding and awareness of survivors' rights to reparations and to create further momentum for the delivery of meaningful survivor-centred reparations to CRSV survivors in Cambodia.

The Cambodia Study is part of a global study on reparations (the "Global Reparations Study") launched by GSF in 2020, which focusses on the status of and opportunities for reparations for survivors of conflict-related sexual violence ("CRSV") in over 20 countries. The Global Reparations Study is a multi-actor effort led by GSF in collaboration with over 40 local and international partners, including survivors' networks and groups. It seeks to make recommendations for further action based on survivors' needs and aspirations and to identify potential support available among key actors and concrete action to enhance access to reparations for CRSV survivors around the world.

1.2. About project partners

REDRESS

Ending torture, seeking justice for survivors

REDRESS Trust (REDRESS) is an international human rights organisation that delivers justice and reparation for survivors of torture, challenges impunity for perpetrators and advocates for legal and policy reforms to combat torture and provide effective reparations. As part of its Discrimination programme, REDRESS works to push for accountability and reparations for victims of conflict-related sexual violence. For more information, visit www.redress.org/.



Kdei Karuna (KdK) is a politically neutral peacebuilding Non-Governmental Organisation (NGO) aiming to contribute to sustainable peace efforts in Cambodia. Through expertise in dialogue facilitation and sustained engagement with communities, KdK encourages locally driven approaches to address conflict, encourage mutual understanding, and promote healing. KdK's priority areas are youth development & lifelong learning; inter-ethnic relations; gender equality & empowerment of all women and girls. KdK was one of the NGOs that implemented the only judicial reparations project of the ECCC specifically focused on forced marriage, the "*Pka Sla Kroam Angkar*" project (which translates as "*Wedding Flowers Bestowed by The Organisation*"). As part of this project, Kdei Karuna produced a mobile exhibition on gender-based violence under the Khmer Rouge and its implications for Cambodian society today. KdK has extensive experience working directly with survivors and gathering the views and insights from local communities on their perceptions of needs for justice and reparations. For more information, visit www.kdei-karuna.org/.



GSF was launched in October 2019 by Dr Denis Mukwege and Ms Nadia Murad, Nobel Peace Prize laureates 2018. Its mission is to enhance access to

reparations for survivors of conflict-related sexual violence around the globe, thus seeking to fill a gap long identified by survivors. GSF acts to provide interim reparative measures in situations where states or other parties are unable or unwilling to meet their responsibilities. GSF advocates also for duty bearers, as well as the international community, to develop reparations programmes, and provides expertise and technical support to guide states and civil society in the design of reparations programmes. GSF's survivor-centric approach is the cornerstone of its work. For more information, visit www.globalsurvivorsfund.org.

1.3. Acknowledgments

This report was drafted by Lisa-Marie Rudi, REDRESS Legal Consultant, with support and review from a REDRESS team consisting of Ikram Ais, Legal Fellow, Mariana Baptista, Legal Intern, Julie Bardèche, Legal Advisor, Ely Cossio, Legal Fellow, Ana Cutts Dougherty, Legal Consultant, Alejandra Vicente, Head of Law and Carmen Ramirez, Legal Intern, and a KdK team consisting of Vuthy Bun, Head of Programmes, Minea Tim, Director, Piseth Thoen, Project Officer and Viasna Run, Project Officer and the GSF team.

REDRESS and KdK are grateful to the many CRSV survivors who worked with us and engaged during the project so that this study would reflect their views and expectations.

REDRESS and KdK appreciate the assistance by those who agreed to be interviewed and provided input on the study during the project. In particular, we are thankful to the following persons, who provided detailed feedback on the report: Piseth Duch, Megan Hirst, Kasumi Nakagawa, Silke Studinzky, Jeanne Sultzer and Beini Ye.

List of interviewees (all interviews were conducted online):¹

- Anonymous staff member of Cambodian Women's organisation, 17 November 2021
- Ang Pich, current National Lead Co-Lawyer for civil parties (ECCC), 9 July 2021
- Beini Ye, former Civil Party Lawyer (ECCC), 6 July 2021
- Helen Jarvis, Researcher (formerly ECCC), 21 October 2021

- Jonas Nilsson (formerly ECCC), 11 June 2021
- Kao Dyna, General Programme Manager, Legal Aid Cambodia (LAC), 5 July 2021
- Kasumi Nakagawa, Researcher, 19 July 2021
- Kdei Karuna Staff, 11 June 2021
- Maddalena Ghezzi (formerly ECCC), 21 June 2021
- Maria Lorna Mesina, Programme Specialist, UN Trust Fund to End Violence Against Women, 19 November 2021
- Megan Hirst, former Civil Party Lead Co-Lawyer (ECCC), 18 June 2021
- Piseth Duch, Director of Avocacy, Cambodian Center for Human Rights (CCHR), 25 May 2021
- Pisey Ly, RoCK Coordinator, RoCK Cambodia, 6 October 2021
- Rattanak Ly, Programme Manager, Women Peace Makers Cambodia, formerly Kdei Karuna, 22 November 2021
- Silke Studinzky, former Civil Party Lawyer (ECCC), 28 June 2021
- Sima Man, Team Leader of Gender and Violence, Banteay Srei, 13 July 2021
- Sokkeoun Man, Executive Director, Youth for Peace Cambodia (YfP Cambodia), 28 June 2021
- Solida Sun, Project Assistant and Counsellor, Transcultural Psychosocial Organization (TPO Cambodia), 9 July 2021
- Sopheap Chea, Executive Director, Bophana Center, 9 July 2021
- S.R., Gender and Development for Cambodia, 22 July 2021
- Theresa de Langis, Researcher, 3 September 2021
- Vannak Hang, Chief, Victims Support Section (ECCC), 2 June 2021

2. Methodology

2.1. Aim of the Cambodia Reparations Study

To identify what current avenues are available in Cambodia for accessing reparations for CRSV, what gaps between access and survivors' needs exist and how such gaps can be mitigated to ensure timely access to reparations for all survivors of CRSV.

¹ Any views expressed are those of the interviewees and are not necessarily shared by the United Nations or the ECCC.

2.2. Specific objectives of the Cambodia Study

1. Document to the extent possible the scope and extent of sexual violence committed during or related to the conflict period.
2. Identify and assess legal and administrative remedies in place for awarding reparations to survivors of CRSV.
3. Identify and analyse survivors' perspectives, needs and expectations in relation to reparation and interim reparative measures.
4. Identify gaps between current access to reparations and survivors' needs, and determine opportunities for, as well as possible challenges, to access to reparations in Cambodia.
5. Provide contextual recommendations for ensuring that reparations and interim reparative measures are provided to survivors of CRSV in Cambodia.

2.2.1. Study methods

This report is based on desk-based research carried out by REDRESS, including a systematic review of relevant publications; background information about the Khmer Rouge era; systematic review of existing information on the scope, scale, and nature of CRSV and reparations (including based on the records of the Extraordinary Chambers in the Courts of Cambodia (ECCC)); and analysis of legal, institutional and policy frameworks relevant for CRSV survivors. REDRESS also conducted stakeholder interviews with former and current civil party lawyers, civil society, experts, and academics in and outside Cambodia. Finally, the report integrates input and data gathered by KdK from consultations and activities conducted with 82 survivors of CRSV.

For this report, CRSV refers to *"rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict"*.² This definition is deliberately wide, to account for the contextual differences in which CRSV occurs.³

At the start of the project, REDRESS conducted a training with KdK on the scope of the right to redress and the different types of reparations, including how they were awarded in other contexts and countries to victims of CRSV. REDRESS and KdK also had a half-day work session during which they adapted forms and questionnaires to the Cambodian context and agreed on the methodology for conducting interviews considering GSF's framework and methodology.

Through outreach and engagement with survivor communities, KdK contributed to increasing the understanding and awareness of the right to reparation of CRSV survivors. They used their existing knowledge, networks, and systems to gather strong insights on CRSV survivors' perceptions and expectations in relation to individual and collective reparations and interim reparation measures. KdK reached out to their contacts throughout the Cambodian provinces to accurately identify survivors, as well as to civil parties to the ECCC proceedings and local partners to seek their views on the various project activities. KdK then carried out a four-day training of 16 data collectors, who are themselves survivors, on victim-centric reparations for CRSV, data collection relating to CRSV survivors, trauma awareness and self-care. The training included a module on handling the psychosocial and particularly the trauma-related aspects of data-collection and its impact on survivors by a psychosocial expert. This enabled the trained survivors to disseminate information about reparations to other survivors in their respective localities and conduct data collection with these survivors in a holistic way.



16 survivors were engaged as data collectors

2 UN Security Council, 'Conflict-Related Sexual Violence: Report of the Secretary-General' (2020) UN Doc S/2020/487, para 4.

3 See on this: Elisabeth Jean Wood, 'Conflict-Related Sexual Violence and the Policy Implications of Recent Research' (2014) 96 International Review of the Red Cross 457, 461 <https://international-review.icrc.org/sites/default/files/irrc-894-wood.pdf> accessed 11 February 2022.

SURVIVORS OF CRSV INTERVIEWED FOR THIS STUDY

 **59 women**

 **23 men**

Total = 82 survivors

KdK and the trained data collectors gathered data and conducted interviews with survivors of CRSV in the form of semi-structured interviews at informal venues. To protect against any risk of re-traumatisation, a psychosocial expert was on call during the interviews to speak with survivors in case they needed this support. The data collectors reached 82 survivors (59 women and 23 men) in 11 provinces. This report includes their views, summarised, and analysed by REDRESS.

During a survivors' forum held on 8 November 2021 by KdK, the main findings and recommendations of the research were presented to a group of 60 survivors from 11 provinces, 39 of whom were female. The survivors voiced their views on the recommendations, which were integrated into the report.

KdK also organised a meeting with stakeholders on 18 January 2022. The meeting included members of the Cambodian Ministries of Women's Affairs and of Education, Youth and Sport, as well as representatives of Heinrich Böll Stiftung Cambodia (HBS), Youth for Peace (YfP), the Tuol Sleng Genocide Museum, the ECCC Victims Support Section (VSS) and, finally, 11 survivors and some of their children. During the meeting, survivors were able to directly voice their concerns and priorities to the other stakeholders present, and to orally support the findings of the study. The stakeholders made suggestions that further helped inform this report.

A. LIMITED SAMPLE

As will be described in more detail in the report, CRSV is underreported in Cambodia. Underreporting is often linked to the lack of punishment of perpetrators, the silence of survivors, and the misconception that CRSV was not prevalent under the Khmer Rouge regime. Moreover, for survivors, it is understandably a traumatic experience to speak about CRSV, which often puts them at further risk of stigmatisation. Nevertheless, given that the data collectors were survivors themselves, they managed to reach a high number of survivors.

Cambodians generally have limited trust in the government and public institutions. The ECCC is winding down and many survivors no longer have expectations in relation to reparations. Many are no longer interested in engaging in conversations about reparations because of the gap between survivors' expectations and the mandate of the ECCC that limits reparations to moral and collective measures. Further, no outreach programme so far helped survivors to fully grasp what they could expect from the Court or to present them with alternatives. This has also impacted the willingness of survivors to speak to the data collectors, especially among ethnic and religious minorities who face additional exclusion and, therefore, may have less trust in the data collectors.

While 82 survivors engaged during the project, this sample is not as diverse as KdK and REDRESS originally expected. Of the 82 survivors interviewed, 59 were female, and 23 were male, none identified as being part of the LGBTIQ+ community. Their ages ranged from 60 and 80 years of age, with only three interviewees over 80. None of the survivors interviewed indicated that they were part of a religious or ethnic minority, 78 indicated that they were Buddhists, and the remaining four did not provide an answer as to their religion. As for their socio-economic situation, two of them pointed out they earn between USD 200 and USD 250 per month, and the rest indicated they make USD 100 or less. Furthermore, only four are currently employed, and 37 are self-employed or have non-formal jobs. More than 70% of the survivors interviewed have received some form of education. Fifty-four have had access to primary school, 14 to secondary school, and only five to higher education. Despite the preceding, 35 of the survivors interviewed indicated they are literate, 26 can read and write with assistance, and 17 are illiterate.

B. LIMITATIONS TO THE INCLUSION OF SURVIVORS FROM ETHNIC GROUPS

REDRESS and KdK attempted to obtain the views of survivors from ethnic and religious minorities through interviews with organisations working with those communities. A member of the Cham Muslims ethnic and religious community who has worked with various religious and ethnic minorities in Cambodia explained in an interview that there was additional stigma attached to sexual violence for women in the Muslim communities, and that they were therefore less likely to speak about it than Buddhist women. In rural areas, the Cham or Vietnamese communities live separated from the rest of the population, unlike in Phnom Penh. Some of them do not speak Khmer well, and this would have constituted a language barrier with the data collectors, who all speak Khmer and used the questionnaire in the Khmer language.⁴

C. LIMITATIONS TO THE INCLUSION OF LGBTIQ+ SURVIVORS IN THE STUDY

As described in this report, members of the LGBTIQ+ community experienced CRSV during the Khmer Rouge period as they were forcibly married, raped, and tortured, particularly because of their gender identity and sexual orientation. However, including CRSV survivors of the LGBTIQ+ community as interviewees for this study turned out to be a challenge. One interviewee explained that many LGBTIQ+ survivors did not speak about their experience of sexual violence during or after the Khmer Rouge because they did not feel safe doing so and did not want to relive their experience, respectively. They continue to face discrimination and have experienced violence in many other ways since the Khmer Rouge era, including ongoing threats to their security because of their sexual orientation and gender identity. As such, their priority is to survive and protect themselves.⁵ This is confirmed by a researcher on the topic, who found that the

sexual violence members of the LGBTIQ+ community experienced under the Khmer Rouge is only one aspect of their continuous experience of discrimination throughout their whole lives.⁶

D. SURVIVORS WORKING AS DATA COLLECTORS

REDRESS and KdK made the conscious choice to not conduct interviews themselves, but to train and empower survivors to interview other survivors. This decision was made to ensure that the process of data collection was itself reparative and prioritised skill-building and empowerment of the survivors trained as data collectors.

Some information may have been lost through the translation process. REDRESS trained KdK on the GSF methodology and forms. KdK then organised the translation of the forms into Khmer and trained the data collectors. After the interviews were conducted, the answers were translated into English. The statistics on survivors' answers, whether provided in percentages or numbers, are approximations. None of the questions were answered by all survivors interviewed and some answers were not considered when it appeared that a question had been misunderstood. Some answers required a measure of interpretation at the stage of data analysis. Nevertheless, some key findings have clearly emerged from the research as survivors communicated what they want and need. This is described in the report in detail.

While the methodology has some limitations, it also has benefits. One of the reasons for the high number of survivors interviewed is surely the fact that they were approached by other survivors from their communities, whom they knew and trusted. Moreover, the data collectors have reported that they feel empowered and emboldened through this process and will continue to work on strengthening solidarity networks among survivors in their own communities.

4 Interview with Rattanak Ly, Programme Manager, Women Peace Makers Cambodia, formerly Kdei Karuna (online, 22 November 2021).

5 Interview with Pisey Ly, RoCK Coordinator, RoCK Cambodia (online, 6 October 2021).

6 Kasumi Nakagawa, 'Gender-based Violence Against Sexual Minorities during the Khmer Rouge regime' (2015) 70 https://giz-cambodia.com/wordpress/wp-content/uploads/LGBT-KR-GBV_kasumi-.pdf accessed 4 November 2021.



*Killing tree at the Choeng Ek Genocide Memorial near Phnom Penh, Cambodia, 2018.
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II. INTRODUCTION

“Whenever I am reminded about the past experience, I feel the suffering, fear, and feel valueless in life. I never thought this would happen to me. I felt so valueless. I wanted to escape from people and wanted to kill myself. I also feel pity for my children that also suffer from this experience. That is, they are perceived as the children from traditionally unacceptable marriages.”

Anonymous Survivor, Kampot Province, 2021

Conflict-related sexual violence (CRSV) is a common feature of armed conflict and has devastating consequences for survivors. In Cambodia as in many other conflict settings, sexual violence was endemic, with people being raped, subjected to sexual violence, and forced to marry.

Sexual violence has grave physical, psychological, and socioeconomic impacts for survivors, their families and communities and impacts the younger generations, and yet in Cambodia, there has been limited progress towards redressing or mitigating those harms. Whereas there has been some progress towards obtaining justice for some of the crimes and in particular forced marriages, reparations for survivors of CRSV remain elusive. As a direct consequence of this failure to provide reparations, survivors continue to endure the consequences of the harms suffered without redress.

To date, the ECCC in Phnom Penh, Cambodia, has sentenced a handful of senior leaders of the Khmer Rouge regime (1975-1979) to sentences up to life imprisonment for crimes including some forms of CRSV. It has also ordered reparations for some CRSV and other survivors, limited by its internal rules to collective and symbolic reparations. Beyond these

measures, the Cambodian government has taken no steps to redress the harm caused during the Khmer Rouge regime to CRSV survivors. Thus, many survivors of CRSV remain without access to justice or reparations in Cambodia.

This study seeks to better understand the needs of survivors, and how they can be met. It provides an analysis of the main legal, policy and practical obstacles that survivors face to obtaining reparations in Cambodia. The report first describes the scope and modalities of CRSV during the Khmer Rouge, as well as the profile of the victims and perpetrators. It then reflects the survivors’ needs, priorities, and expectations in relation to reparations, and the risks they face. The report goes on to explore to what extent survivors have been able to access interim assistance or relief. It thereafter analyses the international and domestic legal and policy frameworks relevant for the implementation of reparations to CRSV survivors in Cambodia. The report then takes stock of the status of implementation of reparations so far, highlighting the main challenges. The penultimate section explores the opportunities to secure reparations for CRSV. The last section offers recommendations to a diverse range of stakeholders on the implementation of reparations and interim measures.



III. CONFLICT-RELATED SEXUAL VIOLENCE

| 1. Context

During the period of the Democratic Kampuchea (DK), the Khmer Rouge committed countless unthinkable mass crimes and are responsible for the deaths of approximately one quarter of the Cambodian population. They committed CRSV from the time the regime took power in 1975, until it was overthrown in 1979. However, CRSV under the Khmer Rouge only began to be highlighted in recent years.

In the 1960s, the war between Vietnam and the United States created instability in Cambodia.⁷ Around this time, the Communist Party of Kampuchea (CPK), also known as the Khmer Rouge, was formed in the Cambodian jungles as a guerrilla group of communist ideology. In 1970, former King Norodom Sihanouk was deposed in a military coup by the US-backed forces of the then-Prime Minister Lon Nol.⁸ The coup led to a civil war during which former King Norodom Sihanouk leaned on the Khmer Rouge for support.⁹ On 17 April 1975, the Khmer Rouge entered Phnom Penh and declared the end of the civil war. This was the beginning of the Khmer Rouge rule, and of the regime known as the Democratic Kampuchea. It ended on 6 January 1979 with the arrival of Vietnamese troops in Cambodia.¹⁰

The regime was characterised by the total centralisation of power over Cambodian society by the “*Angkar*” – meaning the “*organisation*” in the Khmer language.¹¹ This deliberately vague term refers to the entity which led the country and which ordinary people understood had the power to control the entire nation.¹² Financial, educational, and religious institutions were abolished,¹³ and the previous social fabric was destroyed. People who lived in cities were classified as “*new*” people and were seen as threats to the regime’s ideology.¹⁴ Conversely, the new ruling class were the villagers, also known as the “*old*” people.¹⁵ Additionally, the regime abolished or closely regulated personal relationships, often separating families.¹⁶ Children born during this period were deemed to be related to the Angkar, rather than to their families. Forced marriage, to build the “*revolutionary families*”, was a key tool for the Khmer Rouge to systematically destroy the traditional courtship rituals and pre-existing family units.¹⁷

The ECCC found that “*marriage and family had to be seen from the perspective of a collectivist approach aimed at eliminating private ownership and advancing the class struggle, including through the dictatorship of the proletariat*”.¹⁸

7 GBV under the Khmer Rouge Information Platform (GBVKR), ‘Cambodia and the Khmer Rouge regime’ <http://gbvkr.org/background/cambodia-and-the-khmer-rouge-regime/> accessed 2 August 2021.

8 Ibid.

9 Ibid.

10 Ibid.

11 Agence France-Presse, ‘Who were the Khmer Rouge?’ (*Rappler*, 5 September 2020) www.rappler.com/world/asia-pacific/who-were-the-khmer-rouge accessed 20 October 2021.

12 *Case 002/02*, Summary of Judgement (ECCC, 16 November 2018) para 13 https://legal.un.org/ola/media/info_from_lc/mss/speeches/MSS-Phnom-Penh-November-2018-ECCC-2-2-summary-of-judgement.pdf accessed 4 November 2021.

13 GBV under the Khmer Rouge Information Platform (GBVKR), ‘Cambodia and the Khmer Rouge regime’ <http://gbvkr.org/background/cambodia-and-the-khmer-rouge-regime/> accessed 2 August 2021.

14 Ibid.

15 Ibid.

16 Ibid.

17 Christopher G Moore, ‘Killing Fields Justice: Destruction of the Family Unit’ *Phnom Penh Post* (Phnom Penh, 9 December 2011) www.phnompenhpost.com/national/killing-fields-justice-destruction-family-unit accessed 4 November 2021.

18 *Case 002/02-E465*, Trial Judgement (ECCC Trial Chamber, 16 November 2018) paras 3539-3540.

The Khmer Rouge hoped to rapidly create an agricultural society, ruled by the peasant class. The CPK claimed that its objective was to improve the wellbeing of the population, and that forced marriages would allow it to increase population growth in order to develop Cambodia into a strong and economically independent country.¹⁹ To do so, millions of people were forcibly displaced from the Cambodian cities to rural villages where they were subjected to forced labour.²⁰ On the basis of this ideology, the regime resorted to mass crimes and was responsible for the death of approximately one quarter of the Cambodian population. People were deprived of their basic human rights, many died of starvation, were killed, or tortured.²¹ Furthermore, the Khmer Rouge specifically targeted certain ethnic minorities,²² such as the Cham Muslims, Khmer Krom and Vietnamese people.

After the Vietnamese entered Cambodia on 6 January 1979, putting an end to the regime, the Khmer Rouge resumed operating guerrilla warfare from bases near the border with Thailand, backed by China.²³ In 1991, a UN-sponsored peace settlement was reached, leading to the multiparty elections in 1993.²⁴ Secluded to isolated areas in the country and after several cadres accepted amnesty offers from the Cambodian government, the Khmer Rouge became increasingly weakened.²⁵ The ultimate dismantlement of the movement followed the signing of a peace agreement with the government in 1996, the imprisonment of Pol Pot and other top leaders of the Khmer Rouge in 1997 and 1998, and Pol Pot's death in 1998.²⁶ Pol Pot never underwent prosecution.

2. Nature and scope of conflict-related sexual violence

2.1. Scale, scope, forms and pattern of crimes

Cambodian culture is still restrictive for women in many ways,²⁷ placing an emphasis on traditional gender roles and manifesting itself in all aspects of life. Cultural markers such as the *Chbab Srey* (or "Code for Women") and the proverb "men are gold, women are white cloth" (signifying that men can be "cleaned" while women stay "stained" forever) are representative of this mindset which significantly limits women's freedom, autonomy, and opportunities for self-determination.²⁸ As one researcher put it "[t]he system is structured to privilege hegemonic masculinities".²⁹ In the 1960s and 70s, arranged marriages were the norm, and a woman's virginity played an important role in her prospect as a future spouse.³⁰

The prevalence and number of survivors of CRSV in Cambodia is still understudied and representative quantitative studies have yet to be conducted.³¹ Nevertheless, enough information is available from this and other studies to state that CRSV was widespread during the Khmer Rouge regime. As part of the Khmer Rouge's objective to break down traditional social structures and family ties and increase the population, the regime organised forced marriage ceremonies. The ECCC found that there was a nationwide policy to regulate family-building and marriage.

19 Ibid para 3549.

20 Judith Strasser and others, 'A Study about Victims' Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge regime' (Transcultural Psychosocial Organization, September 2015) 27 https://tpocambodia.org/wp-content/uploads/2014/06/TPO_GBV-under-the-Khmer-Rouge_Report_20151.pdf accessed 24 February 2022.

21 GBV under the Khmer Rouge Information Platform (GBVIR), 'Cambodia and the Khmer Rouge regime' <http://gbvkr.org/background/cambodia-and-the-khmer-rouge-regime/> accessed 2 August 2021.

22 Ibid.

23 Adam Augustyn, 'Khmer Rouge' (Encyclopaedia Britannica) www.britannica.com/topic/Khmer-Rouge accessed 21 October 2021.

24 Ibid.

25 Ibid.

26 Ibid.

27 Katrina Natale, "'I Could Feel My Soul Flying Away from My Body": A Study on Gender-Based Violence During Democratic Kampuchea in Battambang and Svay Rieng Provinces' (CDP, 2011) 18 http://gbvkr.org/wp-content/uploads/2013/01/Natale_K_Research_GBV_KR_ENG-web.pdf accessed 24 February 2022.

28 Ibid 19.

29 Kasumi Nakagawa, 'Gender-based Violence Against Sexual Minorities during the Khmer Rouge regime' (2015) 70 https://giz-cambodia.com/wordpress/wp-content/uploads/LGBT-KR-GBV_kasumi-.pdf accessed 4 November 2021.

30 Katrina Natale, "'I Could Feel My Soul Flying Away from My Body": A Study on Gender-Based Violence During Democratic Kampuchea in Battambang and Svay Rieng Provinces' (CDP, 2011) 18 http://gbvkr.org/wp-content/uploads/2013/01/Natale_K_Research_GBV_KR_ENG-web.pdf accessed 24 February 2022.

31 GBV under the Khmer Rouge Information Platform, 'Rape during the Khmer Rouge' <http://gbvkr.org/gender-based-violence-under-khmer-rouge/facts-and-figures/rape-during-the-khmer-rouge/> accessed 20 October 2021.

Forced marriages concerned the entire population and were organised in numerous locations throughout the whole Democratic Kampuchea period.³²

Some estimate that approximately 250,000 women were forced to marry during the Khmer Rouge period.³³ The ECCC found that these forced marriages happened “throughout the DK period and in numerous geographical locations throughout the territory of Cambodia”.³⁴

In Cambodian tradition, marriage ceremonies last three days,³⁵ and it is crucial for family members and villagers to be present.³⁶ Moreover, the groom is required to ask for the approval of both his and the bride’s parents. Conversely, during the Khmer Rouge regime, most couples had no choice of partner, and many had never met their future spouses until the ceremony. Shortly before the ceremony, couples would be approached and informed that they were to be married.³⁷ Such marriages were held in a systematic manner throughout the country in impersonal mass ceremonies that

involved from five to 100 couples, and in a majority of cases, family members were not allowed to attend.³⁸ Afterwards, couples were taken to small huts for two to three nights where they were forced to engage in sexual intercourse.³⁹ Khmer Rouge soldiers monitored the couples to ensure that they were having sexual intercourse.⁴⁰ Couples could be tortured or even killed if they failed to follow the Angkar’s orders.⁴¹

Some women “reported that Khmer Rouge cadres assisted husbands in raping their new wives if they refused to have sex”.⁴²

The Khmer Rouge also adopted a policy prohibiting so-called “moral offences”; namely, outlawing relationships between unmarried men and women, and both parties could be punished for committing such an offence.⁴³ There is a common misconception that sexual violence outside of forced marriage was not prevalent because of this policy. This misconception was replicated by the ECCC, as the prosecution in its initial strategy,⁴⁴ enquiry and outreach activities had no focus on CRSV, nor did the ECCC have an SGBV-sensitive programme towards survivors.

Many researchers have found that, contrary to popular belief, sexual violence was a recurring practice during the Khmer Rouge regime, and that it occurred in a variety of scenarios, such as gang rapes, rape prior to execution at killing fields, rapes in Khmer Rouge cooperatives, sexual exploitation, and sexual slavery.⁴⁵

32 Case 002/02, Summary of Judgement (ECCC, 16 November 2018) para 39.

33 Christopher G Moore, ‘Killing Fields Justice: Destruction of the Family Unit’ *Phnom Penh Post* (Phnom Penh, 9 December 2011) www.phnompenhpost.com/national/killing-fields-justice-destruction-family-unit accessed 4 November 2021.

34 Case 002/02, Trial Judgement 3690.

35 Kasumi Nakagawa, *Gender-Based Violence During the Khmer Rouge: Stories of Survivors from the Democratic Kampuchea (1975-1979)* (Phnom Penh, CDP, 2008) 14.

36 Ibid.

37 Ibid.

38 Ibid.

39 Ibid 16.

40 Ibid 17.

41 Ibid.

42 GBV under the Khmer Rouge Information Platform, ‘Forced Marriage’ <http://gbvkr.org/gender-based-violence-under-khmer-rouge/facts-and-figures/forced-marriage/> accessed 27 November 2021.

43 Kasumi Nakagawa, *Gender-Based Violence During the Khmer Rouge: Stories of Survivors from the Democratic Kampuchea (1975-1979)* (Phnom Penh, CDP, 2008) 12.

44 Interview with Silke Studinzky, former Civil Party Lawyer (ECCC) (online, 28 June 2021); see also Theresa de Langis, ‘ECCC Baseline Study on Gender Sensitivity in Transitional Justice Processes in Cambodia’ (2012) ECCC 28 www.researchgate.net/publication/306056007_ECCC_Baseline_Study_on_Gender_Sensitivity_in_Transitional_Justice_Processes_in_Cambodia_Phnom_Penh_Extraordinary_Chambers_in_the_Courts_of_Cambodia_2012 accessed 21 October 2021.

45 GBVCR, ‘Rape during the Khmer Rouge’ <http://gbvkr.org/gender-based-violence-under-khmer-rouge/facts-and-figures/rape-during-the-khmer-rouge/> accessed 20 October 2021; see also Duong Savorn, ‘The Mystery of Sexual Violence under the Khmer Rouge regime’ (CDP, June 2011) http://gbvkr.org/wp-content/uploads/2013/01/Mystery_of_Sexual_Violence_during_KR_ENG-web.pdf accessed 24 February 2022.



A forced marriage at the S-24 Khmer Rouge prison during Democratic Kampuchea (1975-1979).
© Documentation Center of Cambodia (DC-Cam)

The infliction of punishment by the Khmer Rouge for a “*moral offence*” was independent of whether the sexual act was consensual. As such, victims of rape could be punished for the rape alongside the perpetrator.⁴⁶

⁴⁶ Kasumi Nakagawa, *Gender-Based Violence During the Khmer Rouge: Stories of Survivors from the Democratic Kampuchea (1975-1979)* (Phnom Penh, CDP, 2008) 12.

In addition, this policy did not contribute to decreasing CRSV, but instead silenced it: because victims were afraid of being punished, they would not report the “offence” and the perpetrators of sexual violence enjoyed generalised impunity.⁴⁷ Several pregnancies resulted from rapes during the Khmer Rouge regime. Pregnancy outside of wedlock was also prohibited by the Khmer Rouge,⁴⁸ and was essentially a death sentence. Perpetrators of rape would kill the victims, to avoid being punished for a “moral offence”.⁴⁹ In other instances, if Khmer Rouge soldiers or the hierarchy found out that an unmarried woman was pregnant, they would kill her as a punishment. Moreover, the Khmer Rouge strictly controlled access to food among the population, distributing small portions of rice porridge.⁵⁰ Consequently, many died of starvation, and young women would sometimes be forced to have sex with Khmer Rouge soldiers in exchange for food.⁵¹

Survivors reported that rape was the most common form of sexual violence they experienced or witnessed during the Khmer Rouge regime.⁵² Other forms of SGBV were also common during the regime, such as genital mutilation and forced nudity as a form of humiliation in detention centres,⁵³ sexual slavery, and sexual humiliation and abuse.⁵⁴

A study focused on ethnic minorities in Cambodia documented accounts of survivors who had witnessed “[t]he public display of removed sexual organs, dead naked bodies being left in the open, sometimes with evidence of rape with a foreign object”.⁵⁵

As a result of malnutrition and trauma, many women stopped menstruating during the Khmer Rouge regime.⁵⁶ This has not yet been analysed through the lens of CRSV. It is possible that a variety of forms of CRSV that were prevalent during the regime remain unspoken of until today. In addition, Cambodian culture and tradition supports and promotes the importance of the “purity” of women.⁵⁷ As such, stigma still surrounds sexual violence. This hinders victims from openly speaking out.⁵⁸

Out of 82 survivors interviewed for this report, 79 (96%) indicated that they were survivors of forced marriage, while the outstanding four percent (4%) did not indicate which form of CRSV they had survived. Eleven percent (11%) indicated that they had been raped (half of them by Khmer Rouge cadres, the other half by “others”), five percent (5%) indicated that they had survived gang rape and four percent (4%) that they had suffered forced pregnancy.⁵⁹

47 Ibid 19.

48 Ibid 12.

49 Ibid 22.

50 Ibid 24.

51 Ibid.

52 Katrina Natale, “I Could Feel My Soul Flying Away from My Body”: A Study on Gender-Based Violence During Democratic Kampuchea in Battambang and Svay Rieng Provinces’ (CDP, 2011) 27 http://gbvkr.org/wp-content/uploads/2013/01/Natale_K_Research_GBV_KR_ENG-web.pdf accessed 24 February 2022.

53 GBV under the Khmer Rouge Information Platform, ‘Facts and figures’ <http://gbvkr.org/gender-based-violence-under-khmer-rouge/facts-and-figures/> accessed 30 April 2021.

54 Judith Strasser and others, ‘A Study about Victims’ Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge regime’ (Transcultural Psychosocial Organization, September 2015) 14, 16 https://tpocambodia.org/wp-content/uploads/2014/06/TPO_GBV-under-the-Khmer-Rouge_Report_20151.pdf accessed 24 February 2022.

55 Rochelle Braaf, ‘Sexual Violence against Ethnic Minorities during the Khmer Rouge Regime’ (2014) CDP xv http://gbvkr.org/wp-content/uploads/2014/05/Sexual-violence_ethnic-minorities_KR-regime_CDP-2014-Lo-Res.pdf accessed 5 November 2021.

56 Elizabeth Becker, *When the War Was Over: Cambodia and the Khmer Rouge Revolution* (Hachette UK 1986); Kate Frieson, ‘In the Shadows: Women, Power and Politics in Cambodia’ (2001) 26 CAPI occasional paper series 11 www.uvic.ca/research/centres/capi/assets/docs/Frieson_-_Women_in_Cambodia.pdf accessed 11 February 2022; Paul and Sophia Quinn-Judge, ‘Stories of Hunger and Agony at the Heart of Cambodia’ *The Michigan Daily* (16 November 1979) <https://news.google.com/newspapers?nid=2706&dat=19791116&id=HxJKAAAIBAJ&sjid=5x4NAAAIBAJ&pg=4270,4264816> accessed 11 February 2022.

57 GBV under the Khmer Rouge Information Platform, ‘Impact of SGBV’ <http://gbvkr.org/gender-based-violence-under-khmer-rouge/impact-of-gbv/> accessed 30 April 2021; see also Katrina Natale, “I Could Feel My Soul Flying Away from My Body”: A Study on Gender-Based Violence During Democratic Kampuchea in Battambang and Svay Rieng Provinces’ (CDP, 2011) 19 http://gbvkr.org/wp-content/uploads/2013/01/Natale_K_Research_GBV_KR_ENG-web.pdf accessed 24 February 2022.

58 Rochelle Braaf, ‘Sexual Violence against Ethnic Minorities during the Khmer Rouge Regime’ (2014) CDP xiv http://gbvkr.org/wp-content/uploads/2014/05/Sexual-violence_ethnic-minorities_KR-regime_CDP-2014-Lo-Res.pdf accessed 5 November 2021.

59 The ICC Rome Statute defines forced pregnancy in article 7(2)(f) as a crime against humanity and as: “the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.”

2.2. Profile and mapping of victims

As previously mentioned, the regime frequently organised forced marriages and forced couples to have sex, victimising both men and women. In some instances, Khmer Rouge cadres were allowed to select a person they wanted to marry, and who had no choice in the matter.⁶⁰

Beyond forced marriage, some studies suggest that women were more often victims of sexual violence during the regime than men.⁶¹ However, the extent of sexual violence against males during the Democratic Kampuchea is still understudied.⁶² In addition to reports that female Khmer Rouge soldiers were raped, there have been reports of female Khmer Rouge soldiers raping male victims.⁶³ As part of the “*Pka Sla Kroam Angkar*” reparations project, KdK documented the individual stories of ten survivors, among whom was a male survivor who described being repeatedly raped by a female Khmer Rouge cadre.⁶⁴

In general, victims were often targeted indiscriminately.⁶⁵ However, several groups were particularly vulnerable, as will be described below.

Often, survivors were targeted for being so-called enemies of the regime, and sexual violence was used as a form of punishment and humiliation of dissidents.⁶⁶ This was often due to certain political

affiliations and/or belonging to certain ethnic minorities.⁶⁷ Ethnic Vietnamese, Khmer Krom and Khmer Muslims or Cham people were particularly targeted. Ethnic Vietnamese were persecuted as perceived “*enemies of the revolution*” and the Khmer Krom, while ethnically and culturally Khmer, were perceived to be aligned with the Vietnamese.⁶⁸ The Cham were targeted because the Khmer Rouge despised and wanted to abolish all religion.⁶⁹ According to the ECCC Trial Chamber, they also wanted to destroy them as a group first to “*assimilate them*” and later to address the “*need to preserve the Khmer race and to protect Cambodian population from all enemies*”.⁷⁰

They placed a particular focus on forcibly marrying Muslims with Khmer people.⁷¹ One study found that all ethnic minorities were subjected to various forms of sexual violence,⁷² and many of the respondents described being shocked by the particular savagery displayed by Khmer Rouge perpetrators.⁷³ The experience of persons from ethnic and religious minorities differs from the rest of the population in the sense that the practice of forced marriage was used to merge the community into the Khmer population. As such, women and girls from ethnic minorities may have been a more frequent target of sexual violence and more often singled out for rape.⁷⁴ Moreover, in many locations, persons from ethnic and religious minorities were the target of specific purges and women were often raped before being killed.⁷⁵

60 GBVCR, ‘Forced Marriage’ <http://gbvkr.org/gender-based-violence-under-khmer-rouge/facts-and-figures/forced-marriage/> accessed 27 November 2021.

61 GBVCR, ‘Rape during the Khmer Rouge’ <http://gbvkr.org/gender-based-violence-under-khmer-rouge/facts-and-figures/rape-during-the-khmer-rouge/> accessed 20 October 2021.

62 Ibid.

63 Kasumi Nakagawa, *Gender-Based Violence During the Khmer Rouge: Stories of Survivors from the Democratic Kampuchea (1975-1979)* (Phnom Penh, CDP, 2008) 23-24.

64 Kdei Karuna, ‘Thinking of the Future – Listening to the Survivors’ Oral History on Forced Marriage during the Khmer Rouge’ (January 2018) 143 <https://static1.squarespace.com/static/578c602bf7e0ab358fd70682/t/5b431bbe03ce641f98167fa0/1531124688145/women+PKL.pdf> accessed 22 October 2021.

65 GBVCR, ‘Rape during the Khmer Rouge’ <http://gbvkr.org/gender-based-violence-under-khmer-rouge/facts-and-figures/rape-during-the-khmer-rouge/> accessed 20 October 2021.

66 Ibid.

67 Ibid.

68 Rochelle Braaf, ‘Sexual Violence against Ethnic Minorities during the Khmer Rouge Regime’ (2014) CDP xi http://gbvkr.org/wp-content/uploads/2014/05/Sexual-violence_ethnic-minorities_KR-regime_CDP-2014-Lo-Res.pdf accessed 5 November 2021.

69 Ibid.

70 *Case 002/02*, Trial Judgement 3228.

71 Rochelle Braaf, ‘Sexual Violence against Ethnic Minorities during the Khmer Rouge Regime’ (2014) CDP xi http://gbvkr.org/wp-content/uploads/2014/05/Sexual-violence_ethnic-minorities_KR-regime_CDP-2014-Lo-Res.pdf accessed 5 November 2021.

72 Ibid xiv.

73 Ibid xv.

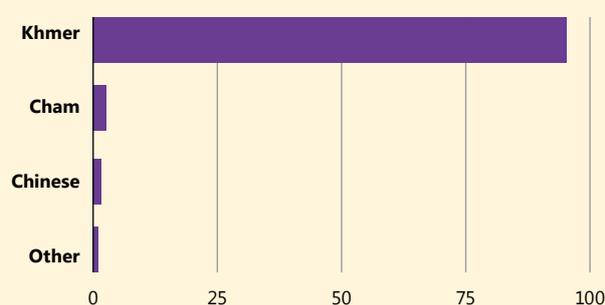
74 Ibid xvi.

75 Ibid.

Members of the LGBTIQ+ community were diversely impacted during the Khmer Rouge regime, based on their sexual orientation or gender identity.⁷⁶ According to a researcher on this topic, the Khmer Rouge equated gender identity to sex assigned at birth, either forcing trans individuals to marry people from the opposite biological sex,⁷⁷ or someone of the

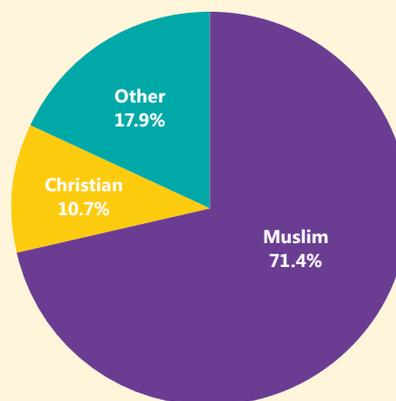
same sex assigned at birth if the Khmer Rouge were unaware of them being trans. Both could be equally traumatising, and additional trauma could arise in relation to the individual's sexual orientation. Some trans women were able to live as women during the Khmer Rouge regime and were forced to marry a man, as the Khmer Rouge did not realise that they

CAMBODIA – ETHNIC COMPOSITION

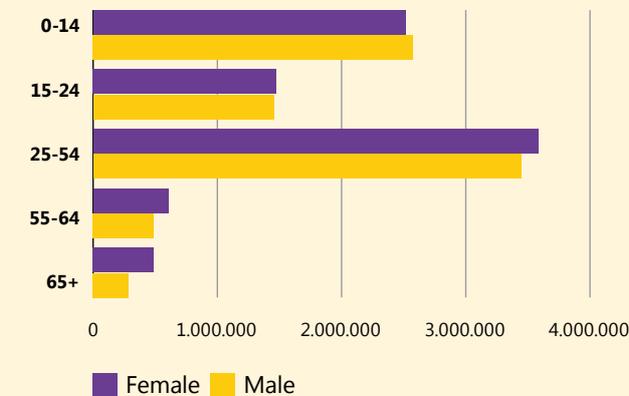


CAMBODIA – RELIGION

Buddhism is practised by the overwhelming majority of the population in Cambodia (97%). This Chart reflects the proportion of other religions practiced in the country.



CAMBODIA – AGES



Data source for all graphs: <https://www.cia.gov/the-world-factbook/countries/cambodia/summaries> as accessed 10 June 2022

76 When speaking about the LGBTIQ+ community in the Cambodian context, one needs to take into account that the concept of gender is understood in less rigid terms than the traditional western categories of “female” and “male” and that the words used to describe gender and sexual orientation in the English language do not reflect the multifaceted concepts in the Khmer language. There are five terms used in Khmer to refer to one’s sexual gender, which all have different connotations. Moreover, it is believed that males are born into two categories: “rengpeng” meaning “firm” or “tough”) and “tuonphluon” (meaning “gentile” or “docile”). “If a man is believed to have been born in the more feminine tuonphluon category, this categorization is believed to be natural, and definitive of the male’s personality. [...] Males in this category are said to identify themselves as women, and are inevitably drawn to their opposite, the masculine male, or rengpeng. These feminine males may categorize themselves as khteuy or as members of the “third gender”. This person is not understood to be a male, but rather a kind of intermediary gender that is neither male nor female”. Jarrett Davis, Heike Lippmann, Glenn Miles, Todd Morrison, Zoe Miles, Vana Hem, Chendamony Sokun, Pov Song and Elizabeth Isaac, ‘More than Gender: A Baseline Study of Transgender Persons in the Phnom Penh Sex Industry (Book)’ (2014) 3 Sixth Annual Interdisciplinary Conference on Human Trafficking 7-8 <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1002&context=humtrafcon6> accessed 22 December 2021.

77 Kasumi Nakagawa, ‘Gender-based Violence Against Sexual Minorities during the Khmer Rouge regime’ (2015) 42-43 https://giz-cambodia.com/wordpress/wp-content/uploads/LGBT-KR-GBV_kasumi-pdf accessed 4 November 2021.

were trans. They were frightened of being murdered if they refused the marriage and had the additional fear of what may happen if they revealed their gender identity and sexuality to their new spouses.⁷⁸

Khmer Rouge compounds were separated according to gender. As a result, gay and transgender persons were in a particularly vulnerable position, as they were targeted by Khmer Rouge cadres and often subjected to discrimination and (sexual) violence from the people they were living with.⁷⁹ One researcher who interviewed 48 members of the LGBTIQ+ community who survived the Khmer Rouge regime found that almost all transgender persons she interviewed were threatened, abused or harassed due to their sexuality during the Khmer Rouge period.⁸⁰ Many respondents indicated that they tried to hide their gender identity for fear of being killed.⁸¹ Nevertheless, 100% of gay men and 61% of trans women interviewed for the research had experienced some form of sexual violence due to discrimination based on their gender identity and the general context of impunity for CRSV during the regime. The researcher found that the risk of being subjected to CRSV was higher for members of the LGBTIQ+ community because of personal and institutionalised homophobia that existed before the regime.⁸² She also found that gay men and trans women were particularly vulnerable because the sexual abuse by male Khmer Rouge cadres against people who were assigned the male gender at birth was not explicitly prohibited as a “*moral offence*”.⁸³

2.3. Profile of perpetrators

The Democratic Kampuchea regime was led by the Standing Committee of the Central Committee of the CPK. It included eight members and oversaw

six (later seven) zones, which were divided into regions, districts, subdistricts, and cooperatives. Each zone, region, district, and cooperative were in turn governed by a three-person committee consisting of a secretary, deputy secretary and member. The zone committee was responsible for overseeing the implementation of party plans and policies throughout the zone and for delegating plans and policies to all levels. The committees at the lower levels fulfilled the same function of implementing orders coming from the CPK. Information and commodities were channelled hierarchically through the committees with the ultimate control exercised by the CPK. There were no direct relations between the different entities.⁸⁴ Power was, thus, centralised, and its exercise highly regulated and formalised.

Forced marriages were the result of a country-wide policy. The ECCC has found that several senior CPK leaders operated in a joint criminal enterprise, sharing the common purpose of rapidly implementing socialist revolution in Cambodia. This revolution was implemented across the country by the party's administrative network of zone, sector, district and local-level secretaries and CPK cadres through the execution of (at least) five policies, including the regulation of marriage and the establishment and operation of security centres and execution sites, which were formulated at the highest echelon and then implemented through the CPK structure throughout the country.⁸⁵ The ECCC Trial Chamber found in Case 002/02 that Nuon Chea was a key figure within the CPK throughout the entire regime. He first served as Pol Pot's right hand and ultimately replaced him as interim prime minister. Together with Pol Pot, he exercised the top-level decision-making power of the CPK. His control extended to the government and administration of the Democratic Kampuchea and to military matters.⁸⁶

78 Ibid.

79 Interview with Kasumi Nakagawa, Researcher (online, 19 July 2021); see also Kasumi Nakagawa, ‘Gender-based Violence Against Sexual Minorities during the Khmer Rouge regime’ (2015) 57 https://giz-cambodia.com/wordpress/wp-content/uploads/LGBT-KR-GBV_kasumi-pdf accessed 4 November 2021.

80 Interview with Kasumi Nakagawa, Researcher (online, 19 July 2021); see also Kasumi Nakagawa, ‘Gender-based Violence Against Sexual Minorities during the Khmer Rouge regime’ (2015) 15 https://giz-cambodia.com/wordpress/wp-content/uploads/LGBT-KR-GBV_kasumi-pdf accessed 4 November 2021.

81 Kasumi Nakagawa, ‘Gender-based Violence Against Sexual Minorities during the Khmer Rouge regime’ (2015) 66 https://giz-cambodia.com/wordpress/wp-content/uploads/LGBT-KR-GBV_kasumi-pdf accessed 4 November 2021.

82 Ibid 51.

83 Ibid 57, 63, 69.

84 James A Tyner and others, ‘Phnom Penh during the Cambodian Genocide: A Case of Selective Urbicide’ (2014) 46 *Environment and Planning* 1873, 1879.

85 Case 002/02, Summary of Judgement (ECCC, 16 November 2018) para 43.

86 Ibid para 46.

The Chamber found that Khieu Samphan, the Head of State of Democratic Kampuchea, was the face of the regime. He “supported and promoted the common purpose, and encouraged, incited, and legitimised its implementation through criminal policies”.⁸⁷ The ECCC’s jurisdiction was limited to assessing the criminal responsibility of the senior leaders of the Democratic Kampuchea hierarchy and those most responsible for the crimes committed.⁸⁸ However, the entire security apparatus they created was responsible for crimes committed throughout the country, including forced marriage.

Most perpetrators of CRSV were Khmer Rouge cadres.⁸⁹ As mentioned above, it is mistakenly thought in Cambodia that sexual violence did not take place

during the Khmer Rouge era, as the regime officially outlawed rape and sex outside marriage. In reality, this prohibition did not prevent SGBV from taking place. Instead, it paved the way for impunity for these crimes. This is particularly true in relation to higher ranking Khmer Rouge cadres, who were rarely held accountable under the prohibition.⁹⁰ Because of the prohibition, many victims were killed to erase evidence that they had been raped.⁹¹ In addition, as mentioned above, so-called “moral offences” were punishable with respect to both parties that engaged in sexual activity, even if it was not consensual. This meant that rape victims were themselves considered perpetrators of “moral offences”.⁹² As a result, victims of sexual violence or people who witnessed killings of victims did not come forward for fear of being punished.

87 Ibid para 58.

88 Law to Amend the 2001 Law on the Establishment of the Extraordinary Chambers (2004) art 2.

89 GBVCR, ‘Rape during the Khmer Rouge’ <http://gbvkr.org/gender-based-violence-under-khmer-rouge/facts-and-figures/rape-during-the-khmer-rouge/> accessed 20 October 2021; Judith Strasser and others, ‘A Study about Victims’ Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge regime’ (Transcultural Psychosocial Organization, September 2015) 14 https://tpocambodia.org/wp-content/uploads/2014/06/TPO_GBV-under-the-Khmer-Rouge_Report_20151.pdf accessed 24 February 2022.

90 Kasumi Nakagawa, *Gender-Based Violence During the Khmer Rouge: Stories of Survivors from the Democratic Kampuchea (1975-1979)* (Phnom Penh, CDP, 2008) 20–21.

91 Ibid 19.

92 GBVCR, ‘Rape during the Khmer Rouge’ <http://gbvkr.org/gender-based-violence-under-khmer-rouge/facts-and-figures/rape-during-the-khmer-rouge/> accessed 20 October 2021.



IV. SURVIVORS' PERCEPTIONS, NEEDS, PRIORITIES AND RISKS

"If there is real reparation, that will be fair because justice brings dignity to all human beings and my family, especially the physical and mental reparations which promote honour to all people."

Anonymous survivor, Battambang Province, 2021

1. Impacts on victims, families and communities

1.1. Physical impacts

Survivors of CRSV in Cambodia have suffered from long-term physical ailments that have greatly impacted their quality of life. In a study of civil parties before the ECCC who experienced CRSV, 20.4% of the respondents stated that their experience had negatively impacted their physical wellbeing.⁹³ Female survivors, in particular, have continued to endure the physical impact of the violence they experienced as sexual violence left many women with ongoing gynaecological issues.⁹⁴ 15.2% of the respondents described that their sexual function had been adversely impacted with many reporting ongoing pain and discomfort in their vagina and uterus.⁹⁵ Many survivors of mistreatment and sexual violence suffer from other health issues such as head trauma or permanent disability.⁹⁶

As discussed above, during the Khmer Rouge regime, many women became pregnant because of rape and/or forced marriage. Often, women who gave birth were forced to continue working with insufficient food until the day of the birth. These women were also not given much time to rest after giving birth before they were ordered to go back to work and some suffer from ongoing health issues as a consequence.⁹⁷ Others went through risky self-administered abortions after having been raped and as a result, suffer long-term physical ailments.⁹⁸ Famine and malnutrition have also contributed to the impact on children born during the DK regime, who are at higher risk of diabetes, heart disease, obesity and high blood pressure – this includes children born from forced marriages and out of rape.⁹⁹

Though the specific impact that CRSV in Cambodia has had on men is still largely understudied, male survivors have also suffered from long-term physical ailments, as reported by the male survivors interviewed in this study.

93 Judith Strasser and others, 'A Study about Victims' Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge regime' (Transcultural Psychosocial Organization, September 2015) 82 https://tpocambodia.org/wp-content/uploads/2014/06/TPO_GBV-under-the-Khmer-Rouge_Report_20151.pdf accessed 24 February 2022.

94 Ibid 34-35.

95 Ibid 82.

96 Ibid 34-35.

97 GBVCR, 'Impact of SGBV' <http://gbvkr.org/gender-based-violence-under-khmer-rouge/impact-of-gbv/> accessed 30 April 2021.

98 Judith Strasser and others, 'A Study about Victims' Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge regime' (Transcultural Psychosocial Organization, September 2015) 34-35 https://tpocambodia.org/wp-content/uploads/2014/06/TPO_GBV-under-the-Khmer-Rouge_Report_20151.pdf accessed 24 February 2022.

99 Midori Matsushima, 'Intergenerational Health Impact of Adverse Environment in Utero under Civil Conflict: Evidence from Cambodia' (2021) *Journal of Health Research* 1, 1-11; 'The Epigenetics of Hunger' *Borgen Magazine* (Phnom Penh, 23 May 2014) www.borgenmagazine.com/the-epigenetics-of-hunger/ accessed 11 February 2022.



Child survivors of the Security Prison 21 (S-21), 2018.
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Out of the 82 survivors (59 women and 23 men) interviewed for this report, all of them reported to have suffered from various physical ailments.

Sexual violence was part of a broad range of other human rights violations that the civilian population suffered during the Khmer Rouge era. It was near impossible for the survivors to adequately link their physical ailments to specific violations. Three of the interviewees were over 80 years old, while the others were in their 60s and 70s. Nearly all of them provided a long list of physical ailments, ranging from high blood pressure to heart disease to dizziness, diabetes, and different types of chronic pain and to a variety of permanent physical injuries and disabilities.

1.2. Psychological impacts

The psychological effect of CRSV experienced by survivors is one of the lasting impacts of the Khmer Rouge regime. Most survivors experience trauma-related mental health issues that take the shape of anxiety, depression, panic attacks, flashbacks, and insomnia, among other issues.¹⁰⁰ In a survey of SGBV survivors conducted in 2014 by the Transcultural Psychosocial Organization Cambodia (TPO Cambodia), over half of the respondents revealed that their experiences of CRSV still affected their psychological wellbeing and many described feeling emotions such as anger, a wish for revenge, and regret.¹⁰¹

Feelings of shame are also common among survivors and their families. The taboo surrounding sexual violence and sex outside of marriage contributes to a culture in which CRSV is not discussed. In addition to a general culture of silence among regime survivors,¹⁰² stigma around the topic of sexual violence exacerbates the psychological trauma that survivors experience. They also find it difficult to access quality mental health support and care.¹⁰³

During the Khmer Rouge regime, forced marriage was widespread in Cambodia and affected people in a variety of ways, depending on their gender, experiences, and other personal characteristics. One researcher recalled that within some forced marriages, some privileges were given to men as opposed to women: they were occasionally allowed to choose who they wanted to marry.¹⁰⁴ That said, it is important to emphasise that both men and women were victims of forced marriages, as both parties were forced into a union against their will and tradition. The same researcher mentioned that men who were forcibly married were psychologically and emotionally affected by their inability to fulfil their role as providers in the family.¹⁰⁵ Because of this additional layer of shame, there might be an added barrier for men to talk about the CRSV they experienced within and outside of forced marriages.

100 Judith Strasser and others, 'A Study about Victims' Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge regime' (Transcultural Psychosocial Organization, September 2015) 34-35 https://tpocambodia.org/wp-content/uploads/2014/06/TPO_GBV-under-the-Khmer-Rouge_Report_20151.pdf accessed 24 February 2022.

101 Ibid 82.

102 Neil Trevithick, 'Cambodia: Silenced by a brutal past' *BBC News* (Phnom Penh, 4 December 2010) http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/9251334.stm accessed 6 November 2021.

103 Judith Strasser and others, 'A Study about Victims' Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge regime' (Transcultural Psychosocial Organization, September 2015) 34-35 https://tpocambodia.org/wp-content/uploads/2014/06/TPO_GBV-under-the-Khmer-Rouge_Report_20151.pdf accessed 24 February 2022.

104 Comment by Kasumi Nakagawa, Researcher (13 January 2022).

105 Interview with Kasumi Nakagawa, Researcher (online, 19 July 2021).

Most survivors interviewed for this report indicated that they were suffering psychologically, listing symptoms such as flashbacks, general fearfulness, nightmares, panic attacks, insomnia, depression, overthinking, memory issues, feelings of worthlessness, low self-esteem, suicidal thoughts, feelings of shame, bad temper and easily becoming aggressive.

A couple of interviewees mentioned that they suffered from “*baksbat*”, which translates as “*broken courage*”. It is a Cambodian concept that is recognised by some as a formal cultural trauma syndrome, distinct from post-traumatic stress disorder (PTSD).¹⁰⁶

1.3. Socio-economic impacts

“Some villagers discriminate those who got arranged marriage during the Khmer Rouge regime, seeing our family as not traditionally acceptable.”

Anonymous Survivor, Kampong Chhnang Province, 2021

As explained above a woman’s “*purity*” is still very important in Cambodian society and culture.¹⁰⁷ In that sense, women survivors of CRSV face ostracization by their communities due to misogynistic perceptions that their experiences of violent crime have rendered them “*impure*”, leaving them isolated from their families and other support systems. As explained by one interviewee,¹⁰⁸ the Cambodian government missed the opportunity to create social change to empower

women in the process of recovery from the regime, and traditional patriarchal structures prevailed. For instance, women in Cambodia often do not have the ability to divorce because they are economically and financially dependent on their husbands. Nevertheless, those who do divorce face specific challenges. For example, women who are no longer virgins are discriminated against and find it difficult to re-marry. Interviewees also mentioned that some survivors who re-married after the end of the regime became victims of domestic violence after their second husband discovered that they had already been “*married*” during the Khmer Rouge regime.¹⁰⁹

The stigma attached to sexual violence also impacts the socio-economic status of survivors. Survivors have expressed fear of being discriminated against because of their experiences.¹¹⁰ CRSV, for many reasons, causes material loss (alongside the physical and psychological impacts discussed above) among survivors whose lives were derailed by their experiences. Examples of this can include property loss and disruption of employment or education.¹¹¹ As a result of CRSV, many survivors continue to experience poverty which compounds the difficulty they face in accessing health, legal and other support services. In addition, since the end of the Khmer Rouge regime, some survivors have remained fearful of retaliation or backlash from former Khmer Rouge cadres, given that the Khmer Rouge stayed active and

106 “The etymological, social, and historical contexts of idioms of distress experienced by Khmer, known as *baksbat*, were studied through interviews with 53 Cambodian experts. *Phey-khlach* (double fear), *bor-veas-cheas-chgnay* (wishing that the trauma would go away), *dam-doeum-kor* (planting a kapok tree-remaining mute), *chos-nhorm* (submissive, easily giving in), *kob yobal* (ideas are buried), and loss of togetherness, were all identified as specific symptoms of *baksbat*”. Sothearea Chhim, ‘Baksbat (Broken Courage): A Trauma-Based Cultural Syndrome in Cambodia’ (2013) 32 *Medical Anthropology* 160.

107 GBVCR, ‘Impact of SGBV’ <http://gbvkr.org/gender-based-violence-under-khmer-rouge/impact-of-gbv/> accessed 30 April 2021.

108 Interview with Kasumi Nakagawa, Researcher (online, 19 July 2021).

109 Interview with Kdei Karuna (online, 11 June 2021).

110 Judith Strasser and others, ‘A Study about Victims’ Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge regime’ (Transcultural Psychosocial Organization, September 2015) 35 https://tpocambodia.org/wp-content/uploads/2014/06/TPO_GBV-under-the-Khmer-Rouge_Report_20151.pdf accessed 24 February 2022.

111 Ibid 27.

powerful in some areas of Cambodia until the late 1990s and given that former cadres live in some of the survivors' communities today.¹¹²

Research from 2013 showed that levels of SGBV in Cambodia remain high, with 25% of women who have been in a relationship reporting having experienced violence and 25% of men admitting to having committed rape.¹¹³ More recent data continues to show alarming rates of violence against women. During the COVID-19 lockdown in Cambodia in 2020, media reports revealed an increase in the number of women murdered by their male partners.¹¹⁴ Despite the growing prevalence of this issue, informal reconciliation by untrained community members continues to be the primary means for resolving domestic violence cases in Cambodia.¹¹⁵

Moreover, as the Cambodian health infrastructure is inadequate in providing medical assistance to survivors, "some survivors are forced to dedicate a large part of their income towards treating [medical] problems" stemming from sexual violence endured during the Khmer Rouge regime.¹¹⁶

1.4. Impact on the family and intergenerational harm

"He is controlling... There is domestic violence... He forced me to have sex, so we have many children."

Anonymous Survivor, Kampong Thom Province, 2021

Psychological trauma and damage to the socio-economic status experienced by survivors also has a lasting impact on their families and communities. Such impacts are intergenerational and include poverty, low education levels, unemployment and drug and alcohol abuse among survivors and their wider circles.¹¹⁷ Alongside the culture of impunity that has existed during and following the regime, this constitutes strong risk factors for SGBV in Cambodia today.

The Khmer Rouge regime's policy of forced marriages had long-lasting consequences on families and generations. One researcher interviewed linked the high rate of divorce and child abandonment in Cambodia to the severe disruption of family structures and ties during the DK regime.¹¹⁸ In particular, forced marriages imposed significant emotional hardship and trauma onto the family dynamic, creating an environment conducive to abuse, such as domestic violence.¹¹⁹ Although divorce is possible in Cambodia,¹²⁰ couples who were forcibly married and had children often remained together after the end of the regime.¹²¹ This is confirmed by the data collected for this report, with 62% of survivors interviewed married during the Khmer Rouge and remaining married today.¹²²

However, these couples sometimes lack an emotional connection, and the family dynamic may be permeated by feelings of resentment and anger. In addition, children born of forced marriages are often not aware that their parents were forcibly married. This exacerbates feelings of confusion among the next generation.¹²³

112 Ibid 35.

113 Ibid.

114 The Cambodian NGO Committee on CEDAW, 'CEDAW Monitoring Report for Cambodia' (2020) 5-7 <http://ngocedaw.org/wp-content/uploads/2021/03/MR2020EN-1.pdf> accessed 3 February 2022.

115 Ibid.

116 GBVCR, 'Impact of SGBV' <http://gbvcr.org/gender-based-violence-under-khmer-rouge/impact-of-gbv/> accessed 30 April 2021.

117 Ibid.

118 Interview with Kasumi Nakagawa, Researcher (online, 19 July 2021).

119 Interview with Kasumi Nakagawa, Researcher (online, 19 July 2021); see also Sotheary Yim, 'The Past and the Present of Forced Marriage Survivors – Experience Towards Healing' (CDP, April 2013) <http://gbvcr.org/wp-content/uploads/2013/04/The-Past-and-the-Present-of-Forced-Marriage-Survivors-small-2.pdf> accessed 24 February 2022.

120 Interview with Kdei Karuna (online, 11 June 2021).

121 Ibid; Interview with Sun Solida, Project Assistant and Counsellor, TPO Cambodia (online, 9 July 2021).

122 Please note that it may be possible that some of them remarried since but indicated only the year they were married during the regime and then the fact that they are married today.

123 Interview with Kasumi Nakagawa, Researcher (online, 19 July 2021); Interview with Sokkeoun Man, Executive Director, YFP Cambodia (online, 28 June 2021).

Sixteen percent of survivor interviewees indicated that their family did not get along; two interviewees were currently suffering from domestic violence and ongoing marital rape; and five interviewees indicated that their children were “not happy” with the fact that they were forcibly married.

Several interviewees explained that their children did not access higher education because of stigma and discrimination or because they were troubled because of their family’s history. Six survivors indicated that they suffer from poverty because they are no longer married, and their children cannot find jobs or family ties are severed.

Stakeholders mentioned that couples who were forcibly married during the Khmer Rouge regime are sometimes ostracised by their local communities due to the fact their marriage ceremonies did not follow Cambodian traditions.¹²⁴ The calla lily flower, a sign of good luck in Cambodian culture, plays an important part in the rituals of Cambodian weddings. Weddings typically last three days during which the couple is married and surrounded by family and community members. Couples who are married without following these traditions are said to have been married “without calla”. This is considered a sign of bad luck and misfortune in local communities. As a result, an unknown number of children born of forced marriage are isolated from their community, as they are perceived as *illegitimate* sons and daughters and a sign of bad luck.¹²⁵ Some children born of forced marriages have problems finding a partner and building their own families because they are regarded as having been conceived outside of marriage and therefore as being “unlucky”.¹²⁶ One interviewee, however, pointed out how much this phenomenon varies within Cambodia, depending on the makeup and values of one’s community, indicating that he did not know of many children who felt discriminated against because their parents were forcibly married.¹²⁷

The differences in terms of the social impacts experienced by survivors’ families are reflected in the data collected for this report. The data clearly demonstrates that an intersectional lens is necessary when analysing survivors’ lived experiences. Forty-three percent (43%) of the survivors interviewed indicated that their families and children experience discrimination by their neighbours and communities. They explained that they felt rejected, and that they were not invited to wedding ceremonies and other community celebrations and activities. Thirty-four percent (34%) of respondents, on the other hand, explained that they felt supported by their community. Four interviewees indicated that their community had issued a marriage certificate for them, but one indicated that they were still not supported by their community. All those who indicated that they were not discriminated against by their community were from two provinces (Siem Reap and Kampong Cham). Kampong Cham contains a high number of people belonging to the Cham community. This indicates that the social impact on the family may be dependent on location and the makeup of one’s community.

2. Survivors’ current needs

A former civil party lawyer at ECCC noted that there are two distinct groups of CRSV survivors in the Cambodian context with different perceptions and needs: on the one hand, survivors of CRSV who live in Cambodia, who often live in poverty and have high rates of illiteracy; and on the other hand, the diaspora survivors who, by contrast,

¹²⁴ Interview with Kdei Karuna (online, 11 June 2021); Interview with Sun Solida, Project Assistant and Counsellor, TPO Cambodia (online, 9 July 2021).

¹²⁵ Interview with Kdei Karuna (online, 11 June 2021).

¹²⁶ Ibid.

¹²⁷ Interview with Sokkoeun Man, Executive Director, YFP Cambodia (online, 28 June 2021).

have a different background often with access to higher levels of education and more resources. This distinction (arguably applicable to all survivors rather than just those of CRSV) impacts survivors' agency, perceptions, expectations, and needs.¹²⁸ The interviewees whose views are reflected in this section fall within the first category. Forty-three (43%) percent of the survivors interviewed for the study are illiterate. Only four were formally employed at the time of the interview, and only five had accessed higher education. The majority earn less than USD 100 per month, as estimated by the data collectors.

In the Khmer Rouge's attempt to establish an agrarian society, the entire Cambodian healthcare system was destroyed, including equipment, supplies, personnel, and major infrastructure.¹²⁹ Despite significant reforms in the past decades and attempts to rebuild the healthcare system, access to health care is still limited and unequal. Many Cambodians, particularly those who are living in poverty and living in rural areas, do not have access to quality health services. A significant portion of the overall health financing in Cambodia is channelled into the private sector, which primarily benefits affluent Cambodians and is highly unregulated.¹³⁰

The social welfare system in Cambodia is weak and health care can be expensive. As a result, elderly survivors rely on their children for financial support.¹³¹ The need for access to health support for mental and physical issues was raised several times by stakeholders and is one of their most pressing needs.¹³² Some survivors have received trauma therapy through NGOs but would still need additional medical care to meet their basic needs and those of their children.¹³³

For CRSV survivors, limited access to health care is compounded by the fact that they often face additional stigma and social exclusion.

As such, they can feel uncomfortable or unsupported when seeking to access health services. Many survivors live in poverty and are unable to pay for health care provided by private clinics. Many interviewees mentioned that survivors' current needs have been amplified during the COVID-19 pandemic, with decreased mobility during lockdowns and with the general strain on the healthcare system and economy deteriorating their situation.¹³⁴

One stakeholder interviewee pointed out that elderly survivors from the LGBTIQ+ community are particularly marginalised and vulnerable.¹³⁵ They continue to experience discrimination and sometimes violence.¹³⁶ They are often isolated from their biological families and either do not have children or may have particularly difficult relationships with their families of origin. In many cases, their needs for basic necessities such as food, housing and health care, are particularly pressing.¹³⁷

Almost all survivors interviewed expressed needing access to medical care. Many mentioned that they would like a health insurance card and financial support for their daily living expenses. They all expressed worry over access to care as they become older, and when it becomes more difficult for them to travel. Some also referred to the need to have a peaceful country, no corruption and access to justice.

128 Interview with Silke Studzinsky, former Civil Party Lawyer (online, 28 June 2021).

129 Laura McGrew, 'Health Care in Cambodia' (September 1990) Cultural Survival Quarterly Magazine www.culturalsurvival.org/publications/cultural-survival-quarterly/health-care-cambodia accessed 5 November 2021.

130 Augustine D Asante and others, 'Who Benefits from Healthcare Spending in Cambodia? Evidence for a Universal Health Coverage Policy' (2019) 34 Health Policy and Planning i4, i10 <https://doi.org/10.1093/heapol/czz011> accessed 6 November 2021.

131 Interview with Kasumi Nakagawa, Researcher (online, 19 July 2021).

132 Interview with Megan Hirst, former Civil Party Lead Co-Lawyer (online, 18 June 2021).

133 Interview with Beini Ye, former Civil Party Lawyer (online, 6 July 2021).

134 Interview with Kasumi Nakagawa, Researcher (online, 19 July 2021).

135 Interview with Pisey Ly, RoCK Coordinator, RoCK Cambodia (online, 6 October 2021).

136 Kasumi Nakagawa, 'Gender-based Violence Against Sexual Minorities during the Khmer Rouge regime' (2015) 70 https://giz-cambodia.com/wordpress/wp-content/uploads/LGBT-KR-GBV_kasumi-pdf accessed 4 November 2021.

137 Interview with Pisey Ly, RoCK Coordinator, RoCK Cambodia (online, 6 October 2021).

Given the advanced age of the interviewees, the question around survivors' needs in five or 10 years yielded very similar responses. Some had certain very concrete immediate needs such as glasses or a wheelchair or were worried about accessing nursing homes. Some mentioned needing infrastructure improvement in their community regarding roads, hospitals, and schools. They also noted that their children needed vocational training and scholarships and to get good jobs. One person mentioned needing visits from NGOs more often because they gave her encouragement and hope. A couple of people mentioned needing housing and access to a well with clean drinking water.

In general, older Cambodians live in a context of poverty and are likely to be *"economically and materially deprived"*. Almost 50% of the elderly population live in *"dwellings with earth, bamboo, or thatched floors [...] have no toilet facilities and [...] few if any house-hold amenities"*.¹³⁸ This is in part because during the Khmer Rouge regime, public property was indiscriminately destroyed and individual property was seized.¹³⁹ As such, the needs discussed above are arguably common among all elderly survivors of the Khmer Rouge regime, and not only CRSV survivors. However, given the lasting physical, psychological, and socio-economic impacts experienced by CRSV survivors due to the particular violence they have suffered, their needs for adequate health care and other social services are particularly acute.

During the survivors' forum conducted as part of this research, survivors stressed the urgency of the implementation of reparation measures, due to their advanced age and existing needs.

Many CRSV survivors in Cambodia experience poverty, which compounds the difficulty they face in accessing health, legal and other support services. The psychological trauma and damage to socio-economic status experienced by survivors also has a lasting impact on their families and communities. Such impacts are intergenerational and include poverty, low education levels, and unemployment. In addition, survivors still suffer from long-term physical and psychological ailments and often do not have access to adequate care.

The most clearly identified need and desired form of reparations expressed by survivors in this research is individual monetary compensation, paid in the form of monthly pensions. Another overwhelming desire of survivors is vocational training or access to scholarships for their children and grandchildren to help address the intergenerational impacts of CRSV (see below).

| 3. Survivors' agency and perceptions

3.1. Survivors' agency

According to some stakeholder interviewees, many survivors in Cambodia lack agency to advocate for their rights. In fact, most survivors have never been in a position where they could fully discuss reparation processes or freely express which forms of reparations they want. Survivors of CRSV are particularly affected by this limited agency, in part due to the stigma that surrounds sexual violence in Cambodia. Women's restrictive standing in Cambodian society also makes this group especially vulnerable. As a response, many interviewees emphasised the importance of trust-building and empowerment initiatives directed towards survivors. In general, survivors respond well to sharing their experiences with other survivors and forming communities among themselves.¹⁴⁰ The following initiatives were organised by civil society, the lawyers and lead co-lawyers for civil parties as well as the VSS at the ECCC and sought to put survivors at the centre of the reparative initiatives and enhance their agency.

138 Zachary Zimmer and others, 'The Impact of Past Conflicts and Social Disruption on the Elderly in Cambodia' (2006) 32 *Population and Development Review* 333, 336-337.

139 Estelle Bockers, Nadine Stammel and Christine Knaevelsrud, 'Reconciliation in Cambodia: Thirty Years after the Terror of the Khmer Rouge Regime' (2011) 21 *Torture* 71, 78 www.ircct.org/assets/uploads/1018-8185_2011-2_71-83.pdf accessed 3 February 2022.

140 Interview with Silke Studzinsky, former Civil Party Lawyer (online, 28 June 2021).



View of the Tuol Sleng Genocide Museum. The site is a former school that was used as the notorious Security Prison 21 (S-21) by the Khmer Rouge regime from 1975 to 1979, 2014.

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According to the evaluation report on the second phase of the non-judicial gender project 'Promoting Gender Equality and Improving Access to Justice for Female Survivors and Victims of Gender-based Violence under the Khmer Rouge regime' led by VSS and TPO Cambodia between 2016 and 2019,¹⁴¹ public truth-telling and community-based dialogues were effective in strengthening the voices of civil parties and, to a lesser extent, other survivors of CRSV, at the community level. They fostered discussions of the crimes committed by the Khmer Rouge, including CRSV, and their impact on the mental health of survivors. This enabled survivors to share their experiences and to express their opinions in relation to the ECCC, allowing for the acknowledgement of survivors' suffering and possibly helping to prevent discrimination (see below for more information on CSO-run reparative projects that focused on bolstering survivors' agency).¹⁴²

3.2. Survivors' perceptions

Some stakeholders pointed out that survivors' understandings and awareness about reparations and justice in Cambodia were influenced by Buddhist traditions. One interviewee explained that the notion of "karma" was crucial in rebuilding the social fabric of Cambodian society after the fall of the Khmer Rouge regime in 1979.¹⁴³ In this regard, it is common for survivors to believe that Khmer Rouge soldiers and leaders will be punished on a spiritual level. As seen with the "Testimonial Therapy" project led by the Rehabilitation and Research Centre for Torture Victims in four countries in Asia between 2008 to 2010, various religious practices can play an important role in reconciliation; in the case of Cambodia, this was found to be particularly so within communities where survivors and Khmer Rouge cadres were living together.¹⁴⁴

When asked what the word reparations means to them, survivors interviewed for this study all gave very similar answers, explaining that reparations for them is about repairing harm that was caused to a victim. Every respondent described this slightly differently, but the overall theme that emerged was that reparations means repairing harm through compensation and by contributing to alleviating victims' suffering in a variety of ways.

As one interviewee put it, reparation means "compensate, fix what has been lost through materials, money or symbols. Gives relief to victims and allows them to accept the past".

Five interviewees (6% of respondents) seemed to have a view of reparations that was limited to repairing or returning someone's property that had been damaged or stolen. When asked whether survivors have a right to reparation, all respondents agreed that they do.

In TPO Cambodia's 2014 study, respondents were asked about their motivation for participating in the ECCC proceedings. About one fourth (22.1%) reported that they wanted to obtain justice for themselves and for their relatives, while 17.6% stated that they were seeking truth.¹⁴⁵ Others (11.7%) mentioned that they wanted to achieve mental and physical healing.¹⁴⁶ 10.9% of the respondents reported that they wanted to obtain reparations, with 4.1% referring to individual reparations, and 6.8% mentioning collective reparations.¹⁴⁷

141 'Non-judicial measures' are a mechanism in addition to reparations to provide all Khmer Rouge survivors with some form of justice regardless of their status before the ECCC. They are further explained in section VIII(2).

142 Julian Poluda, Sineth Siv and Sotheary Yim, 'Promoting Gender Equality and Improving Access to Justice for Female Survivors and Victims of Gender-based Violence under the Khmer Rouge Regime: Final Evaluation of the ECCC Non-judicial Gender Project (Phase 2)' (2019) UN Trust Fund to End Violence against Women, VSS, and TPO 30-31, 37 https://eccc.gov.kh/sites/default/files/reports/UNTFVAW_Cambodia_VSS_TPO_Final%20Evaluation%20Report%207Oct2019.pdf accessed 9 September 2021.

143 Interview with Sokkooun Man, Executive Director, YFP Cambodia (online, 28 June 2021).

144 Inger Agger and others, 'Testimony Ceremonies in Asia: Integrating Spirituality in Testimonial Therapy for Torture Survivors in India, Sri Lanka, Cambodia and the Philippines' (2012) 49 *Transcultural Psychiatry* 571, 579-581 www.ncbi.nlm.nih.gov/pmc/articles/PMC3472560/pdf/10.1177_1363461512447138.pdf accessed 4 February 2022; see also Dylan Ungerman Sears, 'The Power of Testimonial Therapy: Healing, Closure, and Dignity for Victims' (ECCC, 2017) www.eccc.gov.kh/en/blog/2018/01/08/power-testimonial-therapy-healing-closure-and-dignity-victims accessed 4 February 2022.

145 Judith Strasser and others, 'A Study about Victims' Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge regime' (Transcultural Psychosocial Organization, September 2015) 43-44 https://tpocambodia.org/wp-content/uploads/2014/06/TPO_GBV-under-the-Khmer-Rouge_Report_20151.pdf accessed 24 February 2022.

146 Ibid 44.

147 Ibid.

"I need some other support and these needs should be provided on time. Don't wait until we are too old, forgetful, unfit. I need some medicines urgently to treat my diseases. I also need some money for living."

Anonymous Survivor, Kampong Thom Province, 2021

4. Survivors' views and priorities on forms and modalities of reparations

In 2015, UN Women organised a dialogue between CRSV survivors and government representatives from Cambodia. They gathered 45 people in total, including representatives of ministries and of UN Women. It led to the identification of seven main wishes of survivors:

1. Obtaining ID-Poor (defined below) so that they benefit from free of charge mental health services (counselling and therapy).
2. Constructing memorials for CRSV victims of the Khmer Rouge regime.
3. Accessing high-quality mental health services.
4. Public and official recognition of CRSV crimes through a commemorative day.
5. Creating a private psychiatric hospital, which could provide a safe environment for survivors suffering from mental issues.
6. Creating a centre for elderly survivors of the Khmer Rouge regime.
7. Creating an association gathering all CRSV victims, supported by public funds.¹⁴⁸

Almost all these wishes are also reflected in the data collected and analysed for this report and will be further described below. The only wish not mentioned in the workshop report that featured prominently in the data collected from survivors is individual monetary

compensation. This could be because in the meeting with government officials organised under the project tied to this report, survivors were told that individual financial compensation payments would likely not be available. The creation of a victims' association is not a wish that came up during interviews conducted for this report. Survivors' views and priorities on forms and modalities of reparations are laid out below, organised into the following categories: (i) individual monetary compensation; (ii) rehabilitation (access to medical care); (iii) memorialisation; (iv) reparations for children of survivors; and (v) ID-Cards.

4.1. Individual monetary compensation

Many stakeholders who have worked closely with survivors highlighted that the survivors' initial and primary wish was for individual financial compensation, and compensation in kind. This predated the establishment of the ECCC.¹⁴⁹ The ECCC rules provide only for collective and moral reparations and exclude individual and monetary compensation¹⁵⁰ and in Case 001, the Trial Chamber rejected requests made by civil parties for monetary compensation, on the grounds that it was beyond the scope of the ECCC (see below).¹⁵¹ The ECCC and CSOs did not fully succeed in communicating to victims what forms reparations would or would not likely take, in organising proper outreach on this issue, or in managing victims' and survivors' expectations with regard to reparations. Indeed, the above-mentioned evaluation report on the second phase of the non-judicial gender project led by VSS and TPO Cambodia showed that civil parties to the ECCC living in poverty would have preferred reparations in the form of monetary compensation. It also showed that the lack of such reparations contributed to the dissatisfaction

148 REDRESS and KdK, Internal Note on 'Follow up Dialogue Workshop for Representatives of the Royal Government of Cambodia, regarding Gender Based Violence during the Khmer Rouge and the Implementation of CEDAW COB 15' (14 July 2015, on file with REDRESS and KdK) 3.

149 Interview with Vannak Hang, Chief, VSS (online, 31 May 2021); Interview with Silke Studzinsky, former Civil Party Lawyer (online, 28 June 2021).

150 ECCC Internal Rules (rev. 9) 2015, rules 23(1)(b), 23bis(1)(b) and 23 *quinquies* (1), 80bis(4) and (5).

151 Case 007-E188, Trial Judgement (ECCC Trial Chamber, 26 July 2010) [670].

and poor mental health of survivors of CRSV and, in particular, widows from the conflict and women divorced after having been in forced marriages.¹⁵² After the Case 001, several civil parties expressed dissatisfaction over the lack of monetary awards¹⁵³ and protested in front of the ECCC.¹⁵⁴

This was confirmed by the data collected through survivors' interviews for this study.

Seventy-seven respondents (94%) indicated that they thought individual and monetary reparations were the most adequate form of reparation for the harm that they suffered.

Monthly pensions were mentioned by 55% of respondents as the preferred method of disbursing those reparations. A lump sum was preferred by 12%. Some indicated that a combination of both would be preferable. Several respondents mentioned that they would need help in setting up or accessing a bank account.¹⁵⁵ Nearly all survivors interviewed for this study responded that reparations are linked to justice, but 22 respondents (27%) indicated that reparations are only linked to justice when they entail individual financial compensation. Many stakeholder interviewees mentioned that, in Cambodia, it is

common for perpetrators to financially compensate victims to avoid criminal prosecutions,¹⁵⁶ as will be further discussed below.¹⁵⁷

According to stakeholder interviews, there is some frustration among victims about the limited scope of ECCC reparations.¹⁵⁸ At the same time, one stakeholder mentioned that, since many of the survivors are living in poverty, their expectations are very low as they have never been in a position to ask for anything before.¹⁵⁹ One civil party representative, who joined the ECCC after the reparations phase of the trials, expressed surprise at how understanding survivors were about the limited reparations they had been awarded.¹⁶⁰ According to one stakeholder, many survivors who have engaged with the ECCC now understand the difficulty around obtaining individual compensation and are more open to moral and collective reparations.¹⁶¹ Only three survivors (4%) interviewed for this study were civil parties, all of them from the same province (Kampong Thom). The three indicated that they benefitted from ECCC collective reparations, through a "stupa" (a Buddhist religious monument)¹⁶² and through education projects for the next generation. When asked whether reparations are linked to justice for them, however, all three agreed that real justice would be achieved through individual reparations. One mentioned that participating in a meeting with VSS to voice their opinion was also linked to justice. The three also agreed that an advantage of the ECCC reparations scheme was that young people learned about what happened (see below for more information about the ECCC reparations scheme).

152 Julian Poluda, Sineth Siv and Sotheary Yim, 'Promoting Gender Equality and Improving Access to Justice for Female Survivors and Victims of Gender-based Violence under the Khmer Rouge Regime: Final Evaluation of the ECCC Non-judicial Gender Project (Phase 2)' (2019) UN Trust Fund to End Violence against Women, VSS, and TPO 43 https://eccc.gov.kh/sites/default/files/reports/UNTFVAW_Cambodia_VSS_TPO_Final%20Evaluation%20Report%20Oct2019.pdf accessed 9 September 2021.

153 Eric Stover, Mychelle Balthazard and K. Alexa Koenig, 'Confronting Duch: civil party participation in Case 001 at the Extraordinary Chambers in the Courts of Cambodia' (June 2011) 93 *International Review of the Red Cross* 539-540 https://international-review.icrc.org/sites/default/files/irrc-882-stover-balthazard-koenig_0.pdf accessed 16 May 2022.

154 See picture of Pring Samrang, 'Victims of the Khmer Rouge regime protest outside the Extraordinary Chambers in the Courts of Cambodia (ECCC) to demand individual reparations from the court, on the outskirts of Phnom Penh' *Reuters* (17 October 2014) <https://cutt.ly/OKRCFE7> accessed 16 May 2022.

155 Note that in the ID-Poor system, government transfers are done via a mobile banking system. Comment by Kasumi Nakagawa, Researcher (13 January 2022).

156 Interview with Kao Dyna, General Programme Manager, Legal Aid Cambodia (online, 5 June 2021); Interview with Sima Man, Team Leader of Gender and Violence, Banteay Srei (a Cambodian women's NGO that empowers vulnerable women to improve their political, economic and psycho-social situation) (online, 13 July 2021).

157 For more information, see section 6.2. on "Relevant Domestic Legal and Policy Frameworks".

158 Interview with Jonas Nilson, formerly ECCC (online, 11 June 2021); Interview with Silke Studzinsky, former Civil Party Lawyer (online, 28 June 2021); Interview with Kdei Karuna (online, 11 June 2021).

159 Interview with Silke Studzinsky, former Civil Party Lawyer (online, 28 June 2021).

160 Interview with Megan Hirst, former Civil Party Lead Co-Lawyer (online, 18 June 2021).

161 Interview with Vannak Hang, Chief, VSS (online, 31 May 2021).

162 Inger Agger and others, 'Testimony Ceremonies in Asia: Integrating Spirituality in Testimonial Therapy for Torture Survivors in India, Sri Lanka, Cambodia and the Philippines' (2012) 49 *Transcultural Psychiatry* 579 www.ncbi.nlm.nih.gov/pmc/articles/PMC3472560/pdf/10.1177_1363461512447138.pdf accessed 4 February 2022.



Entrance of the Tuol Sleng Genocide Museum in Phnom Penh, chronicling the Cambodian genocide.
© iStock

4.2. Rehabilitation - Access to medical care

The second most mentioned demand/wish was access to health care.

Fifty survivors interviewed (61%) mentioned that they found free access to medical care, including medication, health insurance and medical care that can be accessed from home, when necessary, to be among the most adequate forms of reparations.

There was a clear focus on physical medical care, rather than psychological or mental care in the survivors' answers. This could be related to their advanced age and ailments. When describing the impact CRSV had on their lives, however, most survivors mentioned that they struggle psychologically, as mentioned above. The fact that asking for and accessing mental health care may still be stigmatised or at least not normalised, is relevant in this respect. Several interviewees who indicated that they had a good relationship with their family stated that their children "*encourage[d] them to forget*" what happened. This may be perceived by some as the culturally appropriate response to trauma.

4.3. Memorialisation

One stakeholder noted that many survivors she worked with during ECCC proceedings asked for museums to be created or for story-telling initiatives about the past to be supported.¹⁶³ The opportunity for survivors to meet fellow survivors and discuss their

experiences was raised by another stakeholder.¹⁶⁴ Many survivors raised requests for a "*stupa*" in their applications to the ECCC, not just as a place for worship and meditation but also a place where they can meet and memorialise the past.¹⁶⁵ Recognition of the harm suffered was also mentioned several times by stakeholders.¹⁶⁶

Some survivors expressed that their sole wish was for an acknowledgment of what happened to them.

This was more common among survivors who did not have strong needs for financial support or compensation.¹⁶⁷

Case 002/01 featured the publication of a booklet on facts adjudicated in the case as a reparation measure. This ensured that a record of the recognition of these facts was disseminated in an accessible way to a lay person. This contributes to memorialisation. No such publication followed Case 002/02, the only case with charges of forced marriage. In the interviews conducted for this study, memorialisation did not arise as a primary concern of survivors. This may be because this is less of a concern after the ECCC trials were held and memorialisation-related reparations projects were implemented. A wish for memorialisation did arise during the civil party and stakeholder consultation organised by the ECCC in May 2022, from the invited civil parties and CSO representatives. This may have been in part driven by the knowledge of the strong focus on memorialisation by the ECCC.

4.4. Reparations for children of survivors

One stakeholder noted that survivors were concerned about the next generation and would like to see reparations provide support for the younger generations in Cambodia who may still feel the impact

163 Interview with Beini Ye, former Civil Party Lawyer (online, 6 July 2021).

164 Interview with Vannak Hang, Chief, VSS (online, 31 May 2021).

165 Interview with Megan Hirst, former Civil Party Lead Co-Lawyer (online, 18 June 2021).

166 Interview with Kao Dyna, General Programme Manager, Legal Aid Cambodia (online, 5 June 2021).

167 Interview with Silke Studzinsky, former Civil Party Lawyer (online, 28 June 2021).

of the harm caused by the Khmer Rouge.¹⁶⁸ Survivors have expressed concern for their children and their education. Continued intergenerational support to ensure that future generations have more security has been raised as a potential type of reparation.¹⁶⁹ The concern for the next generation also clearly emerged from the interview data collected from survivors for this study.

Nearly all survivors interviewed for this study said that they would like vocational training, scholarships, and access to education for the next generation. Some also mentioned that they wanted their children to be informed of what happened during the regime. Two survivors mentioned that, whatever form their reparations take, they would like them to be transferrable so that they could be passed on to their children when they die.

4.5. ID-Cards

Twenty survivors mentioned that they would like to have a card, officially recognising them as survivors (referred to under the term "ID-card"), although the precise features they preferred for the card varied. An ID providing access to health care was mentioned 14 times (17% of respondents). Being recognised as a victim with an ID-card was mentioned five times (6% of respondents). Other services to which an ID-card should provide access included food (mentioned twice), life insurance (mentioned once), access to legal services (mentioned twice), and social affair support (mentioned twice). Three survivors did not specify what exactly an ID-card would do.¹⁷⁰ It is likely that some of the survivors who spoke of ID-cards were thinking of the "ID-Poor" system in place in Cambodia, also mentioned during the UN Women consultation in 2015.

ID-POOR: IDENTIFICATION OF POOR HOUSEHOLDS

ID-Poor, also known as the "*Identification of Poor Households*" is an initiative developed by the Cambodian Ministry of Planning.¹⁷¹ It identifies vulnerable households and households living in poverty and ensures that they can access social services, such as free health care, social transfers (transfers made -in cash or in kind- to persons or families to lighten the financial burden of protection against various risks), reduced government fees, school feeding programmes, assistance with shelter, running water, and more. To assess eligibility, villagers elect representatives to survey households using "*standardised poverty criteria*". Villagers then discuss the survey results within the community and finalise a list of "*poor*" households in each village. A representative group at the commune level oversees the eligibility process.¹⁷² This system has been in place since 2011 and the government is progressively taking over responsibility for funding ID-Poor's operational costs, which were initially funded by international donors.¹⁷³

Since 2011, millions of vulnerable Cambodians and Cambodians living in poverty have benefitted from this scheme. However, ID-Poor suffers from several shortcomings.¹⁷⁴ Several NGOs have pointed out corruption problems related to the ID-Poor scheme as well as the long distance that survivors must travel between their homes and the locations of relevant health services (see below for an analysis of Cambodians' willingness to include survivors in the ID-Poor scheme).¹⁷⁵ In relation to survivors of CRSV and beyond their views as reflected above, obtaining these benefits would potentially facilitate their access to services to treat the lingering physical and psychological effects of the CRSV they suffered. The service could be adapted to cater for their specific needs, including ensuring that the card recognises their victimhood, and they could be identified as priority recipients of the ID-Poor scheme.

168 Interview with Vannak Hang, Chief, VSS (online, 31 May 2021).

169 Interview with KdK (online, 11 June 2021); Interview with Megan Hirst, former Civil Party Lead Co-Lawyer (online, 18 June 2021).

170 NB: survivors who said they wanted a "*health insurance card*" are grouped under the category of health care above.

171 With support from *Deutsche Gesellschaft für International Zusammenarbeit (GIZ) GmbH*.

172 See Royal Government of Cambodia, 'ID Poor Process' www.idpoor.gov.kh/about/process accessed 25 February 2022.

173 GIZ, 'Support to the identification of poor households programme (IDPoor)' www.giz.de/en/worldwide/17300.html accessed 20 October 2021.

174 Emily de Riel, 'Leave No One Behind: Insights from Cambodia's National Poverty Identification System' (2017) German Federal Ministry for Economic Cooperation and Development 18 <https://health.bmz.de/studies/leave-no-one-behind/> accessed 25 February 2022.

175 REDRESS and KdK, Internal Note on 'Follow up Dialogue Workshop for Representatives of the Royal Government of Cambodia, regarding Gender Based Violence during the Khmer Rouge and the Implementation of CEDAW COB 15' (14 July 2015, on file with REDRESS and KdK) 7.

“We don’t want to join any community events because we, all family members, feel ashamed of it.”

Anonymous Survivor, Kampong Thom Province, 2021

5. Main risks and security assessment faced by CRSV survivors

Risks faced by survivors can be separated in two main categories: 1) the risks that human rights advocates generally face in Cambodia and that may extend to survivors advocating for justice and reparations 2) personal risks that survivors may face within their community and families.

5.1. Risks faced by those confronting the regime about the past, justice, and reparations

Cambodia’s Prime Minister Hun Sen has been in power for 35 years, making him one of the longest serving political leaders in the world today. His government has been characterised as repressive and the COVID-19 pandemic has worsened the political and security situation in Cambodia. The past decade has seen government violence against peaceful protestors, and arrests and murders of human rights defenders, journalists, and political opponents. The use of emergency powers throughout the pandemic, as well as recent laws have further restricted human rights and particularly impacted minorities in Cambodia.¹⁷⁶

The impasse reached at the ECCC relating to additional cases (003/004) and the absence of other national proceedings aside from the ECCC have cast doubt on the government’s willingness

to engage in accountability and reparations efforts (see below on threats to reparations).¹⁷⁷ Hun Sen is a former Khmer Rouge cadre, who became deputy regional commander during the regime before he fled to Vietnam, fearing that he would be targeted in an internal purge.¹⁷⁸ It is therefore unsurprising that he has openly said he would “not allow” further prosecutions before the ECCC.¹⁷⁹ His reluctance to address justice and reparations, combined with his demonstrated willingness to violently suppress human rights defenders, creates an environment of fear. It will continue to adversely impact survivors’ disposition to speak about their experiences and their ability to advocate for their right to reparations. Indeed, they may face threats to their safety and security if they speak out. None of the survivors interviewed for this report, however, mentioned perceiving any risk directly connected to this context.

5.2. Personal and community risks

As mentioned above, there is generally a strong distrust of the justice system among the Cambodian population. The ECCC’s mandate was limited to the prosecution of senior leaders. In some locations, former low and mid-level Khmer Rouge cadres continue to live in the same communities as survivors. A 2012 study found that survivors expressed fear of being discriminated against because of their experiences and many were also fearful of retaliation or backlash from former Khmer Rouge cadres who

176 Human Rights Watch, ‘World Report 2021: Cambodia’ (2021) www.hrw.org/world-report/2021/country-chapters/cambodia accessed 30 April 2021. On 6 October 2021, the UN Human Rights Council discussed the situation in Cambodia, and the Special Rapporteur on the situation of human rights in Cambodia noted that in recent years, there had been “*disturbing, deteriorating backsliding with democratic space, with civil and political rights and freedoms regressing, interlinked with the monopolization of power*”. OHCHR, ‘Human Rights Council Discusses Situation of Human Rights in South Sudan, Cambodia and Sudan under its Agenda Item on Technical Assistance and Capacity Building’ (2021) www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27616&LangID=E accessed 7 October 2021.

177 Freedom House, ‘Freedom in the World 2020: Cambodia’ (2020) <https://freedomhouse.org/country/cambodia/freedom-world/2020> accessed 30 April 2021; Open Society Justice Initiative, ‘Dead End at Cambodia’s Khmer Rouge Tribunal: next Steps for the UN’ (2020) www.justiceinitiative.org/uploads/2c97f0a8-607b-4e74-807d-6b2b56a9c68a/briefing-eccc-end0304-20200429.pdf accessed 1 February 2021.

178 ‘Hun Sen: The ex-Khmer Rouge Soldier Keeping His Grip on Cambodia’ *France 24* (28 July 2018) www.france24.com/en/20180728-hun-sen-khmer-rouge-soldier-elections-phnom-penh-cambodia accessed 25 February 2022.

179 ‘Prime Minister Hun Sen told United Nations Secretary General Ban Ki-moon yesterday that he would not allow prosecutions at the Khmer Rouge tribunal beyond its second case, a move critics called the most blatant example yet of political interference in the work of the court.’ Cheang Sokha and James O’Toole, ‘Hun Sen to Ban Ki Moon: Case 002 Last Trial at ECCC’ *Phnom Penh Post* (Phnom Penh, 27 October 2010) www.phnompenhpost.com/national/hun-sen-ban-ki-moon-case-002-last-trial-eccc accessed 25 February 2022.

lived in their communities.¹⁸⁰ However, none of the survivors interviewed for this study indicated that they were afraid of former Khmer Rouge cadres living in their communities.

Only 24 of the survivors interviewed for this study (28%) indicated that they saw no risk at all in relation to accessing reparations. They explained that they lived in safe communities or that they did not see any risks because reparations would be officially approved. Among the 57 people who do see a risk (70% of respondents), different types of risks were named, most of which were connected to an idea of reparations being monetary and/or needing to travel to an event/tribunal to participate in a reparations process. Some survivors explained that they were worried reparations may be managed poorly and get lost in an administrative process. Others mentioned jealousy from neighbours or their community or being faced with lawsuits (possibly when neighbours know that they have received money). Several

mentioned that they were scared for their health and security when traveling to participate in a process or not having money to pay for travel. Others mentioned fears around confidentiality and their data being shared with others.

As mentioned above, three survivors interviewed spoke about ongoing domestic violence and even marital rape. Risks and threats for them may come from within their own family.

6. Mitigating measures

Those survivors who saw a security risk connected to receiving reparations mentioned mitigating measures such as working on improving community support and solidarity networks, receiving money for travel or a way for them to travel safely to whichever "event" they may attend, and access to free legal support in case they were being sued.



V. ACCESS TO ASSISTANCE OR INTERIM RELIEF

Some of the ECCC court-approved reparations projects could be classified as interim relief or interim assistance. Indeed, some of them provided assistance to survivors, such as psychosocial care, before convictions or decisions on reparations. Even though many of these projects were later retroactively recognised as "reparations' projects" by the ECCC,

there have been debates as to whether they can be called reparations. Some argue that these projects were originally not connected to any recognition of responsibility and therefore lacked the symbolic value of reparations at the time that they were being implemented.¹⁸¹ More information on these reparations' projects can be found below.

180 Judith Strasser and others, 'A Study about Victims' Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge regime' (Transcultural Psychosocial Organization, September 2015) 42-43 https://tpocambodia.org/wp-content/uploads/2014/06/TPO_GBV-under-the-Khmer-Rouge_Report_20151.pdf accessed 24 February 2022.

181 Interview with Beini Ye, former Civil Party Lawyer (online, 6 July 2021); see also Rachel Killean and Luke Moffett, 'What's in a Name? 'Reparations' at the Extraordinary Chambers in the Courts of Cambodia' (2020) Melbourne Journal of International Law 14 https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4100006_code1851422.pdf?abstractid=3603179&mirid=1&type=2 accessed 10 August 2021.



A manual worker harvesting the seasonal rice paddy, Cambodia.
© iStock



VI. AVENUES FOR REPARATIONS

1. International human rights obligations, legal and policy frameworks for reparations

Cambodia has ratified many core international human rights treaties including: the Convention against Torture (CAT) and its Optional Protocol (OPCAT); the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol; the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child (CRC). Cambodia has also accepted the individual complaints procedure under the Optional Protocol to CEDAW.¹⁸²

As a Member State of the Association of Southeast Asian Nations (ASEAN),¹⁸³ Cambodia has joined the following relevant regional commitments: the Declaration on the Elimination of Violence against Women in ASEAN; the ASEAN Declaration against Trafficking in Persons particularly Women and Children; the Declaration on the Elimination of Violence against Women and the Elimination of Violence against Children and the ASEAN Regional Plan of Action on the Elimination of Violence Against Women.¹⁸⁴

Both regional and international law instruments and jurisprudence require States to provide redress to victims of human rights violations, through the right of survivors to an effective remedy.¹⁸⁵ Five forms of reparations are typically recognised: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁸⁶ States have a duty to investigate human rights violations, including SGBV, and mechanisms to seek relief should be made known and accessible to the victims.

Cambodia is a party to the Geneva Conventions and the related additional protocols I and II.¹⁸⁷ Cambodia ratified the International Criminal Court (ICC) Rome Statute in 2002.¹⁸⁸ This provides the ICC with jurisdiction in Cambodia over international crimes committed post-2002.

The main relevant judicial body in relation to CRSV in the context of the Khmer Rouge era is the ECCC. The ECCC Law provides for the application of both international and national law by the Court. This includes crimes set forth in the domestic penal code such as homicide, torture, and religious persecution; genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; crimes against humanity and crimes constituting grave breaches of the Geneva Conventions.

182 See UN Human Rights Treaty Bodies Database, 'Reporting Status for Cambodia' https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=KHM&Lang=EN accessed 25 February 2022.

183 ASEAN Secretariat, 'Press Release: Cambodia Ratifies the ASEAN Charter' (2 April 2008) <https://asean.org/press-release-cambodia-ratifies-the-asean-charter/> accessed 22 February 2022.

184 Royal Government of Cambodia, 'National Action Plan to Prevent Violence against Women 2019-2023' (2020) 3 https://cambodia.unfpa.org/sites/default/files/pub-pdf/nap_2019-2023_english_final.pdf accessed 22 February 2022.

185 UN General Assembly (UNGA), Universal Declaration of Human Rights (10 December 1948) UN Doc 217 A (III), art 8; UNGA, International Covenant on Civil and Political Rights (16 December 1966) United Nations Treaty Series vol. 999, p. 171, art 2(3); UNGA, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984) United Nations Treaty Series vol. 1465, p. 85.

186 UN Committee Against Torture (CAT), 'General Comment No. 3, 2012: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Implementation of Article 14 by States Parties' (13 December 2012) UN Doc CAT/C/GC/3, 2 www.refworld.org/docid/5437cc274.html accessed 29 July 2021; UNGA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted 16 December 2005 (21 March 2006) A/RES/60/147 www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation accessed 1 July 2022.

187 See ICRC Treaties, States Parties and commentaries database 'Cambodia' https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=KH&nv=4 accessed 21 February 2022.

188 ICC Assembly of States Parties 'Cambodia' <https://asp.icc-cpi.int/states-parties/asian-states/cambodia> accessed 1 July 2022.

While rape and sexual violence are codified in the Penal Code of Cambodia, sexual crimes other than rape as a crime against humanity were not specifically included under the ECCC law.¹⁸⁹

2. Relevant domestic legal and policy frameworks

The current Cambodian legal framework is key to ensuring access to justice for survivors of CRSV, particularly in relation to violence that constitutes international crimes which do not prescribe and have not been investigated by the ECCC. Additionally, many survivors of CRSV experience other forms of SGBV as an impact, as well as discrimination and exclusion, which need to be addressed effectively by the authorities. Finally, the current legal framework is relevant to assessing opportunities for reparation for survivors. Addressing the legislative gaps in the Cambodian legal system would lead the path to change people's perceptions and course of actions surrounding CRSV and SGBV. Changing the legal system to prevent recurrence of SGBV and CRSV in the future is an important step and constitutes in itself a form of reparation (guarantees of non-repetition).

“Reparation and justice are interchangeable, meaning we have justice only when we receive reparation. Reparation cannot compensate for the sufferings, but it can help address some difficulties.”

Anonymous Survivor, Kampong Chhnang Province, 2021.

2.1. General Cambodian domestic legal and policy frameworks relevant to CRSV

The Constitution of Cambodia endorses the international human rights framework, stating that: *“The Kingdom of Cambodia recognizes and respects human rights as enshrined in the United Nations Charter, the Universal Declaration of Human rights, and all the treaties and conventions related to human rights, women's rights, and children's rights.”*¹⁹⁰

The Cambodian Constitution provides that *“all forms of discrimination against women are prohibited.”*¹⁹¹ It does not contain a definition of direct and indirect discrimination against women, or an explicit recognition of discrimination based on sexual orientation or gender identity. The Cambodian Penal Code limits the prohibition to a few forms of direct discrimination (such as denial of access to goods, services, or employment).¹⁹²

Cambodia has several regulations addressing violence against women and promoting gender equality, including the Law on the Prevention of Domestic Violence and the Protection of Victims (Domestic Violence Law).¹⁹³ The Cambodian government has adopted the National Strategic Plan for Gender Equality and the Empowerment of Women (2014-2018), the National Action Plans to Prevent Violence Against Women (2014-2018 and 2019-2023), and the National Strategy for Reproductive and Sexual Health (2017-2020).¹⁹⁴

As raised by the CEDAW Committee in 2019 in its concluding observations on Cambodia, more recent amendments that were supposed to address gender equality have failed to adequately do so and there has been a lack of gender impact assessments in the adoption or revision of legislation.¹⁹⁵

189 Theresa de Langis and Silke Studzinsky, 'Briefing Paper on the ECCC, the Cambodia Women's Hearing, and Steps for Addressing Sexual Violence under the Khmer Rouge regime' (2012) 10-11 <http://gbvkr.org/wp-content/uploads/2013/02/Briefing-Paper-on-VAWECCC-Theresa-de-Langis-Final-ENG.pdf> accessed 25 February 2022.

190 Cambodia Constitution of 1993, 2014 revised version, art 31.

191 Ibid art 45.

192 Committee on the Elimination of Discrimination against Women (CEDAW) 'Concluding Observations on the Sixth Periodic Report of Cambodia' (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 para 8.

193 So Sokbunthooun, Kim Sedara and Doung Virorth, 'Exploring the Implementation of Policies to Address Violence against Women in Cambodia: A Study of Perceptions and Observations of National and Subnational Implementation Actors' (2013) Partners for Prevention 6 www.svri.org/sites/default/files/attachments/2020-02-05/p4p_working_paper_vaw_policies_cambodia.pdf accessed 28 September 2021.

194 CEDAW Committee, 'Concluding Observations on the Sixth Periodic Report of Cambodia' (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 para 4.

195 Ibid para 3.

The CEDAW Committee particularly mentioned that it remained concerned about “[s]ocial norms that justify gender-based violence against women and girls and blame the victim rather than the perpetrator, and the high prevalence of such violence, in particular domestic violence, as well as rape, including gang rape or *bauk*, which is viewed as a means of male bonding”.¹⁹⁶

One stakeholder mentioned that when the Domestic Violence Law was being discussed in Parliament, part of the parliamentary debates concerned the inclusion of marital rape, and some Members of Parliament argued that sexual intercourse is an obligation in a marriage.¹⁹⁷ Patriarchal views on marriage remain prevalent in Cambodia and parents often pressure young people, especially girls, into choosing certain partners for marriage.¹⁹⁸ The rate of child marriage also remains high in some communities.¹⁹⁹ Thus, even though the legal framework protecting women and members of the LGBTIQ+ community is formally improving, the implementation is often hampered by such harmful views and practices.

While no specific national laws address CRSV beyond the ECCC, Cambodia has ratified the Rome Statute and incorporated it in the 2010 Criminal Code.²⁰⁰ The Criminal Code, therefore, penalises genocide, crimes against humanity and war crimes with life imprisonment by using, in essence, the same terminology as the Rome Statute and the Genocide Convention.²⁰¹ Genocide, crimes against humanity and war crimes are not subject to any statute of limitations.²⁰²

The ECCC’s mandate is quite limited, as will be further developed below. The Court only has jurisdiction over those most responsible for crimes and other serious violations that occurred during the Khmer Rouge regime; namely from 17 April 1975 to 6 January 1979.²⁰³ In theory, ordinary domestic criminal courts have jurisdiction over offences committed during the Khmer Rouge era by medium or lower-ranking cadres. Interviewees stated that this is however not practically feasible.²⁰⁴ There appears to be no political will to take such cases to court, and the domestic system does not have the necessary level of expertise to deal with such complex cases. As a result, the ECCC is, in practice, the only judicial avenue available for addressing offences committed during the Khmer Rouge era.²⁰⁵

A. RAPE AND SEXUAL ASSAULT

The Cambodian Criminal Code (2010) 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”.²⁰⁶ It provides for a wide range of aggravating circumstances regarding the means used to commit the crime,²⁰⁷ the status of the perpetrator,²⁰⁸ the status or special vulnerability of the victim,²⁰⁹ or the harm inflicted on the victim, such as disability,²¹⁰ death,²¹¹ or harm derived from torture.²¹² This definition of rape is vague, restrictive and incomplete. For instance, it limits penetration to sexual penetration (and not anal or oral), with a sexual organ or an object

196 Ibid para 24.

197 Interview with S.R., Gender and Development for Cambodia (online, 22 July 2021).

198 CEDAW Committee ‘Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined 4th and 5th Periodic Reports of States Parties: Cambodia’ (24 September 2011) UN Doc CEDAW/C/KHM/4-5 para 76 www.refworld.org/docid/521de8f54.html accessed 14 February 2022.

199 CEDAW Committee, ‘Concluding Observations on the Sixth Periodic Report of Cambodia’ (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 para 48.

200 Cambodian Criminal Code 2010, art 183 -187 (genocide), 188-192 (crimes against humanity) and 193-198 (war crimes).

201 Ibid art 184 (genocide), 189 (crimes against humanity) and 195 (war crimes).

202 Ibid art 9 and 143; Cambodian Code of Criminal Procedure 2007, art 9.

203 Law to Amend the 2001 Law on the Establishment of the Extraordinary Chambers 2004, art 1.

204 Interview with Jonas Nilsson, formerly ECCC (online, 11 June 2021); Interview with Maddalena Ghezzi, formerly ECCC (online, 21 June 2021).

205 Beini Ye, ‘2013 Women’s Hearing with the Young Generation on Gender-Based Violence during the Khmer Rouge regime: Report on the Proceedings’ (2014) CDP 3.

206 Cambodian Criminal Code 2010, art 239.

207 Ibid art 240.

208 Ibid.

209 Ibid art 241.

210 Ibid art 242.

211 Ibid art 244.

212 Ibid art 243.

(and not other body parts); in addition, it does not mention the notion of consent of the victim. Other sexual acts that fall short of the above definition are covered by the offence of “*indecent assault*” defined in the Cambodian Criminal Code as “*touching, fondling, or caressing the sexual organs or other part of a person without that person’s consent or coercing another person to perform such acts on the perpetrator himself or herself or a third person for the purpose of arousing the perpetrator or providing sexual pleasure to the perpetrator*”.²¹³ Similarly, this definition is restrictive and incomplete. For instance, an assault falling short of the purposes listed would escape this offence.

While the Criminal Code prohibits any kind of rape and makes no exception for rape that happens inside of a marriage, courts and authorities rarely consider rape in the context of marriage.²¹⁴ There was an attempt to remedy this by outlawing marital rape in the Domestic Violence Law in 2005, which includes “*sexual aggression*” as a form of domestic violence that “*should be prevented*” and states that one of its elements is “*violent sex*”.²¹⁵ However, given that the law does not provide a definition of “*violent sex*” and does not mention the absence of consent as an element of “*violent sex*” it appears that the law effectively allows for marital rape so long as there is no violent struggle involved.

B. MODES OF LIABILITY

Cambodian law recognises the following modes of liability: direct perpetration;²¹⁶ co-perpetration, which finds criminally liable “*any persons under mutual agreement attempting to commit a relevant*

[offence]”;²¹⁷ instigation, which finds criminally liable any person who gives instructions, orders or provokes the attempt or commission of an offence by means of abuse of authority or power, such as providing gifts, promises or threats;²¹⁸ and complicity, which covers any person knowingly aiding or abetting the attempt or commission of an offence.²¹⁹

In relation to genocide, crimes against humanity and war crimes, the Criminal Code adds “*planning*” as a mode of liability. It is defined as “*participating in a group or conspiracy planning to commit genocide, crimes against humanity or war crimes*”, as long as the plan contains at least one material act of the crime.²²⁰ Cambodian law does not recognise the mode of liability of command responsibility. The criminal responsibility of perpetrators of genocide, crimes against humanity or war crimes cannot be excluded, even if they performed an act prescribed, authorised, or not prohibited by the law in force, or if they acted under the order of a legitimate authority.²²¹

The Law on the ECCC provides for the modes of liability of planning, instigating, aiding, and abetting.²²² In addition, the ECCC drew on international customary law to apply modes of liability such as command responsibility,²²³ and joint criminal enterprise.²²⁴

C. DOMESTIC VIOLENCE

Regrettably, the Cambodian Domestic Violence Law does not prohibit domestic violence or provide a framework to punish perpetrators. It merely calls for the prevention of violence between spouses by providing measures to protect the victims.²²⁵ In

213 Ibid art 246.

214 The Cambodian Committee of Women, ‘Violence Against Women: How Cambodian Laws Discriminate against Women’ (2007) 9 www.licadho-cambodia.org/reports/files/112CAMBOWViolenceWomenReport2007_ENG.pdf accessed 24 November 2021; Interview with S.R., Gender and Development for Cambodia (online, 22 July 2021).

215 Law on the Prevention of Domestic Violence and the Protection of Victims 2005, art 3; see also The Cambodian Committee of Women, ‘Violence Against Women: How Cambodian Laws Discriminate against Women’ (2007) 9 www.licadho-cambodia.org/reports/files/112CAMBOWViolenceWomenReport2007_ENG.pdf accessed 24 November 2021.

216 Cambodian Criminal Code 2010, art 24-25.

217 Ibid art 26.

218 Ibid art 28.

219 Ibid art 29.

220 Ibid art 185 (genocide), 190 (crimes against humanity), 196 (war crimes).

221 Ibid art 32.

222 Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006), art 29.

223 Case 001 Trial Judgement paras 548-549.

224 Case 002/01-E313, Trial Judgement (ECCC Trial Chamber, 7 August 2014) paras 722-837.

225 Hor Peng, Kong Phallack and Jörg Menzel, *Introduction to Cambodian Law* (Konrad-Adenauer-Stiftung, 2012) 392.

Cambodian law, domestic violence is defined as violence that occurs against spouses, children, and other people who are living in a household and are the dependents of that household.²²⁶ It recognises that domestic violence can take many forms,²²⁷ such as acts which affect life,²²⁸ or physical integrity,²²⁹ cruel acts or torture,²³⁰ or sexual aggression.²³¹ This law fails to cover unmarried, cohabiting or dating partners.²³²

The Domestic Violence Law does not clearly lay out which authority shall intervene to prevent or to protect victims of domestic violence.²³³ Furthermore, authorities often regard domestic violence as a private matter,²³⁴ and very few cases of domestic violence reach the courts.²³⁵ One reason for this is a generalised tendency to resort to informal mediation for cases of domestic violence,²³⁶ and the lack of gender sensitivity among the authorities,²³⁷ as will be further developed below. As noted by the United Nations (UN) Country Team for Cambodia, the Domestic Violence Law has resulted in a limited number of protection orders for victims and a lack of prosecutions of perpetrators.²³⁸

The Domestic Violence Law provides that mediation and reconciliation should be used regarding ‘minor’ cases and all cases of emotional and economic violence.²³⁹ The

Law is unclear as to which acts of domestic violence are to be considered ‘minor’. As such, local authorities end up playing an interpretative role.²⁴⁰ This is dangerous as they may uphold a patriarchal view of domestic violence.

*Indeed, in a study carried out in 2009 by the Australian Agency for International Development (AusAID) researchers, more than a third of the respondents (local authorities) believed that it was acceptable for a husband to resort to extreme violence if their wife argued with them, disobeyed them, or disrespected them.*²⁴¹

The Special Rapporteur on the Situation of Human Rights in Cambodia stated that the Domestic Violence Law is often misapplied and women and children often end up returning to live with the alleged perpetrator following the resolution of domestic disputes through mechanisms such as mediation.²⁴²

D. (LACK OF) ACCESS TO JUSTICE

The Cambodian domestic legal system is based on the French civil law system, meaning that victims can participate in criminal proceedings by becoming civil parties. This role gives them a range of rights,

226 The Cambodian Committee of Women, ‘Violence Against Women: How Cambodian Laws Discriminate against Women’ (2007) 8 www.licadho-cambodia.org/reports/files/112CMBOWViolenceWomenReport2007_ENG.pdf accessed 24 November 2021; see also Law on the Prevention of Domestic Violence and the Protection of Victims 2005, art 2.

227 Law on the Prevention of Domestic Violence and the Protection of Victims 2005, art 3.

228 Ibid art 4.

229 Ibid art 5.

230 Ibid art 6.

231 Ibid art 7.

232 UNICEF East Asia and the Pacific Regional Office, ‘Ending violence Against Women and Children in Cambodia: Opportunities and challenges for collaborative and integrative approaches’ (2020) Australian Aid, UNFPA, UN Women, and UNICEF 11-13 www.unicef.org/eap/media/8631/file/Ending_Violence_against_Women_and_Children_in_Cambodia.pdf accessed 3 February 2022.

233 Hor Peng, Kong Phallack and Jörg Menzel, *Introduction to Cambodian Law* (Konrad-Adenauer-Stiftung, 2012) 395.

234 The Cambodian NGO Committee on CEDAW, ‘CEDAW Monitoring Report’ (2017) 8 <http://ngocedaw.org/wp-content/uploads/2018/11/2017-CEDAW-Monitoring-Report-by-NGO-CEDAW-EN.pdf> accessed 25 February 2022.

235 UN Human Rights Council, ‘Compilation on Cambodia’ (12 November 2018) UN Doc A/HRC/WG.6/32/KHM/2 para 45.

236 CEDAW Committee, ‘Concluding Observations on the Sixth Periodic Report of Cambodia’ (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 para 24(b); Anonymous staff member of Cambodian Women’s organization (17 November 2021).

237 UN Human Rights Council (2018) Compilation para 45.

238 UN Human Rights Council, ‘Report of the Special Rapporteur on the Situation of Human Rights in Cambodia – Addendum: Assessing Protection of Those at Risk of Being Left Behind’ (2019) UN Doc A/HRC/42/60.Add.1 para 69.

239 CEDAW Committee, ‘Concluding Observations on the Sixth Periodic Report of Cambodia’ (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 para 24; Law on the Prevention of Domestic Violence and the Protection of Victims 2005, art 26.

240 Ministry of Women’s Affairs of Cambodia, ‘Violence Against Women and Girls: Cambodia Gender Assessment’ (2014) 18 www.kh.undp.org/content/dam/cambodia/docs/DemoGov/NearyRattanak4/Neary%20Rattanak%204%20-%20Violence%20against%20Women%20and%20Girls_Eng.pdf accessed 25 February 2022.

241 Ibid.

242 UN Human Rights Council 2019 Report of Rapporteur on the Situation of Human Rights in Cambodia, 34.

including the right to request reparations.²⁴³ In Cambodia this system is not efficient in providing redress to victims for various reasons.

Women still face significant barriers to accessing justice and effective remedies.²⁴⁴ This is particularly true for women belonging to ethnic minority groups, rural and indigenous women, and for the LGBTIQ+ community.²⁴⁵ These barriers are, for example, social and cultural stigma, limited access to information on the available remedies, and lack of gender sensitivity in the justice system.²⁴⁶

According to a study on victims' participation at the ECCC by TPO Cambodia researchers, most survivors of sexual violence had never received any form of support,²⁴⁷ either because such services were not available to them or because they were not aware of them.²⁴⁸ The same study concluded that most participants who were civil parties at the ECCC did not seek help for the CRSV they experienced before becoming civil parties.²⁴⁹

As mentioned above, traditionally, a woman's "purity" is highly valued in Cambodia. In that sense, the stigma and shame surrounding women's sexuality keeps victims from reporting cases of sexual violence to the authorities.²⁵⁰ Often, family members encourage victims not to report, and to settle the issue extrajudicially (see above on risks faced by CRSV survivors). One interviewee mentioned that survivors who do report

SGBV to the authorities often regret their decision as they are re-traumatised by the questioning or even abused by the police; this is particularly true for members of the LGBTIQ+ community and sex workers because of their sexual orientation, gender identity, occupation, and social status.²⁵¹ Moreover, for members of certain minority groups who may not speak Khmer, there is a language barrier when attempting to access the formal justice system.²⁵²

It is common practice in Cambodia for perpetrators to provide financial compensation to victims and their families in exchange for their silence.²⁵³ This is particularly harmful in cases of sexual violence, where victims are already disincentivised from reporting the incidents to local authorities because of stigma and discrimination. Occasionally these informal "settlements" are reached with the involvement of the local authorities who serve as mediators.²⁵⁴ Given the fact that Cambodia continuously scores among the lowest in the world on the Corruption Perceptions Index, it is possible that the local authorities are influenced by bribes.²⁵⁵ While these forms of settlements are reached far more frequently than a conviction and compensation through a court,²⁵⁶ they further increase the survivors' general distrust in the authorities and, by extension, the justice system.

When survivors do decide to report and attempt to obtain justice through the formal system, they encounter several hurdles. One of them is proving

243 FIDH, 'Victims' Rights Before the Extraordinary Chambers in the Courts of Cambodia – A Mixed Record for Civil Parties' (2012) 16 www.fidh.org/IMG/pdf/eccc_victrights_rep_nov2012_en_web.pdf accessed 24 November 2021.

244 CEDAW Committee, 'Concluding Observations on the Sixth Periodic Report of Cambodia' (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 para 10.

245 Ibid.

246 Ibid.

247 Judith Strasser and others, 'A Study about Victims' Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge regime' (Transcultural Psychosocial Organization, September 2015) 83 https://tpocambodia.org/wp-content/uploads/2014/06/TPO_GBV-under-the-Khmer-Rouge_Report_20151.pdf accessed 24 February 2022.

248 Ibid.

249 Ibid 85-86.

250 The Cambodian Committee of Women, 'Violence Against Women: How Cambodian Laws Discriminate against Women' (2007) 19 www.licadho-cambodia.org/reports/files/112CAMBOWViolenceWomenReport2007_ENG.pdf accessed 24 November 2021.

251 Interview with Pisey Ly, RoCK Coordinator, RoCK Cambodia (online, 6 October 2021).

252 Interview with Rattanak Ly, Programme Manager, Women Peace Makers Cambodia, formerly Kdei Karuna (online, 22 November 2021).

253 Interview with Kao Dyna, General Programme Manager, Legal Aid Cambodia (online, 5 June 2021); Interview with Sima Man, Team Leader of Gender and Violence, Banteay Srei (online, 13 July 2021).

254 Interview with Sima Man, Team Leader of Gender and Violence, Banteay Srei (online, 13 July 2021); see also The Cambodian Committee of Women, 'Violence Against Women: How Cambodian Laws Discriminate against Women' (2007) 19 www.licadho-cambodia.org/reports/files/112CAMBOWViolenceWomenReport2007_ENG.pdf accessed 24 November 2021.

255 Transparency International Cambodia, 'CPI 2020 Press Release Cambodia' (28 January 2021) www.ticambodia.org/cpi2020/ accessed 25 February 2022.

256 The Cambodian Committee of Women, 'Violence Against Women: How Cambodian Laws Discriminate against Women' (2007) 20 www.licadho-cambodia.org/reports/files/112CAMBOWViolenceWomenReport2007_ENG.pdf accessed 24 November 2021.

that the sexual violence occurred. According to a 2010 Amnesty International Report, forensic certificates attesting that sexual assault or rape happened are difficult to come by, primarily because medical professionals continue to hold an outdated focus on the status of the hymen as evidence of sexual violence.²⁵⁷ In addition, there is uncertainty as to which institutions can provide medical forensic certificates of rape that are admissible in court.²⁵⁸

Moreover, access to legal aid for survivors is inefficient, especially in rural areas,²⁵⁹ even though this has improved slightly in recent years.²⁶⁰ According to one interviewee who provides legal aid to survivors, many legal professionals are not familiar with the legal framework that addresses SGBV.²⁶¹ Interviewees mentioned that survivors of SGBV are generally reluctant to take cases to court because of the financial burden incurred.²⁶² Legal procedures in Cambodia tend to be long and bribes are often used in order to expedite them.²⁶³ One stakeholder explained that enforcing judgments and obtaining reparations is also difficult for victims in Cambodia.²⁶⁴

According to the Cambodian Code of Criminal Procedure, a civil action can be brought by the victim of an offence, their guardian, or certain associations for specific crimes. For instance, the Associations for Eliminating All Acts of Sexual Violence, Domestic

Violence or Violence against Children, can bring a civil action for the crimes of intentional threat against life; harassment against a person's integrity and sexual harassment.²⁶⁵ The civil action can be brought in conjunction with a criminal action before a criminal court.²⁶⁶

An injury can be compensated by paying damages, by giving back to the victim the property that has been taken or by restoring the damaged or destroyed property to its original state.²⁶⁷ In the judgment of a criminal case, the court makes a finding on the civil remedy.²⁶⁸ If the person sentenced does not pay the damages they were ordered to pay, the enforcement of the judgment will only be pursued at the request of the civil party.²⁶⁹ This often initiates a long process that rarely ends with the survivors obtaining the compensation they are owed.²⁷⁰ A convicted person who did not pay the damages that were ordered can be imprisoned.²⁷¹ Once the convicted person has served an imprisonment sentence, they remain liable to pay what they owe but cannot be imprisoned for the same debt again.²⁷² If the perpetrator is indigent or unwilling to pay, enforcing the judgment can entail a long and arduous process for the survivors, who need legal representation to navigate the legal system and may end up never obtaining the payment of what they are legally owed, let alone the legal cost implied.²⁷³

257 Amnesty International, 'Breaking the Silence: Sexual Violence in Cambodia' (2010) 29 www.amnesty.org/en/documents/asa23/001/2010/en/ accessed 25 February 2022.

258 Ibid 30.

259 Interview with Kao Dyna, General Programme Manager, Legal Aid Cambodia (online, 5 June 2021).

260 CEDAW Committee, 'Concluding Observations on the Sixth Periodic Report of Cambodia' (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 paras 10-11.

261 Interview with S.R., Gender and Development for Cambodia (online, 22 July 2021).

262 Interview with Kao Dyna, General Programme Manager, Legal Aid Cambodia (online, 5 June 2021); Interview with Sima Man, Team Leader of Gender and Violence, Banteay Srei (online, 13 July 2021).

263 Interview with Sima Man, Team Leader of Gender and Violence, Banteay Srei (online, 13 July 2021).

264 Interview with Kao Dyna, General Programme Manager, Legal Aid Cambodia (online, 5 June 2021).

265 Cambodian Code of Criminal Procedure 2007, art 17.

266 Ibid art 22.

267 Ibid art 14.

268 Ibid art 355.

269 Ibid art 496.

270 Interview with Kao Dyna, General Programme Manager, Legal Aid Cambodia (online, 5 June 2021); Interview with Piseth Duch, Director of Advocacy, Cambodian Center for Human Rights (online, 25 May 2021).

271 Cambodian Code of Criminal Procedure 2007, art 523.

272 Ibid art 532.

273 Interview with Kao Dyna, General Programme Manager, Legal Aid Cambodia (online, 5 June 2021); Interview with Piseth Duch, Director of Advocacy, Cambodian Center for Human Rights (online, 25 May 2021).



Tuol Sleng Genocide Museum, 2010.

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E. LEGAL AND POLICY FRAMEWORK ON SEXUAL AND REPRODUCTIVE RIGHTS

As mentioned above, the Cambodian healthcare system was significantly damaged by the Khmer Rouge era, as people with higher education, including doctors and other medical professionals, were targeted by the regime.²⁷⁴ While Cambodia's health infrastructure has improved since, sexual and reproductive health care remains a major challenge for various reasons.²⁷⁵ In 2019, the CEDAW Committee noted with concern the limited access to sexual and reproductive healthcare services and information in Cambodia, leading to high rates of maternal mortality and early pregnancy.²⁷⁶

The country made efforts to establish a legal and policy framework on sexual and reproductive rights, including the adoption of the family planning program. In 1995, the Birth Spacing Policy, which entailed helping women plan greater intervals between births, was introduced to reduce unintended pregnancies, and maternal and neonatal mortality.²⁷⁷ Later, in 1997, the Abortion Law was adopted.²⁷⁸ In 2008, the National Guidelines for Adolescent and Youth Friendly Services were introduced,²⁷⁹ directed at assisting health professionals who provide services to vulnerable groups. More recently, the Ministry of Health has introduced the National Strategy for Reproductive and Sexual Health (2017-2020), aimed at improving the reproductive and sexual health of the Cambodian population

by outlining priorities and key intervention areas.²⁸⁰ In 2020, the Ministry of Health published the third edition of the National Safe Motherhood Protocols which provide guidance for medical and other health professionals who deliver antenatal, labour, delivery, postpartum and neonatal care.²⁸¹

In Cambodia, abortion is legal upon request until the 12th week of gestation.²⁸² Nevertheless, there is considerable stigma surrounding abortions in Cambodia.²⁸³ Many factors hinder women from accessing safe abortions, such as reluctance from medical professionals to perform abortions,²⁸⁴ fear of stigma,²⁸⁵ and general lack of education on sexual and reproductive health. There is generally a shortage of modern contraceptive methods in Cambodia. This is particularly true in rural areas: an investigation by the World Health Organisation revealed that only one third of Cambodian villages had active distributors of contraceptives, such as birth control pills and condoms.²⁸⁶

F. LEGAL AND POLICY FRAMEWORK IMPACTING THE LGBTIQ+ COMMUNITY

There are four main forms of legal discrimination against the LGBTIQ+ community in Cambodia: the lack of legal protection against discrimination and violence; the absence of legal recognition of self-defined gender identity; the absence of marriage equality in Cambodian law; and the denial of full

274 Jerker Liljestrand and Mean Reatanak Sambath, 'Socio-economic Improvements and Health System Strengthening of Maternity Care are Contributing to Maternal Mortality Reduction in Cambodia' (2012) 20 *Reproductive Health Matters* 62, 64 www.tandfonline.com/doi/full/10.1016/S0968-8080%2812%2939620-1 accessed 13 October 2021.

275 Farwa Rizvi, Joanne Williams and Elizabeth Hoban, 'Factors Influencing Unintended Pregnancies amongst Adolescent Girls and Young Women in Cambodia' (2019) 16 *International Journal of Environmental Research and Public Health* 1 www.mdpi.com/1660-4601/16/20/4006 accessed 13 October 2021.

276 CEDAW Committee, 'Concluding Observations on the Sixth Periodic Report of Cambodia' (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 para 38.

277 Farwa Rizvi, Joanne Williams and Elizabeth Hoban, 'Factors Influencing Unintended Pregnancies amongst Adolescent Girls and Young Women in Cambodia' (2019) 16 *International Journal of Environmental Research and Public Health* 1 www.mdpi.com/1660-4601/16/20/4006 accessed 13 October 2021; WHO, 'Cambodia: Identifying Actions for Scaling up Long-Acting Reversible Contraceptives' (2017) 3-4 https://apps.who.int/iris/bitstream/handle/10665/259992/9789290618218_eng.pdf?sequence=1&isAllowed=y accessed 21 February 2022.

278 Farwa Rizvi, Joanne Williams and Elizabeth Hoban, 'Factors Influencing Unintended Pregnancies amongst Adolescent Girls and Young Women in Cambodia' (2019) 16 *International Journal of Environmental Research and Public Health* 1-2 www.mdpi.com/1660-4601/16/20/4006 accessed 13 October 2021.

279 Ibid 2.

280 Kingdom of Cambodia, 'National Strategy for Reproductive and Sexual Health in Cambodia 2017-2020' (May 2017) 2.

281 Kingdom of Cambodia, 'National Safe Motherhood Clinical Management Protocols for Referral Hospitals' (June 2020) 1.

282 Farwa Rizvi, Joanne Williams and Elizabeth Hoban, 'Factors Influencing Unintended Pregnancies amongst Adolescent Girls and Young Women in Cambodia' (2019) 16 *International Journal of Environmental Research and Public Health* 2 www.mdpi.com/1660-4601/16/20/4006 accessed 13 October 2021.

283 Ibid 2; CEDAW Committee, 'Concluding Observations on the Sixth Periodic Report of Cambodia' (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 para 38.

284 Farwa Rizvi, Joanne Williams and Elizabeth Hoban, 'Factors Influencing Unintended Pregnancies amongst Adolescent Girls and Young Women in Cambodia' (2019) 16 *International Journal of Environmental Research and Public Health* 2 www.mdpi.com/1660-4601/16/20/4006 accessed 13 October 2021.

285 Ibid.

286 Ibid.

adoption rights to “rainbow couples” (transgender and homosexual couples).²⁸⁷ The Criminal Code does not include Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIESC) as a prohibited basis for discrimination and, while the Cambodian Constitution guarantees equal rights to all Cambodians regardless of personal characteristics, the explicit inclusion of 9 categories of protected persons, alongside the exclusion of the category of SOGIESC, is a clear statement.²⁸⁸ In addition, the Criminal Code contains no defined sanctions for those who commit hate crimes against LGBTIQ+ persons.²⁸⁹

The lack of clarity surrounding the status of transgender people’s right to be legally recognised according to their self-defined gender leaves transgender Cambodians at the mercy of the discretion of relevant officials.²⁹⁰

There is no longer an explicit legal prohibition of same-sex marriage in Cambodia, so unofficial wedding ceremonies can be held. However, there is no legal recognition of same sex partnerships.²⁹¹ Remedying this situation would be a strong statement that Cambodia has changed since the Khmer Rouge, where people were forced into marriages with the opposite sex assigned at birth regardless of their sexual orientation and gender identity. As long as marriage equality is not recognised, full adoption also remains unavailable to “rainbow couples”, as only married couples can adopt children in Cambodia.²⁹²

2.2. Domestic legal and policy frameworks relevant to reparations (including for CRSV)

There are no specific purely national laws in Cambodia that address reparations for CRSV or stand-alone government-supported bodies to deliver reparations. As mentioned above, in the absence of a special law on CRSV, survivors could in theory use the regular domestic court system and become civil parties in national criminal proceedings against former Khmer Rouge cadres. Given the marked reluctance of the Cambodian authorities to do so, there will likely be no criminal proceedings before ordinary criminal courts regarding the DK era,²⁹³ including in relation to CRSV, and therefore no opportunity to seek reparations in that way. The following section mostly focuses on the ECCC’s reparations framework with a brief mention of national demobilisation and security reform efforts, as complementary avenues to promote trust and the long-lasting transformations needed to enable access to reparations for survivors.

2.3. (Lack of) Formal demobilisation and reintegration programmes for former Khmer Rouge

The United Nations Transitional Authority in Cambodia (UNTAC) was established in February 1992 to implement the Paris Peace Agreements. It became the first body in Cambodia to implement a Disarmament,

287 Cambodian Center for Human Rights, Rainbow Community Kampuchea and Destination Justice, ‘Joint Submission to the United Nations Human Rights Council for the Third Universal Periodic Review of the Kingdom of Cambodia – Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIESC) Rights and Sexual Reproductive Health and Rights (SRHS) in Cambodia’ (12 July 2018) para 5; Interview with Pisey Ly, RoCK Coordinator, RoCK Cambodia (online, 6 October 2021).

288 Cambodian Center for Human Rights, Rainbow Community Kampuchea and Destination Justice, ‘Joint Submission to the United Nations Human Rights Council for the Third Universal Periodic Review of the Kingdom of Cambodia – Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIESC) Rights and Sexual Reproductive Health and Rights (SRHS) in Cambodia’ (12 July 2018) para 6.

289 Ibid para 7.

290 Ibid para 9.

291 Ibid para 12.

292 Ibid para 16.

293 ‘No more Khmer Rouge prosecutions, says Cambodia’ *Associated Press (Cambodia, 19 November 2018)* www.theguardian.com/world/2018/nov/19/no-more-khmer-rouge-prosecutions-says-cambodia accessed 16 May 2022.

Demobilisation and Reintegration Programme (DDR). However, fighting continued and as the Peace Agreement did not last, the DDR programme was widely considered to have failed. In 1996, hundreds of Khmer Rouge soldiers were absorbed into the national army. In 1999, the government announced the demobilisation of 55,000 soldiers from the national army over a three-year period, which was part of a larger programme to reform the public sector. The programme was framed as a peacebuilding measure. A “safety-net” was put in place to help ex-combatants reintegrate. It “included money, a motorcycle, a sewing machine, some rice and fish sauce and some gardening or construction tools”.²⁹⁴ Some demobilised soldiers were provided also with a piece of land, but no training. There were no follow-up programmes to facilitate access to employment and the programme was widely considered unsuccessful.²⁹⁵

Successfully reintegrating former soldiers – especially when they were involved in committing international crimes – is critical to ensure they no longer represent a threat to the communities. A weak DDR programme does not guarantee the non-repetition of violations. For instance, the transfer of Khmer Rouge soldiers into the national army without a proper process represented a risk for survivors of CRSV. Moreover, the lack of a comprehensive DDR process in Cambodia prevented ex-combatants from contributing to the reconstruction of the social fabric. As one report notes:

*“DDR [in Cambodia] would first have to have been grouped together in a coherent manner and then correlated to transitional justice measures (prosecutions, truth-telling, reparations, vetting and other forms of institutional reform), which also clearly did not happen”.*²⁹⁶

2.4. Lack of security sector reforms

The Cambodian security forces are generally considered to be the armed wing of the ruling party.²⁹⁷ The National Police and the Royal Cambodian Armed Forces have been continuously reported to commit arbitrary killings, to abuse and torture detainees, to practice arbitrary detention, to use prolonged pre-trial detention and to arbitrarily interfere with the private lives of citizens.²⁹⁸

There is a general culture of impunity for crimes committed by the security forces and government officials and their families are similarly generally considered immune from prosecution.

For instance, in September 2020, a high-ranking Cambodian police official was reportedly sacked over sexual misconduct after he allegedly forced female colleagues to perform sexual acts at work under threat of blocking their careers. He was not prosecuted “to protect the dignity of the women involved” according to official statements.²⁹⁹

The combination of the lack of a proper DDR programme, the reintegration of former Khmer Rouge soldiers into the army, and the lack of security sector reforms foster a culture of impunity for human rights violations committed by army, security, and police forces in Cambodia, including CRSV. This constitutes a challenge to justice and thus reparations for survivors.

294 Tiphaine Ferry, ‘How Disarmament, Demobilization and Reintegration Programs Could Have Facilitated the Establishment of Long-term Conflict Prevention in Post-Conflict Cambodia’ (2014) 3 *The Cambodia Law and Policy Journal* 127, 143 <http://cambodialpj.org/article/how-disarmament-demobilization-and-reintegration-programs-could-have-facilitated-the-establishment-of-long-term-conflict-prevention-in-post-conflict-cambodia/> accessed 13 October 2021.

295 Ibid.

296 Peter Bartu and Neil Wilford, ‘Transitional Justice and DDR: The Case of Cambodia’ (June 2009), ICTJ, 32 www.ictj.org/sites/default/files/ICTJ-DDR-Cambodia-CaseStudy-2009-English.pdf accessed 28 June 2022.

297 US Department of State, ‘2020 Report on the Human Rights Situation in Cambodia’ (2020) 1 www.state.gov/reports/2020-country-reports-on-human-rights-practices/cambodia/ accessed 19 October 2021.

298 Human Rights Watch, ‘Cambodia’s Dirty Dozen: a long history of rights abuses by Hun Sen’s generals’ (27 June 2018) www.hrw.org/report/2018/06/27/cambodias-dirty-dozen/long-history-rights-abuses-hun-sens-generals accessed 21 February 2022.

299 Matt Bloomberg, ‘Cambodia Police Chief Sacked over Sexual Misconduct in Landmark Case’ *Reuters* (9 September 2020) www.reuters.com/article/us-cambodia-women-rape-idUSKBN2601TY accessed 19 October 2021.

2.5. The ECCC

The ECCC, also called the Khmer Rouge Tribunal, is a special internationalised Cambodian court that convicted several senior Khmer Rouge leaders and handed down some reparations awards for crimes committed during the Khmer Rouge period. It is the only accountability mechanism in place to address CRSV and other international crimes in Cambodia.

In 1997, the government requested the United Nations to assist in establishing a body to prosecute the senior leaders of the Khmer Rouge. In 2001, the Cambodian National Assembly passed a law to create the ECCC. The Court sits in the Cambodian legal system, but the government invited international participation due to the weakness of the Cambodian judiciary and the international nature of the crimes, and to provide assistance in meeting international standards. An agreement with the United Nations, detailing how the court would be run, was ultimately reached in June 2003.³⁰⁰

In 2007, the ECCC judges adopted Internal Rules that provided for civil party participation, including the right to claim reparations from the accused, as is common in the Cambodian legal system based on the French civil law tradition. However, from the outset, the rules limited the scope of reparations to “collective and moral reparations”. Accordingly, judges excluded individual reparations and financial compensation in their reparation’s orders.³⁰¹

TRIALS BEFORE THE ECC

There have been three trials so far before the ECCC, stemming from one prosecutor’s introductory submission (followed by two severances): Case 001 against defendant Kaing Guek Eav – alias Duch, who oversaw the Tuol Sleng security centre –, and Case 002 (severed into 002/1 and 002/2) against defendants Khieu Samphan, former Democratic Kampuchea’s Head of State, Nuon Chea, former leading figure of the Communist Party of Kampuchea, Ieng Sary, former Democratic Kampuchea’s Minister of Foreign Affairs and his wife Ieng Thirith, former Minister of Social Affairs. All the accused are now deceased, except for Khieu Samphan, in respect of whom appeals against the Case 002/02 trial judgment are still ongoing.³⁰²

Regarding CRSV, Duch was convicted by the Trial Chamber in 2010 of one act of rape as a form of torture under the umbrella of crimes against humanity, which was confirmed on appeal.³⁰³ Case 002 included other CRSV charges, namely forced marriage, as an “other inhumane act” as a crime against humanity. The initial Introductory Submission by the Co-Prosecutors contained no mention of forced marriage. The civil parties and their lawyers conducted concerted advocacy, submitted civil party applications highlighting forced marriages and CRSV, and filed a request to the Co-Investigating Judges to issue a forwarding order to the Co-Prosecutors for

300 ECCC, ‘Introduction to the ECCC’ www.eccc.gov.kh/en/introduction-eccc accessed 2 September 2021.

301 Christoph Sperfeldt, ‘Collective Reparations at the Extraordinary Chambers in the Courts of Cambodia’ (2012) 12 *International Criminal Law Review* 457, 461-462.

302 ECCC, ‘Introduction to the ECCC’ www.eccc.gov.kh/en/introduction-eccc accessed 2 September 2021.

303 *Case 001 Trial Judgement para 366.*

them to conduct a preliminary inquiry into forced marriages, rape, forced pregnancy and other forms of SGBV.³⁰⁴ As a result, in April 2009, the Co-Prosecutors filed a Supplementary Submission and requested that the Co-Investigating Judges investigate forced marriages.³⁰⁵ Initially, this investigation was limited to the temporal and geographical scope of the facts described into the civil party applications. After further investigative requests by civil party lawyers, the Co-Prosecutors extended the Supplementary Submission and seized the Co-Investigating Judges with countrywide investigations of forced marriages.³⁰⁶ The Co-Investigating Judges found in their Closing Order (Indictment) in Case 002 that there was evidence that forced marriage occurred in mass ceremonies throughout the whole Khmer Rouge regime.³⁰⁷ They also found that forced marriage and rape in the context of forced marriage were a central element of control under the Khmer Rouge regime.³⁰⁸

The Trial Chamber did not rule on sexual violence beyond forced marriage, as such charges were not included by the Co-Investigating Judges in the Closing Order.³⁰⁹ Responding to the Civil Parties' request that other sexual violence-related charges be added to the indictment, the Trial Chamber found that there were no legal bases for such charges. They held that the Co-Investigating Judges had found that while rape did occur in security centres, it could not be linked

to the Accused.³¹⁰ According to the Co-Investigating Judges, there was no evidence to support a finding that the Khmer Rouge leaders had used rape as a policy in security centres.³¹¹ This conclusion has been widely criticised by civil society and some international experts and academics who have concluded that, if one had conducted thorough investigations and asked the right questions, a pattern of widespread sexual violence outside of forced marriage at the hands of the Khmer Rouge, and its link to the accused persons, may have become apparent.³¹²

Civil party lawyers criticised what they called “a clear failure to prioritise sexual crimes committed by the Khmer Rouge regime”, pointing out that there is no evidence that witnesses were interviewed specifically about sexual crimes outside the context of forced marriages.³¹³

In Case 001 the Supreme Court Chamber held that rape was a war crime but not a crime against humanity, under customary international law at the time of the Khmer Rouge regime.³¹⁴ In Case 002/02, Khieu Samphan and Nuon Chea were sentenced to life imprisonment in 2018, for charges including forced marriage and rape in the context of forced marriage as the crime against humanity of “other inhumane acts”. An appeal of this judgment is currently pending before the Supreme Court Chamber.

304 Valérie Oosterveld and Patricia Viseur Sellers, ‘Issues of Sexual and gender-Based Violence at the ECCC’, in Simon Meisenberg, Ignaz Stegmiller (eds.), *The Extraordinary Chambers in the Courts of Cambodia: Assessing their Contribution to International Criminal Law* (Asser Press, Springer, 2016) 326-327 https://books.google.fr/books?id=z13eCwAAQBAJ&pg=PA327&lpg=PA327&dq=%22request+for+investigative+actions%22+eccc+002+forced+marriage&source=bl&ots=xNsAD0gYOr&sig=ACfU3U0qvPz9bLTz5YGmAJB3N8SkqpvOg&hl=en&sa=X&ved=2ahUKEwj1l-eHz-b3AhW4h_0HHtQyB90Q6AF6BAgVEAM#v=onepage&q&f=false accessed 17 May 2022.

305 *Case 002-D146/3, Co-Prosecutors' Response to the Forwarding Order of the Co-Investigating Judges and the Supplementary Submission* (ECCC, 30 April 2009).

306 Silke Studzinsky, ‘Blind in One Eye? Is the ICC a Model of How Sexual Crimes Should Be Investigated and Treated?’ (2012) Gunda Werner Institute www.gwi-boell.de/en/2012/04/16/blind-one-eye-icc-model-how-sexual-crimes-should-be-investigated-and-treated accessed 2 September 2021. See generally *Case 002, Order on Request for Investigative Action Concerning Forced Marriage and Forced Sexual Relations* (ECCC, 2009).

307 *Case 002-D427, Closing Order (Indictment)* (ECCC Co-Investigating Judges, 15 September 2010) paras 843-844 www.eccc.gov.kh/en/document/court/closing-order-indictment-case-002 accessed 25 February 2022.

308 *Ibid* 1446.

309 *Case 002/02 Trial Judgement* para 3535; see also *Case 002/02-E306/7/3/1/4, Decision on Civil Parties' Immediate Appeal against the Trial Chamber's Decision on the Scope of 12-1-2017 Case 002/02 in Relation to the Charges of Rape* (ECCC Supreme Court Chamber, 12 January 2017); *Case 002 Closing Order* paras 1426,1429: “the official CPK [Khmer Rouge] policy regarding rape was to prevent its occurrence and to punish the perpetrators”.

310 *Case 002/02 Trial Judgement* para 187.

311 *Case 002 Closing Order* paras 1426,1429; See also Elinor Fry and Elies van Sliedregt, ‘Targeted Groups, Rape and *Dolus Eventualis*: Assessing the ECCC's Contributions to Substantive International Criminal Law’ (2020) 18 *Journal of International Criminal Justice* 701–721.

312 Sin Soworn and Silke Studzinsky, ‘Tribunal Has Failed Victims of Sex Crimes’ *Phnom Penh Post* (Phnom Penh, 11 June 2012) www.phnompenhpost.com/national/tribunal-has-failed-victims-sex-crimes accessed 25 February 2022; Interview with Silke Studzinsky, former Civil Party Lawyer (online, 28 June 2021).

313 *Ibid*.

314 *Case 001-F28, Appeal Judgement* (ECCC Supreme Court Chamber, 3 February 2012) paras 176-189.

The Trial Chamber found Nuon Chea and Khieu Samphan “responsible for a nationwide policy of identifying individuals to be forcibly married, often to strangers. After group weddings, couples were monitored by militiamen and compelled to have sexual intercourse with their new spouses. CPK cadres took the role of parents in the selection of suitable spouses, forced couples to marry, and to produce children for the purpose of increasing the country’s population”.³¹⁵

ground that the Office of the Co-Prosecutors has appealed, asking the Supreme Court Chamber to rule that the Trial Chamber erred when concluding that men who were forced to consummate their marriages by having sexual intercourse were not victims.

The Co-Prosecutors have requested that “the conviction for the crime of other inhumane acts be corrected to include sexual violence against the male victims so that both male and female victims of the same act of forced sexual intercourse are properly recognized”.³¹⁷

However, the Trial Chamber concluded that men who were forced to consummate their marriages by having sexual intercourse were not victims of rape, because the elements of “other inhumane acts” had not been met with respect to this conduct.³¹⁶ This is the single

The appeals hearings were concluded on 24 August 2021 and a decision is still pending at the time of drafting of this report.³¹⁸



The Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia at the opening of the initial hearing in Case 002, 27 June 2011.
© Wikimedia Commons

315 ‘NUON Chea and KHIEU Samphan Sentenced to Life Imprisonment in Case 002/02’ (ECCC Press Release, 16 November 2018) https://legal.un.org/ola/media/info_from_lc/mss/speeches/MSS_Phnom-Penh-November%202018-ECCC-2-2-press-release.pdf accessed 2 September 2021.

316 Case 002/02, Trial Judgement paras 731, 3701.

317 Case 002/02-F50, Co-Prosecutors’ Appeal Against the Case 002/02 Trial Judgment (ECCC Co-Prosecutors, 21 August 2019) para 3.

318 ‘Conclusion of Khieu Samphan’s Appeal Hearings is a Milestone for the ECCC in Searching for the Truth and Justice’ (ECCC Press Release) www.eccc.gov.kh/en/articles/conclusion-khieu-samphans-appeal-hearings-milestone-eccc-searching-truth-and-justice accessed 7 September 2021.



VII. STATUS OF IMPLEMENTATION OF REPARATIONS

1. Government and other duty-bearers' position

The Cambodian government has never acknowledged responsibility for any wrongdoing during the Khmer Rouge, including for CRSV. The ECCC did not address the issue of State responsibility with respect to reparations (see below), as this would have been beyond its mandate.³¹⁹ Acknowledgment of the wrongdoing of individual senior Khmer Rouge leaders and their regime came in the form of a limited number of criminal judgments handed down by the ECCC, as described above.

There are different views among those interviewed regarding the extent to which reparations are a priority for the Cambodian authorities. Almost all of them agreed that the government generally wants to move on and focus more on other pressing development issues.³²⁰ Some are of the opinion that the Cambodian government is eluding the question of reparations to avoid recognising responsibility for the crimes of the Khmer Rouge or suggesting any link between former Khmer Rouge cadres and current government or security officials.³²¹ Others believe that the government's position is linked to a general lack of resources, a fear to open the floodgates and having to pay reparations to many people without having the means to do so.³²² Some also mentioned the general lack of coordination between the relevant ministries.³²³

The last record of government discussions connected to reparations for CRSV dates back to 2015.

In 2013, the CEDAW committee urged Cambodia to: *"Provide effective redress to all victims of [SGBV] committed during the Khmer Rouge regime, including gender-based violence against women committed outside the context of forced marriage, and consider developing effective non-judicial transitional justice programmes, including the provision of adequate reparation and psychological and other appropriate support"*.³²⁴

In 2014 and 2015 there were a series of meetings and ongoing dialogue between the relevant line-ministries, UN Women and Cambodian civil society (including KdK) regarding CEDAW's recommendation. In March 2015, UN Women organised a discussion between representatives of ministries and CRSV survivors.³²⁵ One of the main desires expressed by survivors during this consultation was to gain access to the ID-Poor scheme (see above). In response, the Ministries of Health and Planning noted that the system would not prioritise a specific type of person living in poverty. This means victims of the Khmer Rouge era would not be prioritised but could access the system if they fulfil all the criteria.³²⁶ UN Women concluded that information about accessing social services should be formalised and increased to allow equal access to all people and that more formal cooperation between the ECCC, NGOs and the ministries was required to address these challenges.³²⁷

Thus, it appears that a conscious decision was made by the various ministries not to give CRSV survivors priority access to the ID-Poor scheme. After the workshops, no further action seems to have been

319 *Case 001 Trial Judgement* para 671.

320 Interview with Megan Hirst, former Civil Party Lead Co-Lawyer (online, 18 June 2021); Interview with Vannak Hang, Chief, VSS (online, 31 May 2021); Interview with Kasumi Nakagawa, Researcher (online, 19 July 2021); Interview with Theresa de Langis, Researcher (online, 3 September 2021).

321 Interview with Sokkoeun Man, Executive Director, YFP Cambodia (online, 28 June 2021).

322 Interview with Helen Jarvis, Researcher, formerly ECCC (online, 22 October 2021).

323 Interview with Theresa de Langis, Researcher (online, 3 September 2021); Interview with Kdei Karuna (online, 11 June 2021).

324 CEDAW Committee, 'Concluding Observations on the Sixth Periodic Report of Cambodia' (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 para 13.

325 REDRESS and KdK, Internal Note on 'Follow up Dialogue Workshop for Representatives of the Royal Government of Cambodia, regarding Gender Based Violence during the Khmer Rouge and the Implementation of CEDAW COB 15' (14 July 2015, on file with REDRESS and KdK) 3.

326 *Ibid* 6, 8, 13.

327 *Ibid* 9.

taken with respect to improving the accessibility of the ID-Poor scheme for survivors or in relation to any other reparation measures. Stakeholders interviewed on the topic, including KdK who was the main NGO involved in the discussions at the time, were not informed of or invited to follow-up discussions.³²⁸ One interviewee explained that efforts were made by the European Union (EU) in the past five years to engage the Cambodian government on the topic of reparations, but that the EU had to shift focus as the government was unwilling to engage.³²⁹

In its 2018 report to CEDAW, the Cambodian government did not mention the demands of the survivors that had been presented to them during the 2015 workshop. To show that it had implemented CEDAW's recommendations, it referred to NGO-run reparations projects (see paras below).³³⁰

While this is not CRSV-specific, as of 2020, the Cambodian government decided to remove the National Day of Remembrance, which had been established as a reparation measure in Case 002, from the list of public holidays in a general move to reduce the number of public holidays.³³¹ That Day of Remembrance had been surrounded by controversy since its inception. Originally known as "Day of Hatred" in 1984 by the Vietnamese-backed government in an attempt to render the Khmer Rouge unpopular, it was renamed "National Day of Remembrance" and made a national holiday in 2018 by a Hun Sen decree.³³² Victims and their representatives reacted by calling on the government to "continue the commemoration of the Day of Remembrance".³³³

2. Access to reparations

2.1. Access to full reparations to date

A. REPARATIONS AWARDED BY THE ECCC

To date, the ECCC has provided the only opportunity for Cambodian survivors to obtain reparations.³³⁴ Reparations were awarded in very different and limited ways in Cases 001, 002/01 and 002/2. Only Case 002/02 involved a CRSV-specific reparations project.

Given the fact that CRSV crimes barely featured in Case 001, there were no CRSV-specific reparations requested or ordered. The judges rejected civil parties' requests for the establishment of a Trust Fund to pay for any collective reparation awards as well as requests for the provision of vocational trainings or microloans on the basis that they amounted to "individual monetary awards for civil parties".³³⁵ The judges also considered that there was no mechanism allowing the ECCC to substitute or supplement awards made against the accused persons with funds provided by national authorities or third parties.³³⁶

Moreover, the Trial Chamber considered that requests for the provision of access to free health care or educational measures, "which by their nature are not symbolic but instead designed to benefit a large number of individual victims – are outside the scope of available reparations before the ECCC".³³⁷

328 Interview with Theresa de Langis, Researcher (online, 3 September 2021).

329 Interview with Kasumi Nakagawa, Researcher (online, 19 July 2021).

330 CEDAW Committee 'Sixth Periodic Report Submitted by Cambodia under Article 18 of the Convention' (12 June 2018) UN Doc CEDAW/C/KHM/6 paras 30-32.

331 Long Kimmarita, 'Six public holidays set to be axed' *Phnom Penh Post* (Phnom Penh, 7 August 2019) www.phnompenhpost.com/national/six-public-holidays-set-be-axed accessed 25 February 2022.

332 Erin Handley, 'Day of Anger Becomes Kingdom's Latest National Holiday' *Phnom Penh Post* (Phnom Penh, 21 February 2018) www.phnompenhpost.com/national/day-anger-becomes-kingdoms-latest-national-holiday accessed 16 May 2022.

333 Sok Khemara, 'Khmer Rouge Victims Push for continuation of May 20 Commemoration' *VOA Khmer* (North Carolina, 14 July 2020) www.voacambodia.com/a/khmer-rouge-victims-push-for-continuation-of-may-20-commemorations/5502157.html accessed 16 May 2022.

334 Rachel Killean and Luke Moffett, 'What's in a Name? 'Reparations' at the Extraordinary Chambers in the Courts of Cambodia' (2020) *Melbourne Journal of International Law* 4 https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4100006_code1851422.pdf?abstractid=3603179&mirid=1&type=2 accessed 10 August 2021.

335 *Case 001 Trial Judgement para 670*.

336 *Ibid* para 664.

337 *Ibid* para 674.

Unfortunately, the Chamber granted only two reparations requests: to include in its judgment the names of civil parties and their relatives who died at S-21, and to compile and publish statements of apology by the convicted person.³³⁸ The Supreme Court Chamber upheld the judgment, arguing that the Court could not grant reparations that required government funding, or that were unrealistic due to the accused's indigence.³³⁹

In 2010 an amendment was made to the ECCC Internal Rules, allowing for externally funded projects to be designed or identified in cooperation with the Court's VSS, and then recognised as reparations by the Court following a judgment.³⁴⁰

The Trial Chamber in Case 002/01 described this as a means through which the Chamber could recognise specific projects which contribute to rehabilitation, reintegration and restoration of dignity where national or international authorities, NGOs or other potential donors provide financial support and other forms of assistance to show solidarity with the victims.³⁴¹

Under the amended rules, civil parties can request that reparations be awarded against the accused or funded by external actors. The two modes of funding are mutually exclusive.³⁴² When civil party lawyers

requested that the Chamber combine the principle that the cost of reparations be borne by the accused with an order that costs be externally funded when necessary, the Trial Chamber rejected their request.³⁴³ The indigence of the accused has meant that in practice, the 24 reparation projects recognised across Cases 002/01 (11 projects) and 002/02 (13 projects – one partially recognised) have been exclusively externally funded, and primarily delivered by CSOs.³⁴⁴ Moreover, the ECCC has found that it has no power to adjudicate questions of State responsibility, that it has no jurisdiction over the Cambodian government, and that it cannot impose obligations on entities that were not party to the proceedings.³⁴⁵

Some commentators have noted that within the limits of its jurisdiction, the Court has proved willing to recognise a wide range of victims as having a legal entitlement to a remedy, facilitated by a shift from individual civil party participation in Case 001, to a collective participation model adopted in the larger Case 002.³⁴⁶ This collective model allowed the Court to accept civil party applications from victims who were harmed by crimes which took place in sites other than those included in the Closing Order and it adopted a presumption of collective psychological injury, recognising civil party applicants who were members of the same targeted group or community as direct victims.³⁴⁷

In Case 002, given the civil parties' collective participation as a single group and the focus on '*collective and moral*' reparations, the Court focused on reparations which "*encompass the entire consolidated group of civil parties*", regardless of the specific types of harm suffered.³⁴⁸ Going beyond the

338 Ibid paras 638, 645, 650.

339 Case 001 Appeal Judgement para 668.

340 ECCC Internal Rules, Rev.6 (17 September 2010) rule 23 *quinquies*, para 3.

341 Case 002/01-E313, Trial Judgement (ECCC Trial Chamber, 7 August 2014) para 1116; see also Rachel Killean and Luke Moffett, 'What's in a Name? Reparations' at the Extraordinary Chambers in the Courts of Cambodia' (2020) Melbourne Journal of International Law 22-23 https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4100006_code1851422.pdf?abstractid=3603179&mirid=1&type=2 accessed 10 August 2021.

342 Case 002/01 Trial Judgement para 3207.

343 Ibid para 1124.

344 Rachel Killean and Luke Moffett, 'What's in a Name? Reparations' at the Extraordinary Chambers in the Courts of Cambodia' (2020) Melbourne Journal of International Law 9 https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4100006_code1851422.pdf?abstractid=3603179&mirid=1&type=2 accessed 10 August 2021.

345 Case 001 Appeal Judgement para 663.

346 Rachel Killean, 'Constructing Victimhood at the Khmer Rouge Tribunal: Visibility, Selectivity and Participation' (2018) 24 International Review of Victimology 273-296.

347 Case 002-D404/2/4, Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications (ECCC Pre-Trial Chamber, 24 June 2011) paras 49, 68.

348 Case 002/01 Trial Judgement para 4414.

civil parties, the Court also awarded reparations which were described as “benefiting the wider community of unrepresented victims”.³⁴⁹ For example, reparations in Case 002/01 included a Remembrance Day, and several art and education projects were awarded in order to create a broader community impact.³⁵⁰ One interviewee pointed out the irony of focusing on collective reparations after a regime where the individual was erased in favour of the collective.³⁵¹ For specific groups of victims, such as survivors of CRSV, the lack of focus of this collective system of reparations limited its potential to respond to their particular needs.

B. REPARATIONS PROJECTS ENDORSED BY THE ECCC IN CASE 002

Reparations project proposed by the ECCC civil party lawyers in Case 002 were designed with the involvement of the civil parties, though consultation and outreach activities.³⁵² In Case 002/01, the Trial Chamber endorsed 11 projects, including public memorials; the construction and maintenance of a regional community peace learning centre; mental health programmes, including testimonial therapy sessions; permanent exhibitions on aspects of Case 002/01; new educational material for teachers on the Khmer Rouge regime; and the distribution of the trial judgment and relevant informational material.³⁵³ In Case 002/02, the Trial Chamber recognised 13 further reparations projects. These were categorised as constituting guarantees of non-repetition, measures of satisfaction, and rehabilitative measures. Under the category of guarantees of non-repetition, the Court recognised an application on Khmer Rouge history, a workshop for Khmer Rouge history teachers and university lecturers, a media project promoting civil courage, a community media project exploring

the experiences of the Cham, a classical dance performance about forced marriage, an exhibition on the experience of ethnic minorities during the regime, and a legal and civic education project for minority Civil Parties. Under the category of measures of satisfaction, the Chamber recognised an illustrated book of the accounts of civil parties, a song writing contest, an exhibition about a security centre, and a repository of documents related to the trial. Under the category of rehabilitative measures, the Chamber recognised two final projects which provided mental and physical health services.³⁵⁴

It is difficult to quantify how many CRSV survivors benefitted from reparations awarded in Cases 001, 002/01 and 002/2 as they may have participated in reparations projects that provided, for example, psychosocial care or they may have benefitted from memorialisation initiatives. Most of them also experienced other crimes and might have been part of other projects because of that experience.

The only CRSV-specific reparations project, however, was the KdK project “*Phka Sla Krom Angkar*”, which translates as “*Wedding Flowers Bestowed by The Organisation*”. It included measures such as artistic memorialisation of shared experiences, intergenerational dialogue, participatory documentation, therapeutic support, and research regarding forced marriage under the Khmer Rouge. In total, the project provided services to 235 civil parties (140 female) and 1,276 other Khmer Rouge survivors (643 female).³⁵⁵ The project included a Khmer classical-dance performance around forced marriage, to which all civil parties, the broader victim community and the Cambodian and international public at large had access.

349 Case 002/02 Trial Judgement para 1114.

350 Case 002/01 Trial Judgement paras 1152-1160. According to Killean and Moffet, “*The outer limits to the Court’s broad interpretation can be found in the Trial Chamber’s rejection of a project focusing on indigenous minorities on the grounds that the accused were not convicted of targeting indigenous minorities*”. Rachel Killean and Luke Moffett, ‘What’s in a Name? ‘Reparations’ at the Extraordinary Chambers in the Courts of Cambodia’ (2020) Melbourne Journal of International Law 12 https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4100006_code1851422.pdf?abstractid=3603179&mirid=1&type=2 accessed 10 August 2021.

351 Interview with Silke Studzinsky, former Civil Party Lawyer (online, 28 June 2021).

352 Case 002/02-E457/6/2/1, Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 (ECCC, 30 May 2017) paras 5-9 www.eccc.gov.kh/sites/default/files/documents/court/02/E457_6_2_1_EN.pdf accessed 17 May 2022.

353 Case 002/02 Trial Judgement paras 1151-1160.

354 Case 002/02 Trial Judgement paras 4417-4433, 4454-4467; see also Rachel Killean and Luke Moffett, ‘What’s in a Name? ‘Reparations’ at the Extraordinary Chambers in the Courts of Cambodia’ (2020) Melbourne Journal of International Law 24 https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4100006_code1851422.pdf?abstractid=3603179&mirid=1&type=2 accessed 10 August 2021.

355 Numbers provided by Kdei Karuna staff based on numbers provided in Kdei Karuna Organisation, ‘Annual Report 2017’ (only available in Khmer) and ‘Annual Report 2018’.

Additionally, the project entitled 'Promoting Gender Equality and Improving Access to Justice for Female Survivors and Victims of Gender-based Violence under the Khmer Rouge regime' was a "non-judicial measure" with the aim of addressing broader interests of victims than those addressed by the ECCC's judicial or reparations measures (which were linked to the specific crimes of each case). It was run by a coalition of the ECCC's VSS and NGOs. Some might qualify it as an interim relief project. It was the most comprehensive and long-lasting of the ECCC's non-judicial measures, and the main initiative to address CRSV under the Khmer Rouge, including forced marriage. The project included activities such as the provision of logistical support to survivors to attend judicial proceedings, facilitation of informational workshops among survivors, civil party national forums, the establishment of self-help groups among survivors, psychosocial support, the creation of national "Women's Truth-Telling Forums", and a nationwide radio-program on Gender-Based Violence (GBV). In total, the project provided services to 2,833 female survivors (2,200 female civil parties and 633 other female survivors) and 402 male survivors of CRSV under the Khmer Rouge (240 male civil parties and 162 other male survivors).³⁵⁶ According to the evaluation report on Phase 2 of the project, public truth-telling, done through "Testimonial Therapy", was an innovative and effective form of treatment.³⁵⁷

Testimonial Therapy is a "specific form of political and human rights-based therapy, that engages survivors in the narration and documentation of their traumatic experiences whilst providing opportunities to reconstruct traumatic memories".³⁵⁸

Over a series of five counselling sessions, the counsellor and the client identified time, place and sequence of each traumatic event and converted the memories into a "testimony", a written document, which was read aloud and handed over to the survivors during a public Buddhist ceremony.³⁵⁹ If the participants were of a different faith (for example from the Muslim Cham community) the ceremony was adapted accordingly.³⁶⁰

One interviewee, who worked for TPO Cambodia and directly with survivors through this project, explained that this trust-building exercise allowed civil parties to share experiences that they had not told in Court. Though their trauma was not completely resolved, they indicated that they were better able to deal with recurring memories and strong emotions. It was a starting point to move past painful memories. This interviewee highlighted the significance of sharing and of participating in the religious ceremony in front of the community.³⁶¹

One interviewee who worked on the project explained that some funding, which was left over at the end of the project, was reallocated to support the livelihoods of some civil parties. VSS and TPO Cambodia went to rural communities and communes and inquired into ways that survivors' livelihoods could be supported with the funds, but they could not distribute them because they were unable to come up with a strong recommendation on how to support survivors in a sustainable and equitable way due to limited opportunities given the advanced age of the survivors.³⁶²

356 Julian Poluda, Sineth Siv and Sotheary Yim, 'Promoting Gender Equality and Improving Access to Justice for Female Survivors and Victims of Gender-based Violence under the Khmer Rouge Regime: Final Evaluation of the ECCC Non-judicial Gender Project (Phase 2)' (2019) UN Trust Fund to End Violence against Women, VSS, and TPO 37 https://eccc.gov.kh/sites/default/files/reports/UNTFVAW_Cambodia_VSS_TPO_Final%20Evaluation%20Report%20Oct2019.pdf accessed 9 September 2021.

357 Ibid.

358 Ibid.

359 Ibid.

360 Interview with Sun Solida, Project Assistant and Counsellor, TPO Cambodia (online, 9 July 2021).

361 Ibid.

362 Interview with Maria Lorna Mesina, Programme Specialist, UN Trust Fund to End Violence Against Women (online, 29 Nov 2021).

2.2. CSO-run reparative projects

Civil society, survivors and academics have been creative in coming up with reparative projects beyond what was recognised or ordered by the ECCC.

One relevant reparative activity that bolstered survivors' agency was the organisation of Women's Hearings. The first, organised by Cambodian Defenders Project (CDP) in 2011, was ground-breaking as it marked the first ever truth-telling forum on sexual violence during the Khmer Rouge regime and drew attention to the fact that survivors of CRSV had not found a forum within transitional justice processes and initiatives to be heard.³⁶³ The second and third hearings, organised by CDP, TPO Cambodia and VSS in 2012 and 2013, firstly extended the hearings to women from other countries, such as Bangladesh and Nepal, in the hope of creating a solidarity movement in the region,³⁶⁴ and secondly focused on creating intergenerational dialogue within Cambodia on the topic of CRSV.³⁶⁵

Since sexual violence outside of forced marriages was not referred to the Trial Chamber by the Co-Investigating Judges in Case 002, these out-of-court hearings were built as a truth-telling exercise directed towards those women who would not have the ability to share their testimony in Court. It also allowed for acts of CRSV that had not been looked at by the Court to be brought to light. These initiatives are powerful examples of Cambodian women coming together and creating their own space to share and record their stories, when they felt that the ECCC was failing to provide such a space. Another such example are oral history projects, such as the Cambodian Women's Oral History Project, run by Theresa de

Langis,³⁶⁶ or "transmissions", a Bophana Center online exhibition on intergenerational dialogue between the Khmer Rouge survivors and youth.³⁶⁷

Moreover, the Cambodian NGO YFP has organised, upon survivors' requests, wedding ceremonies for couples who were forcibly married during the Khmer Rouge and decided to stay together to reduce some of the stigma they carry from not having had a traditional wedding ceremony. This is a creative and unconventional measure that responds to some of the needs expressed by survivors.³⁶⁸ During the survivors' forum in which the main findings of this report were shared with survivors, there were mixed opinions about the necessity and meaningfulness of such ceremonies. One survivor mentioned that survivors in her community might enjoy the opportunity to attend a symbolic wedding ceremony open to a large group of people where couples can take the traditional wedding pictures, which they do not have if they were forcibly married. Another survivor mentioned that she saw no use in such ceremonies at her advanced age and since there are several widows in her community. KdK mentioned that such ceremonies could not fully repair families or prevent them from being discriminated as the children remained born "without calla".

Additionally, the Documentation Center of Cambodia (DC-Cam) recently launched a far-reaching project focusing on providing health care to all victims of the Khmer Rouge regime, financed by the US Agency for International Development (USAID). The project entitled, 'Advancing the Rights and Improving the Conditions of the Health of Khmer Rouge Survivors' is financed by a 6.5 million USD grant and will "help provide access for Khmer Rouge survivors to health care and document health conditions and concerns, socio-economic conditions, and the experiences

363 Cambodian Defenders Project, 'Report on the Proceedings of the 2011 Women's Hearing on Sexual Violence Under the Khmer Rouge' (2012) 2 www.ziviler-friedensdienst.org/sites/default/files/media/file/2021/zfd-womens-hearing-true-voices-women-under-khmer-rouge-1648.pdf accessed 9 November 2021.

364 Theresa de Langis, 'Asia-Pacific Regional Women's Hearing on Gender-Based Violence' (2012) CDP <http://gbvkr.org/wp-content/uploads/2013/01/Asia-Pacific-Regional-Womens-Hearing-on-GBV-in-Conflict-2012-Report.pdf> accessed 8 November 2021.

365 Beini Ye, '2013 Women's Hearing with the Young Generation on Gender-Based Violence during the Khmer Rouge regime: Report on the Proceedings' (2014) CDP <http://gbvkr.org/wp-content/uploads/2014/05/WomenHearingEng.pdf> accessed 14 October 2021.

366 Cambodian Women's Oral History Project, 'Cambodian Women's Oral History Project: Life Stories of Survival under the Khmer Rouge regime' () <http://cambodianwomensoralhistory.com/about> accessed October 21, 2021.

367 Interview with Sopheap Chea, Executive Director, Bophana Center (online, 9 August 2021); Bophana Center 'Transmission 2018' (2018) <https://bophana.org/events/transmissions-2018/> accessed 19 December 2021.

368 Interview with Sokkoeun Man, Executive Director, YFP Cambodia (online, 28 June 2021); see also Dene-Hern Chen, 'Only 'Lovers' Left Alive – Forced to Marry under a Genocidal Regime, Seven Cambodian Couples Decide to Renew their Vows' *Aljazeera* (Cambodia, 13 February 2016) <http://projects.aljazeera.com/2016/02/cambodia-love/> accessed 21 October 2021.

during the Khmer Rouge period".³⁶⁹ The project entails field research on survivor welfare conditions and the findings will be translated into public awareness campaigns. A group of 500 volunteers will help survivors access community health clinics, while also providing survivors opportunities to share their story of struggle during the Khmer Rouge period with the younger generations to ensure they do not forget.³⁷⁰

Finally, HelpAge, an NGO whose work is not specifically connected to repairing harm caused by the Khmer Rouge conflict, supports isolated and elderly people who are living in poverty, many of them Khmer Rouge survivors. HelpAge works in 60 rural villages in Battambang and Banteay Meanchey provinces, supporting village-based *Older People's Associations*, which are groups that help older people look after each other. They also maintain collective holdings of rice and cows, improve people's access to clean drinking water, run health camps, provide small business start-up grants and offer care at home for the most vulnerable older people in the community through their *Sponsor a Grandparent* scheme.³⁷¹ HelpAge has reported that the majority of the elderly are women with close to half of women in Cambodia being widowed.³⁷² Given the prevalence of CRSV during the Khmer Rouge period, particularly forced marriage, it is safe to assume that a considerable number of elderly women are survivors of CRSV.

The list of projects discussed here is by no means exhaustive but simply aims to provide a general sense and overview of some NGO projects that have responded to some of the needs identified in this report. There are many other NGO projects, not described in this report, that benefit survivors of the regime in general, wherein CRSV survivors might have also benefitted.

3. Key challenges and obstacles faced in accessing remedies

3.1. Lack of sustainability and doubts as to the reparative nature of "Reparations Projects"

In 2019, the CEDAW Committee made an explicit statement regarding the judgment in Case 002/2, stating that the reparations projects implemented throughout Cambodia did not adequately provide effective redress to victims of SGBV committed during the Khmer Rouge regime, including rape committed outside of forced marriage.³⁷³

Scholars have argued that *"the ECCC has awarded measures that have little connection to those responsible for the harm, and [...] often fail to deliver a sense of recognition, reflect the needs and wishes of recipients, deliver material benefit, or have symbolic significance"*.³⁷⁴

The reparations projects lacked State and political support as they were entirely donor-funded, implemented by NGOs with no contribution by the State or the convicted persons, and many were already ongoing or even almost completed when they were recognised by the ECCC as such.

369 US Embassy in Cambodia, 'USAID announces new grant to improve Khmer Rouge survivor health' (23 September 2021) <https://kh.usembassy.gov/usaid-announces-new-grant-to-improve-khmer-rouge-survivor-health/> accessed 6 December 2021.

370 Ibid.

371 HelpAge International, 'Cambodia' www.helpage.org/tags/cambodia/ accessed 21 October 2021.

372 HelpAge International, 'Ageing population in Cambodia' <https://ageingasia.org/ageing-population-cambodia/> accessed 21 October 2021.

373 CEDAW Committee, 'Concluding Observations on the Sixth Periodic Report of Cambodia' (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 para 12.

374 Rachel Killean and Luke Moffett, 'What's in a Name? 'Reparations' at the Extraordinary Chambers in the Courts of Cambodia' (2020) Melbourne Journal of International Law 4 https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4100006_code1851422.pdf?abstractid=3603179&mirid=1&type=2 accessed 10 August 2021.

Most of the ECCC-sanctioned reparations projects primarily focused on recognising and raising awareness of victims' suffering within Cambodian society and sharing information about the trial and the civil parties' role in the process. Some commentators have argued that such symbolic measures without other more tangible forms of redress may not be an effective remedy for the victims' suffering.³⁷⁵ The emphasis on the retrospective recognition of feasible – but not always meaningful – projects have limited the real impact that such projects can achieve.³⁷⁶

As mentioned above, many survivors were disappointed that the ECCC limited its reparation awards to collective and moral measures, as they continued to live in poverty (see above). Since the reparations projects' sustainability was not guaranteed, most of the projects have come to an end even though many survivors, especially those in rural areas, have not had sufficient, if any, access to the services provided through the projects.

The data collected from survivors for this study indicates that survivors were not widely reached.

Among the 82 survivors interviewed for this study, only three were civil parties and 19 (23%) indicated that they had received some type of reparation.

They all mentioned different types of "reparations", for example the fact that the Khmer Rouge leaders were imprisoned for life (mentioned three times as reparations received), that electricity is now back and the country was rebuilt after the Khmer Rouge regime (mentioned once), that *stupas* were built (mentioned six times), that information on the Khmer Rouge regime was added to history education (mentioned twice), that they received some money (per diem) when participating in a meeting (mentioned twice), that they participated in the *Phka Sla Krom Angkar* project (mentioned six times) or in TPO Cambodia, KdK and other programs (mentioned four times).

When asked whether they were *aware* of the ECCC reparations scheme, 51 of the interviewees (62%) indicated that they were not, and only 31 survivors (38%) answered positively. They were not civil parties to the ECCC proceedings. Only some of them provided more information with that affirmative answer, which suggests that most survivors may not have a clear understanding of what reparations are. Five interviewees responded that the perpetrators going to prison itself was the ECCC reparations, four interviewees mentioned the building of stupas, four mentioned the Khmer Rouge education history and eight mentioned that they had heard on the radio about judgments and reparations through NGOs such as KdK. Among the advantages of the ECCC reparations scheme mentioned by survivors were the fact that it can provide justice and heal suffering (mentioned six times; seven percent of respondents), the fact that reparations benefit victims in general and the young generation can learn about the Khmer Rouge regime so that it will not happen again (mentioned 12 times; fifteen percent (15%) of respondents), and the fact that survivors feel less lonely (mentioned twice). The main disadvantage mentioned was the fact that the reparations are not beneficial to survivors because they are not individual (mentioned by six survivors; seven percent (7%)) and the fact that the ECCC reparations did not compensate for the physical and emotional suffering of the victims (mentioned by three people; four percent (4%) of respondents).

3.2. (Lack of) Survivor consultation

Survivors were not sufficiently consulted in the reparations process of the ECCC.

Since the ECCC only included the crime of forced marriage in the Case 002/02 Closing Order (Indictment), many CRSV survivors were not civil parties and were unable to advocate for the reparations they needed, or to access reparation projects. Similarly, since the ECCC cases did not have a focus on the specific experiences of the LGBTIQ+

375 Ibid 25.

376 Ibid 29.

community and not many civil parties were a part of that community, there was no focus on projects with a specific LGBTIQ+ focus. Several interviewees pointed out that access to the court and becoming a civil party to Case 002 was a somewhat arbitrary process in the early days of the Court.³⁷⁷ This is due to the sheer number of victims in Cambodia and the fact that it was in the hands of NGOs to run the consultations. This is a common limitation of court-ordered reparations where the focus is on victims of specific crimes that have been charged and investigated, and many others are excluded.

Even those who were civil parties were not systematically consulted, even though they had formal legal representation before the ECCC. According to reparations experts Rachel Killean and Luke Moffett:

"In Cases 002/01 and 002/02, the involvement of nearly 4,000 victims, the multiple intermediary and civil party lawyer teams working with them, and the challenges associated with accessing adequate outreach resources led to significant variances in consultation practices".³⁷⁸

Civil parties with connections to NGOs had greater opportunities for consultation than those without, and NGOs were pitching projects to the Court but did not have the resources or time to properly understand the needs and wishes of survivors.³⁷⁹

These experts also stated that "[w]hile some of the projects drew from expressed wishes of civil parties, others originated from the NGOs themselves, or were shaped by the donors funding their work. Some of these were specifically designed to be reparations, while others were pre-existing projects which were rebranded as reparative".³⁸⁰ A 2018 survey by researchers demonstrated that:

"While two-thirds of civil party respondents felt they had been consulted and their views considered, in-depth interviews revealed discontent over the consultation process".³⁸¹

Many felt there was a discrepancy between the views they had expressed, and the awards delivered. Some observed that the ECCC and donors demonstrated a preference for the proposals of NGOs rather than the requests of civil parties.³⁸²

3.3. (Lack of) Gender sensitivity of the ECCC

In 2012, Theresa de Langis, an expert and scholar on women's rights in conflict and post-conflict, conducted a baseline study on gender sensitivity at the ECCC.³⁸³ She found that many sections of the ECCC were of the view that CRSV crimes represented a very small percentage of the overall caseload.

377 Interview with Helen Jarvis, Researcher, formerly ECCC (online, 22 October 2021); Interview with Megan Hirst, former Civil Party Lead Co-Lawyer (online, 18 June 2021).

378 Rachel Killean and Luke Moffett, 'What's in a Name? 'Reparations' at the Extraordinary Chambers in the Courts of Cambodia' (2020) *Melbourne Journal of International Law* 17 https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4100006_code1851422.pdf?abstractid=3603179&mirid=1&type=2 accessed 10 August 2021.

379 Ibid.

380 Ibid 17-18.

381 Citation from: Rachel Killean and Luke Moffett, 'What's in a Name? 'Reparations' at the Extraordinary Chambers in the Courts of Cambodia' (2020) *Melbourne Journal of International Law* 17-18 https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4100006_code1851422.pdf?abstractid=3603179&mirid=1&type=2 accessed 10 August 2021.; survey by: Timothy Williams, Julie Bernath, Boravin Tann and Somaly Kum, 'Justice and reconciliation for the victims of the Khmer Rouge? Victim participation in Cambodia's transitional justice process', (2018) Marburg: Centre for Conflict Studies; Phnom Penh: Centre for the Study of Humanitarian Law; Bern: Swisspeace 117 www.swisspeace.ch/assets/publications/downloads/Reports/af32f3c3a1/Justice-and-Reconciliation-for-the-Victims-of-the-Khmer-Rouge-Report-2018-.pdf accessed 17 May 2022.

382 Rachel Killean and Luke Moffett, 'What's in a Name? 'Reparations' at the Extraordinary Chambers in the Courts of Cambodia' (2020) *Melbourne Journal of International Law* 18-19 https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4100006_code1851422.pdf?abstractid=3603179&mirid=1&type=2 accessed 10 August 2021; See also Rachel Killean and Luke Moffett, 'Victim Legal Representation before the ICC and ECCC' (2017) 15 *Journal of International Criminal Justice* 713.

383 Theresa de Langis, 'ECCC Baseline Study on Gender Sensitivity in Transitional Justice Processes in Cambodia' (2012) ECCC www.researchgate.net/publication/306056007_ECCC_Baseline_Study_on_Gender_Sensitivity_in_Transitional_Justice_Processes_in_Cambodia_Phnom_Penh_Extraordinary_Chambers_in_the_Courts_of_Cambodia_2012 accessed 21 October 2021.

However, according to her research:

The number of civil parties survivors of forced marriage in case 002/01 was almost equal to the number of civil parties who had been forcibly transferred, the largest group of civil parties and forcible transfers being a prominent feature of Case 002. The number of CRSV survivors was, thus, not insignificant.

Theresa de Langis found that there was no comprehensive strategy across ECCC sections to ensure that the access needs of women were met.³⁸⁴ She also found that a very low number of women were professionally engaged in ECCC processes, especially in the administration of justice and at decision-making levels.³⁸⁵ She added that sexual crimes were reportedly mentioned in a full quarter to one-third of all statements, *“despite a flawed investigation that did not include a single female on the team”*.³⁸⁶ She further stated that: *“the conclusion that evidence [of sexual and gender-based crimes] does not exist appears premature”*.³⁸⁷

Several interviewees who worked at the Court mentioned that the procedures at the ECCC were not particularly survivor-friendly as compared to the international standards that exist today. For instance, there was no formal evidentiary rule about excluding the previous sexual history of the victim or about not needing corroboration of the victims’ account as included now in many systems.³⁸⁸ According to an interviewee, the lack of female judges and the prevalent nepotism and corruption acted as barriers for female survivors who did not necessarily want

to tell their stories to male police officers.³⁸⁹ The ECCC double representation system, with lawyer representing victims and other lawyers representing the interests and general strategy of the consolidated group of civil parties, arguably constitutes a structural problem. That is, there is insufficient funding for the civil party lawyers to meet their clients, sometimes leading to them being unaware of survivors’ needs and even of how many survivors are still alive. Survivor friendliness requires lawyers to visit civil parties within their provinces and become familiarised with their circumstances.³⁹⁰ In October 2021, the United Nations Assistance to the Khmer Rouge Trials (UNAKRT) side of the administration cut off human resources to the Civil Party Lead Co-Lawyers, stating that the lawyers’ mandate was limited to “judicial work”. Also, frequently, survivors who cried during the hearings were told to compose themselves, under the threat that otherwise they would not be allowed to speak.³⁹¹ Similarly, the manner in which survivors were questioned has been described as *“attacking”*, *“harmful”*, *“insensitive”*, *“disempowering”*³⁹² and *“hurtful”* to survivors and their testimonies.³⁹³ This led the last international Civil Party Lead Co-Lawyer to resign.³⁹⁴

The lack of adequate training of the staff was an additional problem. While some workshops on gender sensitivity in transitional justice in general and internal trainings on gender issues within ECCC teams were organised,³⁹⁵ before 2014 there were no known trainings of investigators or legal officers on duty on gender sensitivity and CRSV investigations. Later (between 2014 and 2017), during the Case 003 and 004 investigations, female Canadian investigators with such experience and training were deployed by

384 Ibid 27.

385 Ibid 25.

386 Ibid 28.

387 Ibid.

388 Interview with Beini Ye, former Civil Party Lawyer (online, 6 July 2021); see for example ICC Rules of Procedure and Evidence, rules 63(4), 70, and 71; see also UN Women, ‘Handbook for Legislation on Violence against Women’ (2012) www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2012/12/UNW_Legislation-Handbook%20pdf.pdf accessed 23 February 2022, 39–42.

389 Interview with Piseth Duch, Director of Advocacy, Cambodian Center for Human Rights (online, 25 May 2021).

390 Interview with Megan Hirst, former Civil Party Lead Co-Lawyer (online, 18 June 2021).

391 Interview with Silke Studzinsky, former Civil Party Lawyer (online, 28 June 2021).

392 Interview with Kasumi Nakagawa, Researcher (online, 19 July 2021).

393 Interview with Sun Solida, Project Assistant and Counsellor, TPO Cambodia (online, 9 July 2021).

394 Hirst M, Letter on Withdrawal as International Civil Party Lead Co-Lawyer, 16 June 2022 <https://docs.voanews.eu/en-US/2022/07/08/2f3efa31-49d1-4815-9c9f-5e93fd6bf738.pdf> accessed 13 July 2022.

395 See for example VSS, ‘Report – Training Workshop on “Gender Sensitivity and Transitional Justice for ECCC Officials”’ (2012).

Justice Rapid Response to help investigate allegations of forced marriages.³⁹⁶ They had received training on gender-sensitivity and documentation of CRSV. This helped to increase the volume and improve the quality of evidence obtained on forced marriages and enhanced the understanding of sensitive interviewing among the investigative team members.

TPO Cambodia provided psychosocial preparation and aftercare to all those who testified during Case 002, and all survivors were supported by VSS before and during the interview process. Survivors could also have a support person present during their testimony. However, several interviewees mentioned that questioning of survivors in the courtroom potentially re-traumatised them.³⁹⁷ This was for

instance the case when judges told civil parties who began crying to compose themselves if they wanted to keep testifying.³⁹⁸ Another example is that of Ms Sou Sotheavy, a transgender survivor, who was invited to testify in Case 002/01 and whom a translator and several other people in the courtroom misgendered.³⁹⁹ The fact that the wide spectrum of CRSV crimes committed during the regime were not addressed during the proceedings also meant that many CRSV survivors could not testify, which in itself could have been a form of reparations. For those who did testify, however, the fact that procedures were not designed to be gender-sensitive and that not all ECCC staff had the necessary training, meant that the experience could be traumatising rather than reparative for some of them.

The fact that the ECCC was not a gender-sensitive institution from the outset precluded early investigations of CRSV crimes, which in turn led to them being excluded from certain charges and convictions.

³⁹⁶ Justice Rapid Response, 'Report on Resolution 3' (2019) <https://rcrcconference.org/about/previous-conferences/32nd-international-conference/resolution-reports-list/resolution-3-sexual-and-gender-based-violence-joint-action-on-prevention-and-response-7/> accessed 26 November 2021.

³⁹⁷ Interview with Beini Ye, former Civil Party Lawyer (online, 6 July 2021).

³⁹⁸ Interview with Silke Studzinsky, former Civil Party Lawyer (online, 28 June 2021).

³⁹⁹ Ibid.



Commemorative stupa filled with skulls at the Choeung Ek Genocide Memorial near Phnom Penh, Cambodia.
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VIII. ANALYSIS OF OPPORTUNITIES AND THREATS FOR REPARATIONS

1. Mapping of key stakeholders

1.1. Key stakeholders

Given its obligation to provide reparations, the government is the most important stakeholder, despite the current lack of political will to make progress in this regard. The Ministry of Planning, Ministry of Health and Ministry of Women's Affairs were all previously involved in discussions on reparations for CRSV, including discussions regarding prioritisation of CRSV survivors for the ID-Poor system.

The ECCC is still a key stakeholder on the delivery of reparations, especially considering that a residual function is in the process of being conceptualised (see below).

The NGOs mentioned throughout this report and involved in reparations projects are also key stakeholders (KdK, TPO Cambodia, YfP, Bophana Center and others), as they have been working with survivors for many years.

The main donors so far in relation to CRSV reparations projects are the following: USAID (which funded the *Phka Sla Krom Angkar* project), the Swiss Agency for Development and Cooperation and the German Federal Ministry for Economic Cooperation

and Development,⁴⁰⁰ and the UN Trust Fund to End Violence against Women (which funded the above-mentioned non-judicial gender project).⁴⁰¹

The United Nations supported domestic accountability for international crimes. They should now support efforts towards delivering reparations to survivors. Similarly, the community of donors to the ECCC should channel their funds toward the delivery of reparations projects.

1.2. Main CRSV documentation efforts

Given that the ECCC's focus on CRSV was limited in scope, most of the documentation of CRSV committed under the Khmer Rouge was conducted by researchers and civil party lawyers. They managed to refute the presumption that CRSV was not common during the regime. Researchers Duong Savorn,⁴⁰² Sotheary Yim,⁴⁰³ Kasumi Nakagawa,⁴⁰⁴ Dr Theresa de Langis,⁴⁰⁵ and civil party lawyer Silke Studzinsky and Cambodian lawyers of the Cambodian Defenders Project (CDP) all led research work in this regard and were involved in the Women's Hearings. CDP staff established and maintained the website "*GBV under the Khmer Rouge – information platform*",⁴⁰⁶ run by CDP, TPO Cambodia, and VSS. This website is a depository of various forms of documentation of CRSV and was established as part of the ECCC non-judicial gender project 'Promoting

400 Bophana Audiovisual Resource Center, 'Phka Sla Krom Angkar' <https://bophana.org/phka-sla/> accessed 26 November 2021.

401 Julian Poluda, Sineth Siv and Sotheary Yim, 'Promoting Gender Equality and Improving Access to Justice for Female Survivors and Victims of Gender-based Violence under the Khmer Rouge Regime: Final Evaluation of the ECCC Non-judicial Gender Project (Phase 2)' (2019) UN Trust Fund to End Violence against Women, VSS, and TPO https://eccc.gov.kh/sites/default/files/reports/UNTFVAW_Cambodia_VSS_TPO_Final%20Evaluation%20Report%207Oct2019.pdf accessed 9 September 2021.

402 Duong Savorn, 'The Mystery of Sexual Violence under the Khmer Rouge Regime' (June 2011) CDP http://gbvkr.org/wp-content/uploads/2013/01/Mystery_of_Sexual_Violence_during_KR_ENG-web.pdf accessed 24 February 2022.

403 Sotheary Yim, 'The Past and the Present of Forced Marriage Survivors – Experience Towards Healing' (April 2013) CDP <http://gbvkr.org/wp-content/uploads/2013/04/The-Past-and-the-Present-of-Forced-Marriage-Survivors-small-2.pdf> accessed 24 February 2022.

404 Kasumi Nakagawa, *Gender-Based Violence During the Khmer Rouge: Stories of Survivors from the Democratic Kampuchea (1975-1979)* (Phnom Penh, CDP, 2008).

405 See Dr. De Langis' collection of publications on researchgate: www.researchgate.net/profile/Theresa-De-Langis.

406 Julian Poluda, Sineth Siv and Sotheary Yim, 'Promoting Gender Equality and Improving Access to Justice for Female Survivors and Victims of Gender-based Violence under the Khmer Rouge Regime: Final Evaluation of the ECCC Non-judicial Gender Project (Phase 2)' (2019) UN Trust Fund to End Violence against Women, VSS, and TPO https://eccc.gov.kh/sites/default/files/reports/UNTFVAW_Cambodia_VSS_TPO_Final%20Evaluation%20Report%207Oct2019.pdf accessed 9 September 2021.

Gender Equality and Improving Access to Justice for Female Survivors and Victims of Gender-based Violence under the Khmer Rouge regime’, mentioned previously.

Further documentation efforts, especially concerning CRSV beyond forced marriage, should build upon the work already done and the expertise accumulated by these experts.

2. Reparations advocacy initiatives and opportunities for reparations

CDP, which is no longer active in Cambodia, was very dynamic in advocating for access to reparations for CRSV survivors, including by submitting shadow reports to CEDAW,⁴⁰⁷ and conducting advocacy for the inclusion of reparations in National Action Plans (unfortunately without success). According to the research conducted in this study, there are no major ongoing advocacy efforts focusing on reparations for CRSV, beyond those mentioned in earlier sections.

Since Cases 003 and 004 have not proceeded beyond the investigative phase (see below), judicial proceedings before the ECCC will likely end in 2022 with the final appeal judgment in Case 002/02. The ECCC and its residual functions related to victims present an opportunity for the implementation of reparations. The Draft Addendum to the Agreement between the United Nations and the Royal Government of Cambodia (Draft Addendum) provides for an initial period of three years, starting upon completion of the judicial proceedings (including any appeals), during which the ECCC will continue to carry out residual functions.⁴⁰⁸

The Draft Addendum lists the residual functions of the ECCC. It contains only two references to victims or civil parties, noting that the ECCC shall continue to provide

for the protection of victims and witnesses and monitor the enforcement of reparations awarded to civil parties, as required.⁴⁰⁹ The ECCC appears to be taking a broad view of their residual mandate with respect to victims, as they issued a public ‘Call for Contribution of Ideas’ (Call) on it.⁴¹⁰ It also specified that the term ‘victim’ should be interpreted broadly and is not limited to those who participated in legal proceedings before the ECCC.⁴¹¹ The Office of Administration of the ECCC appointed two co-rapporteurs on residual functions related to victims, to provide “*explanations for and recommendations on possible undertakings appropriate to and meaningful for victims encompassed in the jurisdiction of the [ECCC]*”.⁴¹² The Call specified that contributions should explain “*how the proposed initiatives would be meaningful and of lasting assistance for Civil Parties, victims of the Khmer Rouge regime and the general public*”.⁴¹³

The fact that stakeholders and civil society were invited to submit input is a positive development and raises hope that there may be an ongoing dialogue with civil society going forward. It also suggests that the ECCC has learned from Case 002 that it would be better able to fundraise and implement projects for survivors in cooperation with civil society.

In response to the Call, the ECCC received different proposals that fall into initiatives to promote peace, soothe wounds, foster social dialogue and reconciliation, strengthen the rule of law, and encourage non-recurrence. Some of the proposals include creating a set of guiding principles for victims-related initiatives in the ECCC’s residual phase, developing victim support services within the criminal justice system in favour of victims of sexual crimes and minority groups, facilitating community reconciliation, testimony, mediation, and alternative dispute resolution, providing mental health support to victims, enabling educational initiatives about

407 Cambodian Defenders Project, ‘NGO Submission on Question No. 11 of the List of Issues and Questions with regard to the Consideration of Periodic Reports of Cambodia’ (2013) <http://gbvkr.org/wp-content/uploads/2013/10/CEDAW-Written-Submission-on-Issue-11-final.pdf> accessed 25 February 2022.

408 UNGA, Draft Addendum to the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea on the Transitional Arrangements and the Completion of Work of the Extraordinary Chambers, Annex to ‘Report of the Secretary General on the Extraordinary Chambers in the Courts of Cambodia – residual functions’ (19 March 2021) UN Doc A/75/809, art 2(2).

409 Ibid art 2(1).

410 ECCC, ‘Call for Contributions of Ideas Extraordinary Chambers in the Courts of Cambodia (ECCC) Residual Functions Related to Victims’ (2 September 2021) 2.

411 Ibid 2.

412 Ibid.

413 Ibid 1.

transitional justice and the ECCC's mandate, fostering the protection and conservation of documents, among others.⁴¹⁴ Yet, the ECCC only endorsed four proposals which are the prioritisation of the principle of "do no harm" and contextualisation of any external donor or stakeholder on the Cambodian situation, the prioritisation of projects that build upon past or existing initiatives, the collaboration between academic institutions and local communities to implement community-based projects, and the preservation and dissemination of information concerning victims-related initiatives.⁴¹⁵

This leaves doubts as to whether the ECCC will consider and endorse the projects and initiatives proposed that fall outside of the four general proposals already endorsed by the tribunal, especially the ones stemming from the victim workshop held in Phnom Penh in May 2022. The workshop was a platform for stakeholders, including civil parties and their representatives, NGOs, and CSOs (amongst others, Kdk and REDRESS joined in person and GSF joined remotely), to present project proposals for the residual phase and explore synergies between new and/or existing initiatives and projects. During the workshop, participants discussed various projects and ideas to shape ECCC's residual activities and ensure the long-term participation of victims and civil parties in the transitional process. Many participants discussed prioritising victims' voices, needs, and stories and avoiding hierarchising victims and crimes. On this last point, due to the little attention given to gender-related crimes during the ECCC's criminal proceedings, participants asked for the implementation of gender-sensitive and transformative projects to enable discussions around CRSV and offer victims safe spaces to talk about their experiences. Some civil parties also proposed the inclusion of SGBV issues in educational programmes, facilitating an intergenerational dialogue on the impact of CRSV and SGBV and creating a memory

centre where the experiences of SGBV survivors are showcased in a sensitive manner.

In his report on the Draft Addendum, the UN Secretary General explained that the yearly expenses of the residual stage are estimated at US\$2,995,000, covering 11 international and 22 national staff members, including specialists in archives, outreach activities and the protection of victims and witnesses.⁴¹⁶ A report will be prepared by a panel of advisory experts on the residual functions, based on the workshop discussions and the submissions (due 15 May 2022), and presented to the ECCC donor community.

One interviewee mentioned that additional projects concerning victims could also be conducted via other organisations (both government and non-government), including the Legal Documentation Centre (LDC) related to the ECCC.⁴¹⁷ The LDC was established as a reparation measure in Case 002/02. It is creating a repository of documents, including the ECCC Case File documents classified as public, as well as other material relating to the ECCC, with a special focus on the role of civil parties. It is mandated to serve the larger group of unrepresented victims and was established as a permanent structure by the Cambodian government, with financial support from Japan. The future status of civil party applications – including whether or not they will be accessible to the public in an archive – is not yet clear.⁴¹⁸ Civil party lawyers have argued that the publication of these documents and other material about civil parties should be based on the consent of each of the civil parties.⁴¹⁹

3. Threats to effective reparations for CRSV

As mentioned before, the Cambodian government has created an environment of fear for human rights defenders, particularly for those advocating for freedom of speech and opinion. Since reparations

414 ECCC, 'Advisory report on victims-related activities of the ECCC during the residual phase' (2022) https://eccc.gov.kh/sites/default/files/publications/EN-Advisory-Report-2022_web_2.pdf accessed 20 April 2022.

415 Ibid.

416 UN Secretary General, 'Report of the Secretary General on the Extraordinary Chambers in the Courts of Cambodia – residual functions' (19 March 2021) UN Doc A/75/809, 41.

417 Interview with Helen Jarvis, Researcher, formerly ECCC (online, 22 October 2021); see also: Royal Government of Cambodia, 'Annex – Replies to the List of Issues and Questions in Relation to the Sixth Period Report of Cambodia Submitted under Article 18 of the Convention on the Elimination of Discrimination against Women' (September 2019) 4.

418 Interview with Megan Hirst, former Civil Party Lead Co-Lawyer (online, 18 June 2021).

419 Case 002-F71, Request for Directions Regarding the Reclassification of Civil Party Documents (ECCC Civil Party Lead Co-Lawyers, 15 December 2021) para 6.

have not been a “hot topic” recently, interviewees have not feared a government crack-down. Stakeholders working on women’s access to justice and LGBTIQ+ issues indicated that they do not currently face problems with the government trying to actively hinder their work, as “the work on LGBTIQ+ issues is not politicising”.⁴²⁰

However, as the government has been unwilling to admit State responsibility and Hun Sen continuously denies his link to the Khmer Rouge, opening this debate could carry risks. Cases 003 and 004 have been subject to controversy, and there have been allegations raising concerns as to the independence of the National Co-Investigating Judge.⁴²¹ It appears that the national authorities have never attempted to hinder the investigation. The trigger for such allegations instead seems to have been the consistency with which the National Co-Investigating Judge has declared the lack of personal jurisdiction over all defendants in these cases. The International Co-Investigating Judge, after proceeding to a full investigation over the alleged facts, found a lack of personal jurisdiction over one of the defendants, but decided to indict the other three.⁴²² The Pre-Trial Chamber was unable to break the judicial deadlock.⁴²³ Due to the disagreements between the national and international sides, these cases will never proceed to the trial phase. In late 2021, the SCC terminated Cases 003 and 004 in the absence of enforceable

indictments.⁴²⁴ Advocacy campaigns over reparations projects should take this context of domestic institutional push-back into account.

Another challenge encountered by the ECCC throughout its mandate is general donor fatigue, leading to several major financing crises.⁴²⁵ Other obstacles to reparations were identified before in the present study. They include the lack of proper survivor consultations or agency with respect to reparation discussions.

Beyond the work of the ECCC, there has been a lack of political will on the part of the Cambodian government to implement other mechanisms of accountability and redress for victims of the Khmer Rouge in general and CRSV survivors in particular.

In any event, future reparation projects will need to include a risk assessment, a plan to ensure their sustainability, and a proper process to ensure the participation and centrality of survivors.

420 Interview with Man Sima, Team Leader of Gender and Violence, Banteay Srei (online, 13 June 2021); Interview with Pisey Ly, RoCK Coordinator, RoCK Cambodia (online, 6 October 2021).

421 Open Society Justice Initiative, ‘The future of Cases 003/004 at the Extraordinary Chambers in the Courts of Cambodia’ (October 2012) 10 www.justiceinitiative.org/uploads/20fe99cf-bc19-4299-813a-d81055c30d22/eccc-report-cases3and4-100112_0.pdf accessed 25 February 2022; Amnesty International, ‘Public Statement-Khmer Rouge Tribunal: Last Chance to Salvage Justice’ (September 2012) www.amnesty.org/es/wp-content/uploads/2021/06/asa230212012en.pdf accessed 25 February 2022; see also ‘Press Release by the Reserve International Co-Investigating Judge’ (ECCC Press Release) www.eccc.gov.kh/en/articles/press-release-reserve-international-co-investigating-judge accessed 26 November 2021.

422 *Case 003-D267*, Closing Order in the Case 003 against Meas Muth by the International Co-Investigating Judge (ECCC Co-Investigating Judges, 28 November 2018); *Case 004-D381*, Closing Order Dismissing the Case against Yim Tith (ECCC Co-Investigating Judges, 17 September 2019); *Case 004/02-D359*, Order Dismissing the Case against Ao An (ECCC Co-Investigating Judges, 16 August 2018).

423 *Case 004-D381/45 & D382/43*, Considerations on Appeals Against Closing Orders (ECCC Pre-Trial Chamber, 17 September 2021); *Case 003-D266/27 & D267/35*, Considerations on Appeals Against Closing Orders (ECCC Pre-Trial Chamber, 7 April 2021); *Case 004/02-D359/24 & D360/33*, Considerations on Appeals Against Closing Orders (ECCC Pre-Trial Chamber, 19 December 2019).

424 *Case 003-4/1/1/1*, Decision on Meas Muth’s Request to Terminate Case 003 (ECCC Supreme Court Chamber, 27 December 2021); *Case 004-2/1/1/1*, Decision on International Co-Prosecutor’s Appeal of the Pre-Trial Chamber’s Failure to Send Case 004 to Trial as required by the ECCC Legal Framework (ECCC Supreme Court Chamber, 28 December 2021); *Case 004-D388*, Order Sealing and Archiving Case File 004 (ECCC Co-Investigating Judges, 29 December 2021).

425 See for example: FIDH, ‘The ECCC Funding Crisis Must Be Swiftly Resolved’ (20 September 2013) www.fidh.org/en/region/asia/cambodia/eccc/the-eccc-funding-crisis-must-be-swiftly-resolved-13961 accessed 27 November 2021.



IX. RECOMMENDATIONS

“I think reparation can contribute to providing justice for me if this reparation program could be launched in the future such as: providing cash, food, or other material support. But all these reparations could not heal or hide our suffering/pain affected in the Khmer Rouge regime.”

Anonymous Survivor, Prey Veng Province, 2021.

The following recommendations are based on the views of the survivors and the findings of this report and are targeted to the relevant stakeholders identified through our research.

1. Recommendations to the Government of Cambodia

1.1. Direct administrative reparations programme to CRSV survivors

The Government of Cambodia is the primary duty-bearer for the implementation of all reparation measures and programmes to survivors of all international crimes committed during the Khmer Rouge regime, including CRSV. While it may potentially be limited by its resources, the government should nonetheless implement, as a priority, measures that respond to the most urgent needs of CRSV survivors. The Cambodian authorities could consider the establishment of inter-ministerial bodies to:

- Respond to the urgent needs of CRSV survivors and set up an administrative reparations programme, through individual lump sum payments or pensions.
- Establish an ID programme qualifying CRSV survivors for free and adequate medical and psychosocial care and other forms of reparations. This could be done through the existing ID-Poor programme.
- Establish a system to identify the children of CRSV victims to provide them with access to scholarships and vocational training.

These processes should meet international standards (including accessibility, effectiveness, adequateness, non-discrimination, gender sensitivity, transformativeness). They should be preceded by and implemented with the consultation and participation of CRSV survivors. They should involve the Ministries of Health; of Women’s Affairs; of Education, Youth and Sport; of Labour and Vocational Training; of Social Affairs, Veterans and Youth Rehabilitation; and of Civil Service.

1.2. Memorialisation and acknowledgement

Consider leading and supporting efforts to document, memorialise, and publicly recognise the harms suffered by CRSV survivors. Such initiatives should be conducted in consultation and collaboration with survivors and their representatives, civil society actors and the ECCC Residual Mechanism.

1.3. Guarantees of non-Repetition: Legal reform and awareness raising

Consider among others the following actions, largely based on CEDAW’s recommendations:

ON SGBV:

- Undertake a review of Cambodian legislation on SGBV, and in particular the Law on the Prevention of Domestic Violence and the Protection of Victims and Cambodia’s Criminal Code, and amend them to define, prohibit and criminalise all forms of SGBV, including domestic violence and marital rape.

- Increase support and care for SGBV survivors, including free and accessible legal assistance, health care and psychosocial support.⁴²⁶
- Provide assistance to CRSV survivors who experience ongoing domestic violence and marital rape as a priority, should they wish to access it.
- Conduct a legal reform of the provisions of the Criminal Code on rape and other forms of sexual assault. Among others, the definition of rape should include anal or oral penetration with other body parts, and the lack of consent of the victim as an element of the crime.⁴²⁷
- Guarantee the inclusion and participation of diverse categories of victims: female SGBV victims, men victims of SGBV, LGBTIQ+ and persons from minorities in any activity or project undertaken as part of reparation initiatives.

ON ACCESS TO JUSTICE:

ON NON-DISCRIMINATION:

- Disseminate information on the mechanisms and procedures for seeking remedies for violations of the rights of women and girls, particularly in rural areas.
- Strengthen the gender responsiveness and gender sensitivity of the justice system, including by increasing the number of women in the judiciary and providing systematic training to judges, prosecutors, police officers and other law enforcement officials on gender issues.
- Strengthen the independence and impartiality of the judiciary and ensure that cases of gender-based discrimination and violence against women, including domestic violence and rape, are thoroughly investigated, perpetrators are prosecuted and adequately punished, and victims are provided with remedies.⁴³¹
- Provide redress to victims, develop non-judicial transitional justice programmes and ensure that women are fully involved at all stages of peacebuilding, conflict prevention and resolution initiatives.⁴³²
- Raise awareness and train law enforcement, court and local level officials on child-sensitivity, to ensure child victims and witnesses are treated in a protective, rights-responsive manner.⁴³³
- Ensure that domestic legislation includes a definition of discrimination against women, covering direct and indirect discrimination in the public and private spheres, including intersecting forms of discrimination, in line with article 1 of the CEDAW Convention. Systematically undertake gender impact assessments when adopting or revising laws and ensure that legislative changes help promote and protect the rights of women.⁴²⁸
- Conduct awareness-raising campaigns to curb child marriages and arranged marriages.⁴²⁹ This could include raising awareness about the harms suffered by victims of forced marriage under the Khmer Rouge regime to challenge the practices of child and arranged marriage today.
- Conduct awareness-raising and advocacy campaigns in schools through educational programmes and gender-specific syllabi that address gender identity, gender discrimination and sexual orientation.⁴³⁰

426 CEDAW Committee, 'Concluding Observations on the Sixth Periodic Report of Cambodia' (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 para 25. See also 'Recommendations for Amending Cambodia's Law on Domestic Violence Based on a CEDAW Analysis' (NGO-CEDAW 2019) <http://ngoicedaw.org/wp-content/uploads/2019/08/Cambodia-DV-law-analysis-chart-EN-24July2019.pdf> accessed 2 February 2022.

427 See section 6.2. on 'Relevant Domestic Legal and Policy Frameworks'

428 CEDAW Committee, 'Concluding Observations on the Sixth Periodic Report of Cambodia' (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 para 9.

429 Ibid paras 48-49.

430 On a related topic, these ministries are currently doing work to develop education programmes to seek to reduce domestic violence. See Ministry of Education, Youth and Sport of Cambodia, 'UNICEF Call for Institutional Expressions of Interest (EOIs) – Ministry of Education, Youth and Sport Leadership Professional Development Programme' (2021) www.unicef.org/cambodia/sites/unicef.org/cambodia/files/2021-04/Professional_Development_for_MoEYS_Leadership_EOI.pdf accessed 2 February 2022.

431 CEDAW Committee, 'Concluding Observations on the Sixth Periodic Report of Cambodia' (12 November 2019) UN Doc CEDAW/C/KHM/CO/6 para 11.

432 Ibid.

433 UN Human Rights Council (2019) Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, para 33.

- Enable access to legal aid to victims and survivors, particularly vulnerable victims and minority groups. Legal aid should be channelled to victims of forced marriages who are still in forced marriages and want to divorce or face domestic violence.

ON THE PROTECTION OF LGBTIQ+ PERSONS:

Strengthen their status and legal protection as a form of guarantee of non-repetition.

Repeal provisions that discriminate on sex, age, and income regarding marriage.⁴³⁴

- Introduce an anti-discrimination law, to explicitly prohibit discrimination of all kinds, including based on SOGIESC in all areas of public and private life.
- Introduce the specific offence of “*hate crimes*” into the Criminal Code, including appropriate punishments for the perpetrators of hate crimes against LGBTIQ+ individuals and other minorities.
- Introduce a Gender Recognition Law, to guarantee every person the right to have their self-defined gender identity recognised on all official documents issued by the State through a simple administrative procedure based on self-determination.
- Amend article 45 of the Constitution to enable legal marriage equality.⁴³⁵

All the above proposed measures should be conducted by ministries working in collaboration, and in particular, the Ministries of Justice; of Women’s Affairs; of Education, Youth and Sport; of Health; and of Social Affairs, Veterans and Youth Rehabilitation.

2. Recommendations to the ECCC

We commend the ECCC’s recent opening of dialogue with survivors, civil society, academia, and other stakeholders, through the open ‘Call for Contribution of Ideas for the ECCC’s Residual Functions Related to Victims’ and the recent consultation. We urge the ECCC to:

- Provide the civil party lawyers and prosecution units with sufficient resources to enable them to carry out their work adequately.
- Continue working towards and during the residual function in close consultation with survivors, civil society, academia, and other stakeholders.
- Expand the consultation work beyond civil parties to include victims and survivors who were not parties to the proceedings and take their needs into account.
- Work closely with the Cambodian government to establish residual functions that fill the gaps left by the ECCC reparations scheme (in terms of material, geographical and personal scope, and going beyond memorialisation and education to take individual survivors’ needs into account).
- Collaborate with the government to provide urgent reparations in the form of direct assistance to survivors living in poverty or social exclusion and ensure their integration in permanent programmes to secure their durability.
- Include a risk assessment, a sustainability plan, and design the residual functions and reparation schemes in such a way to ensure the centrality, consent and participation of survivors.
- Collaborate with the government and with civil society actors to promote memorialisation and acknowledgement efforts.

434 Ibid para 70.

435 Cambodian Center for Human Rights, Rainbow Community Kampuchea and Destination Justice, ‘Joint Submission to the United Nations Human Rights Council for the Third Universal Periodic Review of the Kingdom of Cambodia – Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIESC) Rights and Sexual Reproductive Health and Rights (SRHS) in Cambodia’ (12 July 2018) para 7-8.

- Support the publication of a booklet on the adjudication of forced marriage in Case 002/02.
- Support the LDC, to allow the public to consult court documents and evidence, ensuring that CRSV is included and showcased in a sensitive manner.
- Acknowledge the memorialisation efforts carried out by civil society actors, such as the Bophana Center, DC-Cam, and KdK, in the memorialisation efforts and strategy. These efforts should be supported by the Mechanism or external donors.
- Ensure a collaborative approach to delivering any reparation project, and a skill-building aspect to ensure sustainability of the projects and activities undertaken. This could be done through the establishment of a collaborative platform among survivors, NGOs and governmental institutions.

3. Recommendations to the international community and donors

The international community should support the ECCC's residual functions with funding and technical support, particularly in relation to the implementation of reparation measures to survivors, including CRSV survivors. Given the apparent lack of political will on the part of the Cambodian government to implement reparations, the international community should use their diplomatic and financial leverage to push for an administrative reparation programme and the recognition of State responsibility.

The international donor community should support NGO and CSO reparations initiatives, survivor solidarity networks and projects aimed at memorialisation of the DK era. They should also lend expertise to the government, and to NGO advocacy programmes to support legislative review and reform aimed at guaranteeing non-repetition of the DK era crimes.

Specifically, international donors should support among others the following kinds of initiatives, which would fill some of the gaps left by duty bearers:

- NGOs have done extensive psychosocial work with CRSV survivors, including testimonial therapy, and trial accompaniment. Financial support would enable NGOs to reach out to survivors in

remote communities and to continue their work offering intergenerational therapy to families. They could also continue and expand their services to survivors, including in remote areas. Programmes focused on improving community solidarity and family relations, and providing access to social workers, may address the violence survivors face in their families, such as domestic violence or marital rape.

- Projects which support community social welfare and respond to the problems of CRSV survivors (and their families), including mental health issues and domestic violence, are still highly relevant. Such projects could include activities such as counselling sessions and the creation of survivors' solidarity networks through which survivors could support each other.
- Many NGO representatives spoke of the need for more intergenerational dialogue programmes, as they ensure that the next generation, including children born of forced marriage, understand the stigma and trauma their parents carry. Such programmes have already been conducted by NGOs in the past. Intergenerational dialogue programmes could be supported alongside memorialisation efforts to contribute to non-recurrence of CRSV and to promote healing for CRSV survivors.
- Support further documentation efforts on CRSV and forced marriages, not disregarding the work that has already been done.
- Support further research and documentation efforts on the impact of forced marriage, CRSV and SGBV on men, LGBTIQ+ and ethnic groups to identify and address their specific needs.

4. Recommendations to ASEAN

Alongside and as part of the implementation of the ASEAN Regional Plan of Action on the Elimination of Violence against Women, ASEAN should take up discussions on prevention, reparation, and justice for all CRSV survivors in Cambodia, obtain commitments from Cambodia and other member States and monitor their implementation. ASEAN could also produce soft law that sets standards on reparations for CRSV and other human rights violations.



X. CONCLUSION

This report has identified and presented the reparations needs of survivors of CRSV in Cambodia, as well as the opportunities for delivering reparations to survivors through judicial and administrative processes. It has also presented and analysed survivors' perceptions and expectations for reparations. Furthermore, the report analysed the main legal, policy and practical obstacles survivors face to obtaining reparations and set out practical, concrete and context-specific recommendations to policy makers and other relevant actors at the national and global levels to inform the design and delivery of survivor-centred reparations in Cambodia.

To date, there are no reliable statistics on the prevalence of CRSV or the numbers of survivors in Cambodia. Nonetheless, sexual violence was endemic and widespread, with people being raped, subjected to sexual violence, and forced to marry. Cambodian survivors of CRSV suffered from distinct harms that significantly impacted their quality of life and relationships with families and their communities. Today, many CRSV survivors live in poverty and do not have their basic needs met and continue struggling for survival. There remain numerous legal, policy, and practical gaps and obstacles that survivors face in obtaining reparations in Cambodia. As illustrated through this report, survivors have not been able to access any reparation that delivers a sense of recognition, reflects their needs and wishes, provides material benefit, or attains symbolic significance.

The gaps in the domestic legal system also show that guarantees of non-repetition are not in place to ensure the non-recurrence of the violations. Survivors, due to their vulnerable position, may face being exposed to further violations, sexual violence, and harm.

The survivors who participated in this study were vocal in underscoring what reparation means to them. They highlighted that their right to reparation must respond to the needs that have resulted from the impacts of CRSV and the lack of timely attention to those impacts. Therefore, the Cambodian government must heed survivors' call to guarantee their right to reparation by implementing administrative and legal measures that allow survivors access to essential services and rights.

The recommendations included in this report echo the opinions of survivors and the result of an analysis of the Cambodian legal framework and existing practices and procedures concerning women's rights and CRSV. Hence, the Cambodian government, the ECCC, the international community and donors need a real commitment and concerted efforts to bridge the significant gaps in prevention, accountability, justice, reparations and protection of victims and their families in Cambodia.



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