

FINAL RESULTS FOR ECCC FOR ECCC BASELINE STUDY

ECCC BASELINE STUDY on GENDER SENSITIVITY IN TRANSITIONAL JUSTICE PROCESSES IN CAMBODIA The Victims Support Section of the Extraordinary Chambers in the Courts of Cambodia

This report is authored by Theresa de Langis, Ph.D., Senior International Advisor on Women's Human Rights in Conflict Settings. The author wishes to thank the many ECCC staff members who participated in the baseline study through personal interview and returned surveys. Acknowledgement is extended to Noy Sophary, National Consultant for the Baseline Study project, for her assistance.

“Transformative justice seeks to address not just the consequences of violations committed during conflict but the social relationships that enabled these violations in the first place, and this includes the correction of unequal gendered power relations in society.”--Rashida Manjoo, UN Special Representative for Violence against women, its causes and consequences

The Extraordinary Chambers in the Courts of Cambodia (ECCC) has been awarded a Project of the United Nation's Fund to End Violence Against Women on “Promoting Gender Equality and Improving Access to Justice for Female Survivors and Victims of Gender-Based Violence under the Khmer Rouge Regime,” for 2012 to 2015. The ECCC will implement the project in cooperation with two Cambodian non-governmental organizations (NGOs), namely Cambodian Defenders Project (CDP) and Transcultural Psychosocial Organization (TPO). The **Program Goal** is to promote gender equality and improve access to justice for female survivors and victims of GBV under the Khmer Rouge regime, thereby contributing to preventing gender-based violence (GBV) and increasing access to justice for all survivors of GBV.

To adequately measure impact of the project, two external consultants were contracted to conduct a baseline study, hired by the VSS of the ECCC, in cooperation with partner organizations CDP and TPO. According to the ToR, the baseline study aims to “map past and current efforts in including women in the transitional justice process and assess the awareness toward gender issues and the need for capacity building in the ECCC as well as civil society organizations working in the context of the Khmer Rouge tribunal.”

I. Methodology

This baseline study was conducted by means of desk research and structured interviews. Time constraints did not permit a more participatory approach with consultations with victims and other direct stakeholders. Nevertheless, a half-day workshop open to all ECCC staff was conducted on 7 March 2012 to present and discuss preliminary results of the study. Workshop participants validated the baseline rankings, and new information provided at the workshop is reflected in this final report.

A list of key respondents for the baseline from the major ECCC offices was pre-agreed by the VSS and its project partners CDP and TPO. Additional respondents were added by referral of interviewed respondents. Interviews took place in ECCC offices for an average duration of 30 minutes to 1 hour. An interview questionnaire was developed to gather information on 20 identified indicators for gender-responsive

transitional justice processes¹. Each indicator was then ranked on a standardized scale, with “5” indicating “exceeds minimum standards” and “1” indicating the indicator is non-existent based on the respondent’s present knowledge. A “0” indicated “I do not know” or “not applicable.” All responses are confidential. Where relevant, responses to indicators were validated by desk research of the enabling statute of the ECCC, its internal Rules and Procedures (v.8), and the Personnel Handbook. A full list of sources is included at the end of the study.

Interviews took place between the week of 20 and 27 February 2012, and they were conducted with decision-making representatives of nine ECCC Offices. A shortcoming of the study is the inability of researchers to interview senior-level staff in the Office of Administration. A total of 13 respondents were interviewed representing 9 ECCC Offices.

As a final note, because the ECCC is a Chamber of the Cambodian Courts, it has its own specific Rules of Procedure, the Internal Rules (IRs), which can only be amended in Plenary Session. UNAKRT, the UN support mission to the ECCC, has a separate, parallel regime of rules and procedures. ECCC Offices also operate as parallel regimes, with separate national and international offices. Reforms, while not impossible, are reported to be difficult to accomplish due to this dual structure.

What follows are the results of the baseline study on gender responsive approaches to transitional justice within the ECCC. Observations about results are noted for each indicator. General Findings and Priority Recommendations are included at the end of the Baseline Report.

RATING SCALE		
5	exceeds minimum standards	the indicator exceeds “minimum standards”
4	meets minimum standards	the indicator is in place in a meaningful and sustainable way
3	needs improvement	efforts are present, but are ad hoc, not institutionalized or systematic, which impacts final results
2	Insufficient	efforts are superficial, such as token representation of women in leadership and decision-making roles
1	Missing	the indicator is non-existent or information is not available
0	n/a	The indicator is not applicable, or the informant ‘does not know’

II. RESULTS OF THE ECCC BASELINE STUDY BY CORE INDICATORS: Gender Mainstreaming Transitional Justice Processes in the ECCC

A. The integration of women’s and men’s concerns in all policies and projects.	0-5	Summary Findings																																				
1. Sex disaggregated data is collected and analyzed, or there is a specific reason noted for not disaggregating by sex	3	<p>Systems exist, but they are not consistently used nor is there evidence that information collected is analyzed.</p> <p>For example, while sex disaggregated data has proven useful to assure gender balance for witnesses in some cases, it is not collected or analyzed to examine the numbers of men and women who access the physical court (anecdotally reported to be an estimated 60% women).</p>																																				
2. Women as well as men have influence as <i>decision-makers</i> in critical mass numbers (at least 30%)	3 (I) 2 (N)	<p>Total UNAKRT Staff: 29% female; 71% male</p> <table border="1" data-bbox="919 834 1591 984"> <thead> <tr> <th></th> <th>Female</th> <th>Male</th> </tr> </thead> <tbody> <tr> <td>General Services and Related</td> <td>31%</td> <td>69%</td> </tr> <tr> <td>Field Services</td> <td>24%</td> <td>76%</td> </tr> <tr> <td>Professional and Above (P and D)</td> <td>30%</td> <td>70%</td> </tr> </tbody> </table> <p>Total UNAKRT Staff P4 and Higher by Gender (includes Judges)</p> <table border="1" data-bbox="919 1089 1864 1349"> <thead> <tr> <th></th> <th>Female</th> <th>Male</th> <th>% Women in Leadership</th> </tr> </thead> <tbody> <tr> <td>D-2</td> <td>1</td> <td>6</td> <td>14%</td> </tr> <tr> <td>P-6/D-1</td> <td>4</td> <td>4</td> <td>50%</td> </tr> <tr> <td>P-5</td> <td>1</td> <td>3</td> <td>25%</td> </tr> <tr> <td>P-4</td> <td>4</td> <td>17</td> <td>19%</td> </tr> <tr> <td>Total</td> <td>10</td> <td>30</td> <td>25%</td> </tr> </tbody> </table> <p>Total ECCC Staff: 17% female; 83% male</p>		Female	Male	General Services and Related	31%	69%	Field Services	24%	76%	Professional and Above (P and D)	30%	70%		Female	Male	% Women in Leadership	D-2	1	6	14%	P-6/D-1	4	4	50%	P-5	1	3	25%	P-4	4	17	19%	Total	10	30	25%
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	Female	Male
Judiciary Offices and Chambers	17%	83%
Defense Services and Victims Unit Support	37%	63%
Office of Administration	16%	84%
Legacy	50%	50%

ECCC Staff by Level and Gender (includes Judges):

	Female	Male	% Women in Leadership
D1	1	16	6%
P5	0	2	0%
NOD	0	21	0%
NOC	5	29	15%
NOB	3	20	13%
NOA	2	1	67%
GS-7	1	3	25%
GS-6	7	15	32%
GS-5	12	24	33%
GS-4	9	12	43%
GS-3	8	59	12%
GS-2	0	23	0%

Respondents reported the perception that women generally are underrepresented at leadership levels (P4 and above) and overrepresented at administrative and general service levels. According to informant estimates, females comprise 60 to 80 percent of all UNAKRT interns; yet, women's numbers dramatically decrease as the rank level increases. The situation is most dramatic on the national side of the Court.

See also the UN Rules on Staff Selection and special measures to increase women's promotion, covered in detail under Indicator 14. These measures include specific measures to increase women's promotion at D and P levels.

		Affirmative action and special temporary measures could greatly and immediately improve numbers on the National side of the court, along with mentorship opportunities to build a career ladder for female employees on both the national and international sides of the Court.
B. Specific activities are implemented aimed at empowering women.	0-5	Summary Findings
3. At least one program outcome clearly articulates how gender equality and women's empowerment will be promoted	3	<p>The question was asked of each respondent if gender equality and women's empowerment is an explicit part of the work of the Section. In almost all instances, respondents reported "0," not relevant to the Section's work as the Section or Unit is expected to provide all services indiscriminately. The response indicates a need for greater awareness as to how gender equality programs do not contradict that aim but, by ensuring women's full participation, ensure that both men's and women's needs are met without discrimination.</p> <p>The VSS is the only Section throughout the ECCC with a project explicitly aimed at addressing gender inequality. The project, begun in late 2011, is jointly implemented with CDP and TPO and called "Promoting Gender Equality and Improving Access to Justice for Female Survivors and Victims of Gender Based Violence under the Khmer Rouge Regime."</p> <p>Other Sections are engaged in efforts to call attention to the experience of women during the Khmer Rouge regime, although these efforts are not explicitly linked to a gender equality aim—but could easily be so. For example, PAS will produce a video on Forced Marriage, one of the charges to be brought forward before in Case 002, and the Section has already arranged for the showing in communities of "Red Wedding," a video on the same topic.</p>
4. Stakeholders/partners influence (either through direct participation or through consultation) in the design, implementation, monitoring and evaluation of programs	3	<p>Most respondents reported some type of communication loop with stakeholders and partners, although these efforts were anecdotal by "client" rather than a systematized and formalized approach. Annual internal and external surveys of stakeholders is one way to ensure self-reflection and responsiveness of Sections. Likewise, some Sections report continual "lessons learned" reflection—an important best practice—yet it is unclear if or how these results are shared</p>

	<p>external to the Section or if they are recorded as knowledge products. Those Sections and Units working with Civil Parties, Witnesses and Victims were most likely to organize outreach and coordination with external stakeholders to the ECCC, in particular NGOs. The VSS meets regularly for monitoring and evaluation for the UN Women project, and adding a beneficiary to this monitoring group could serve as a model for a formalized and consistent method whereby a joint effort is implemented—and then analyzed and corrected in real time—with inputs from beneficiaries and partners.</p> <p>Civil Parties may also be viewed as a way for external stakeholders to have influence over the processes of the ECCC. 3864 Civil Parties have been admitted to Case 002 (as compared to 90 in Case 001). Women are reported to comprise the majority of admitted Civil Parties (anecdotally at 60% or higher).</p> <p>A total of 57 Civil Party lawyers are currently coordinated by 2 Co-Lead Civil Party Lawyers attached to the ECCC. Three of the Civil Party lawyers, all national, were hired by VSS. This represents the sole modality of “legal aid” provided to Civil Parties although legal representation is mandatory beyond the Closing Order. All Civil Party Lawyers are unpaid.</p> <p>It is not clear that civil party lawyers are explicitly trained in gender responsive approaches to sexual and gender-based crimes, or if they are required to have this expertise. Respondents reported that some Civil Party lawyers do not liaise consistently with clients, taking the lead on cases without thorough consultations with Civil Parties as to ramifications of legal actions. In these instances, Civil Party victims are reported as not being empowered in their decision making.</p> <p>Some respondents feel that recent rule changes in the Court have served to constrict the participation of victims and Civil Parties. For example, a more limited timeframe was adopted for Civil Party applications for Case 002 (as opposed to Case 001, where victims could apply just days before the trial began). In addition, Civil Party lawyers are no longer permitted to directly address the Court, but must now go through the ECCC Co-Lead Civil Party lawyers. Finally, Civil Party lawyers are no longer provided individual office space and facilities within the ECCC compound, restricting their access to the Court itself and its</p>
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	<p>many resources.</p> <p>VSS is that arm of the ECCC most responsible by mandate for ensuring wide engagement of victims—outside of and including Civil Parties. Respondents reported that, unlike all other ECCC offices, VSS currently has no UNAKRT component. Respondents pointed to the need to apply the hybrid model of the ECCC to VSS. An international Deputy post has been vacant since September 2010.</p> <p>Internal Rules mandate VSS to work with NGOs on non-judicial measures of the ECCC, developed and implemented in collaboration with governmental and non-governmental organizations external to the ECCC.</p> <p>Non-Judicial Measures will contribute to expanding the impact of the ECCC as a full transitional justice mechanism, which can have great impact on women. As of now, the ECCC functions entirely as a Court, and so engagement is limited to indictments and cases. This potentially excludes the experiences of many victims of the Khmer Rouge regime, including most notably victims of rape outside of Forced Marriage, as this crime is not currently being taken up by the Court. These victims, nevertheless, should be acknowledged and provided opportunity through alternative avenues to incorporate their suffering into the official record of atrocities committed under the Khmer Rouge regime.</p> <p>Reparations as allowed by the ECCC are specified as “moral” and “collective,” which has been interpreted largely as symbolic and non-monetary. Models exist in other countries where funds are set up for the purpose of supporting the implementation of reparation schemes specifically focused on the effects of sexual crimes. (See for example, Sierra Leone reparations project for survivors of rape, largely funded by the UN Women Trust Fund to End Violence against Women.)</p> <p>Civil Parties and their lawyers are responsible for framing reparation requests (as well as identifying the funds for implementation). On Feb 17, VSS held a strategic planning meeting to discuss a “Road Map” in developing an action plan for a number of projects under the scheme of Reparation and Non-Judicial Measures. The discussion did not consider the specificity of gender and</p>
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		reparations—an area with a growing body of research and attention, including by the Special Rapporteur on violence against women, its causes and consequences, to the UN Human Rights Council. Such guidelines for gender responsive reparation schemes should be incorporated in any efforts of the ECCC moving forward to accomplish best results.
C. (Normative) The formal remit of the institution includes crimes against women as a matter of core concern.	0-5	Summary Findings
5. The mandate of the institution includes crimes against women as a matter of core concern	2	<p>Pursuant to the ECCC Law, “Rape” is listed as a distinct Crime Against Humanity. The UN-RGC Agreement specifies that the 1998 Rome Statute of the International Criminal Court shall be used as the basis for defining Crimes against Humanity. Under the principle of legality, only those Crimes against Humanity recognized in 1975 as customary international law are applicable to ECCC proceedings, regardless of being listed in the 1998 Statute for the ICC. It should be noted that Rape is a listed criminal offense under the 1956 code of Cambodia, although not listed in the ECCC statute as such.</p> <p>The following focuses on the specific <i>criminal charges</i> as they have been brought before the ECCC related to the Court’s mandate, including Rape, as a matter of core concern.</p> <p>Sexual and gender-based violence crimes are not included in the 2007 Introductory Submission of the Office of the Co-Prosecutors (OCP). In 2009, OCP filed a supplementary submission for investigations of five cases of Forced Marriage that had been brought forward by Civil Party lawyers.</p> <p>In the Case 002 Closing Order, the Office of the Co-Investigative Judges (OCIJ) included Forced Marriage, legally characterized as Rape as a distinct crime under Crimes Against Humanity (CAH) and as Forced Marriage as an Other Inhuman Act (OIA). Upon appeal by the Defense, the Pre-Trial Chamber determined Rape was not yet recognized in customary international criminal law as a distinct crime under CAH, and therefore Rape as a distinct crime was struck out of the Closing Order for 002. It should be noted that as of the time of the baseline study, the Court had yet to conclusively determine if Rape was a distinct Crime against Humanity (CAH) as of 1975 or not.</p>

	<p>The Closing Order for Case 002 includes factual allegations of pregnancies as a result of Forced Marriages (see Closing Order, Para. 860). Yet, Enforced Pregnancy is not included as a separate charge as a distinct element of Forced Marriage in the indictment for Case 002.</p> <p>With regard to Rape outside of the context of Forced Marriage, the OCIJ has stated in the Closing Order for Case 002 that although Rape did occur, the accused cannot be held liable as “the official CPK policy regarding rape was to prevent its occurrence and to punish the perpetrators.” The Closing Order continues, “despite the fact that the policy did not manage to prevent rape, it cannot be considered that rape was one of the crimes used by the CPK leaders to implement the common purpose” (Closing Order, Para. 1429).</p> <p>The Introductory Submission of OCP in Case 003 does not include sexual and gender-based crimes. Thus, OCIJ has not been seized to investigate sexual and gender-based crimes as part of Case 003.</p> <p>Rape has not been taken up by the Court <i>as such</i>, which is important in that it serves as a clear message for deterrence and emphasizes the sexual element of the crime. For example, Case 001 includes one conviction of Rape, which is subsumed under the count of Torture. (It should be noted that the charge of one rape incident in Case 001 was discovered through the admission of the accused himself during interviews.)</p> <p>Challenges cited by respondents in handling sexual violence cases in the ECCC include the presumption that many victims are supposed to have been killed, and therefore survivors to the crime are assumed to not exist. Those that did survive are assumed to be reluctant to come forward, as the crime remains a secret even to husbands and families and severe stigma is attached to victims of sexual violence even until today. Likewise, the Court must face the reality of tight resources and even tighter deadlines—referred in one instance as “legal pragmatism,” along with economy of scale, whereby sexual violence crimes are presumed to be only a small fraction of the total crimes.</p> <p>It is imperative to stress that none of these challenges are unique to the</p>
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		<p>Cambodian context and precedent and lessons learned exist from other Tribunals for sound approaches.</p> <p>As in many instances for this baseline, efforts on bringing forward charges of sexual violence in line with the ECCC law can be viewed as reactive rather than proactive, tactical rather than strategic. The results are weakened as a consequence, and they are dependent upon the motivation and interest of specific individuals rather than treated as a central part of the Court’s aim.</p> <p>It should be noted that almost all individuals interviewed responded to the statement as “0,” not relevant to their work, as the ECCC is concerned with War Crimes and Crimes Against Humanity, which are not determined by gender but are applied to the “human” and determined by “human rights.” If and when gender-based violence becomes a focus through the charge of Forced Marriage, ECCC Sections report, so will the issue gain greater attention as a core concern for the Court and its diverse Sections.</p> <p>See also Indicator 9(b).</p>
<p>6. International jurisprudence and international standards regarding gender discrimination and sexual violence in conflict is referenced (CEDAW, ICTY, ICTR, SCSL, ICC, UN SCR 1325, etc.)</p>	<p>2</p>	<p>Cambodia is a State Party to CEDAW and its Optional Protocol. As a member of the UN, Cambodia is obligated to UN SCR 1325, et al.</p> <p>Enabling documents of the ECCC (“The ECCC Law”, “The UN-RGC Agreement”) do not reference CEDAW nor UN SCR 1325. Nevertheless, the two instruments are especially relevant to the ECCC in terms of women’s equality, peace and security in a post-conflict, transitional setting.</p> <p>Many respondents outside of legal offices responded to the statement with “0,” not relevant to their Section, citing the imperative for impartiality and neutrality of the Court. Legal offices were more likely to be familiar with, and to use in legal arguments, references to international human rights standards and precedent from previous Tribunals, although it was not clear that this was specific to gender concerns or sexual violence. Legal staff was hired with the expectation that they are already trained on these instruments as part of their general expertise. No additional training was provided in a systematic way on the issue of gender equality nor gender-based and sexual violence, although training had been</p>

	<p>organized by independent Court staff (see Indicator 10).</p> <p>One of the international judges, Sylvia Cartwright, is a former member of the CEDAW Committee.</p> <p>There was question by respondents as to whether the Security Resolutions applied to the Court and its mandate. Awareness raising is needed as to the application and implementation of elements of the Resolutions, especially as they relate to women’s access to justice and equality before the law in post-conflict scenarios.</p> <p>It should be noted that respondents reported national legal staff tend to rely more on international legal staff who have international experience and more assumed knowledge of international legal instruments. The relationship seems in line with the legacy and development aims of the ECCC, although it is not clear that professional mentorship and capacity transfer in these areas is a strong focus of the legal offices—and indeed in some instances apparently adversarial relations have hampered such learning, respondents reported.</p> <p>Many UNAKRT staff members, including respondents, have had previous experience in Tribunals, including ICTY, ICTR, SCSL, among others. Respondents often shared how gender-responsive approaches of other Tribunals absent in the ECCC. These included the practice and policy at the ICTY in designating female-only positions for strategic posts; providing courses for employees on sexual harassment prevention; establishing a focal point for women in the staff welfare office; and setting indicators specific to the UNSCR 1325 women, peace and security agenda. In many—but not all—instances, individual staff members have taken the initiative to incorporate and improve upon lessons learned from other Tribunals related to gender based and sexual violence, but these efforts are dependent on informal gender advocates and not systematic or institutionalized in policy of the ECCC.</p> <p>As a final note, because the ECCC is a Chamber of the Cambodian Courts, it has its own specific Rules of Procedure, the Internal Rules (IRs), which can only be amended in Plenary Session. This will need to be furthered reviewed when looking to amend policy to more fully institutionalize sustainable practices</p>
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		related to gender-based and sexual violence response.
7. A conflict mapping exercise has documented the range of violations experienced by women, the impacts of the violations and the actors involved	2	<p>It appears from informant responses that the legal offices, as would be typical for any criminal case, have developed a “crime mapping,” and that gender-based and sexual crimes are a specific index in the analysis. It was not possible to view the conflict mapping as it was “locked” in a computer of a colleague who had recently resigned.</p> <p>A gender lens has reportedly not been explicitly used for conceptual analysis of the mapping as the crimes are against “humanity.”</p> <p>A gender analysis provides opportunity to analyze the specific crimes committed against women (most often, but not exclusively, sexual violence), as well as better understand how identical crimes committed against women and men may have distinct, accumulative and differential consequences on women due to societal gender inequality and other factors.</p> <p>It is interesting to note that, in response to this indicator, more than one informant replied, because the ECCC is a Court, “our work must be related to the court, its cases, and its indictments.” Respondents seem to conclude that judicial impartiality is mutually exclusive of gender-responsive approaches. Additionally, the response does not account for the development context and distinct legacy aim of the ECCC as a transitional justice process. It seems also to neglect the fact that “Rape” is listed as a distinct crime in the ECCC mandate and therefore would be expected to be a distinct part of the crime mapping.</p> <p>A full conflict mapping of the time period under the mandate of the ECCC could serve as an indispensable ground for understanding cultural roles and expectations of women, their experiences during the conflict, and their progress in recuperating from that trauma and accessing justice in present day Cambodia.</p>
D. (Procedural) Adequate steps are taken to remove practical obstacles that women may face in accessing transitional justice.	0-5	Summary Findings

<p>8. A well staffed and resourced Gender Unit is mandated to conduct regular training and sensitization of all ECCC staff; to ensure the mainstreaming of gender into all aspects of the ECCC's work; and to conduct specific gender activities (i.e., separate hearings for women)</p>	<p>1</p>	<p>A Gender Unit does not exist.</p> <p>Advanced gender competent staff members do exist in the Court, although in very small numbers and not as a critical mass (thereby increasing the chances of influencing policy and organizational culture).</p> <p>UNAKRT has a focal point (non-gender expert) to the UNDAF Gender Working Group.</p> <p>UNAKRT has a focal point for Sexual Abuse and Exploitation (see Indicator #16)</p>
<p>9. (a) ICC Rules of Procedure and Evidence have been adopted and applied, including providing specific measures for the protection of sexual violence witnesses (in-camera hearings; do not require corroboration for sexual violence crimes; compel the registrar to “take gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.”)</p>	<p>3</p>	<p>Cambodia is a State Party to the Rome Statute of the International Criminal Court. According to the UN-RGC Agreement to establish the ECCC, crimes against humanity shall be defined as in the Rome Statute of the ICC.</p> <p>As a national Cambodian Court, the ECCC follows its own Internal Rules of Procedure (IRs). These rules have not obstructed the provision of the same protections of witnesses to the ECCC as those available to witnesses to the ICC. Respondents report that judges are responsive to special protection measures, including in regards to gender based violence.</p> <p>Independent Civil Party lawyers have proposed amendments to the Internal Rules to include specific protection measures and safeguards for victims/witnesses of sexual violence. These have not been adopted by the Plenary. Special gender-sensitive measures, including but limited to witness collaboration, witness examination or cross examination are not specified in the IRs.</p> <p>See also Indicators 11, 12 and 13, below.</p>

<p>(b) Sexual and gender-based crimes have been the focus of a systematic and comprehensive investigation by the ECCC?</p>	<p>1-2</p>	<p>See also Indicator 5.</p> <p>A systematic and comprehensive investigation of sexual and gender-based crimes has not taken place. Without such investigation, as warranted by the ECCC mandate, it is not possible to discern what evidence exists for the occurrence of such crimes, their scope and magnitude. As such, it is questionable if the Court has recognized the full gravity of sexual violence and gender-based crimes under the Khmer Rouge, as it is mandated to do under the ECCC Law.</p> <p>The onus for preliminary investigations of charges lies with the Office of the Co-Prosecutors (OCP). The preliminary investigation of OCP on Rape and other gender-based crimes is reported to have largely depended upon analysis of academic research on the topic by DC-Cam and other recognized experts on the Khmer Rouge generally, which according to the respondent did not note a policy of Rape by the Khmer Rouge to achieve its purpose. The thesis is founded on so-called Code Number 6 of the Codes of Conduct for Khmer Rouge Cadre which prohibited “moral offenses.” The academic thesis reads that Rape was prohibited by the Khmer Rouge, and when it did occur it was harshly punished. Thus the senior leadership (or accused under the ECCC) cannot be held liable. Additionally, the thesis holds, victims of sexual violence were killed or are too stigmatized to come forward, making evidence hard to come by.</p> <p>As a result of its preliminary investigation, the OCP did not include sexual or gender based crimes as part of its Introductory Submission in 2007. Two years later, in 2009, a Supplementary Submission was filed y the OCP and seized OCIJ with investigating five cases brought forward by Civil Parties of Forced Marriage.</p> <p>The investigations were undertaken by OCIJ without a female investigator, female analyst, or female interpreter on staff. Although at least one senior OCIJ staff member is reported to have advanced gender competence, the Section does not include a designated and accountable staff member with specific gender expertise. These practices do not suggest international best practices and outcomes should be viewed as adversely impacted.</p> <p>At the ECCC workshop on preliminary results for the baseline study, OCIJ pointed</p>
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	<p>out that it was seized very late in the process with investigating Forced Marriage—a full two years into the investigation. Additionally, OCIJ was faced with an impending deadline in regards to the detention order of the accused. Additionally, the Office reportedly has attempted to hire women applicants for many years, but has been unable to find female qualified candidates for either interpreters or investigators for at least two years.</p> <p>At the same ECCC workshop, OCIJ shared that 800 statements were taken as part of the investigations for Case 002. Of these, 200 to 300 include incidents of rape before the victim was killed. It does not appear that any action has been taken on this evidence—despite constituting one-quarter to one-third of all statements collected. The question was raised at the ECCC workshop, “Where does this information go?” with no conclusive answer forthcoming.</p> <p>Without systematic and comprehensive investigations, the academic thesis that Rape did not occur remains largely untested. Yet, this thesis has appeared to have undue influence on decisions of the ECCC office—despite its own collected evidence to the contrary. The Closing Order of Case 002, in Paragraphs 1426-1429, explicitly states that, although a Khmer Rouge policy did not manage to prevent rape, sexual violence outside of forced marriage is not considered to have been used to implement the common purpose of the regime. As such, the accused cannot be held liable for crimes of sexual violence outside the context of forced marriage.</p> <p>It should be noted that the policy of Khmer Rouge against “moral offenses” (Code Number 6) was not a policy against Rape as such, as represented in the Closing Order of Case 002. Rather, it is a policy of the regulation of <i>all</i> sexual relations outside of State sanctioned and regulated marriage (including Forced Marriage). For example, most recently research has suggested that <i>both</i> the victim and the perpetrator of Rape were punished for having sex outside regulated marriage.</p> <p>One charge of one a Rape incident is included in Case 001. The incident this was discovered through the admission of the accused himself during interviews and did not trigger a wider investigation, respondents reported.</p>
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	<p>In Case 002, where Forced Marriage is charged by the Closing Order, Civil Parties and their lawyers are attributed (by one UNAKRT respondent with “100%”) of efforts to call to the Court’s attention the crime of Forced Marriage, its scope and its gravity.</p> <p>In relation to Case 002, a growing body of research suggests that sexual violence outside of Forced Marriage was a common occurrence for women throughout Democratic Kampuchea as a consequence of the general suspension of rule of law, and that survivors and witnesses are willing and ready to come forward to have their suffering acknowledged. At a recent Women’s Hearing on Sexual Violence Under the Khmer Rouge, these Rapes are attributed to the accused as an element of their “Policy against the Enemy.” A Final Panel Statement from the Women’s Hearing is attached to the Baseline Study.</p> <p>In Case 003, a preliminary investigation into sexual and gender-based crimes is not included in the Introductory Submission, and thus OCIJ is not seized to investigate sexual crimes in relation to Case 003.</p> <p>Several respondents reported that due attention to sexual and gender-based crimes is often overwhelmed by the sheer volume of the total crimes to cover—genocide, forced movement, persecution, etc. As a result, sexual crimes have been considered a low priority, assuming that such crimes form only a small part of the total atrocities. Legal pragmatism, respondents shared, also works against pursuing sexual crimes, as they are assumed to be difficult to link to the accused.</p> <p>The explicit mandate of the ECCC warrants that Rape is fully investigated independent of victims or survivors self-identifying or pushing the issue—who, due to stigma, potential retaliation and women’s general lowered status, may have more to lose than to gain in accessing justice via the ECCC. As such, it is imperative for the ECCC to proactively take on this burden, especially in terms of a legacy of the ECCC, with the main objective of demonstrating due process, protection of human rights and recognition of equality under the rule of law.</p>

<p>10. Gender competence and expertise is promoted and supported</p>	<p>2</p>	<p>Despite no informant reporting a staff hire had been made explicitly for gender expertise, staff members who are hired already in possession of this competence appear to be informally supported in individual Sections. Yet, these staff members are small in number and do not hold ToR's with explicit gender competence accountability.</p> <p>Without a system-wide Gender Unit—or at minimum a high-level Gender Advisor to the Court—capacity building training and awareness rising on gender as related to the ECCC has been left to the self-initiated efforts of individual staff members. Efforts therefore appear ad hoc and not well timed for strategic impact. For example, an internal training on “Investigation and Prosecution of Sexual Assault,” open to all legal offices, took place after the investigations for Cases 001 and 002 were already closed. The training at this point will not impact investigations of Case 003 and Case 004 as the OCIJ has not been seized to investigate sexual crimes in relation to the suspects.</p> <p>Though not organized by the Court, ECCC employees, most at lower levels, attended the “First International Gender Justice Conference on Prosecuting Gender-Based Violence During the Khmer Rouge Regime,” in November 2010, convened by the Cambodian Defenders Project (CDP). Both the CDP and ECCC training reviewed lessons learned from other Tribunals and the ICC regarding sexual violence investigations and prosecutions.</p>
<p>a) The Office of the Co- Prosecutors and the Office of the Co-Investigative Judges have appointed advisers with legal expertise on SGBV</p>	<p>1</p>	<p>No specific legal expertise on SGBV has been hired. As such, no focal point within the Sections is responsible and accountable for prioritizing gender analysis and response in the prosecution or investigation of crimes.</p>
<p>b) The Office of the Co-Investigative Judges have appointed advisers with expertise on SGBV and relevant gender-sensitive evidence-gathering approaches</p>	<p>1</p>	<p>See Indicator 10.a, above.</p> <p>At the time of interviews, it should be noted that OCIJ did not have a single woman employed in its Investigative or Analyst Unit, and respondents reported this had been the case for at least the last two years. The Court does not employ a female Khmer-English Interpreter, further hampering</p>

		investigations.
c) The Victims and Witness Units includes staff with experience in trauma related to sex crimes	3	VSS does not include staff with experience in trauma related to sex crimes. WESU does have staff with advanced expertise related to sexual-trauma, and other staff having experience in dealing with general trauma.
d) Gender focal points are designated in each office to conduct organizational gender training	1	No gender focal points nor organizational gender training have been appointed by Office.
11. Women's access barriers as participants/witnesses are addressed through the provision of childcare, safe transportation, and language translation	2	<p>Women do not have full access to justice via the ECCC.</p> <p>There is no female Khmer-English interpreter and no female investigator, putting at risk women's ability to meaningfully engage with ECCC legal processes. This would be especially true in instances where gender-based and sexual crimes are an area of focus.</p> <p>Free transportation to the ECCC is provided to all Cambodians who organize themselves into groups of 50 to view the proceedings of the Court. Women are reported to be an estimated 50-60% of total beneficiaries.</p> <p>Women are permitted to bring their children, but there are no childcare provisions. Women who attend with young children must stay outside in the canteen: Official policy stipulates that visitors must be 18 years old or 16 years old with a guardian to enter the Court's gallery. Respondents cite security concerns that there is no particular provision for children at the Court.</p> <p>Childcare is not provided for witnesses, although they are entitled to be accompanied by one support person.</p>

<p>12. Witnesses/beneficiaries are provided psychosocial support before, during and after testifying/participating and provided referrals to mechanisms to deal with social backlash and family ostracism</p>	<p>3</p>	<p>Transcultural Psychosocial Organization Cambodia (TPO) has signed an MoU with the Court to serve as the sole organization to provide psycho-social support services by referral to victims and witnesses attached to the ECCC. Counseling is available prior to hearings or questionings, and TPO provides two on-site follow-up visits.</p> <p>Referrals are automatic, but interventions within the ECCC are largely dependent upon the skill and interest of the staff member involved—most respondents pointing to WESU as solely responsible for dealing with trauma, backlash and ostracism.</p> <p>Yet, these issues are a joint responsibility of the Offices of the Court, with all staff aware of basic “do no harm” responses to client trauma, along with specific protocols for trauma related to sexual crimes.</p> <p>It should be noted that evidence of vicarious trauma on Court staff was observed, and yet no staff welfare office exists. At least one Section has self-initiated briefing sessions with staff as part of their normal duties to mitigate vicarious trauma--while not codified in policy, it should be viewed as good practice for all Offices.</p>
<p>13. Witnesses/beneficiaries are protected from stigmatization and backlash with confidentiality and security, including follow up monitoring to respond to protection needs of those who testified from threats of violence or other retribution</p>	<p>3</p>	<p>The protocol for witness protection is in need of review from a gender perspective, especially in terms of culturally-determined roles of Cambodian women, respondents reported. Again, this is a joint responsibility of all Court Offices, and not the concern solely of WESU. All Court personnel should have a basic understanding of the cultural context of gender relations in Cambodia in order to effectively deal with their varied stakeholders—as witnesses, victims, clients, or even visitors to the Court.</p>

		<p>Witnesses are provided protection measures, including security and follow up monitoring by TPO for psychosocial support. What is less clear is if specific protection and security measures are in place for women who have been subject to gender-based violence in the home (and are therefore at greater risk of violence and retribution for engaging with the Court, especially around gender-based and sexual crimes). Some training has been done with local Police, but not specifically around the handling of domestic violence issues, which are often dismissed as “private” matters.</p>
<p>E. (Culture/Attitudes) Efforts are made to address gendered bias in the institution itself and to address societal attitudes about gender discrimination and women’s equality.</p>	<p>0-5</p>	<p>Summary Findings</p>
<p>14. Women are represented in equal numbers to men in all aspects of the ECCC [to include investigators, statement takers, translators, admin and programming staff, outreach personnel, etc.]</p>	<p>2</p>	<p>See above, Question #2, for a full breakdown of ECCC and UNAKRT staff by gender.</p> <p>Women are reported to be overrepresented at the lower levels of ECCC employment, concentrated in general services and with administrative (versus substantive) tasks.</p> <p>Women’s representation is uneven throughout the ECCC, warranting further study. In some units, no women are employed on either the national or international sides (most notably, as investigators and analysts within OCIJ). In other units and sections women are overrepresented (for example, in VSS, where a reported 66% of total staff is female). Notably, in areas where the profession is highly “feminized” (for example, in translation and interpretation, where women comprise a reported 80% of the workforce), women’s numbers within the ECCC are very low. The challenge is much more pronounced on the national versus the international side, but both sides are impacted.</p> <p>At least one informant pointed to the impact on outcomes of gender imbalance of staff. While work in the legal offices is very technical, and legal proceedings are dependent upon evidence in relationship to the mandate of the ECCC, women can bring a different approach and perspective, along with different</p>

		<p>technical approaches. According to this informant, sexual and gender-based violence may have been more pronounced as a core issue of the Court if more women had been involved in the substantive proceedings of the ECCC. This certainly would have been true in terms of investigations of sexual crimes, where female victims would be much more likely to disclose information to women investigators and translators.</p>
<p>15. Gender training is provided to all employees on a mandatory and recurring basis</p>	<p>1</p>	<p>UNAKRT employees reported that all UN staff must do online courses on sexual harassment in the workplace. One Section reported including this training as part of performance evaluations (although this is not required by policy), while others reported they do not monitor whether employees in fact complete the training. The training is not required of national ECCC staff, and there appears to be no parallel training on the national side.</p>
<p>16. The ECCC promulgates, enforces and records actions of a zero tolerance policy and complaint mechanisms for sexual harassment in the workplace, which is known to employees</p>	<p>1</p>	<p>There is no reference made to sexual harassment, complaint mechanisms nor penalties, in the ECCC Personnel Handbook.</p> <p>UNAKRT staff is governed by UN Staff Rules. These rules (and protections) do not automatically confer to the national side to ECCC employees.</p> <p>Sexual Harassment is covered under UN Staff Rules (http://www.un.org/esa/cdo/hr/RULES%20AND%20REGULATIONS/Staff%20Rules%20JY9.pdf) as such:</p> <p>Rule 1.2 (e): (e) Any form of discrimination of harassment, including sexual or gender harassment, as well as physical or verbal abuse at the workplace or in connection with work, is prohibited.</p> <p>Other relevant UN policies issued by the Secretary-General include ST/SGB/253, "Promotion of equal treatment of men and women in the Secretariat and the prevention of sexual harassment," and the related administrative instruction set forth in ST/AI/379, "Procedures for dealing with sexual harassment."</p>

		<p>In February 2012, a circular on Sexual Abuse and Exploitation was circulated only to the UNAKRT side of the ECCC, despite the policy’s relevance to national colleagues, especially in terms of professional relationships between the two sides of the court. The Secretary-General’s bulletin ST/SGB/2003/13, it is worth noting, is not a sexual harassment policy <i>per se</i>, but rather the result of the April 2003 investigation into sexual exploitation of refugees by aid workers in West Africa, prohibiting transactional sex for money, employment, or goods or services.</p> <p>As so many UNAKRT staff confused the most recent S-G’s circular for a sexual harassment policy, it is clear that UNAKRT staff is not well aware of what sexual harassment is, what complaint measures exist, and how the ECCC—both the national and international sides—is liable for its occurrence if adequate measures are not taken for its prevention and elimination.</p>
<p>17. The ECCC has affirmative action recruitment policy and efforts to increase the number of female staff members</p>	<p>2</p>	<p>Though respondents were largely unaware of its existence, the United Nations has developed a body of special measures to increase women’s numbers and leadership. See “Administrative Instruction: Special measures for the achievement of gender equality,” (ST/AI/1999/9).</p> <p>See also “Gender Related United Nations System Policies” (http://www.un.org/womenwatch/osagi/fpgenderpolicies.htm).</p> <p>The policies do not appear to be systematically and fully implemented by UNAKRT, according to respondents.</p> <p>The national side of the ECCC does not have an official affirmative action recruitment policy, with many respondents stressing all hires are made on merit and on a competitive basis, as outlined in the ECCC Personnel Handbook.</p> <p>Nevertheless, informal efforts exist within Sections to increase the numbers of female staff members. Indeed, many Sections report they are eager to recruit and hire more women. For example, WESU maintains a minimum of one designated national staff post for a female, and many Sections report that, when</p>

		<p>presented with two equally qualified candidates, women will be given preference. Efforts to accept female applicants with unique profiles so they can be part of the interviewed pool is also reported by respondents.</p> <p>Respondents are largely aware of the structural and cultural barriers involved in bringing on more professional women into the ECCC workforce. For example, women are less likely to be educated out of country, or even to have participated in specialized training abroad. In a recent recruitment period in one informant’s Section, 70% of applicants were male for a P4 post, where leadership and management are stressed. In contrast, intern applicants in the same office are 70-80% women. The question then becomes how best to build a pipeline within the ECCC itself so that women advance in the system, rather than separate from the Court as too often happens. Further research seems warranted here, and a cohesive system wide affirmative action approach could greatly enhance the current individual efforts by Sections.</p>
<p>18. The ECCC has provisions for working mothers, including childcare, opportunity for breastfeeding, flexible work hours, etc.</p>	<p>2</p>	<p>The ECCC Personnel Handbook does not provide special provisions related to work-life balance or workplace flexibility. Indeed, the Rules specify:</p> <p style="padding-left: 40px;">“ECCC National employees who are absent from duty to take care of a family member may not use their sick leave. Absences such as these are chargeable to annual leave or leave without pay” (Chapter 9.E.2.c).</p> <p>Employees are required to be “punctual,” and in certain instances are expected to work 44 hours as a basic work week (Chapter 9.A). National employees are provided paid maternity leave.</p> <p>The UN corporate Staff rules specify a range of work-life policies and flexible working arrangements, including staggered working hours, compressed work schedules, telecommuting, and time off for external learning activities (See “Gender Related United Nations System Policies” (http://www.un.org/womenwatch/osagi/fpgenderpolicies.htm)). These rules and opportunities do not appear to be well known by employees or applied within UNAKRT.</p>

		<p>Respondents often mentioned the working environment of the Court as a reason for the low numbers of women employees. The remote and isolated location of the court leaves little room for work-like balance, especially in terms of dealing with parenting emergencies. National staff may be more impacted than international staff (with one informant reporting that “almost all national staff women have children, while almost no international staff women have children”). Except informally by Section, flexibility over workplace and hours does not exist, and all employees are expected to report to the Court for work between 8:00 and 4:30. Working from home is not an approved policy (although it has been requested by some Sections), and respondents reported the Town Office is no longer available to employees to work remotely from the Court at least to some extent.</p> <p>There are no designated breastfeeding facilities at the ECCC. The Court appears to have universally applied a UN policy that allows breastfeeding mothers one hour per day for breastfeeding, but as they must take that hour at the beginning or end of the day or at lunch, many women do not take advantage of the benefit as it reportedly entails forfeiting the benefit of free transportation to and from town by ECCC bus.</p> <p>Wherever possible, a single regime of policy on work-life balance should be established, to apply to both national and international staff. While difficult in the current administrative framework of the ECCC, this is not impossible and indeed is already done with salary grades and breast-feeding policies.</p>
<p>19. The ECCC has a wage equality policy and complaint mechanisms</p>	<p>---</p>	<p>“For each grade in the United Nations system, there is a corresponding salary scale. While the United Nations salary system is not applicable to ECCC National staff, the relative values set out by the UN position grading system forms the basis for ECCC employee’s salaries in the approved staffing table.” (ECCC Personnel Handbook, Chapter 7.A.3)</p> <p>This is the only instance whereby UN and National Personnel Rules are merged into a single written policy regime.</p> <p>The indicator was removed from the baseline, as no respondent felt this was an</p>

		issue and as the question did not specifically ask about gendered pay inequality.
20. The ECCC provides women staff members the opportunity for professional development in the form of mentorships, specialized training, and networking	2	<p>While other tribunals, including ICTY, provided professional development opportunities for women involved with the Court, such a program does not exist within the ECCC, which could contribute to an important legacy of the Court, especially in terms of engaging Cambodian women in greater numbers in formal justice process and professionalized work environments.</p> <p>Sections reported taking independent initiative to encourage female staff to take on professional development opportunities external to the ECCC, although challenges remain in terms of women’s ability to travel, especially out of country and in particular if they have children. Most often, respondents reported, female staff are mentored informally within the ECCC, “learning by doing” alongside more senior staff.</p> <p>Most respondents recalled a March 8 celebration in 2011 organized by a woman employee of the Court.</p>

III. General Findings

Political Will and Technical Expertise: Within the ECCC, there is no one person responsible and accountable for taking the lead on gender issues, testing assumptions as to when they may or may not be relevant, creatively finding solutions and credible approaches to challenges. These things do happen, but are entirely dependent upon the self-initiation of individual staff members. In response to the question “If this individual left the Court would the practice continue?” respondents answered “not necessarily.” Practice is present, but its sustainability—and assured quality—is questionable without policy and support (including adequate resources) from the highest levels of the Court. A Gender Unit or Gender Advisor to the Court at the least should be developed to ensure accountability to gender-equality commitments inherent in the Court’s mandate and to strengthen and coordinate already good faith but ad hoc efforts to elevate awareness and competence around this issue. This is particularly true in light of the fact that so many respondents—both within and outside of the legal offices—reported that gender equality, women’s empowerment and crimes against women are not relevant to the core matters of concern for the ECCC.

Women’s Access to Justice via the ECCC. Gender expertise and women ECCC employees are conspicuously absent in overall *fora* of the court, which has adversely impacted women’s access to justice via the ECCC. For example, there is not a single female Khmer-English interpreter attached to the Court; there is not a single female investigator or analyst. No gender expertise has been explicitly hired for legal or investigative purposes, despite the fact that Rape is listed as a crime in the ECCC mandate, that Forced Marriage is a gender-based crime to be taken up in

Case 002, and that rape as a form of torture was brought forward in Case 001. A comprehensive and systematic investigation into sexual crimes has of yet not been accomplished by the Court, although a reported 200 to 300 witness testimonies for Case 002 mention its occurrence. The ECCC lacks a gender unit or, at minimum, a high-level gender expert held accountable to lead and to motivate across ECCC Sections gender mainstreaming efforts.

Experience from previous tribunals, in particular ICTY and ICTR, demonstrate that rape and sexual abuse are particularly challenging but not impossible if investigators, prosecutors, and judges are motivated to do so. Indeed, when proceedings for the ICTY began, it was universally assumed that rape had not occurred. Years later, ICTY would become the first Tribunal to recognize rape as a war crime. Although the ECCC has shown some awareness of this issue in the conviction of one case of Rape in Case 001 and by indicting Forced Marriage as a Crime Against Humanity in Case 002, there is urgent need to improve gender mainstreaming throughout all levels at the ECCC. At a minimum, ICTY and ICTR have shown that gender balanced investigation teams and panels of judges highly increase the motivation and efficacy to prosecute sexual crimes. Likewise, accountable leadership must be established to ensure consistency of efforts, meaningful follow-through, and coordination so as to best leverage scarce resources and even scarcer time left to the life of the Court.

A legacy for ending impunity for sexual and gender based violence is in jeopardy, but still possible. Explicitly referencing international Human Rights standards and jurisprudence in relation to gender equality and sexual violence has long-term impact for the national side of the Court. As the legal regime around sexual and gender based violence is a fast moving and developing field, constant training is needed by all staff, including internationals. National staff report depending on international staff for this knowledge, making ongoing training even more imperative. ECCC is in position to advance efforts globally on this field of jurisprudence and best practice, and carries an obligation as a hybrid court to carry forward lessons learned from other tribunals. It likewise has the explicit obligation to ensure to its full extent that national judicial approaches to gender based and sexual violence—whether or not tried and convicted by the ECCC—are advanced as a means of establishing rule of law and access to justice for all. That entails for the remaining cases of the ECCC to aggressively enhance attention to sexual and gender based violence, especially in Cases 002, 003 and 004. If these crimes cannot be prosecuted under the limited jurisdiction of the Court, the ECCC and its Offices nevertheless should be compelled to find means to officially recognize gender-based and sexual crimes as part of its legacy, including through gender responsive non-judicial mechanisms and reparation schemes.

The ECCC operates in/as a development context without development expertise or perspective. The Court does not accommodate the fact that, as a hybrid institution taking place in a Least Developed Country (LCD) scenario, it operates within a development context. As such, procedures, rules, and deadlines do not account for the need to mentor, train, and transfer capacity to national colleagues and participants to the Court—the ultimate stakeholders to the ECCC outcomes. This particularly has an impact on the recognition and awareness that gender equality, including ending impunity for sexual and gender based violence, is a central pre-requisite for sustainable development, as stressed in CEDAW, the MDGs, UN SCR 1325, 1820, etc., and must necessarily adopt a human-rights based approach to its functions (that is, participatory, inclusive, transparent and accountable to the larger civil society). The development context carries special weight for the legacy of the ECCC, particularly in terms of how well it addresses women’s rights in society. Some hopeful models exist—for example, the work of TPO as a national organization working with the Court on victim support services is a sustainable legacy to Cambodia once the ECCC itself no longer exists. Yet, much more could and should be done, in particular working with local and civilian police, in their duties in relationship to Court for witness

protection, on protocols and procedures for response to sexual and gender based violence in communities, especially if and when it is used for intimidation and retaliation for participation in the formal court system (a common occurrence in Cambodia).

High levels of women beneficiaries are engaged in ECCC processes. An estimated 115,000 visitors are reported to have visited the ECCC between March 2009 and the close of 2011. Yet, as the data is not sex disaggregated, it is not clear how many of these visitors are women. Nevertheless, anecdotal reports suggest that women may be participating at greater numbers than men, with women making up an estimated 60% of Civil Parties and beneficiaries of VSS programs. The increased numbers of women is partially attributed to the fact that more women than men survived the Khmer Rouge regime. A thorough analysis is needed to examine other potential contributing factors, including an examination if men have other outlets to access justice beyond the proceedings of the ECCC. Additionally, analysis should interrogate what ancillary benefits women accrue from their participation in the ECCC as a formal judicial mechanism—for many, it may be their first engagement in formal justice processes, and therefore confer a sense of citizenry and entitlements to rights, including the right to equality before the law. At the very least, the large numbers of women accessing the ECCC should prompt an opportunity to assess what new approaches might be considered from a gendered perspective if women are and remain the primary consumers of transitional justice processes as related to the ECCC.

It should be noted that women have demonstrated self-initiated involvement with the ECCC, with women organizing other women to come to court in groups by busses provided by the Court. Female Commune leaders are cited as especially active in this role.

Economy of Scale leads to marginalization. Sections often repeated that “sexual and gender based crimes are a very small percentage of the overall caseload”. As such, specific requests to provide women’s full access to the ECCC (via female interpreters, investigators, etc.) are reported as infrequent. While all Sections report (and appear to have demonstrated in the past) efforts to meet needs upon demand, there is no cohesive, proactive strategy across ECCC Sections to ensure that women’s access needs are fully met, especially if these make only a small minority of requests and therefore might be overlooked. Immediate attention is needed especially as the crime of Forced Marriage is to be heard as part of Case 002 and the Court must ensure sound strategies are in place to respond to the unique trauma and potential retaliation incurred by victims and witnesses of this crime. Additionally, without a comprehensive and systematic investigation, it is not precisely clear how large a caseload this crime represents. Finally, in Case 002, Civil Parties admitted for Forced Marriage are a single person short of the number of Civil Parties admitted for Forced Relocation from Phnom Penh, so the numbers of victims of gender-based crimes are not as insignificant as perceived by respondents.

One Set of Rules, Two Parallel Regimes: Internal Rules of Procedure (Version 8). It is beyond the scope and timeframe of this baseline study to do a thorough analysis of the Internal Rules (IR) of the ECCC to identify possibly entry points for policy to ensure gender is a specific category of application to procedures. As such, a cursory review of the IRs demonstrate no specific provisions in the administration of Justice—including protection measures, investigation procedures, or victim engagement—that point to the need for special measures to address gender-based and sexual violence.

While explicit provisions do not exist in written policy of the IRs, respondents report that the rules do not obstruct such application. It should be noted that the IRs specify that, upon the IRs coming into force, the Offices of the Co-Prosecutors, Co-Investigating judges, the Chambers, Administration, the Defense Support Section, the Victims Support Section and the Civil Party Lead Co-Lawyers’ Section “shall develop their own respective administrative regulations, which shall comply with these IRs.”

The ECCC operates under two distinct regimes in regards to personnel rules and staff discipline. UNAKRT employees are governed exclusively by UN Staff Regulations and Rules, while national staff members are governed in “accordance with applicable Cambodian Law.” The arrangement complicates efforts to impose a single standard for personnel under a single regime, as UNAKRT employees have no authority over national hires, and vice versa.

IV. Priority Recommendations:

1. Immediately increase **gender competence** throughout the Court, including a high-level Gender Advisor to the Court to carry leadership and accountability across ECCC Offices on raising the priority of gender-based and sexual crimes. The recommendation includes hiring qualified female investigators and interpreters and setting up appropriate mechanisms for retention of female staff and further professional development.
2. Review and revise **administrative rules** to recruit and retain more women employees (to include Affirmative Action policies, Sexual Harassment policy, and Work-Life Balance policy). It will be extremely difficult to recruit and retain female staff if there are structural deficiencies in the institution and its culture related to gender equality and anti-harassment. Increasing women’s leadership on the national side of the ECCC is imperative for the fair administration of justice of the ECCC as well as its ongoing legacy to Cambodia.
3. Conduct comprehensive and systematic **investigations** of sexual and gender-based crimes, and prosecute as warranted, as per the mandate of the Court. Of those investigations conducted for Case 002, sexual crimes are reported to be mentioned in a full-quarter to one-third of all statements (reported at 200-300 of 800 total), despite a flawed investigation that did not include a single female on the team. The thesis that such rapes were punished, as included in the Closing Order for Case 002, remains untested until such an investigation take place, and the conclusion that “evidence does not exist” appears premature. In addition, the numbers of Civil Parties attached to Forced Marriage indicates the scale of gender-based crimes is larger than assumed. Adequate resources—in terms of staff and expertise could be greatly strengthened, and management responses to the on-going challenge of recruitment and retention of qualified female staff as a structural issue of the ECCC are warranted.
4. Implement **alternative mechanisms** for seeking justice, including truth-seeking, for victims of sexual and gender-based crimes—especially if these crimes will not be charged by the ECCC. If rape and other sexual crimes are outside the jurisdiction of the Court, other avenues of redress, remediation and acknowledgement are warranted so that Cambodian women’s experiences can be included as part of the official record of atrocities committed under the Khmer Rouge regime. Victims themselves must play a central role in determining the shape and purpose of reparations and alternative mechanisms for seeking justice. Implementing alternative mechanisms for seeking justice expands the transitional justice aims beyond the proceedings of the trials and has the potential to be especially to women therefore.
5. Integrate a gender perspective to all **reparations** schemes and consider the legacy of the Court on ending impunity for violence against women within the development context of the ECCC. Establishing a reparation scheme calls for inclusivity of and accountability to Cambodian women from a gendered perspective. Other countries have set up funds for the purpose of administering reparations to survivors of sexual violence in communities, and the ECCC could look to these models. Additionally,

Offices of the Court could be looking to legacy issues with a stronger gender perspective, addressing current issues related to sexual and gender based violence, for example, by assisting in setting protocol and procedures around such cases. If strategic and well-formed, such efforts can synergistically reinforce rather than detract or dilute from the jurisdiction and transitional justice aims of the ECCC.

V. List of Sources for Desk Review

1. Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea
2. Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodia Law of Crimes Committed during the Period of Democratic Kampuchea (2003)
3. Extraordinary Chambers in the Courts of Cambodia Internal Rules, Version 8 (August 2011)
4. ECCC Personnel Handbook (National Staff)
5. Gender Related United Nations System Policies
6. Panel Statement on the Women’s Hearing on True Voices of Women Under the Khmer Rouge Regime (November 2011)

ⁱ See the Concept Note for the full explanation of how indicators were developed, providing a definition of “gender-responsive transitional justice” and “gender mainstreaming” as central categories to be measured for the baseline study.