



NGO Submission on Question No. 11 of the List of Issues and Questions
With Regard to the Consideration of Periodic Reports of Cambodia

Submitted to the Committee on Elimination of Discrimination Against Women
(CEDAW Committee)

by Cambodian Defenders Project

INTRODUCTION

In the “List of issues and questions with regard to the consideration of periodic reports” issued by the CEDAW Committee on 8 March 2013 under the topic of “Violence Against Women”, the Committee asks the following of the Royal Government of Cambodia (RGC):

11. The report does not provide any information on measures taken to address the situation of women victims of sexual gender-based violence during the Khmer Rouge regime. Please provide detailed updated information on measures taken to provide assistance and support to the survivors of gender-based violence during the Khmer Rouge regime, and measures taken to prosecute perpetrators, as well as to develop a program of compensation and rehabilitation for the victims.

This paper provides the Committee with background factors for consideration in receiving the government’s response to question No. 11 based on the information collected by Cambodian Defenders Project (CDP), a local non-governmental organization (NGO). In addition, the paper makes suggestions to the Committee for its Concluding Observations in setting recommendations for the Cambodian government in meeting its CEDAW obligations in relation to victims of sexual and gender-based violence (SGBV) under the Khmer Rouge regime.

As illustrated in detail in CDP’s previous submission on the List of Critical Issues in January 2013, during the period between 17 April 1975 and 6 January 1979 under the rule of the Khmer Rouge, various forms of SGBV, including rape, gang rape, rape with foreign object, forced nudity and forced marriage, were committed against women. These crimes have a continuous impact on the lives of the survivors, their families and the society as a whole.

MEASURES TAKEN BY THE CAMBODIAN GOVERNMENT

The RGC has so far taken up a very limited number of measures mentioned in issue No. 11. Some efforts have been made to prosecute the senior leaders of the Khmer Rouge regime under a current war crimes tribunal, yet only for a very narrow scope of SGBV. Victim support and assistance or compensation and rehabilitation programs are mainly provided by civil society organizations.

Measures Taken to Prosecute Perpetrators

The Extraordinary Chambers in the Courts of Cambodia (ECCC) were established as a hybrid-international court under the auspices of the RGC and the UN to prosecute crimes committed during the Khmer Rouge regime by the senior leaders. Victims of alleged crimes can participate in the proceedings as Civil Parties, which bestows certain rights upon them. Despite the fact that numerous Civil Parties reported on SGBV, this type of violence has only been partly addressed in the four cases so far.

In the final judgment for **Case 001** against the former director of a notorious detention center in Phnom Penh, one case of rape was convicted as torture under crimes against humanity. In this incident, a woman was tortured by inserting a bamboo stick into her vagina during interrogation.

In **Case 002** against four most senior leaders of the Khmer Rouge regime (out of whom, one recently died and one declared unfit to stand trial), forced marriages are charged in the indictment. To expedite the proceedings, the Trial Chamber severed Case 002 into sub-trials dealing with specific charges. Charges of forced marriage are envisaged for the third and last sub-trials. Given the contingencies faced by the Court, including the age of the accused and the decline in donor funding, there is little chance that the third or fourth sub-trials will be heard. In addition, the indictment for Case 002 does not hold the accused liable for rapes outside the context of forced marriage, which means the vast majority of rape cases committed under the Khmer Rouge regime will never be prosecuted as a crime against humanity.

Currently, **Case 003 and 004** are in the investigation stage, although it is not clear if and when they will be tried due to the uncertain financial status of the court and alleged political interference on the part of the government. Whether SGBV crimes are being investigated in these cases is not known since at this stage any information on the alleged crimes and facts under investigation are confidential.

Due to the limited temporal jurisdiction, and absence of any other judicial mechanism, there has been no effort to prosecute any SGBV crimes during conflict that occurred outside of the Khmer Rouge regime period. Likewise, there have been no efforts made for prosecution of conflict-related SGBV through domestic courts nor has there been any measures taken against the direct perpetrators.

Measures to Provide Assistance and Support to SGBV Survivors

The Victims Support Section (VSS) at the ECCC can develop non-judicial measures which are independent from any conviction. These can address any harm suffered by victims of the Khmer

Rouge, including SGBV survivors. Currently, the VSS in cooperation with CDP and Transcultural Psychosocial Organization (TPO) is implementing a project funded by the UN Trust Fund to End Violence Against Women to increase the involvement of and the benefit to women in the transitional justice process. This project includes outreach programs, truth-telling forums, direct psycho-social and legal services and institutional capacity building for the ECCC and civil society organizations on gender sensitivity. However, the number of beneficiaries is only a small portion of total anticipated victims, and the project period is limited to 2014.

The project mentioned above is headed by VSS which as a unit of the ECCC is distinct from the national government. National governmental initiatives by the RGC to assist or support SGBV survivors from the Khmer Rouge regime do not currently exist. Notably, the recently finalized National Action Plan to End Violence Against Women (NAP VAW), which will be implemented from 2013 to 2017, does not include any measures targeting this unique group, although it lists SGBV survivors of the Khmer Rouge regime as a group with specific needs.

Measures to develop a program of compensation and rehabilitation

At the ECCC, all Civil Parties can request moral and collective reparations which the court may grant in case of a conviction. In Case 001, no specific reparations were awarded on the case of rape. In Case 002, sub-trial 01, no SGBV crime is currently on trial so that specific reparation projects for survivors of SGBV cannot be claimed at this stage. Given the low chances of future trials for the reasons mentioned above, reparations for this group are highly unlikely to ever be realized through the ECCC.

Outside of the ECCC, the RGC has taken no efforts to develop any type of compensation and rehabilitation programs for victims of SGBV during the Khmer Rouge regime.

LIST OF RECOMMENDATIONS TO THE CAMBODIAN GOVERNMENT

In view of the aforementioned failure of the RGC to address the needs of victims of SGBV during the Khmer Rouge regime, CDP proposes the following recommendations to be included in the Concluding Observations issued by the CEDAW Committee (in order of priority):

1. Fulfill the obligations arising under the CEDAW General Recommendation No. 19, par. 24(i) and the 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 by establishing a comprehensive reparations program led by the Ministry of Women's Affairs (MoWA) and implemented in cooperation with civil society organizations, which includes a package of services for victims of SGBV during conflict (e.g. health services, counseling services, legal aid). The content should be developed in consultation with the victims and respond to their specific needs.
2. Implement the call of the Special Representative to the UN Secretary-General on Sexual Violence in Conflict in the 2011 and 2012 reports to the Security Council to rigorously document the crime of sexual and gender-based violence under the Khmer Rouge regime as part of the historical

record and publically acknowledge the truth about widespread SGBV which occurred during the Khmer Rouge regime and recognize the victims by initiating an official study commissioned by the RGC to document women's experiences and by supporting on-going awareness raising campaigns on past experiences of survivors in order to break the silence and reveal root causes of VAW. Documentation and awareness campaigns should reach a wide public, especially universities, as a basis for further discussion and deeper understanding on the connection and continuum between past and present VAW in Cambodia.

3. Optimize the transformative potential in linking CEDAW implementation to UN Security Council Resolutions 1325 (2000) and 1820 (2008), as a means of promoting women's right to full participation in all development processes, including justice and security sector reforms; establishing land rights and labor standards; and ensuring access to health care, employment opportunities, and education on parity with men. Only in fulfilling its obligation to eliminate patriarchal structures that entrench women's subordinate status and legitimize violence against women will Cambodia achieve long-term stability, security and development for the benefit of all.
4. Improve cooperation between MoWA and civil society organizations by forming a special advisory panel to the government on SGBV in conflict, consisting of members of civil society and other stakeholders with the purpose of proposing projects and programming or offering input and advice on how to successfully integrate the perspective of this unique group of survivors into services contemplated by the government.
5. Demonstrate governmental commitment to addressing the unique needs of women victims of SGBV during the Khmer Rouge regime and provide updated information in on-going CEDAW periodic reports and other treaty mechanisms on discrimination against survivors and challenges in accessing human rights.

CONTACT:

Mr. **Duong Savorn**, Project Coordinator

E-Mail: savorn@cdpcambodia.org

Tel: +855 (0)12 800 816

Ms. **Beini Ye**, Advisor

E-Mail: beini.ye@giz.de

Tel: +855 (0)12 973 026