

# TRANSITIONAL JUSTICE THROUGH THE CAMBODIAN WOMEN’S HEARINGS

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*International and hybrid courts are now well established as transitional justice mechanisms. In Cambodia, a hybrid national/international judicial body set up and run by the Government and the United Nations is the only formal mechanism existing to address the crimes committed during the Khmer Rouge regime. Due to its limited mandate and fragile funding it will not examine all of the harms suffered by victims during the Khmer Rouge era. This article explores the value of non-judicial transitional justice mechanisms as a complementary approach, using the example of the Women’s Hearings on sexual and gender-based violence in conflict that were held in Cambodia by the Cambodian Defenders Project (CDP) in 2011, 2012, and 2013.*

I. INTRODUCTION.....	24
2. WOMEN’S HEARINGS IN CAMBODIA.....	26
3. WOMEN’S HEARING AS A TRANSITIONAL JUSTICE MECHANISM.....	27
3.1. The Element of Truth.....	28
3.2. The Element of Justice.....	30
3.3. The Element of Reparations.....	31
3.4. The Element of Guarantees of Non-Recurrence.....	32

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4. WOMEN'S HEARINGS AS A MECHANISM COMPLEMENTARY TO COURTS AND TRUTH COMMISSIONS .....35

5. CONCLUSION.....36

I. INTRODUCTION

From 17 April 1975 to 6 January 1979, the Communist Party of Kampuchea (CPK), commonly known as the Khmer Rouge, ruled Cambodia and renamed the country Democratic Kampuchea. Under the leadership of the CPK, the entire country was transformed into a vast labor camp accompanied by detention centers, in order to achieve a “socialist revolution.” The population was forced to perform hard labor under inhumane conditions. This resulted in the deaths of thousands due to starvation, disease, and harsh living conditions. At the same time, the CPK relentlessly pursued the elimination of individuals it perceived to be enemies of the regime. During the nearly four years of CPK rule, detention, torture and mass executions of innocent people were commonplace. An estimated two million people perished during this time.

Unknown to many, various forms of sexual and gender-based violence (SGBV) against women<sup>2</sup> were committed alongside the killings and other crimes. Studies conducted in 2008 and 2011 examined the characteristics of this violence and concluded that a wide range of SGBV crimes took place during this period.<sup>3</sup> These included: individual rape, gang rape by multiple perpetrators, mass rape of multiple victims, rape with a foreign object, forced nudity, sexual exploitation, and a state practice of forced marriage.

To prosecute the crimes committed under the rule of the CPK, a hybrid national/international court was established by the Cambodian Government and the United Nations in 2003. The Extraordinary Chambers in the Courts of Cambodia (ECCC) has a mandate to try the senior Khmer Rouge leaders and those who were most responsible for acts perpetrated between 17 April 1975 and 6 January 1979. Currently, this Court is the only institution vested with the authority to prosecute crimes from that time period.

In the four on-going cases at the ECCC, SGBV has received very limited at-

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2 This article focuses on the experience of female SGBV victims. Male experience of SGBV has been reported but has not yet been researched sufficiently.

3 See generally Nakagawa Kasumi, *Gender-Based Violence During the Khmer Rouge Regime – Stories of Survivors from the Democratic Kampuchea* (Mar. 2008), at <http://gbvkr.org/wp-content/uploads/2013/02/Kasumi-GBV-Study-2007.pdf>; 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* (Nov. 2011), at [http://gbvkr.org/wp-content/uploads/2013/01/Natale\\_K\\_Research\\_GBV\\_KR\\_ENG-web.pdf](http://gbvkr.org/wp-content/uploads/2013/01/Natale_K_Research_GBV_KR_ENG-web.pdf).

tention thus far. One mid-level accused has been found guilty of one incident of rape as torture (Case 001).<sup>4</sup> The remaining accused — two former senior Khmer Rouge leaders — have been charged with forced marriage, including rape within this context, as a crime against humanity<sup>5</sup> but have not yet been tried on these counts (Case 002).<sup>6</sup> No other forms of SGBV were included in the countrywide indictment against these accused despite the fact that investigators found incidents of rape committed at a number of crime sites.<sup>7</sup> The Office of the Co-Investigating Judges, the ECCC judicial body that issues indictments, determined that “the official CPK policy regarding rape was to prevent its occurrence and to punish the perpetrators. Despite the fact that this 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.”<sup>8</sup> Recently, the Trial Chamber denied a request made by the civil parties before the start of Case 002 proceedings<sup>9</sup> to include charges of rape outside of forced marriage.<sup>10</sup>

Due to the confidential nature of the Court’s remaining two cases (Cases 003 and 004), which have been under judicial investigation since 2009, it has not been made public to what extent SGBV is being examined. However, in April 2014, the international co-prosecutor requested that allegations against three zone-level suspects be expanded to include not only forced marriage, but also sexual violence outside of that context.<sup>11</sup> Although an extremely welcome development, due to

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4 See Judgment, Case 001/18-07-2007/ECCC/TC, ¶¶ 240, 366 (July 26, 2010).

5 See Closing Order, Case No. 002/19-09-2007-ECCC-OCIJ, ¶¶ 858-60, 1430-33, 1545 (Sept. 15, 2010). Forced marriage charges were added to the indictment after an investigative request by civil parties to the case. See generally Co-Lawyers for the Civil Parties’ Fourth Investigative Request Concerning Forced Marriages and Sexually Related Crimes, Case No. 002/19-9-2007-ECCC/OCIJ (Dec. 4, 2009); Order on Request for Investigative Action Concerning Forced Marriages and Forced Sexual Relations, Case No. 002/19-9-2007-ECCC/OCIJ (Dec. 18, 2009).

6 Two of the original four octogenarian accused in the Court’s second case (Case 002) have been removed from the proceedings: one due to advanced dementia, and the other due to his death in March 2013 during trial proceedings. Because of the advanced age of the accused and fears that they would not live until judgment, before trial began, the Trial Chamber severed the indictment in Case 002 with the aim of holding sequential trials related to different parts of the indictment. See Severance Order Pursuant to Internal Rule 89ter, Case No. 002/19-09-2007-ECCC/TC (Sept. 22, 2011). The first trial, Case 002/01, did not include forced marriage charges. In April 2014, the Trial Chamber decided that the second trial, Case 002/02, would include charges of forced marriage, and rape within this context, on a nationwide basis. See Decision on Additional Severance of Case 002 and Scope of Case 002/02, Case No. 002/19-09-2007-ECCC/TC, ¶ 33 (Apr. 4, 2014).

7 Closing Order, *supra* note 5, ¶¶ 1426-27.

8 *Id.* ¶ 1429.

9 See generally Civil Party Lead-Co Lawyers Response to the Co-Prosecutor’s Request to Re-characterize the Facts Establishing the Conduct of Rape as a Crime Against Humanity, Case No. 002/19-09-2007-ECCC/TC (July 21, 2011).

10 See Memorandum from Nil Nonn Trial Chamber President, Further Information Regarding Preliminary Objections, ¶ 3 (April 25, 2014).

11 Press Release, International Co-Prosecutor Requests Investigation of Alleged Sexual and Gender-Based Violence in Case 004 (Apr. 24, 2014), at [www.eccc.gov.kh/en/articles/international-co-prosecutor-requests-investigation-alleged-sexual-and-gender-based-violence](http://www.eccc.gov.kh/en/articles/international-co-prosecutor-requests-investigation-alleged-sexual-and-gender-based-violence).

longstanding opposition to these cases by the Cambodian Government and unpredictable Court funding, it remains uncertain if these suspects will ever be brought to trial.

If, as is expected, the two accused senior leaders are the last to be tried, SGBV survivors will only be heard on specific elements of their experience. For example a forced marriage survivor who also experienced rape in prison will not be able to testify on the full extent of SGBV.<sup>12</sup> At the same time, these untold stories will not be included in the historic record produced by the ECCC through its judgments, reinforcing the myth that rape did not happen under the Khmer Rouge except in the context of forced marriage. In view of this gap, likely to be left unaddressed by the ECCC, and in face of the increasing risk of losing these stories with the passing of time, Cambodian Defenders Project<sup>13</sup> (CDP) saw an urgent need to take action.

## 2. WOMEN'S HEARINGS IN CAMBODIA

In 2011, CDP initiated the first Women's Hearing in Cambodia. It was followed by two more Women's Hearings in 2012 and 2013 with different themes each year. All of them adhered to the same format with survivors giving public testimony before a panel. The selection of this specific format was largely inspired by truth commissions that have addressed SGBV during conflict,<sup>14</sup> in particular the Commission for Reception, Truth and Reconciliation in Timor-Leste, which held separate hearings for women, and other civil society initiatives such as the Courts of Women.<sup>15</sup> The proceedings of the Cambodian Women's Hearings were documented in the form of reports and films.<sup>16</sup>

In 2011, the focus of the Women's Hearing was sexual violence during the Khmer Rouge in Cambodia. Expanding on this theme, the 2012 Asia-Pacific Regional Women's Hearing shed light on patterns of SGBV in conflict situations by hearing the testimony of women from three countries in the region with a history of armed conflict. The target group for 2013 shifted from an international audience to the post-war generation in Cambodia, which is often unfamiliar with the

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12 One client supported by the Cambodian Defenders Project faces this situation.

13 Cambodian Defenders Project is a local non-governmental organisation (NGO) providing free legal aid to victims of human rights violations, including survivors of the Khmer Rouge regime and SGBV in conflict. See [www.cdpcambodia.org](http://www.cdpcambodia.org) and [gbvkr.org](http://gbvkr.org) for more information.

14 For an overview on how truth commissions dealt with SGBV in conflict, see University of Wyoming Center for International Human Rights Law & Advocacy, *Background Paper on Dealing with Gender-Based Violence in Transitional Justice for Asia-Pacific Regional Women's Hearing on Gender-Based Violence in Conflict* (Oct. 2012).

15 See Introduction on the Courts of Women, at <http://weap.org/news/386/17/The-Courts-of-Women.htm>.

16 The reports can be downloaded at [www.gbvkr.org/publications-and-materials/reports](http://www.gbvkr.org/publications-and-materials/reports). The films can be viewed at [www.gbvkr.org/publications-and-materials/audio-visual-material/](http://www.gbvkr.org/publications-and-materials/audio-visual-material/).

history of the Khmer Rouge regime and has a limited understanding of SGBV.

All three Women's Hearings have sought to offer a non-judicial transitional justice platform to address SGBV in past conflict. The aim was to empower SGBV survivors by giving them a voice to break the silence surrounding these crimes and express their needs and demands; honor survivors by publicly acknowledging their suffering, their strength and courage; fight stigmatization and discrimination against survivors through awareness-raising of the impacts they face and their concerns; and create a more accurate historical record by documenting survivor experiences.

Whereas the panels in 2011 and 2012 consisted of national and international legal and gender experts, the panel in 2013 was staffed with students from various Cambodian universities. Each year the respective panel issued a public statement with findings and recommendations to a number of stakeholders.<sup>17</sup> A total of approximately 1000 participants from various backgrounds, including students, staff from civil society organizations, ECCC officials, members of international organizations, donor representatives, and Khmer Rouge survivors, attended the three Women's Hearings.

Over the three years, 18 SGBV survivors and witnesses testified about their experience of SGBV, its impact, and their needs and demands. All of them voluntarily participated and provided prior informed consent to the entire process. CDP, in cooperation with other NGOs, assisted them prepare to testify, provided psychological support throughout the process, and continues to monitor their well-being. After the Women's Hearings, all who testified reported that they benefited from their participation, feeling a sense of justice, relief, and bonding with other survivors. They were also content to record their experience to allow the future generations to understand and prevent such oppressive regimes.

### 3. WOMEN'S HEARING AS A TRANSITIONAL JUSTICE MECHANISM

According to the International Center for Transitional Justice (ICTJ), the term "transitional justice" refers to a process of responding to past widespread and

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17 See Cambodian Defenders Project, *Report on the Proceedings on the 2011 Women's Hearing on Sexual Violence Under the Khmer Rouge Regime* (May 2012), at [http://gbvkr.org/wp-content/uploads/2013/01/Report-on-2011-Womens-Hearing\\_Phnom-Penh.pdf](http://gbvkr.org/wp-content/uploads/2013/01/Report-on-2011-Womens-Hearing_Phnom-Penh.pdf); Theresa De Langis, *Asia Pacific-Regional Women's Hearing on Gender Based Violence in Conflict – Report on the Proceedings 2012* (Dec. 2012), at <http://gbvkr.org/wp-content/uploads/2013/06/Women-Hearing-Report-2012-final-designed-EN-small-5.pdf>; Beini Ye, *2013 Women's Hearing with the Young Generation on Gender-Based Violence during the Khmer Rouge Regime — Report on the Proceedings* (May 2014), at <http://gbvkr.org/wp-content/uploads/2014/05/WomenHearingEng.pdf>.

systematic human rights violations.<sup>18</sup> A resolution adopted by the United Nations Human Rights Council in 2011 specifies the elements of transitional justice to encompass the four areas of truth, justice, reparation and guarantees of non-recurrence.<sup>19</sup> The process of the Women's Hearings addresses each of these components and has functioned as a valuable transitional justice instrument in Cambodia.

### 3.1. The Element of Truth

The element of "truth" involves truth-telling, meaning the opportunity for survivors and witnesses to share their experience allowing for multiple narratives. It also involves truth-seeking, meaning the documentation and understanding of past crimes and their impact. International judicial bodies such as the ECCC attempt to uncover the factual truth through a strictly standardized process of truth-telling and truth-seeking that takes the perception of the defendants into account. A judicial process run by an official body is necessary in the aftermath of mass crimes to create an official record that helps counter denial of the violations.<sup>20</sup> However, due to the strict legal framework certain narratives are not allowed or not possible at such forums. At the ECCC, for example, the indictments have thus far not included rape outside of forced marriage. As a result, accounts of rape committed in other contexts were not heard at trial.

In contrast, the Women's Hearings captured individual narratives only from the perspective of victims without endeavoring to present an objective version of past events. Being an unofficial and subjective recollection of past violence, the stories captured through the Women's Hearings may be more susceptible to denial and counter-narratives. But with their victim-centered approach they give a voice to marginalized and vulnerable survivors who are often omitted from official judicial processes.<sup>21</sup>

In the context of SGBV during conflict, truth-telling exercises, whether during traditional judicial proceedings or alternative truth-seeking forums, must take into consideration the risks of stigmatization and re-traumatization inherent in disclosing experience of sex crimes and ensure voluntary participation in a safe

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18 See definition at <http://ictj.org/about/transitional-justice>.

19 UN Human Rights Council Res. 18/7 on the Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees on Non-Recurrence, 18th Sess., U.N. Doc. A/HRC/18/2 (Oct. 22, 2012).

20 See, e.g., International Association for Humanitarian Policy and Conflict Research (aisbl), *Transitional Justice & Peacebuilding Processes*, at [www.peacebuildinginitiative.org/index0eea.html?pageId=1691](http://www.peacebuildinginitiative.org/index0eea.html?pageId=1691) (visited May 9, 2014).

21 On obstacles for women survivors of GBV in conflict to access courts and to claim reparations see Carla Ferstman, *Procedural and Substantive Obstacles to Reparations for Women Subjected to Violence through Judicial and Administrative Forums*, Address at the Special Rapporteur on Violence Against Women's Panel Discussion on Reparations for Women Subjected to Violence (June 8, 2010), at [www.redress.org/UNSRVW\\_July\\_2010.pdf](http://www.redress.org/UNSRVW_July_2010.pdf).

environment with sufficient support from psychologists, social workers, and other service providers.

During the Khmer Rouge regime, the traditional taboo surrounding sexual violence in Cambodian society was reinforced through both the myth that CPK cadres did not commit sex crimes and the culture of silence imposed by the regime. The myth can be traced back to a CPK moral code for cadres, which stipulated that “moral offenses” were a punishable crime. However, recent research shows that, in reality, sexual offenses by cadres were not uncommon but were rarely investigated, perpetrators were hardly punished, and victims never received support. Because any opposition or criticism towards the CPK rule was severely punished, survivors and witnesses often remained silent about crimes committed by cadres in order to survive. This is summed up in research with 104 survey respondents published in 2011:

Respondents were aware of the Khmer Rouge policy prohibiting **moral offenses** and many respondents reported having seen individuals punished for such offenses. Respondents reported that this policy led some victims of GBV to kill themselves rather than face punishment from the Khmer Rouge for what would be seen as their involvement in a moral offense. As well, respondents reported that the policy against moral offenses led perpetrators to kill their victims, kill themselves or run away to avoid punishment. Although nearly 20% of respondents participated in moral offense “judgment meetings” or witnessed punishments for moral offenses carried out, respondents in all but three cases reported that the individuals punished were involved in consensual relationships. A perpetrator was punished in only one case.<sup>22</sup>

These factors intensified the obstacles for women to come forward and seek support.

The Women’s Hearings gave SGBV survivors the necessary platform and support to overcome these hurdles and break their decades-long silence. For many who testified, the Women’s Hearings process created their first opportunity to speak about their SGBV experience. Most stated that telling the truth to the public, especially the younger generation of Cambodians, was one of their major motivations for participating in the Women’s Hearings. Their testimonies—documented through print and film—contribute to the historic record and

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22 Natale, *supra* note 3, at 2 (emphasis in original).

demystify the taboo surrounding SGBV during the Khmer Rouge regime, both of which are essential for an understanding and critical discussion of the past.

### 3.2. The Element of Justice

“Justice” usually refers to criminal justice, meaning the judicial investigation, prosecution and, when there is a finding of guilt, punishment of individuals for criminal acts. With the establishment of a number of international or hybrid courts in post-conflict settings worldwide to address past mass human rights abuses, this retributive aspect of transitional justice has received the most attention.

Whereas courts must ensure a fair trial and are therefore defendant-centered, the Women’s Hearings could be victim-centered because they did not determine individual responsibility for crimes or punish alleged perpetrators. Nevertheless, the question of presumption of innocence of alleged perpetrators arose at the Women’s Hearings, especially in the few cases when testifiers knew the individuals who allegedly harmed them. To avoid any violation of fair trial principles, persons who testified agreed not to identify alleged perpetrators during their testimonies. All of the victims agreed to this without any tensions or concerns. In most of the cases, they did not know the perpetrators. In the case of one testifier who was an eyewitness to the gang rape and killing of his sister and continued to be confronted with the presence of the former cadres in his village, not revealing the identity of these alleged perpetrators served as a protection for the testifier himself.

Cross-examination of witnesses, which can cause tremendous stress to survivors, especially in cases of SGBV, was not a feature of the Women’s Hearings. To decrease anxiety, persons who testified were guided through questions asked by the same person who helped them prepare their testimonies. All participants described being nervous and afraid of saying something “wrong,” but feeling eased by the presence of a person they trusted guiding the questions.

The Women’s Hearings cannot and were not intended to fulfill the role of a court. Nevertheless, those who testified at the Women’s Hearings expressed a sense of justice and satisfaction stemming from the public acknowledgment by the panel and the audience of their accounts of SGBV and their suffering. Following the testimonies, panel members addressed individually each person who testified to express their empathy, appreciation and encouragement for their contribution to the proceedings. Through the panel statement, they publicly acknowledged the participants’ experiences and condemned the abuses committed against them.

Explicitly labeling SGBV as a human rights violation and criminal conduct is particularly important for survivors as it shifts the blame and shame, which is often placed on victims, to the perpetrators. The Women’s Hearings, though no replacement for judicial prosecution, thus satisfied certain facets of justice inherent



in the notion of criminal justice that are valuable to survivors.

### 3.3. The Element of Reparations

In the broader context of transitional justice processes, the element of reparations is understood to encompass a variety of forms of state redress for gross human rights violations by the state as defined in 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*<sup>23</sup> (Basic Principles). Comparatively, at the ECCC, victims admitted as civil parties to the proceedings only have the right to collective and moral reparations when an accused is convicted of committing a crime that resulted in the harm victims suffered.<sup>24</sup> Due to the ECCC's narrower authority to authorize reparations than the forms recognized in the Basic Principles, it cannot award individual or monetary reparations. Another difference lies in the fact that the ECCC Trial and Supreme Court Chambers have found that they cannot award reparations against the Government,<sup>25</sup> whereas the Basic Principles establish a state obligation to provide reparations.

The Women's Hearings provided a supplementary form of redress by contributing to rehabilitation and satisfaction. All persons who testified at the Hearings received psychological care before, during and after their participation, which has helped many to advance on their path to personal healing. Persons who testified at the 2012 Asia-Pacific Regional Women's Hearing expressed that, "while publicly sharing their stories was emotionally challenging, they feel a sense of empowerment and relief as a result of participating in the Hearing."<sup>26</sup> Similarly, in 2013:

The women stated that prior to their testimonies they felt hopeless and upset due to previously not having had the chance to speak out about the violence committed against them. They were also anxious to speak publicly in front of a large group for the first time. Following their participation in the Women's Hearing, all four expressed their relief and feeling of being supported by the audience, especially when seeing audience members crying and feeling empathy for them.<sup>27</sup>

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23 Adopted by the General Assembly on 21 March 2006.

24 See ECCC Internal Rules (Rev. 8), as revised on 3 August 2011, rr. 23(1)(b) & 23quinquies(1).

25 See TC Judgment, *supra* note 4, ¶ 671; Appeal Judgment, Case No. 001/18-07-2007-ECCC/SC, ¶¶ 662-65 (Feb. 3, 2012).

26 De Langis, *supra* note 17, at 31.

27 Ye, *supra* note 17.

Some survivors who disclosed their experience of SGBV for the first time are now able to benefit from interventions especially developed for cases of SGBV, such as women self-help groups.<sup>28</sup> According to the Basic Principles, satisfaction should include acknowledgment of the facts and an accurate account of the violations. Both of these aspects were addressed by the Women's Hearings as described above under the elements of truth and justice.

Being a civil society initiative and independent of any formal judicial process, the Women's Hearings do not fall under reparations as defined by the Basic Principles or the ECCC Internal Rules. However, the Women's Hearings can serve as a model for reparations projects awarded by the ECCC or taken up by the Government in the context of a wider reparations program. At a minimum, victims' testimony regarding their needs and demands, recorded during the Women's Hearings, can inform the development of reparations. The major theme running through nearly all their testimonies was the desire to document the experience of women for the younger generation to educate them and prevent future violence against women. This request could be used as the basis for reparation programs that incorporate an educational aspect and support the prevention of gender-based violence. Another strong demand calling for the end of discrimination against victims of sexual violence could be the foundation for reparations programs evolving around awareness-raising and behavioral changes.

### 3.4. The Element of Guarantees of Non-Recurrence

The element of guarantees of non-recurrence calls for the structural change of state institutions, including reforms of the security and legal sectors, to prevent future widespread and systematic state violence. Being a signatory to all of the core international human rights treaties, the Cambodian Government has taken on the obligation to promote and protect human rights and fundamental freedoms. In practice, state violence is still prevalent and currently manifested in the use of lethal violence against civilian protesters.<sup>29</sup>

The ECCC may be seen as an attempt to establish the basis for a reform of the judiciary by setting a good practice example for domestic courts. A number of

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28 The Self-Help Groups bring together 8-10 survivors who are guided by a psychologist through 7-8 meetings where they can learn to cope with past experience of violence and support each other. For a report on the impact of one self-help group for forced marriage survivors see generally Sotheary Yim, *The Past and the Present of Forced Marriage Survivors* (June 2012), at <http://gbvkr.org/wp-content/uploads/2013/04/The-Past-and-the-Present-of-Forced-Marriage-Survivors-small-2.pdf>.

29 See, e.g., Sean Teehan, Mom Kunthear & Sophak Chakrya, *Strikers, Police Clash*, PHNOM PENH POST, Nov. 13, 2013, available at [www.phnompenhpost.com/national/strikers-police-clash](http://www.phnompenhpost.com/national/strikers-police-clash); Cheang Sokha, Sean Teehan & Shane Worrell, *Crackdown Turns Deadly*, PHNOM PENH POST, Jan. 3, 2014, available at [www.phnompenhpost.com/national/crackdown-turns-deadly](http://www.phnompenhpost.com/national/crackdown-turns-deadly) (describing two recent incidents).

legacy projects are being implemented to transfer the lessons learned on fair trial rights and rule of law. The United Nations Office of the High Commissioner of Refugees (OHCHR) in Cambodia has taken the lead in this area by setting up round-tables with Cambodian prosecutors and judges.<sup>30</sup> In cooperation with the East-West Management Institute, OHCHR also recently published an annotated version of the Cambodian Code of Criminal Procedure in which procedural decisions of the ECCC Chambers are collected under the relevant articles in the Cambodian Code.<sup>31</sup>

All three Women's Hearings produced panel statements with policy recommendations to the Government and other stakeholders. Most of them describe specific measures necessary to prevent future violence, especially SGBV, and address its root cause of gender discrimination.

In 2011, among other measures, the panel recommended to the Cambodian Government that it conduct public awareness-raising and incorporate education about sexual violence into school curriculum in order to abolish the myths around sexual violence. Recommendations to ECCC included the establishment of a senior level gender expert position, with a national counterpart, to advocate for the inclusion of a gender perspective and attention to gender-based and sexual violence, and to ensure that these matters are part of the ECCC's legacy to national rule of law. Civil society was called on to empower and mobilize survivors of sexual violence during the Khmer Rouge regime by maintaining and building on the network of survivors and supporting dialogue among them.<sup>32</sup>

In 2012, the panel issued recommendations for each of the participating countries. For Cambodia, the recommendations to the ECCC suggested mainstreaming questions regarding SGBV in relation to other allegations investigated for Cases 003 and 004. It also called on the Government to support documentation to preserve the history of past experiences of victims and survivors, to break the silence, and to assist in the healing process.<sup>33</sup>

The student panel in 2013 addressed their peers by appealing to youth to participate in activities that address gender-based violence, such as training programs, public forums, workshops and study tours; to disseminate information and share knowledge in order to eliminate all forms of gender-based violence and

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30 See the update on this project in Office of the United Nations High Commissioner for Human Rights (OHCHR), *Minutes of the 5th ECCC Legacy Update Meeting — Convened by the Office of the United Nations High Commissioner for Human Rights* (June 28, 2013) (on file with author).

31 Annotated Cambodian Code of Criminal Procedure: Annotations to ECCC and Select International Jurisprudence (Mar. 2014), available at [http://cambodia.ohchr.org/WebDOCs/DocProgrammes/Annotated\\_Cambodian\\_Code\\_of\\_Criminal\\_Procedure\\_Eng.pdf](http://cambodia.ohchr.org/WebDOCs/DocProgrammes/Annotated_Cambodian_Code_of_Criminal_Procedure_Eng.pdf).

32 See Cambodian Defenders Project, *supra* note 17, at 16-18.

33 See De Langis, *supra* note 17, at 55-56.

abolish discrimination against victims; to determine not to commit any form of gender-based violence; and to encourage people, especially family and friends, to end gender-based violence.<sup>34</sup>

The panel statements were based on findings made from the testimonies of participants and document reviews conducted by legal and gender experts. These carefully drafted panel statements are a valuable resource for the Government and could provide guidance for the implementation of the guarantees of non-recurrence. Unlike legacy programs connected to the ECCC that target the judiciary and have a narrow focus on transferring legal knowledge, the Women's Hearing panel statements take a policy-level approach by making recommendations for larger structural changes.

The 2011 panel asked the Cambodian Government to establish a national trust fund for reparations for victims of sexual violence during the Khmer Rouge. In addition, as Chair of the Association of Southeast Asian Nations (ASEAN) in 2012, the Government was called on to provide leadership during the inauguration of the Institute for Peace and Reconciliation by promoting a strong gender perspective within this new Institute; ensuring that the issues of women, peace and security, including conflict-related sexual crimes, are addressed in ASEAN; and maintaining leadership on these issues as a member of ASEAN.<sup>35</sup>

In 2012, the panel recommended the development of alternative non-judicial and peace-building mechanisms to provide opportunities for victims of SGBV to have their voices heard and to open up space for public recognition and dialogue around issues of gender-based violence. It also called on the Government to formulate National Action Plans for the implementation of United Nations Security Council Resolutions 1325 and 1820 on women, peace and security in conjunction with women's and human rights NGOs, containing time-bound benchmarks, concrete indicators and adequate resources.<sup>36</sup>

The student panel in 2013 recommended the inclusion of studies on gender-based violence (both during the Khmer Rouge regime and present-day) into the curriculum of secondary schools and universities.<sup>37</sup>

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34 See Ye, *supra* note 17.

35 Cambodian Defenders Project, *supra* note 17, at 17.

36 See De Langis, *supra* note 17, at 55-56. See also U.N. Doc. S/RES/1325 (2000); U.N. Doc. S/RES/1820 (2008).

37 Ye, *supra* note 17.

#### 4. WOMEN'S HEARINGS AS A MECHANISM COMPLEMENTARY TO COURTS AND TRUTH COMMISSIONS

Women's Hearings in the form conducted in Cambodia differ from truth commissions insofar as they were not set up by the state, were limited in scope and resources, and their main purpose was to give voice to a small number of SGBV survivors. According to ICTJ, truth commissions are non-judicial, independent panels of inquiry, usually established by legislation or decree by the executive branch to determine the facts and context of serious violations of human rights or of international humanitarian law in a country's past.<sup>38</sup> As state-run institutions their mandates are typically quite broad, covering a range of past mass crimes and hearing a vast number of victims and possibly perpetrators. In some cases truth commissions produce binding recommendations that the state must implement; in other cases governments are obligated to publicly report on the status of implementation.<sup>39</sup> None of these functions can be fulfilled by the Women's Hearings in Cambodia.

The Women's Hearings were also established independently from, and in addition to, the ECCC. Given that both were set up within the framework of the transitional justice process and are intended to address the four elements mentioned above, the question arises as to whether one renders the other obsolete. The answer to this is clearly: No. Both mechanisms fulfill different functions under each area and complement rather than duplicate each other.

As important as individual narratives are to truth-seeking, the Women's Hearings were not designed to capture past events to the same level of comprehensiveness as the ECCC. Though certain aspects of justice were addressed through the Women's Hearings, individual perpetrators must be held criminally responsible for their conduct in order to fully satisfy victims' claims for justice and to deter state leaders from abusing their power. A judicial process of criminal prosecution as conducted by the ECCC is also necessary to fully ensure defendants' rights to a fair trial and other international law standards enshrined in the International Covenant on Civil and Political Rights, including the right to a competent, independent and impartial tribunal or the prohibition of double conviction for the same offence.<sup>40</sup>

The greatest weakness of the Women's Hearings is their lack of state sup-

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38 Eduardo González, *Drafting a Truth Commission Mandate – A Practical Tool*, International Center for Transitional Justice (June 2013), at 3-8, available at [http://ictj.org/sites/default/files/ICTJ-Report-DraftingMandate-Truth-Commission-2013\\_0.pdf](http://ictj.org/sites/default/files/ICTJ-Report-DraftingMandate-Truth-Commission-2013_0.pdf).

39 OHCHR, *Rule-of-Law Tools for Post-Conflict States – Truth Commissions* (2006), at I3, available at <http://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf>.

40 See International Covenant on Civil and Political Rights, 999 U.N.T.S 171 and 1057 U.N.T.S. 407 / [1980] A.T.S. 23 / 6 I.L.M. 368 (1967), art. I4.

port. Being a civil society-driven initiative created by NGOs to fill a gap left un-addressed by the ECCC and the Government, the Women's Hearings' reach and significance in the transitional justice process remains limited. Neither the ECCC nor the Government supported or endorsed the Women's Hearings as an official non-judicial measure to deal with the past. Mechanisms set up and run with state support, such as the ECCC, continue to form the core of successful transitional justice processes, as they require the leadership and commitment of the respective post-conflict governments. All above-mentioned elements of transitional justice can only be comprehensively addressed through state action. Only state-run mechanisms for truth-seeking/truth-telling and reparation programs can be inclusive of a vast number of survivors and also give an opportunity to former perpetrators to voice their narratives; only state-run mechanisms can provide criminal justice as the privilege to prosecute and convict lies with the state; and only state-run reforms can ensure sufficient structural change to fulfill the guarantee of non-recurrence.

## 5. CONCLUSION

The Women's Hearings on SGBV during conflicts contributed to the transitional justice process in Cambodia by offering an alternative forum for victims to seek all four elements of truth, justice, reparation and guarantee of non-recurrence. They are non-judicial mechanisms that complement the mandate and work of the ECCC by focusing on individual narratives and being victim-centered. For SGBV survivors who thus far have been excluded from judicial processes and are in need of specialized support, they proved to be particularly valuable. If Case 004 moves forward with charges addressing rape outside of the context of forced marriage, the Women's Hearings should be credited with spurring the ECCC to act on this issue.<sup>41</sup>

The format of the Women's Hearings can be applied to other vulnerable groups such as ethnic minorities subjected to discrimination today. Similar to the situation of SGBV survivors, other vulnerable groups whose experience of violence was not included in the ECCC trials are in need of a platform to voice their experience that ensures a safe environment and sufficient support for their participation. For example, the Khmer Kampuchea Krom minority suffered targeted violence by the Khmer Rouge that is not included in the indictments at the ECCC.<sup>42</sup> In view of

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41 In the event that Case 004 is not brought to trial, consideration must be given to the question of preserving and possibly publishing any evidence gathered on SGBV for educational and documentation purposes.

42 Due to civil party investigative requests, the international co-prosecutor requested the investigation of crimes against the Kampuchea Krom minority in Case 004. See Press Release, Statement by the International Co-Prosecutor Regarding Case File 004 (June 16, 2011).

the current discrimination against this ethnic group in Cambodia,<sup>43</sup> hearings in the format of the Women's Hearings could ensure a certain level of protection but at the same time acknowledge their suffering and the crimes committed against them.

However, as a non-governmental initiative, the Women's Hearings have been necessarily limited in their reach, scope and impact. In view of the Women's Hearings' potential for addressing past human rights violations, the Cambodian Government should consider the use of this format of non-judicial hearings for victims as a means to fulfill its obligation under international law to provide redress to survivors of the Khmer Rouge regime as called for by the committee monitoring the Convention on the Elimination of Discrimination against Women (CEDAW). In the CEDAW Committee's most recent Concluding Observations, the Cambodian Government was urged to develop effective non-judicial transitional justice programmes, including the provision of adequate reparations, psychological and other appropriate support to victims of gender-based violence committed during the Khmer Rouge regime.<sup>44</sup>

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43 See, e.g., Kevin Ponniah & Phak Seangly, *Khmer Minority Lacks Equal Rights: Report*, PHNOM PENH POST, Feb. 6, 2014, available at [www.phnompenhpost.com/national/khmer-minority-lack-equal-rights-report](http://www.phnompenhpost.com/national/khmer-minority-lack-equal-rights-report).

44 Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Cambodia, CEDAW Comm., 56th Session, U.N. Doc. CEDAW/C/KHM/CO/4-5 (2013).

