

Panel Statement for



held on 7 and 8 December, 2011

in Phnom Penh, Cambodia

On 7 and 8 December 2011, the Cambodian Defenders Project (CDP) convened **the Women's Hearing: True Voices of Women during the Khmer Rouge regime on Sexual Violence** at the Ecumenical Diakonia Center in Phnom Penh Cambodia.

The hearing was established to hear the experiences of women during the Khmer Rouge regime on sexual violence. The hearing panel consisted of four distinguished panelists: Vichuta Ly (Cambodia), Manavy Chim (Cambodia), Heisoo Shin (South Korea) and Sylvia Marcos (Mexico). The hearing was open to the public and was attended by representatives from United Nations (UN) agencies, international and local non-government organizations, female Civil Parties and student volunteers.

Through its deliberations, the panel examined women's experiences of sexual violence as part of the whole range of atrocities allegedly committed against the civilian population by the Khmer Rouge regime from January 1975 to April 1979. The panel heard testimonies from women survivors and witnesses on sexual violence perpetrated in Democratic Kampuchea, including in today's provinces of Kampot, Pursat, Svay Rieng and Prey Veng. These testimonies were complemented by a video interview with a former Khmer Rouge interrogator at the notorious S-21 detention center in Phnom Penh.

The panel was also presented with a historic background on the Khmer Rouge regime by an historian, Sombo Manara, an overview of a sexual violence study by a researcher, Kasumi Nakagawa and an analysis of applicable laws by a legal practitioner, Silke Studzinsky. As a distinguished guest speaker, Nancee Bright, Chief of Staff of the Office of the United Nations Special Representative to the Secretary-General on Sexual Violence in Conflict stressed relevant UN Security Council Resolutions (UN SCR), including UN SCR 1325, UN SCR 1820, UN SCR 1888, UN SCR 1889 and UN SCR 1960, as part of the international framework to end impunity for sexual violence in times of war and conflict.

It is noted that any sexual crimes against males are underreported and. With the exception of one research on men having sex with men where 20 interviewees were questioned and reported cases of sexual abuses under the Khmer Rouge, so far no further information is available to which extent males were subjected to sexual violence. The Khmer Rouge did not address sexual violence/sexual relationships between the same sex at all.

Before presenting the findings and their recommendations, the panel took a moment to reflect on the immense courage of the survivors and witnesses that broke the silence and spoke out about sexual violence during the Khmer Rouge.

Findings

Based on the testimonies presented and the arguments offered, the panel issued the following findings.

On the contributing factors to sexual violence against women during the Khmer Rouge period:

1. There was a complete suspension of human rights and natural law during the rule of the Khmer Rouge.
2. State actors had total control over all aspects of women's and men's daily lives making them vulnerable to violence including sexual violence.
3. The Khmer Rouge 'policy against the enemy', which purported the re-education, then punishment and finally eradication of the so called 'enemy' or 'bad elements', dehumanized those declared as an enemy, making it possible for Khmer Rouge to treat them in any way they determined, including using sexual violence. In all cases testified to, except for one which is non conclusive, the evidence indicates that the victims were considered to be enemies or bad elements.
4. Perpetrators enjoyed impunity as they were rarely accused or convicted, and not punished for sexual crimes.
5. There were no mechanisms for victims to make a complaint of sexual crimes or any other crimes against the Khmer Rouge.

On patterns of sexual violence:

6. The women in Cambodia in fact suffered various forms of sexual violence under the Khmer Rouge regime.
7. The rapes as described occurred in the context of the broader human rights violations against the victims, including murder, arrests, forced labor, enforced family separation, forced marriage, forced transfer and starvation.
8. The sexual violence suffered by women included the following acts:
 - a) systematic rape prior to execution;
 - b) sexual violence and rape as an instrument of torture, to obtain information or confession, to intimidate, coerce or punish;

- c) sexual violence involving repeated rape over an extended period of time, gang rapes with multiple perpetrators and mass rapes of multiple victims;
 - d) sexual assault resulting in injury, sometimes indicative of an object used in the rape;
 - e) sexual mutilation;
 - f) exchange of sex for medicine or food for their parents to fulfill their traditional obligations as daughters;
 - g) forced nudity and threat of rape.
9. In all cases presented in the witness and survivor testimonies there was more than one perpetrator, and in all but one case the perpetrators either killed or attempted to kill the victim or victims.
10. Both perpetrators and victims included minors under the age of 18-years-old.
11. Some of the perpetrators are still alive today and at least one holds a position of power within their province.

On state accountability:

12. The perpetrators were of all levels within the Khmer Rouge, including senior, middle, and lower leaders as well as soldiers. The testimonies noted cadres, a cooperative chief and armed Khmer Rouge soldiers as perpetrators.
13. None of the perpetrators as described in the testimonies appear to have been held accountable for their crimes.
14. Sexual violence was an integral part of the Khmer Rouge's *de facto* enemy policy and as such it was not punished or prevented, and it could and should have been known by the most senior leadership of the Khmer Rouge regime who created and implemented the policy against the 'enemy'.
15. The Khmer Rouge's official policy on the prohibition of sexual violence against women and the prohibition of consensual sexual relationships between men and women outside of marriage did not serve as an effective prevention against sexual violence by cadres or officials. The following contributed to the failure to prevent and punish sexual violence:
- a) the failure to prosecute and punish 'good revolutionaries' who were alleged perpetrators of sexual violence;

- b) the non-existence of a consequent and consistent implementation of the prohibition of sexual violence against women;
 - c) the punishment of both people involved in cases of consensual relationships outside of marriage;
 - d) the lack of an appropriate body or court to receive or adjudicate complaints.
16. Because sexual violence was so widespread during the Khmer Rouge period and the leaders of the Khmer Rouge failed to secure the safety of the citizens, *Angkar*, the synonym for the leaders of the Khmer Rouge, should be held accountable for the sexual crimes perpetrated under their leadership.

On impact on victims:

17. Survivors and witnesses of sexual violence suffer long-term psychological trauma which includes psychological, psychical and behavioral symptoms. Symptoms include
- feeling shame, isolated and helpless;
 - experiencing headaches, chest pain, forgetting to eat, feeling confused, nightmares, and having trouble sleeping;
 - aggressive behavior, bad temper and excessive drinking.
18. The trauma experienced by survivors of sexual violence during the Khmer Rouge is unique, because:
- a) the trauma of survivors of sexual violence during the Khmer Rouge was compounded by the other abuses they experienced during that period;
 - b) during the Khmer Rouge period survivors had no access to support and suffered from enforced silence;
 - c) survivors suffer from shame and fear – particularly fear of their story being revealed and then being ostracized by their family and community.

On demands of the survivors:

19. During this hearing we heard demands from the survivors for restitution for the suffering inflicted, including

- a) full investigation, prosecution, conviction and sentencing for sexual crimes committed under the Khmer Rouge by the Extraordinary Chambers in the Courts of Cambodia (ECCC) as per its mandate and subject-matter jurisdiction;
- b) full implementation of policies and laws to protect women from and end impunity for all forms of violence against women today;
- c) assurances and action to ensure non-repetition of the atrocities of the Khmer Rouge period and a commitment to promote and protect the human rights of all;
- d) more research to investigate and record an accurate historical record of the Khmer Rouge period and atrocities that includes sexual violence;
- e) education curriculum in schools to teach the historical truth of this period for future generations;
- f) memorialization, such as in monuments and stupas, to acknowledge, honor and recognize victims of sexual violence and of other abuses under the regime;
- g) exposing the truth about the crimes that happened in the provinces and the atrocities that occurred throughout Democratic Kampuchea, not just in Toul Sleng and the Killing Fields;
- h) record of the names of the victims of atrocities under the Khmer Rouge including sexual violence.

On applicable international law and international standards:

20. The acts described in all testimonies constitute violations under numerous international agreements and are crimes under international law, including
 - a) rape, torture and enslavement as crimes against humanity;
 - b) sexual violence as other inhumane acts under crimes against humanity;
 - c) sexual violence as a means of genocide, being the most aggravated type of crimes against humanity and included into the ECCC Law, which makes direct reference to the Genocide Convention (ratified by Cambodia 1950).
21. Although relevant international treaties were ratified by the Government of Cambodia after the end of the Khmer Rouge Regime in 1979, including most notably the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, entry into force 1981), the Convention on the Rights of the Child (CRC, entry into force 1990) and the Convention against Torture (CAT, entry into force 1987) these

conventions provide useful and universal benchmarks and validation to witnesses of past atrocities and to prevent repetition of such acts in the future.

22. The United Nations' Women, Peace and Security Agenda, initiated in 2000 with the unanimous adoption by the UN SCR 1325, followed by UN SCR 1820 (2008) and UN SCR 1960 (2011), provides a framework relevant to the proceedings of the ECCC and to any other transitional justice measures or reparations as a means of ensuring women's full participation so that their voices are heard, their experiences recognized, and their concerns addressed as a means of ensuring long-term peace with justice.
23. Internationally agreed policies and principles on preventing and remedying violence against women including 1993 Vienna Declaration and Program of Action, 1995 Beijing Declaration and Platform for Action and 1998 Rome Statute of International Criminal Court applicable in Cambodia.

Recommendations

Based on these findings of facts and law, the panel issues the following recommendations.

To the ECCC:

1. Investigate and prosecute sexual violence perpetrated by the Khmer Rouge.
 - a) After having severed case 002, include into the first trial sexual crimes and hold the accused liable under the enemy policy for sexual crimes outside of forced marriage to reflect the experience of the affected population.
 - b) In case 003 and 004, investigate the extent, circumstances and actors of sexual violence as part of the conflict during this period and establish accountability for these violations under international criminal law, in particular as crimes against humanity, as war crimes and genocide and provide reparations as warranted. This is as per the mandate of the court to see justice for crimes committed between 17 April 1975 and 6 January 1979 under Khmer Rouge rule.
2. As mandated for the Victim Support Section under ECCC Internal Rules, develop and implement non-judicial mechanisms for transitional justice, including but not limited to reconciliation, memorialization and truth-seeking, to promote and support the recognition and inclusion of specific experiences of witnesses and survivors of sexual violence under the Khmer Rouge period and ensure the needs of victims are included in gender-sensitive reparations, including provisions for healthcare, education, training, and school curriculums about the history of Khmer Rouge atrocities.
3. Enhance gender competence at the ECCC.

To the Royal Government of Cambodia:

1. As a sovereign state with an obligation to prevent all forms of violence against women including sexual crimes as per:
 - a) Article 45 of the Constitution of the Kingdom of Cambodia guaranteeing gender equality and prohibiting all forms of discrimination against women;
 - b) the Rectangular Strategy for Growth, Employment, Equity and Efficiency, Phase II, recognizing "*women are the backbone of the economy and society*";
 - c) the Neary Rattanak and Gender Mainstreaming Action Plans of Ministries;

- d) relevant national policy and legislation, including the Law on the Prevention of Domestic Violence and Protection of Victims and its related National Action Plan to Combat Violence on Women;

prevent violence against women in Cambodia by:

- a) acknowledging the truth that widespread sexual violence occurred during Democratic Kampuchea;
 - b) protecting all victims of sexual violence from discrimination and stigmatization through awareness raising among the public and school education on the facts of sexual violence including that the perpetrator is to blame not the victim;
 - c) establishing a national trust-fund for reparations for victims of sexual violence during the Khmer Rouge in order to comply with obligations as stipulated in Article 16 of the UN 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 as adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005;
 - d) promoting women's human rights and pro-actively preventing and protecting women from all forms of violence.
2. As a member of the UN General Assembly, adhere to obligations under Security Council Resolutions including those specified in UN SCRs 1325, 1820, 1888, 1889, and 1960 and
- a) report on the situation of survivors of sexual violence during the Khmer Rouge, including access to support and justice, in Government reports on the above obligations;
 - b) regularly report on the prosecution rate of sexual violence as per Security Council Resolution 1325 global indicators;
 - c) fully implement international human rights standards to secure the equal rights of women to enjoy all economic, social, cultural, civil and political rights, including access to justice as per international human rights treaties ratified by the government such as CEDAW and CRC and their optional protocols.
3. As Chair of ASEAN in 2012, provide leadership during the inauguration of the Institute for Peace and Reconciliation in ensuring a strong gender perspective within this new institute and that the issues of women, peace and security, including conflict related sexual crimes are addressed in ASEAN and maintain leadership on these issues as a member of ASEAN.

To the United Nations:

1. To the United Nations Special Representative to the Secretary-General on Sexual Violence in Conflict:

Take up the issue with the ECCC, including calling for the establishing of alternative mechanisms if required, to investigate sexual violence under the Khmer Rouge period and prosecute rape as a distinct crime against humanity as listed in the ECCC statute to afford justice for past crimes and to serve as a deterrent for current and future sexual violence.

2. To UN Women:

Serve as secretariat and provide support and funding for a standing working group and national conference on sexual violence under the Khmer Rouge as a means of taking forward the recommendations and other relevant outcomes of the Hearing.

3. To the Office of the United Nations Assistance to the Khmer Rouge Trials:

Support the ECCC to fund and assign a senior level gender expert to the ECCC with a national counterpart to advocate from within the court for the inclusion of a gender perspective and attention to gender-based and sexual violence and ensure these matters are part of the legacy of the ECCC to the national rule of law.

4. To the United Nations Country Team:

Support civil society engagement in directly addressing the needs of victims of sexual violence during the Khmer Rouge regime as well as in Cambodia today.

5. To the relevant United Nations actors, particularly the Special Rapporteur on Human Rights in Cambodia, the Special Representative of the Secretary General on Sexual Violence in Conflict, the Special Rapporteur on Violence Against Women, its Causes and Consequences and the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees on Non-Recurrence:

- a) Work within their mandate to acknowledge and address the issue of sexual violence during the Khmer Rouge period.
- b) Provide technical assistance and support to the Royal Government of Cambodia in establishing a national trust-fund for victims of sexual violence in order to comply with its obligations as stipulated in Article 16 of the UN 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 as adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

To Civil Society and Non-Government Organisations (NGO):

1. Monitor the implementation of gender equality commitments for compliance with current national and international human rights frameworks, including submitting the NGO shadow report to CEDAW and other relevant treaty bodies, and identify and promote enhanced protections and implementation as necessary.
2. Mobilize constituencies to increase demand for human rights protection and promotion, especially for women and girls.
3. As a medium for truth-seeking, provide historic records and documentation, and use these to raise awareness of the experience of women during the Khmer Rouge regime.
4. Empower and mobilize survivors of sexual violence during the Khmer Rouge regime by maintaining and building on the network and supporting dialogue among those survivors.
5. Engage and support men to mobilize and campaign for men to prevent violence against women.

Issued on 8 December 2011 in Phnom Penh, Cambodia.