

# Working Paper

## Guarantees of Non-Recurrence

of Sexual and Gender-Based Violence  
against Women after the Khmer Rouge

Cambodia Working Paper Series

Sotheary YOU

# Abstract

Four decades after the collapse of the Khmer Rouge regime, Cambodian women continue to suffer from discriminatory social, cultural and economic norms and to experience gender injustice in social and political spheres. Against this background, this paper asks whether and to what extent transitional justice has contributed to providing guarantees of non-recurrence of sexual and gender-based violence (SGBV) against women in Cambodia.

This paper examines how the transitional justice process addressed SGBV committed under the Khmer Rouge regime. It shows that transitional justice has not adequately recognized SGBV against women under the Khmer Rouge, that there has been lack of representation of women in the process and that an unfair redistribution of resources after the Khmer Rouge contributed to further discrimination.

Drawing from the concept of guarantees of non-recurrence and feminist scholarship on gender justice, this paper highlights how a lack of gender-transformative policy and the government's lack of capacity to comply with international legal standards has shaped women's experiences after the Khmer Rouge. It argues that, in order to guarantee the non-repetition of SGBV against women, transitional justice initiatives should aim to address social and cultural injustice effectively; to subvert patriarchal and oppressive norms; and to promote women's participation in social, economic and political development in Cambodia. It concludes with policy recommendations.

Keywords: Sexual and Gender-Based Violence, Khmer Rouge, Guarantee of Non-Recurrence, Transformative Reparation, Transitional Justice, Cambodia.

# Imprint

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# List of Acronyms

CEDAW	The Convention on the Elimination of all Forms of Discrimination Against Women
CEDAW Committee	Committee on the Elimination of Discrimination Against Women
CRPD	Convention on the Rights of Persons with Disabilities
ECCC	Extraordinary Chambers in the Courts of Cambodia
GNR	Guarantees of Non-Recurrence
HDI	Human Development Index
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention of Discrimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economics, Social and Culture Rights
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
KR	Khmer Rouge
MoWA	Ministry of Women's Affairs
MoEYS	Ministry of Education, Youth, and Sport
OECD	Organization for Economic Cooperation and Development
SGBV	Sexual and Gender-Based Violence
UN	United Nations
UNCAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNCRC	Convention on the Rights of the Child
UNDP	United Nations Development Programme
UNSCR	United Nations Security Council Resolution
UN Women	The United Nations Entity for Gender Equality and the Empowerment of Women

# Foreword to the Working Paper Series on Cambodia

Julie Bernath and Ratana Ly, editors of the Cambodia series

The year 2019 was an important milestone for transitional justice in Cambodia. It marks both 40 years after the end of the Khmer Rouge regime in early 1979, and 15 years after the establishment in 2004 of the Extraordinary Chambers in the Courts of Cambodia (ECCC), also known as the Khmer Rouge tribunal.

On this occasion, this Working Paper series brings together a collection of papers by Cambodian early career researchers to reflect upon the transitional justice process in Cambodia. It is the result of a one-year publication project of the Center for the Study of Humanitarian Law at the Royal University of Phnom Penh and swisspeace, supported by the Embassy of Switzerland in Thailand. This series aims to give more visibility to Cambodian researchers in academic writings on transitional justice. As such, it is an attempt at working against the problematic politics of knowledge production that exist in the field of transitional justice. Although transitional justice scholarship has increasingly questioned the marginalization of local voices and perspectives when it comes to policy-making and practices of transitional justice, researchers from contexts in the Global South in which transitional justice processes take place still have less visibility in, and access to, academic debates on transitional justice in comparison to their peers from the Global North.

This set of papers highlights the important achievements made in pursuing justice, accountability and reconciliation in Cambodia. It also illustrates the vast experiences that Cambodian practitioners and researchers alike have gained in the transitional justice field in the last decade and more. At the same time, the papers reflect the ways in which transitional justice inherently constitutes a long-term process. Fifteen years after the establishment of the Khmer Rouge tribunal, the authors discuss the many challenges that remain in order for the transitional justice process to truly unfold its emancipatory and transformative aspirations.

Taken together, this collection of papers speaks to key issues that, beyond the case study of Cambodia, have become central in transitional justice scholarship ever since it has taken a critical turn. The papers identify the difficulties for transitional justice processes to contribute to long-term socio-political change, at the structural level, in order to guarantee the non-recurrence of human rights violations. They highlight the need to attend to the specific socio-political contexts in which transitional justice processes unfold. The papers also point to the selectivity of formal, state-sanctioned transitional justice processes, which contrast with continuities of violence and discrimination across time that parts of the population may experience, for instance women. They shed light on the diversity of actors involved in transitional justice processes, which cannot neatly be captured by a binary distinction of international versus local, and which include not only state actors or legal professionals, but also civil society actors or donors.

Transitional Justice in Cambodia: Fifteen Years After the Establishment of the ECCC

The Khmer Rouge regime was arguably the most totalitarian of the 20th century (Bruneteau 1999). Between April 17, 1975 and January 6, 1979, the Communist Party of Kampuchea, known as the Khmer Rouge, held power over the national territory. The Khmer Rouge aimed at creating a new people and a communist agrarian utopia within the timeframe of a single generation, in a surpassing of Mao Tse Tung's policies in communist China (Ibid). Under the rule of the Khmer Rouge, an estimated 1.5 to 2.2 million people died from starvation, torture, execution, forced labour and malnutrition — at least one in five of the 1975 population (Kiernan 2003).

Given the geopolitical context of the Cold War, the involvement of foreign countries in the conflicts in Cambodia and the political interests of the regimes succeeding the Khmer Rouge, it was only in 1997 that negotiations started between the United Nations and the Royal Government of Cambodia regarding accountability for crimes committed under the Khmer Rouge regime. After protracted negotiations, the ECCC was established in 2004 with the mandate of trying the senior leaders and those most responsible for crimes committed between April 17, 1975 and January 6, 1979 in Cambodia.

Ever since its establishment, the ECCC has attracted a lot of international attention from researchers, policy-makers and practitioners. It displays unique features as a transitional justice process. First, it is a hybrid tribunal or mixed tribunal, i.e. a court of mixed staff, which applies international and Cambodian law. While several hybrid tribunals were established elsewhere, the ECCC arguably represents the most national of all (Petit 2010, 195). Second, although the scope and form of victim participation has been significantly reshaped over time at the ECCC, it grants victims the right to formally participate as parties — a first in the history of international criminal justice (Ciorciari and Heindel 2014). Victims can indeed participate at the ECCC not only as witnesses or complainants, but also as civil parties. Finally, the ECCC's mandate also includes the provision of moral and collective reparations. While the exclusion of individual and financial reparations led to frustrations from civil parties (see e.g. Williams et al. 2018, 109-120), the ECCC's provisions on reparations significantly expanded over time to include non-judicial measures developed and implemented by the ECCC's Victims Support Section with governmental and non-governmental partners.

At the time of writing, three accused persons have been tried and sentenced in separate legal proceedings at the ECCC. In Case 001, the Supreme Court Chamber sentenced Kaing Guek Eav alias Duch, the former deputy and chairman of the security centre S-21, to life imprisonment for crimes against humanity, grave violations of the Geneva Convention, murder and torture (see Soy 2016). Case 002 consists of charges against former senior Khmer Rouge leaders. In light of its complexity and the advanced age of the accused, the Case was split in two to expedite the trial proceedings. The first portion of the trial, Case 002/01, focused on a set of crimes committed during the early stages of the Khmer Rouge regime: forced transfers of the population and the

execution of soldiers of the regime preceding the Khmer Rouge. This Case was completed in November 2016, however two of the accused died prior to its completion: the former Minister of Foreign Affairs, Ieng Sary, and the former Minister of Social Affairs, Ieng Thirith. Case 002/02 examines far-ranging charges related to key policies of the Khmer Rouge, including forced labour, security centres, forced marriages and treatment of minorities. The Trial Chamber judgment handed in November 2018 is currently under appeal. One of the two remaining accused, Nuon Chea, died in August 2019 at the age of 93 before the pronouncement of the Supreme Court Chamber judgment (see Kum 2019). The former Head of State of the Khmer Rouge regime Khieu Samphan, born in 1931, is the only accused in Case 002 now still alive.

Four suspects have additionally been indicted in Cases 003 and 004. However, the national and international side of the ECCC mostly disagreed on whether these cases should move to trial, with the national side arguing that the accused do not fall under the category of 'most responsible' of the ECCC's mandate (see e.g. Naidu 2018). Since the Cambodian ruling party has repeatedly voiced their opposition to these cases (Ciorciari & Heindel 2014, 177), they have become the focus of allegations of political interference (see e.g. OSJI 2010).

Besides the ECCC, civil society actors have significantly shaped the transitional justice process in Cambodia. Their work has been complementary to the ECCC, in particular when it came to victim participation, legal services, psychosocial support and outreach, as civil society organisations provided many key services for the ECCC due to the tribunal's limited funding or mandate in this field (Ryan and McGrew 2016; Sperfeldt 2012). Civil society organisations have also been key in designing and implementing reparations and non-judicial measures. Over time, many creative and artistic initiatives have emerged. NGOs were able to make use of the attention of the international donor community on transitional justice in Cambodia that arose with the establishment of the ECCC (Un 2013), although they have now for the past few years faced significant 'donor fatigue' (Sperfeldt 2012).

The establishment of the ECCC thus initiated a diverse process of transitional justice in Cambodia focusing on the Khmer Rouge regime. This process is also characterized by a significant transnational circulation of practices, since the ECCC was established in a time during which transitional justice had become institutionalized and professionalized as a field of policy-making, research and practice (see e.g. Sharp 2013; Rubli 2012). Several cohorts of international practitioners sojourned in Cambodia, including not only international criminal justice professionals — some of whom Kent (2013) described as 'tribunal hoppers', given their high mobility across internationalized tribunals — but also practitioners from the fields of civilian peacebuilding, media, arts and memory work.

Today, a rich and increasingly diverse body of scholarship also exists on transitional justice in Cambodia, with works from various disciplinary perspectives. This includes not only the dominant field of law (e.g. Werner and Rudy 2010; McGonigle 2009) but also socio-legal studies (e.g. Killeen 2018; Ly

2017; Manning 2012), political science (e.g. Path 2017; McCargo 2015), anthropology (e.g. Hinton 2014; Kent 2013), geography (Sirik 2016; Hughes 2015), psychiatry (Chhim 2014) or history (Gidley 2019). As elsewhere in the field of transitional justice, this scholarship is also characterized by numerous publications of authors who have themselves been closely involved in the transitional justice process in various functions (e.g. Jarvis 2014, Lemonde 2013, Studzinsky 2011, Mohan 2009).

Ever since the establishment of the ECCC, the literature has discussed its relevance as a transitional justice institution. Some analysts highlighted that the tribunal was important and better than none (see e.g. OSJI 2006). Others argued that given the political context, and most importantly the political control of the national judiciary in Cambodia, a hybrid tribunal would only lead to a flawed accountability process (see e.g. Human Rights Watch 2014). The ECCC's extremely limited temporal scope has also been subject to much discussion. The tribunal's mandate only focuses on the Khmer Rouge regime, although this period is embedded in decades of political violence, war and authoritarian rule. Civil society organisations, while complementing the ECCC's limitations in diverse ways, arguably reproduced to an important extent the focus on the Khmer Rouge period in their transitional justice work.

Today, given current political developments in Cambodia, reflecting upon the transitional justice process and its long-term, transformative potential is of particular relevance. With the dissolution of Cambodia's main political opposition party in 2017 and its exclusion from the 2018 election (see e.g. KOFF 2018), the country has moved further away from its scheduled trajectory towards democracy. In an increasingly authoritarian context, civil society organisations, journalists but also researchers working on human rights advocacy face significant difficulties to conduct their work in an independent manner, free from political pressure. Debates over the impact of international interventions in Cambodia have thus re-emerged, most notably over the UN peacebuilding mission of 1992-93. But the political situation in contemporary Cambodia also raises questions regarding the legacies of the ECCC and the transitional justice process.

#### Overview on the Collection of Working Papers on Cambodia

This collection of papers contributes to these discussions. It brings together the perspectives of eight authors with various disciplinary backgrounds, including law, social sciences, development studies and international affairs. Many of these authors also draw from their previous experiences and insights as practitioners in Cambodia's transitional justice process.

A first group of authors discusses how far the transitional justice process has gone in Cambodia, and what has been achieved in terms of the goals initially set for this process.

In their paper, Kimsan Soy and Vandanet Hing examine how the ECCC has contributed to improving fair trial rights in the national judiciary. One of the main hopes associated with hybrid tribunals has been that these tribunals

would contribute to strengthening the national judiciary, as they are set in the country where the crimes have taken place and employ national staff. This was also one of the strong aspirations shared by actors involved in the establishment of the ECCC. Fifteen years later, Soy and Hing ask how defense counsels and experiences of legal representation at the ECCC have contributed to developments in the national justice system. Drawing from qualitative interviews conducted with Cambodian legal professionals, they argue that although the ECCC clearly demonstrates international fair trial standards, in particular the right to effective legal representation, the greatest challenge standing in the way of positive legacies for the domestic judicial system remains political control of the judiciary.

In her paper, Sotheary You also reflects on the impact of transitional justice on contemporary Cambodia, but with a focus on sexual and gender-based violence against women. In order to do so, she draws from the concept of guarantees of non-recurrence and from feminist scholarship on gender justice. You discusses how the ECCC has addressed sexual and gender-based violence so far, in the legal proceedings and in the reparations projects endorsed by the ECCC. She also examines measures taken by the Cambodian government to address the non-recurrence of sexual and gender-based violence. She argues that in light of the ongoing discrimination against women in Cambodia, the transitional justice process has failed to effectively address the issue. She proposes policy recommendations and the adoption of a comprehensive approach, beyond the remit of the ECCC, to ensure the non-recurrence of sexual and gender-based violence against women.

In his paper, Sovann Mam reflects on to what degree reconciliation has been achieved in Cambodia after the Khmer Rouge regime. Drawing from qualitative interviews conducted in Anlong Veng, the former Khmer Rouge stronghold in the North-West of Cambodia, he argues that reconciliation is still missing at the community level. Mam thereby questions the prevalent political narrative in Cambodia that reconciliation has been fully achieved since the end of the 1990s. He shows that while the policies of the Cambodian government in the 1990s secured stability and negative peace, they also delayed the quest for justice and the establishment of the ECCC. Based on his field research in Anlong Veng and interviews with civil society actors working on reconciliation, Mam suggests that more attention should be paid to facilitating processes of acknowledgment and empathy between victims and perpetrators.

In addition to these three papers reflecting on the achievements and limitations of the transitional justice process in Cambodia, the second group of authors focuses on the roles and views of various actors.

In her paper, Samphoas Huy reflects upon the role of intermediary organisations in facilitating, implementing and shaping victim participation at the ECCC. She conceptualizes the role of Cambodian civil society organisations as 'vernacularizers', or actors intimately involved in the translation of international transitional justice norms into the Cambodian context. She analyses this process of vernacularization in various, rich examples of outreach

and inreach that have taken place around the ECCC over the past years. Huy argues that through this process of translation and appropriation, which similarly to previous human rights work in Cambodia significantly draws upon Buddhist understandings, local actors created a transnational space that allowed for meaningful victim participation. But her paper also shows that this process was not without creating 'frictions': actors involved faced challenges in translation but also difficulties related to questions of representation, agency and voice in victim participation.

In her paper, Somaly Kum focuses on donors – a group of actors that is not researched enough in the field of transitional justice, although being key in shaping transitional justice interventions. She provides an overview of the various types of donors that have been funding transitional justice in Cambodia – state donors; non-state donors; multilateral donors. She asks what their role has been in shaping the transitional justice process, both directly and indirectly, through funding the ECCC and civil society projects. Kum draws from qualitative semi-structured interviews conducted with current and former donor representatives, as well as transitional justice practitioners. She discusses how donors reflect upon their roles and societal impact 15 years after the establishment of the ECCC, and shows that one of the main motivations mentioned by her respondents for funding transitional justice, besides contributing to justice and accountability, was to contribute to the rule of law and capacity building.

Finally, Boravin Tann and Khuochsopheaktra Tim discuss the perspectives of an important segment of the Cambodian population: the younger generations born after the Khmer Rouge regime. Although representing the majority of the population today, this group has been rather sidelined in transitional justice discussions in comparison to the elder generations of direct victims. Drawing from rich empirical data, including a recent quantitative survey and focus group discussion, Tann and Tim describe how their respondents, keen to learn more about the Khmer Rouge past, deplored the limitations of information on this matter. They analyse how they view the memorialization processes on the Khmer Rouge regime. They also discuss the existing scope for youth participation in Cambodia's transitional justice process and the intersections between memorialization, the ECCC and the non-recurrence of human rights violations.

Taken together, these papers show avenues for further research and initiatives on transitional justice in Cambodia, from the perspective of Cambodian authors. They also illustrate the relevance of the Cambodian case study for the broader field of transitional justice today. Fifteen years after the establishment of the ECCC, these papers examine from various academic perspectives whether, how and to what extent the transitional justice endeavors in Cambodia have created change. They thereby speak to questions of agency, power and representation that are at the core of critical transitional justice scholarship, and to the long-term emancipatory and transformative aspirations that continue to shape the field.

# 1 Introduction

Since the fall of the Khmer Rouge (KR) on 7 January 1979, the Cambodian government has carried out institutional, societal and individual interventions regarding the guarantees of non-recurrence to bring peace and reconciliation for survivors of the KR. The majority of parties involved in the civil wars and conflict in Cambodia signed the Paris Peace Accord in 1991, which was followed by national elections in 1993 with the support of the United Nations Transitional Authority in Cambodia. Cambodia's government readopted its national constitution in 1993 to grant certain rights and to restore dignity to Cambodians, then adopted other national laws and policies and established the Ministry of Women's Affairs (MoWA) to promote women's rights and gender equality. Four years after the 1993 elections, the government started negotiating with the United Nations (UN) to bring justice to the survivors of the atrocity regime through a formal tribunal system. With the support of the UN, Cambodia established the Extraordinary Chambers in the Courts of Cambodia (ECCC) in 2004 to bring the senior leaders and those most responsible in the KR regime to trial. To date, the ECCC has concluded two cases: Case 001 and Case 002/01 against the accused Nuon Chea, Khieu Samphan and Kaing Guek Eav.

Fifteen years after the establishment of the ECCC, this paper asks whether and to what extent the transitional justice process in Cambodia has contributed to providing guarantees of non-recurrence of sexual and gender-based violence (SGBV) against women in Cambodia. The SGBV experience of women and girls under the KR has not been fully recognized in the ECCC (Elander 2016, 166; De-Langis 2015; Ye 2014; Irvin-Erickson 2018; Studzinsky 2013). After many feminist scholars criticized the ECCC for being a gender-blind tribunal, the ECCC attempted to address some aspects of SGBV against women under the KR, including forced marriage in the case 002/02. The ECCC, however, has not addressed power dynamics and patriarchal practices. The gender-blind experience in the ECCC can be seen in the following three areas: (1) the absence of an acknowledgment of an obligation to make reparation to SGBV survivors; (2) a lack of women's representation in the ECCC process; (3) the ECCC and the Cambodian government have not fairly redistributed economic resources to men and women post-KR.

There is unequivocally a lack of recognition of SGBV against women under the KR. The transitional justice and peacebuilding processes have not tackled the institutional hierarchies of culture that deny women equal status with men in society as suggested by the United Nations Security Council Resolution (UNSCR) 1325.<sup>1</sup> Moreover, the processes of transitional justice and peacebuilding have limited capacity to activate an adequate representation of women and girls to the extent that women's agency<sup>2</sup> is not fully granted. Under-representation of women at the ECCC might have led to a lack of gender sensitivity at the hybrid court. The transitional justice process, thus, has not given formal status to gender as a factor in shaping women's experiences of conflict or in determining the Guarantee of Non-Recurrence (GNR) initiatives. In the broader Cambodian context, women are under-represented in all spheres of society, including the national assembly, senate, government, courts and at the sub-national and local levels (Williams and Palmer 2016; UNDP 2018; Ministry of Women's Affairs 2014). Finally, the unfair

<sup>1</sup> UNSCR 1325, the first resolution in the Women, Peace and Security agenda, was adopted in 2000, reaffirming the important role of women in peacebuilding, including their full involvement and equal participation in the promotion of sustainable peace and security. Resolution 1325 has four pillars: women's participation in peacebuilding, protection of women and girls from SGBV, prevention of SGBV against women and girls and relief and recovery measures that address the post-conflict issues through a gendered lens. See: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/1325\(2000\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1325(2000)) [accessed November 23, 2019].

<sup>2</sup> According to the World Bank, women's agency refers to women's ability to earn and control income, women's freedom of mobility inside and outside the home, women's ability to freely choose a spouse or partner, women's freedom from the risks of violence, and women's ability to voice their concerns and influence policy and policy practices. See: <https://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1315936222006/chapter-4.pdf> [accessed November 23, 2019].

<sup>3</sup> Given recent resolutions in the Women, Peace and Security agenda regarding conflict-related sexual violence against men and boys must also be addressed in the context of the KR regime and transitional justice mechanisms. See for example UNSCR 2106 (2013) and UNSCR 2467 (2019).

redistribution of resources to men and women remains an immense challenge when tackling SGBV against women post-KR. Cambodian women are more disadvantaged than men in accessing resources and services, such as education, decent employment and land titles. Women are expected to be responsible for care, which acts as a barrier for women to enter the paid workforce. Women are seen as having dual responsibilities as caregivers and breadwinners while receiving less recognition as an equal counterpart to men in society.

The transitional justice mechanism could provide an entry point to transform the lives of marginalized and disenfranchised people through tackling the causes of inequality and holding the decision-makers accountable for making this happen. This paper therefore argues that in order to guarantee the non-repetition of SGBV against women, Cambodia's transitional justice process should aim to address social and cultural injustice effectively, subvert the patriarchal and oppressive norms that disempower women and girls and promote women's participation in the social, economic and political development in Cambodia. This paper explicitly focuses on SGBV against women and its GNR, as its prevalence is still alarming four decades after the KR collapse.<sup>3</sup> Gender stereotypes and discrimination continue to persist in Cambodia, fueling the marginalization of women in accessing resources and participating in social and economic development after the KR.

In order to make this argument, I draw on the framework of GNR suggested by de Greiff (2015), the former UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence. This framework outlines that GNR interventions should take place in the institutional, social and individual spheres. I also draw on feminist scholarship on gender justice (Durbach and Chappell 2014), which highlights the importance of representation, redistribution and recognition in transitional justice processes. These two frameworks provide a foundation to understand the characteristics of formal transitional justice processes and the roles of state actors, such as the government of Cambodia and the ECCC, in guaranteeing the non-recurrence of SGBV against women in the post-KR regime. A combination of these two frameworks enables us to access a bigger picture of GNR of SGBV against women from a feminist perspective.

This paper is divided into four main parts. The first section lays out the concept of GNR of the SGBV against women in armed conflict. It discusses the UN Framework on GNR as suggested by de Greiff (2015), as well as works on GNR of SGBV against women in various contexts, in order to understand the patterns and characteristics of gender-ignorance and gender-blindness of the transitional justice in addressing the SGBV against women. This section also discusses the work of Durbach and Chappell (2014) on gender justice in the transitional justice process. The second section draws from existing feminist scholarship and discusses how the ECCC has addressed SGBV against women that occurred under the KR regime. The third section highlights the continuities in discrimination and violence against women in Cambodia and some GNR initiatives of the government. In the conclusion, I offer policy recommendations to promote transformative justice and to prevent SGBV against women in Cambodia.

## 2 Addressing SGBV against Women in Transitional Justice

The term 'guarantees of non-recurrence' was introduced in 1993 (de Greiff 2015). Since then, the international standards on the GNR have grown significantly. Promoting transformative justice for the survivors of SGBV requires effective policy and legal regulations and implementation beyond the judicial measures of the transitional justice process. In addition to understanding the UN concept of GNR, feminist scholarship on women and transitional justice is necessary to fully address what GNR of SGBV against women under the KR requires.

### Guarantees of Non-Recurrence of SGBV

Women survivors of SGBV in armed conflict have largely been absent in the process of transitional justice almost anywhere in the world. Williams and Opdam (2017) pointed out that a lack of women participation in the process of transitional justice is caused by a lack of women representation in the transitional justice process, a lack of recognition of the gender-based crimes in armed conflicts and a lack of redistribution of economic resources to women after the conflict or civil wars (Williams and Opdam 2017, 1282).

Some feminist scholars examine one aspect of transitional justice in particular, that of reparations. O'Rourke and Swaine (2017) and Chappell (2017) note that the acknowledgment of the state to make reparations to victims and survivors of gender-based crimes is often absent in post-conflict societies transitioning from conflict. Chappell (2017), in her work on the 'gender injustice cascade', analyses the reparations for victims of sexual and gender-based crimes in the Lubanga case at the International Criminal Court. She concludes that there is a lack of recognition of gender-based crimes in armed conflicts, thereby neglecting women who are the victims of SGBV in the process of peacebuilding and transitional justice (Chappell 2017). Couillard (2007) also stresses that a lack of holistic, transformative reparation approaches –which result in the failure to acknowledge the structure and economic inequalities experienced by many women and the impact of such inequalities on sexual violence before, during and after the conflict – is a pivotal challenge when it comes to seeking gender justice for women victims and survivors.

These issues have caught the attention of policymakers, scholars, experts and development practitioners, gender advocates and feminist groups working on sexual and gender-based crimes in armed conflicts. The Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence (2014) lays out the guiding principle for the reparation of SGBV in armed conflict: the reparation should strive to be transformative in design and implementation of the reparation programs. The Nairobi Declaration on Women's and Girls' Rights to a Remedy and Reparation from 2007 specifies that the reparation must drive the post-conflict transformation of socio-cultural injustice and political and structural inequalities that shape the lives of women and girls.<sup>4</sup> The UN Entity for Gender Equality and the Empowerment of Women (UN Women) and the UN Development Programme (UNDP) highlight that the guarantees of non-recurrence of gender-based violence necessitate the reforms not only of national economic, political and legal structures, but also

<sup>4</sup> See: [https://www.fidh.org/IMG/pdf/NAIROBI\\_DECLARATIONeng.pdf](https://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf) [accessed April 22, 2019].

local cultural structures that perpetuate discrimination and violence against women and girls (UN Women and UNDP 2010).

The literature suggests that the interventions or mechanisms to address SGBV should focus on the transformation of the lives of victims that must not reinforce pre-existing patterns of SGBV against women. Urban-Walker, as cited by Durbach et al. (2017), argues that interventions of transitional justice should be based on the principle of non-discrimination and the subversion of the patriarchal and oppressive norms that disempower women (Durbach et al. 2017, 1186). The overall objective of the intervention aims to meet the broader goal of gender equality, which potentially reduces gender-based violence in society and promotes women participation in social, economic and political spheres (Durbach et al. 2017, 1187-1190). Manjoo (2017), Williams and Opdam (2017) and Durbach and Chappell (2014) suggest that the interventions need to tackle the issues on three levels — individual, institutional and structural — to redress gender-based crimes in armed conflicts. At the individual level, the participation and engagement of women in the process of transitional justice is crucial. The stakeholders, especially the policy implementers, need to avoid overtly discriminatory measures (Manjoo 2017, 1197; O'Rourke and Swaine 2017, 1305). The structural intervention should tackle the pre-existing structural subordination and systematic marginalization and ensure that patriarchal values do not leak into reparation designs and implementations (Manjoo 2017, 1198; O'Rourke and Swaine 2017, 1305). At the institutional level, Manjoo (2017) stresses the lack of gender-sensitivity in tribunal procedures affects the participation and engagement of women in transitional justice. To address gender-based crimes post-conflict, the legal institution should be equipped with the capacity to handle the crimes in a gender-sensitive way (Manjoo 2017, 1198).

#### Basic Principles of Guarantees of Non-Recurrence

Beyond the literature focusing on the non-repetition of SGBV, guarantees of non-recurrence are also discussed more broadly in the field of transitional justice. Here, the 2015 report published by Pablo de Greiff is particularly useful. In this report, he defines guarantees of non-recurrence as the transitional justice measures which go beyond truth-seeking processes, reparations and criminal prosecutions to specifically address the prevention of crimes.

Similarly to the feminist scholarship discussed above, de Greiff (2015) suggests that interventions for guarantees of non-recurrence should focus on three critical areas, the first being institutional interventions, which include the ratification of the international treaties, legal reforms, judicial reforms and constitutional reforms. Traditionally, guarantees of non-recurrence have indeed focused on democratic structures, civilian oversight of security forces, a functioning judicial system and the rule of law (swisspeace 2012, 6). Second, societal interventions, which consist of legal empowerment, aim to create an enabling environment and allocate resources dedicated to the guarantees of non-recurrence mechanism, and ceasing attacks and removing obstacles. The societal interventions are seen as a tool to change the factor endowment,

such as the available resources and human capacity. Third, interventions in the cultural and individual spheres aim to tackle SGBV through education reforms, art and culture, archive and trauma, and counseling and psychosocial support (De Greiff 2015, 10-23).

The GNR mechanisms require an effective policymaking process, including planning, budgeting and monitoring. The creation of the structures is an expensive and sophisticated long-term process. It is important to note that, while the process of guarantees of non-recurrence often starts with the demobilization of armed forces, free and fair elections, reforms of the security sector, constitutional reforms and the construction of a functioning and independent judiciary, one size does not fit all (de Greiff 2015, 8; swisspeace 2012, 6). No intervention on its own in any of the three spheres is likely to offer sufficiently strong guarantees (de Greiff 2015, 9). According to Mayer-Rieckh (2017), the cultural and individual spheres are the most challenging elements of the prevention measures. However, when interventions in the institutional sphere are not possible due to political or organizational resistance to change, the intervention measures that aim to tackle the culture and personal structures can provide significant entry points to address the issue (Mayer-Rieckh 2017, 438).

In the remainder of this paper, I will draw on these conceptual approaches to GNR in transitional justice in order to examine what has been achieved so far with regards to guarantees of non-recurrence for SGBV in Cambodia, and what still needs to be done. In the next section, I first provide an overview of SGBV under the KR regime, before analyzing how the ECCC has so far addressed SGBV against women.

### 3 The ECCC and SGBV against Women under the Khmer Rouge

5 Full Text of the Code #6, as cited by De Langis (2014a), is as follows: '6. Never commit any misconduct toward women: In short, never commit any ethical misconduct toward women and men. Our honor, revolutionary influence, the clean and dignified culture of our people would be affected if such acts were committed. On the one hand, it would affect our people. On the other hand, and most importantly, if we committed such moral misconduct toward women and men, which is an acutely corrupt element believed to be possessed by enemies of all sorts, we would be easily lured by the enemy. This act is, therefore, dangerous to us and the revolutionary movement. There is no obstacle concerning the present arrangement of marriage, so long as the following principles are adhered to: first, each to-be-married individual consents to the marriage; and second, the collective approves it. When these principles are followed, there is no reason for anyone to commit ethical misconduct toward women and men.'The

Women experienced many forms of SGBV under the KR. Forced marriage, which is the only form of SGBV under the KR acknowledged by the ECCC, was one form of gender-based crime, imposed on the general population of reproductive age, not specifically designed for women. Decades after the KR, the survivors of SGBV live with physical and psychological health problems. Some women victims and survivors were able to seek justice and reparation through the ECCC but others were denied their rights by the hybrid court. Some survivors sought other forms of transitional justice through engaging with the civil society organizations' projects. Despite the inclusion of forced marriage in Case 002/02, the majority of the reparation projects of the ECCC are not directed toward the GNR of SGBV against women under the KR.

#### SGBV against Women under the Khmer Rouge

Under the KR, many women experienced SGBV in the form of individual rape, gang rape by multiple perpetrators, mass rape of multiple victims, rape with a foreign object, forced nudity, sexual exploitation and forced marriage (Ye 2014, 24; Natale 2011, 1-2; Nakagawa 2008; Strasser et al. 2015; De Langis 2014b, 41). During their rule, the KR introduced a code to prevent SGBV, namely Code #6.<sup>5</sup> However, rape and other forms of sexual violations occurred despite having a strict code of conduct to prevent sexual relationships outside of marriage. Scholars on gender-based violence under the KR therefore consider Code #6 as a tool to silence the victims of sexual violence and reinforce the concept of denying women's ownership over their own bodies (De Langis 2014a).

Rape and other forms of sexual violence have a severe impact on the victim's physical and psychological well-being. Many studies revealed that forced marriage resulted in gendered impacts and had dramatic social, economic and cultural consequences on women and their children. The victims of SGBV under the KR suffer trauma, discrimination, violence and stereotyping afterward (Ye 2014, 4; Natale 2011, 1-2; Nakagawa 2008; Strasser et al. 2015; De Langis et al. 2014). According to a study on victim participation at the ECCC and gender-based violence under the KR, which interviewed 222 KR survivors, 51% of respondents reported that the sexual and gender-based violence that they experienced under the KR affected their psychological well-being (Strasser et al., 2015, 17). 20.4% of respondents reported that the experience of violence affected their physical well-being, while 15.2% reported that it had harmed their sexual functioning (Strasser et al., 2015, 17). 30% of respondents reported that they experience a lack of respect in their community due to forced marriage because people in their community believe that their marriage went against traditional norms (Strasser et al. 2015, 18).

In her work on forced marriage under the KR, Irvin-Erickson (2018) concludes that forced marriage has social and physical consequences that still affect the lives of Cambodians four decades after the collapse of the KR, representing a continuation of the legacy of genocide and mass atrocities long after the end of KR. Strasser et al. (2015) and De Langis et al. (2014) also suggest that there are still significant needs related to SGBV under the KR that need to be addressed today through policy and legal frameworks and more holistic approaches, including policy, cultural and attitude changes in order to tackle

mental and physical damage. They argue that victims of SGBV under the KR need more holistic support from the relevant institutions, especially the government and ECCC, such as improving psychosocial services, providing affordable legal services, strengthening the reporting system related to SGBV and using media to raise awareness of the general public to guarantee the non-repetition of SGBV against women (Strasser et al. 2015, 19-20; De Langis et al. 2014, 18).

#### Gender-Sensitivity at the ECCC

To date, the transitional process has not comprehensively addressed SGBV committed against women under the KR. Critics suggest that the ECCC has lacked gender-sensitive measures to address these crimes (Studzinsky 2013; Killean 2015). Palmer and Williams (2017) note that the design of formal procedure rules of the ECCC did not appear to feature gender concerns. At the beginning of the court proceedings, it was unclear whether gender experts were involved in the drafting of ECCC's formal rules or in the negotiation process to establish the ECCC, and there was no consultation with civil society, which could have brought attention to gender concerns (Palmer and Williams 2017, 25).

Women are also under-represented at the ECCC. In the chambers, only four of 23 judges are women and none of them assumed an advocacy role on gender issues in the way that has been seen in other tribunals (Palmer and Williams 2017: 26). Notably, there was no female national judge at the ECCC. In the ECCC's Office of Co-Prosecutors, the national co-prosecutor, Chea Leang, is the only woman appointed to the post (Palmer and Williams 2017, 26). At the beginning of the operation of the hybrid court, all investigators and translators were men and as a result women's specific experiences under the KR may not have been taken into consideration in their work (Elander 2016, 167). For instance, Studzinsky, a former Civil Party Lawyer who spent seven years at the ECCC, claimed that the Co-Prosecutors and Co-Investigating Judges followed the common historical record which had never focused in-depth on SGBV committed under the KR (Elander 2016, 167). An ECCC staff member further pointed out that the absence of female investigators would have caused a gendered blindness in the ECCC at the investigation stage (Palmer and Williams 2017, 27). In addition, the absence of a female international co-prosecutor might have led to an unlikely momentum in favor of pursuing SGBV prosecutions (Palmer and Williams 2017, 27). In her analysis of the judgment in Case 002/01, Sankey (2016, 18) notes that the limited awareness of the ECCC on SGBV under the KR led to a predominantly gender-neutral account of the forced population movements which has never really been neutral. As a result, the ECCC has not explicitly acknowledged the impact of familial separation resulting from the context of forced population movement in a society where gender roles and inequalities remain embedded, meaning that the impact of pre-existing gender roles on experiences of family separation were not considered (Sankey 2016, 19).

6 See the following 16 projects: (1) National Remembrance Day; (2) Community Memorials Initiative; (3) Preservation of Crimes Sites; (4) Tuol Sleng Stupa Project; (5) Testimonial Therapy Initiative; (6) Self Help Groups for Rehabilitation; (7) Gender and Transitional Justice Project; (8) National Reconciliation Event; (9) Forced Transfer Exhibition; (10) Victim Register; (11) Publication of ECCC Verdict; (12) ECCC Documentation Center; (13) Chapter on Victims Participation in a National History Textbook; (14) ECCC Virtual Tribunal; (15) Community Peace Learning Centers; (16) Victims Foundation of Cambodia.

When the court first became operational in 2006, SGBV against women was not considered as part of the widespread violence under the KR, unlike other violations such as killing, torture and forced labor (Elander 2016, 166; Ye 2014). The assumption that leads to this conclusion was that the strict moral Code, namely Code #6, had prohibited all non-marital sexual relationships, including instances of rape and sexual affairs (Elander 2016, 166; De-Langis 2015; Ye 2014; Irvin-Erickson 2018; Studzinsky 2013). SGBV scholars' works, however, have demonstrated that Code #6 had not prevented any widespread occurrence of SGBV against women under the KR (see e.g. De Langis 2015; Elander 2016; Natale 2011; Kasumi 2008; Ye 2014; Strasser et al. 2015). While crimes involving SGBV and forced marriages were absent from the 2007 introductory submission (see Szablewska and Jurasz 2019), the charges of forced marriage and rape within marriage were finally included in Case 002/02 after civil society organizations, civil parties and their lawyers protested (Ye 2014; Irvin-Erickson 2018).

Palmer and Williams (2017) noted that the advocates who seek to influence the prosecution of SGBV crimes at the ECCC mentioned relevant national laws and the national policies concerning the advancement of women's rights in Cambodia. Cambodia's system, however, is not well placed to influence the ECCC to address the SGBV against women under the KR. As an example, Cambodian procedural law did not represent a strong source for integrating gender aspects into the internal rules of the ECCC (Palmer and Williams 2017). In 2015, the UN Human Rights Committee also expressed its regret concerning a lack of information regarding reparations granted to victims of sexual violence crimes committed during the KR regime (Palmer and Williams 2017, 30). Similarly, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) expressed concern that the ECCC has not adequately addressed the cases of gender-based violence, in particular sexual violence against women, committed under the KR regime (CEDAW/C/KHM/4-5).

#### SGBV against Women and the ECCC's Reparation Mandate

Besides the prosecution of SGBV, the ECCC can also provide reparations and non-judicial measures. This could possibly play an important role in addressing SGBV. With a focus on collective and symbolic reparations, and the collaboration with civil society organizations during design and implementation, these interventions can be thought of in relation to what de Greiff (2015) conceptualized as interventions in the cultural or societal sphere.

However, most of the ECCC's reparation projects in Case 001 and Case 002 are not explicitly directed towards addressing SGBV against women under the KR. Between 2013 and 2017, the ECCC granted four categories of reparation programs, namely remembrance, rehabilitation, documentation and education, and contained 16 projects<sup>6</sup> with the expected budget of 7,000,000 USD (Victim Support Section and Civil Party Co-Lead Lawyers 2013). Only one of the 16 projects explicitly addressed the issues of gender-based violence and transitional justice under the KR. In Case 002/02, the ECCC attempted to provide reparations to victims and survivors of SGBV under the KR, which had some transformative characteristics.

Under Case 002, the ECCC granted some reparations projects to address SGBV under the KR such as the Pka Sla Krom Angkar, the Mobile Exhibition and Intergenerational Dialogue and the App-Learning on the KR History Project. The Pka Sla Krom Angkar is a reparation project for forced marriage under the KR that has some transformative characteristics. The project aims to address the harm suffered by civil parties as a result of forced marriages and to educate the younger generations about civil party experiences through classical dance performances, exhibitions and intergenerational dialogue.<sup>7</sup> This reparation project is based on five strategies: artistic engagement, community engagement, psychosocial support, documentation and historical preservation (Embassy of Switzerland, n.d.). It is a very significant project, providing transformative reparation to the victims and survivors of SGBV under the KR. It is implemented by civil society organizations and is financially dependent upon the support of the development partners.

The Mobile Exhibition and Intergenerational Dialogue are non-judicial reparations for the victims of forced marriage. The ECCC conducted this project in Takeo province, and victims, university students and the provincial authority participated.<sup>8</sup> The dialogue aimed to raise youth and public awareness of SGBV during the KR regime and encourage them to participate in challenging the current gender issues in Cambodia.

The App-Learning on the KR History Project was granted as a reparation project.<sup>9</sup> The project is implemented by the Bophana Audiovisual Resource Center to educate Cambodian youth about the experiences of civil parties and the KR history to prevent future recurrence.<sup>10</sup> This application, designed for smartphones, collects personal and collective histories of the KR regime through different audiovisual contents of the ECCC and KR survivors' voices.<sup>11</sup> The application briefly explains marriage before 1975, KR views on marriage, forced marriage and the importance of marriage for the KR regime. It also documents some testimonies of the KR survivors. However, the application does not explicitly include rape and sexual violence against women under the KR.<sup>12</sup>

While the ECCC and civil society have developed some reparation measures which address SGBV under the KR and which could contribute to GNR in the long term, more needs to be done beyond the scope of the ECCC. This becomes even more evident if we look at the situation of SGBV in Cambodia nowadays. In the following section, I provide an overview of persisting discrimination patterns against women and then discuss other measures that are relevant for GNR of SGBV in Cambodia, which have taken place at the level of the state, beyond the scope of the ECCC.

7 See ECCC Document no. E352/2/1, Civil party lead co-lawyers' submission relating to reparation projects for implementation in Case 002/02, available at: [https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2016-08-09%2020%3A36/E352\\_2\\_1\\_EN.PDF](https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2016-08-09%2020%3A36/E352_2_1_EN.PDF) [accessed April 22, 2019].

8 See [http://vss.eccc.gov.kh/index.php?option=com\\_content&view=article&id=194%3Amobile-exhibition-on-forced-marriage-during-the-khmer-rouge-regime-and-intergenerational-dialogue&catid=15%3Apress-release&Itemid=62&lang=en](http://vss.eccc.gov.kh/index.php?option=com_content&view=article&id=194%3Amobile-exhibition-on-forced-marriage-during-the-khmer-rouge-regime-and-intergenerational-dialogue&catid=15%3Apress-release&Itemid=62&lang=en) [accessed October 5, 2019].

9 Reparation projects in Case 002/2 have only been endorsed by the Trial Chamber so far, as the appeals proceedings are still ongoing (even though reparation projects already started to be implemented before the end of the appeal procedures). The application can be accessed here: <https://apps.apple.com/kh/app/khmer-rouge-history/id1262423973> [accessed June 18, 2019].

10 See ECCC Document no. E352/2/1 quoted above.

11 See <https://bophana.org/event/app/> [accessed June 14, 2019].

12 As accessed on June 14, 2019.

## 4 Beyond the ECCC: Addressing SGBV in Cambodia

13 Partner for Prevention is a regional joint program for GBV prevention of four UN agencies including UNDP, United Nations Population Fund, UN Women and United Nations Volunteers in Asia and the Pacific, see: <http://www.partner-s4prevention.org/>

14 The Gender Inequality Index measures gender inequalities in three important aspects of human development: health, empowerment and labor market. See: <http://hdr.undp.org/en/content/gender-inequality-index-gii> [accessed November 23, 2019].

As suggested by de Greiff (2015) and Durbach and Chappell (2014), effective interventions for the GNR of SGBV need the state actors to intervene in institutional and legal arrangements, cultural and societal change and change in individual attitudes toward SGBV. Thus, the intervention at the formal tribunal alone would not be able to generate lasting guarantees of non-repetition of SGBV against women in Cambodia. Rather, the existing gender-stereotyping and discrimination which continues to persist in Cambodia must be addressed by the ECCC and society more broadly in order to prevent future occurrences of SGBV against women.

### Continuities in Discrimination and Violence against Women in Cambodia

In Cambodia women are still disadvantaged in all spheres of society. The levels of violence against women are increasingly alarming. A 2013 study by Partner for Prevention<sup>13</sup> revealed that one in five Cambodian men had committed rape, while more than 40% of those men have not been held accountable for their abuses (Fulu et al. 2013). The Cambodian Women Code of Conduct, which is called 'Chbab Srey' in Khmer, continues to reinforce domestic abuse as acceptable actions (Eisenbruch 2018). The Chbab Srey instructed married women to respect and unquestioningly obey their husband (Anderson and Grace 2018). According to this code, married women are not expected to treat their husband as their equal; an ideal Khmer woman is expected to be responsible for domestic and care work at home, to be submissive and to display demure behaviors in interactions with men (Anderson and Grace 2018). If a Khmer woman violates the Chbab Srey, she might be excluded from, or disrespected by, her community as a punishment.

Women are also under-represented in all tiers of Cambodia's societal organizations. Williams and Palmer (2016) noted that women's representation in the Cambodian judicial system and political life remains well below that of men. Women represented about 18% of total parliament members as of 2018 (UNDP 2018). According to 2014 figures, women represent only 14% of total senate members, 10% of total ministers, and no women were appointed as provincial governors (MoWA 2014).

Cambodian women continue to face a disadvantage in attaining secondary and higher education and decently paid job opportunities (Williams and Palmer 2016, 316). According to the Human Development Index (HDI), only 15.1% of adult women have reached at least a secondary level of education (UNDP 2018). For every 100,000 live births, 161 women die from pregnancy-related causes (UNDP 2018). As of 2018, Cambodia's female HDI value was about 0.553, which is below the average female HDI value of the East Asia and Pacific Region (UNDP 2018). Cambodia has a Gender Inequality Index value<sup>14</sup> of 0.473, ranking it 116 out of 160 countries (UNDP 2018).

Despite having a high percentage of labor participation of about 80%, about 57% of Cambodia's women labor force are employed in vulnerable employment, and approximately 43% of women laborers are wage workers, according World Bank statistics (World Bank n.d.). Cambodia's female

population has lower income per capita than male population. According to the 2019's HDI report, average income per capita for women was about 3,129 USD in Purchasing Power Parity, while average male income per capita was 4,089 USD (UNDP 2019, 5). A report cited by the Organization for Economic Cooperation and Development (OECD 2019) suggested that, despite the legal acknowledgment of equal rights to inherit the land – which is a significant economic yet scarce resource in Cambodia – women are less advantaged than men when it comes to inheriting the land.

In the 2013 submission to the Committee on the Elimination of Discrimination against Women (CEDAW Committee), the Cambodian Defenders Project concluded that 'entrenched gender inequality and the legacy of the KR time have created an environment of impunity and tacit acceptance under which all types of violence against women takes place in present-day Cambodia' (see Williams and Palmer 2016, 316).

The situation of women in Cambodia shows that more needs to be done to ensure non-recurrence of SGBV against women. The structural gender inequalities must be addressed within the ECCC. Also, it requires effective mechanisms of the government to address SGBV against women beyond the existing transitional justice mechanism at the ECCC.

### Guarantee of Non-Recurrence Measures against SGBV against Women

If we think of guarantees of non-recurrence, as conceptualized by de Greiff (2015), as including interventions at various levels – institutional, societal and cultural – we can see that the government of Cambodia has already taken some measures to address the non-recurrence of SGBV in Cambodia after the KR regime.

Indeed, Cambodia has ratified international treaties that are essential for the protection of women's rights. This includes the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention of Elimination of All Forms of Racial Discrimination (ICERD), CEDAW, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the Convention on the Rights of the Child (UNCRC), Convention on the Rights of Persons with Disabilities (CRPD) and the Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). Under these treaties, Cambodia is obligated to take initiatives of legislation, administration and judiciary to prevent acts of torture and violence.<sup>15</sup> Cambodia must ensure an effective remedy, no matter who is the perpetrator, for people who are affected by a violation<sup>16</sup>. Cambodia has to ensure the rights of Cambodian people and people living in Cambodia to enjoy the highest attainable standard of physical and mental health.<sup>17</sup> Cambodia must ensure adequate access to justice in all legal proceedings, including at the investigative and other preliminary stages without any gender, racial or disability discriminations.<sup>18</sup> Cambodia must ensure free consent for marriage, whereby forced or arranged marriage is unacceptable under the national laws.<sup>19</sup> Cambodia is further obligated to address the widespread or systematic practices of enforced disappearance

15 See UNCAT Article 2 and Article 4.

16 See ICCPR Article 2; ICERD Article 6; ICESCR Article 10.

17 See ICCPR Article 2; ICERD Article 6; ICESCR Article 10.

18 See CEDAW; CRPD Article 13; ICERD; ICPPED.

19 See ICESCR Article 10.

20 See ICPED Article 5.

21 See UNCRC Article 34.

22 The MoWA emerged from the Ministry of Women's and Veterans' Affairs established in 1993.

through national laws.<sup>20</sup> Finally, Cambodia is also obligated to protect children from all forms of sexual exploitation and sexual abuse.<sup>21</sup>

In early 2004, the Cambodian government also established the MoWA to promote women's rights and gender equality in the country.<sup>22</sup> Since its establishment, the MoWA has designed and implemented national legal and policy frameworks promoting the rights of women and girls in Cambodia. The government also established the Technical Working Group on Gender to coordinate gender mainstreaming at the inter-ministerial levels. At the provincial and local levels, the government also commissioned committees of women and children to address the issues faced by women and children at the provincial and local level. The establishment of these entities has supported gender related policy design and implementation in Cambodia, such as the National Action Plan to Prevent Violence Against Women and the National Gender Strategic Plan.

Finally, Cambodia has also taken legal measures to protect women from any form of violence and prevent future women's rights violations. The Constitution of Cambodia has several provisions that protect the rights and dignity of Cambodians against any acts of violence. Article 31 ensures equal rights between men and women in Cambodia without any discrimination against race, religion or beliefs. Article 45 protects the rights to marriage of Cambodians and follows the principles of mutual consent and monogamy. Article 38 forbids physical abuses against any individual. It also protects the life, honor and dignity of people in Cambodia. Article 46 prohibits acts of human trafficking, exploitation of prostitution and obscenities which affect the dignity of women. Article 39 grants the rights to Cambodians to denounce, make complaints or file claims for reparations of damages caused by any breach of law by state and social organizations or by the staff of those organizations. In addition, the Criminal Code of Cambodia dedicates a chapter to crimes against the person (including crimes against humanity, genocide and war crimes), and to offenses against the person (including homicide, torture and acts of cruelty, the violation of personal integrity and other acts of violence). The code indicates the definitions of each crime and its penalty. Crimes against the person and offenses against the person are subject to life imprisonment. The Law on Suppression of Human Trafficking and Sexual Exploitation aims to protect Cambodians from any acts of human trafficking and sexual exploitation, especially Cambodian women and girls. According to Article 1, the law also aims to implement the UN Protocol to prevent, suppress and punish human trafficking, especially of women and children.

The effectiveness of the implementation of domestic laws, however, is still insufficient due to the behavior of legal discrimination and the attitude of the government staff, especially police and local authorities, toward victims of gender-based and sexual violence. A study commissioned by Care International (2014) found that the attitude of the government authorities has not encouraged victims of sexual and gender-based crimes to seek justice and social and legal help (Leang and Op 2014). A similar characteristic is also found at the ECCC. Palmer and Williams (2017) highlight that the ECCC personnel who want to bring SGBV to the court were confronted with the informal structures and

practices neglecting SGBV crimes against women under the KR. The MoWA also recognized that the interventions that took place in the country have not meaningfully addressed the root causes of gender-based violence and Cambodia needs further efforts to tackle the causes of the problems and to promote the equal rights of women and men in Cambodian society (MoWA 2014; National Gender Strategic Plan 2014-2018).

Many scholars also note that the Cambodian government has not fully implemented the above-mentioned international treaties. In the fourth and fifth concluding observation report in 2013, the CEDAW committee emphasizes that Cambodia has not fully integrated the CEDAW convention into the legal instrument (CEDAW/C/KHM/4-5). The CEDAW Committee pointed out that the CEDAW convention has not been meaningfully implemented in the country, while the Women, Peace and Security agenda still has no place in Cambodia's policy and legal frameworks (CEDAW/C/KHM/4-5). In August 2018, Rhona Smith, the UN Special Rapporteur for Human Rights in Cambodia, expressed her concern over the repression of rights and of enjoyment of fundamental freedoms in Cambodia, which have implications for the protection and promotion of all human rights in the country. The Special Rapporteur also urged the government to take critical measures to promote and protect human rights in Cambodia following the principles of international conventions and laws (A/HRC/39/73).

In Cambodia, social and cultural injustice, patriarchal and oppressive norms that disempower women and girls and limited women's participation in the social, economic and political development persist. Szablewska and Jurasz (2019) noted that the KR policies and the pre-existing cultural and social norms could be linked to current developments in Cambodia, including social inequality. In this regard, the transitional justice mechanism could provide an entry point to transform the lives of marginalized and disenfranchised people through tackling the causes of inequality and holding the decision-makers accountable for making this happen (Szablewska and Jurasz 2019). However, the transitional justice initiatives taken by the government of Cambodia have so far not effectively targeted the transformation of the lives of women and girls in the post-conflict context.

First, Cambodia has limited capacity to fulfill its promises to promote women's rights in accordance with international standards, in terms of both financial and human resources. The MoWA (2014) itself noted that Cambodia has limited human resources and financial allocations to implement the policy programs to promote women's rights and to address ongoing sexual and gender-based violence against women in Cambodia.

Second, Cambodia lacks a sound gender-transformative policy and legal frameworks that tackle the root causes of SGBV against women. For instance, the education policy still neglects the importance of the integration of gender-based violence in the school curriculum. Even though the Chbab Srey was dropped from the school curriculum in 2007, Cambodian society still teaches women the Chbab Srey, as it is embedded in all structures of society and remains an active force in the lives of female teachers and the girls they teach (Anderson and Grace 2018).

## 5 Conclusion and Policy Recommendations

This paper argues that the Cambodian GNR mechanisms have not effectively subverted the patriarchal norms that disempower women and girls in the post-KR regime. Some institutional and regulatory arrangements were put in place to redress vast human rights violations under the KR and to restore the dignity of women and girls in Cambodia. However, those institutional and regulatory frameworks are ineffective due to a lack of state capacity in implementing and monitoring them and a lack of national government policy orientation toward prevention, protection and the empowerment of women and girls. Effective GNR of SGBV against women need further effort and investment beyond the ECCC's mandate and they require responsive policy design and implementation by the government of Cambodia outside of the ECCC's scope. This paper suggests four policy initiatives to foster the effectiveness of the GNR of SGBV against women as follows:

### A National Action Plan on Women, Peace and Security

First, a National Action Plan to implement the UNSCR 1325 on Women, Peace and Security should be designed, adopted and implemented to provide a foundation for guarantees of non-repetition of the SGBV under the KR, and a specific budget should be allocated for this. The action plan should incorporate explicit guarantees of non-recurrence programs and identify the responsible agencies. It should propose a strategic coordination plan at the Technical Working Group of the line ministries of the government of Cambodia. Moreover, it should include a long- and medium-term capacity development plan to build the capacity of the government to address SGBV against women and to integrate a gender perspective into public policy.

The MoWA should be responsible for the design and implementation of the National Action Plan. The MoWA should collaborate with the civil society organizations that have been implementing the reparations of gender-based violence under the KR initiatives. It is recommended that the MoWA and the inter-ministerial working groups conduct consultation workshops and guarantees of non-recurrence initiatives. MoWA should work together with civil societies and development partners to learn from the previous initiatives and draw the national initiatives that repair the past violations and address the root causes of SGBV in Cambodia. The government should coordinate with all line ministries that provide public services in Cambodia to ensure the accessibility and non-discriminatory services to all Cambodians, especially survivors of gender-based violence under the KR.

### Integrate Education on Masculinity and Sexual and Gender-Based Violence against Women in the School Curriculum

Second, the topics of SGBV and masculinity should be included in the formal education system, since education plays a crucial role in preventing SGBV. Previously, the Ministry of Education, Youth and Sport (MoEYS) has supported civil society organizations in raising awareness among teachers and the public on issues related to gender-based crimes under the KR through the teacher training program. This activity should be scaled up to raise awareness in schools nationwide. Other reparation programs aiming at tackling SGBV under

## Conclusion and Policy Recommendations

the KR (such as Pka Sla Krom Angkar, developed at the ECCC) should be adopted by the government, especially the MoEYS, to educate the younger generation about women's experiences of SGBV under the KR.

### Building Institutional Capacity of Cambodian Government to address Sexual and Gender-Based Violence and for Feminist Public Policy

Third, the capacity of the national government needs to be strengthened in order to ensure that gender transformative justice is taken into account in the national policy design and implementation. The government should develop a national capacity building plan to strengthen the capacity of policymakers at the national, sub-national and local levels on SGBV and women's rights. A gender-responsive policy toolkit should be developed to guide all ministries to incorporate gender aspects into their policy programs in order to prevent SGBV against women.

### Changing Social Attitudes and Norms through Public Campaigns, Art and Effective Law Enforcement

Finally, changes in the societal attitude toward victims of SGBV should be at the center of all interventions. The interventions in cultural and individual spheres need to be strengthened and to engage a wider audience, especially the public service providers. A dialogue needs to take place on SGBV under the KR and its impacts on women and their family lives and well-being. At the heart of the prevention, the intergenerational dialogue should reach out to potential media influencers and social influencers as critical agents to change the perception of the public.

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