



## Written Submission to

### UN Committee on the Elimination of Discrimination against Women (CEDAW)

#### General Discussion on "Access to Justice" 54<sup>th</sup> Session, 11 February to 1 March 2013 in Geneva

This submission is prepared by Cambodian Defenders Project (CDP)<sup>1</sup> in collaboration with Theresa de Langis, Ph.D., Senior Expert in Women's Human Rights in Conflict Settings to contribute to the discussion on a new General Recommendation on access to justice based on the Cambodian perspective.

#### Priority Relevant CEDAW Article:

**The Convention under Article 15(1) mandates States Parties to accord women equality with men before the law**, which necessarily implies that women are entitled to equal benefit and protection of the law, a legal entitlement which is critical in the transitional justice context.<sup>2</sup>

#### **I. Background: Sexual Crimes under the Khmer Rouge Regime**

From April 1975 to January 1979 the repressive Khmer Rouge regime controlled Cambodia, responsible for the deaths of an estimated 1.7 million people. Presently, a hybrid war crimes tribunal, the Extraordinary Chambers in the Courts of Cambodia (ECCC), is adjudicating crimes against humanity and war crimes during the Khmer Rouge period. The ECCC is examining the world's largest crime site, with an estimated 200 prisons, 380 killing fields and 19,403 mass graves. The number of victims is the largest mass atrocity since the Holocaust.

There has never been a full investigation by the ECCC as to the scope and extent of sexual crimes during Khmer Rouge rule and therefore the number of victims of sexual crimes is largely unknown. However, a growing body of evidence collected by others shows that sexual crimes were widespread under the Khmer Rouge, that such violence was a daily lived reality; that acts were seldom punished and implicitly endorsed by an "enemy policy" promulgated by the highest leadership; and that victim-survivors continue to suffer from trauma, discrimination and social stigma even today. Alleged sexual crimes

<sup>1</sup> CDP is a local non-governmental organization (NGO) with a focus on free legal aid to the poor and vulnerable.

<sup>2</sup> CEDAW, *Concept Note for General Discussion on the Protection of Women's Human Rights in Conflict and Post--Conflict Contexts*.

perpetrated by the Khmer Rouge include sexual mutilation, sexual exploitation, and gang rape before mass execution of women and girls.

As a result of tireless advocacy by Civil Parties<sup>3</sup> and their lawyers to the ECCC, the systematic forced marriage of men and women under the Khmer Rouge is now being treated as a gender-based crime by the Court. The Court has determined it will not investigate the charge of rape outside of the context of forced marriage.

The implicit message of the ECCC's failure to investigate and prosecute sexual violence is that **impunity for sexual violence is protected by the highest legal institutions in the Cambodia**. Women's specific experiences of the atrocities of the Khmer Rouge regime have not been accounted for and, therefore, will not make up part of the official historical record of the period as determined by the proceedings of the ECCC. This has implications both for the legacy of the ECCC on Cambodian national courts and women's access to justice, as well as for the possibility of achieving reconciliation, peace and security for Cambodian women, as they fall victim to continued rampant sexual violence and the severe stigma of victimization.

## **II. Impact of Impunity For Cambodian Women Today**

Survivors of sexual violence during Khmer Rouge rule are still plagued by psychological and physical symptoms of their trauma. A culture of blame prevents survivors of sexual crimes from coming forward. As a result, survivors have limited opportunities to talk about past abuses and to find new ways of individual and collective memorialization and mourning. For these survivors and many more like them, they were never able to 'confront their past' in a safe setting – a situation that for many leads to the perpetuation of symptoms generally associated with trauma.<sup>4</sup>

Entrenched gender inequality and the legacy of the Khmer Rouge time have created an **environment of impunity and tacit acceptance under which all types of violence against women takes place in present-day Cambodia**.<sup>5</sup> Violence against women – particularly in the form of domestic violence, rape, and human trafficking for the purposes of sexual exploitation – is one of the most serious human rights problems in the country today.<sup>6</sup> The general conditions of the judiciary obstruct access to justice for women, and women who attempt to access formal legal action are often stigmatized and further re-victimized by the community for doing so. Many women are unaware of their fundamental rights to recourse or redress under formal law.

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<sup>3</sup> Civil Parties are private individuals who participate in the criminal proceedings with certain rights.

<sup>4</sup> Pham, Vinck, Balthazard, Hean, *After the first Trial*, Human Rights Center, University of California, Berkeley, 2011.

<sup>5</sup> United Nations Development Fund for Women (UNIFEM), the World Bank (WB), the Asian Development Bank (ADB), the United Nations Development Programme (UNDP) & the Department for International Development of the United Kingdom (DFID/UK), *Cambodia Gender Assessment*, UNIFEM, WB, ADB, UNDP, DFID/UK, 2004; <http://www.adb.org/Documents/Reports/Country-Gender-Assessments/cga-cam.pdf>

<sup>6</sup> LICADHO, *Violence Against Women in Cambodia*, 2007.

A 2010 Report by Amnesty International, *“Breaking the Silence: Sexual Violence in Cambodia,”* points to an increase in current-day rape in Cambodia, with younger girls making up a growing number of victims. There is an acute lack of resources for victims, including health and psycho-social supports, and perpetrators are seldom convicted in the criminal justice system. The result, the report concludes, is that, “amid a culture of impunity and widespread corruption, victims of sexual violence in Cambodia are often denied justice.”

### **III. Recommendations and Priority Actions**

Cambodia has signed and ratified the international Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1992 and the Optional Protocol in 2010. In 2011, the government submitted the combined 4<sup>th</sup> and 5<sup>th</sup> CEDAW Report. The Cambodian Government is developing the second National Action Plan to End Violence Against Women.

The national legislation enabling the establishment of the ECCC however does not make reference to CEDAW or UN SCR 1325 as operational frameworks. The ECCC, which is the only official transitional justice mechanism for Cambodia, continues to fail women by not adequately delivering justice or reparations for harms suffered and entrenching the flagrant impunity enjoyed by perpetrators of women’s human rights violations. This impunity continues to have impact today, with ever growing numbers of girl-child rapes, sex trafficking, and forced prostitution in Cambodia.

A General Recommendation on Human Rights of Women in Situations of Conflict and Post-Conflict could stress:

- 1. A requirement to State Parties and the United Nations to expressly name and apply CEDAW principles in post-conflict frameworks, including as part of any negotiated terms of agreement for the establishment of tribunals for the adjudication of war crimes and crimes against humanity. Implementation of CEDAW through such frameworks should thereafter be included as part of the individual State Party’s reporting obligations.***
- 2. An explicit statement of presumption by the CEDAW Committee that sexual crimes are at high risk of occurrence during conflict settings, and that judicial and humanitarian first response must adopt this presumption in making proactive interventions—rather than leave the onus on victims to come forward, at the expense of high social costs. Gender competence in reaching out to survivors and witnesses of sexual crimes is a fundamental pre-requisite for first-response peace-building efforts.***
- 3. A reiteration by the CEDAW Committee that sexual violence in armed conflict is among the most serious violations of international standards; that women are entitled to equal benefit and protection of the law in transitional justice processes; and that transitional justice processes are***

*obligated by CEDAW and other instruments to address the specific human rights violations of women in conflict-affected scenarios.*

- 4. An exhortation to conflict-affected State Parties to conduct a mapping of the violence committed against women and an analysis of the linkages between past violence in armed conflict and present violence in post-conflict society perpetrated against women, especially in those instances where impunity reigns.*
- 5. An obligation of State Parties to address the psychological, social and economic aftermath of violence suffered by women in armed conflict, including in reparation schemes.*

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