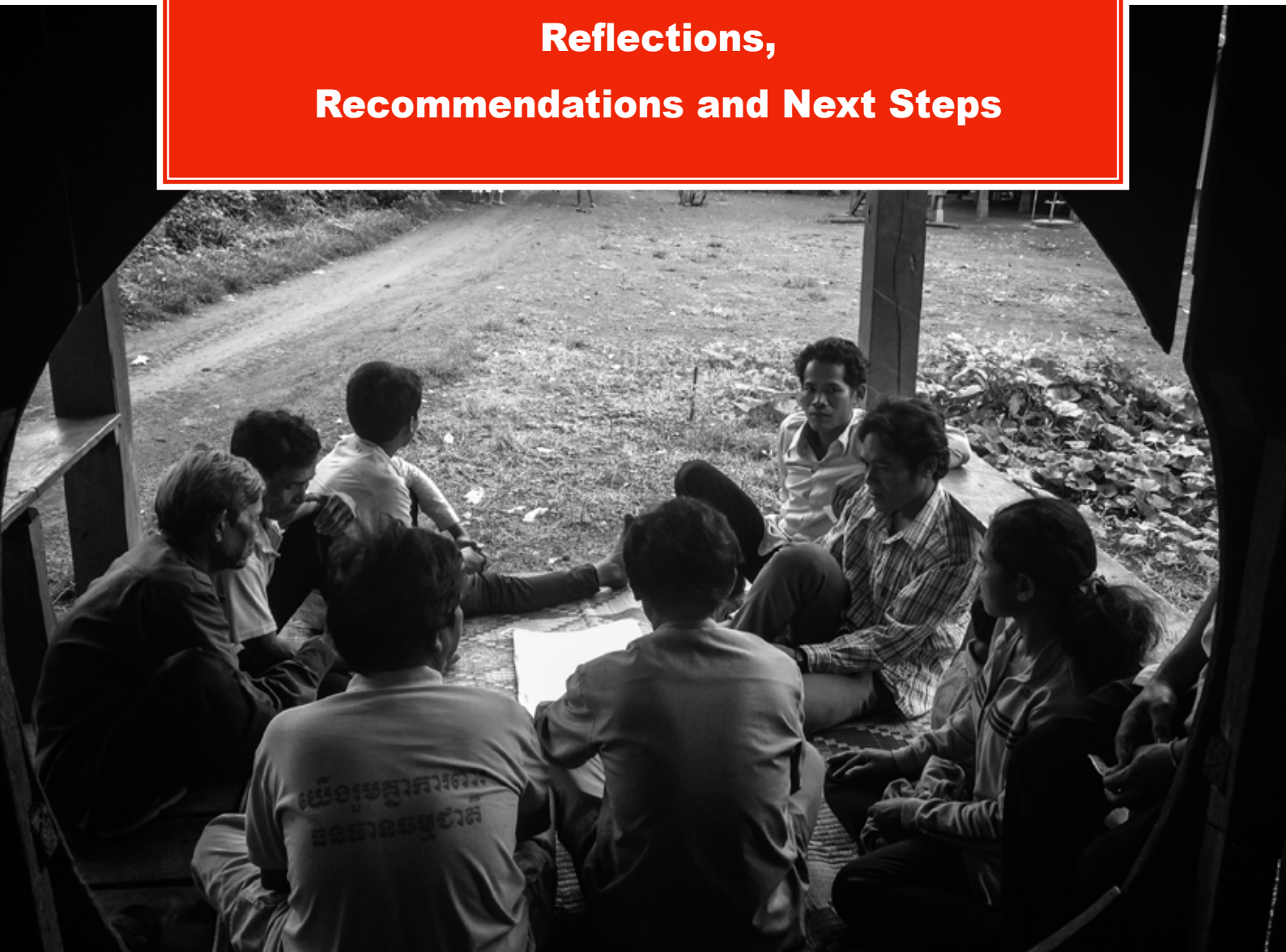


Transformative Reparations for Sexual and Gender-Based Violence at the Extraordinary Chambers in the Courts of Cambodia

Reflections, Recommendations and Next Steps



**REPORT OF THE WORKSHOP,
PHNOM PENH, CAMBODIA
28 November 2014**



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EXECUTIVE SUMMARY

This report details the outcomes of a workshop held in Phnom Penh on 28 November 2014. The focus of the workshop was the possibility, within the reparations mandate and legal framework of the Extraordinary Chambers in the Courts of Cambodia (ECCC), of designing and implementing transformative reparations for sexual and gender-based violence. The workshop engaged a range of ECCC actors, representatives of civil parties, researchers, academics and civil society organisations.

The key aim of the workshop was to examine emerging scholarship and practice concerning the design, selection and implementation of transformative reparations projects, in particular those projects addressing the specific harm suffered by victims of sexual and gender-based violence. Transformative reparations are those reparations that focus on identifying and changing underlying conditions that led to or contributed to the causes of conflict, and sexual violence in particular. Transformative reparations recognise that traditional forms of reparations, which tend to focus on restoring the victim to the position before the crime occurred, are often blind to or insufficient to address such societal factors.

The concept of transformative reparations was then applied to the Cambodian context to determine the potential for transformation as part of the reparations projects developed within the ECCC framework. Experiences from previous cases and reparations projects were considered. An assessment was then made of the potential for the current case before the ECCC, which includes charges of forced marriage and sexual and gender-based violence, to support reparations projects that might have transformative effects. Workshop participants considered a range of possible reparations projects that would address the particular needs of victims of sexual and gender-based violence during the Democratic Kampuchea (DK) regime, as well as potentially altering attitudes or conditions that contribute to sexual and gender-based violence in Cambodia today. Finally, a number of recommendations were drawn from the discussions and presentations.

CONTEXT

Background to the workshop

On 28 November 2014, the Australian Human Rights Centre, UNSW Australia (UNSW), Asian International Justice Initiative (AIJI) and the Victims Support Section (VSS) at the ECCC held a workshop on Transformative Reparations for Sexual and Gender Based Violence at the ECCC. The workshop considered the possibilities for designing reparations that address the harms resulting from sexual and gender-based violence in a manner that could “transform” the social inequalities and structures that contribute to the commission of these crimes.

The workshop included those involved with planning and implementing ECCC reparations projects, as well as civil society actors that work with victims of sexual and gender-based violence crimes in Cambodia (see Annex A). Its main purpose was to discuss the lessons learned from the reparations processes for Cases 001 and 002/01 and to consider how those experiences can be applied to the design and implementation of reparations for victims of sexual and gender-based violence in Case 002/02 and beyond.

Earlier workshops that have considered gender and reparations issues have included two Training Workshops organised by the VSS: “Gender Sensitivity and Transitional Justice for ECCC Officials” held in June 2012 and “Gender Sensitive Reparations Awards” held in November 2013. In April 2014, the AIJI and the Cambodian Defenders Project (CDP) held a further Workshop on “Gender-Sensitive Justice Measures”.



SEXUAL VIOLENCE IN CAMBODIA

There can be no doubt that sexual and gender-based violence occurred across Cambodia during the period of Democratic Kampuchea (DK). Researchers such as Mam,¹ Nakagawa² and Natale³ have documented evidence of widespread sexual violence during the DK regime, while the civil parties involved in the ECCC proceedings,⁴ as well as research by Le Vine⁵ and the Transcultural Psychosocial Organization (TPO),⁶ have further highlighted the widespread implementation of the policy of forced marriage across Cambodia. The Womens' Hearings organised by Cambodian Defenders Project in 2011, 2012 and 2013 all featured emotive survivor testimony concerning sexual violence.⁷ In addition, Braaf and So have uncovered reports of sexual violence committed against minorities during the DK period.⁸

The ECCC has confirmed the prevalence of sexual violence, with the co-investigating judges in Case 002 concluding that it was 'clearly established that crimes against humanity of rape were committed in diverse circumstances'.⁹ The abuses perpetrated during the DK regime also had a significant impact on women in other ways, including through the widespread practice of forced marriage, starvation, the impact of forced transfers and forced labour (particularly for pregnant women), separation from children and partners, and in the myriad other ways the DK regime affected the daily lives of everyone in Cambodia. Men also experienced sexual and gender-based violence as victims, including through the institution of forced marriage across Cambodia.

Sexual violence continues to be a problem in Cambodia today, with a 2013 United Nations (UN) Report finding that 20.4 per cent of men admitted to having perpetrated rape. That report also found relatively high rates of gang rape compared to other regional countries. Moreover, more than 40 per cent of men who admitted to rape had never faced legal consequences for their crimes.¹⁰ There is therefore both a critical need for more research to understand the links between the DK period and sexual and gender-based violence today, and an opportunity for the ECCC to respond meaningfully to these crimes in a way that recognises the ongoing nature of violence against women in Cambodia. One possible avenue for doing so is through the ECCC's reparations mechanism.

REPARATIONS AT THE ECCC

While the award of reparations did not feature in the negotiations to establish the ECCC,¹¹ the agreement between the UN and the Royal Government of Cambodia provided that the applicable procedural framework for the Court would be in accordance with Cambodian Law.¹² Article 36^{new} of the ECCC Law also included a limited role for victims in lodging appeals.¹³ As a result, the Internal Rules were drafted so as to allow civil party participation in ECCC proceedings and the provision of reparations, although on a narrower basis than in domestic Cambodian law.¹⁴ The Internal Rules also included provision for ‘collective and moral reparations’ awarded against the convicted person (original Rule 23(11)).¹⁵

The first case at the ECCC – Case 001 – addressed crimes against humanity and war crimes committed at S-21. The defendant, Kaing Guek Eav (alias Duch), was convicted of these crimes in July 2010 and was ultimately sentenced to life imprisonment. The judgment of the Trial Chamber also included its findings on reparations. Due to the narrow focus of the trial, the need for reparations to be linked to the harm suffered by victims of the crimes before the ECCC and the requirement that reparations could only be awarded against the convicted person, the reparations awarded in Case 001 were limited to compiling and publishing a compilation of Duch’s statements of apology and acknowledgements of responsibility, and the listing of the civil parties in the judgment itself. The Supreme Court Chamber confirmed the limits of the reparations mechanism on appeal.¹⁶

Following changes in 2010, the Internal Rules now provide two mechanisms: first, the provision of judicial support including allowing civil parties to participate in trials and the award of judicial reparations (Rule 23 and 23 *quinquies*); and second, ‘non-judicial programs and measures addressing the broader interests of victims’ developed and implemented by a victims support section’ (Rule 12*bis*(3)).¹⁷

In deciding how to implement the judicial reparations awards, the Chamber may order the convicted person to bear the costs or may recognise that a specific project appropriately gives effect to the award sought by the Lead Co-Lawyers and may be implemented (Rule 23 *quinquies* (3)). Such projects ‘shall have been designed or identified in cooperation with the Victims Support Section and have secured sufficient external funding’. The Court has construed these requirements relatively strictly, requiring financing to be secured and considerable specificity and detail about the projects before approving judicial reparations projects.¹⁸

The second case before the ECCC – Case 002/01 – was severed into separate phases.¹⁹ The first phase (Case 002/01) focused on the forced population movements from Phnom Penh in 1975 and a second forced population movement from September/October 1975 to late 1976. In August 2014, the accused, Nuon Chea and Khieu Samphan, were convicted of crimes against humanity and sentenced to life imprisonment.²⁰ An appeal from the conviction and sentence is pending as at the date of publication. Again, the Trial Chamber judgment set out its findings on reparations, approving 11 reparations projects. Due to the limited scope of the case and the need for reparations to be linked to the harm suffered by victims of the crimes before the ECCC, these reparations projects did not address the harm suffered by survivors of sexual and gender-based violence during the DK regime.

The second phase of the trial (Case 002/02) will consider charges of crimes against humanity including the crime of forced marriage and rape and sexual violence within forced marriage. Cases 003 and 004 will investigate the commission of sexual and gender-based violence crimes, including forced marriage.²¹ There is therefore now a need to examine how reparations projects can address the particular harm suffered by victims of sexual and gender-based violence.

TRANSFORMATIVE REPARATIONS

A particular focus of the workshop was to consider the extent to which reparations projects might be “transformative”.

A range of international measures has been adopted in response to sexual violence committed against women in post-conflict settings. These include: *General Recommendations* under the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW);²² UN Security Council Resolutions 1325, 1820, 1888, 1889, 1960, 2016 and 2122; and the UN appointments of a Special Rapporteur on the causes and consequences of violence against women and of a Special Representative of the UN Secretary General on Sexual Violence in Conflict.

Also relevant in the context of reparations are the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (‘the Basic Principles’), drafted and revised in 1996-7 and adopted by the UN General Assembly in 2005, and the *Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation*, adopted in 2007. Further, the United Nations Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence (June 2014) provides important principles for designing and implementing reparations projects, including the following ‘Guiding Principles for Operational Engagement’:

Adequate reparation for victims of conflict-related sexual violence entails a combination of different forms of reparations.

Judicial and/or administrative reparations should be available to victims of conflict-related sexual violence as part of their right to obtain prompt, adequate and effective remedies.

Individual and collective reparations should complement and reinforce each other.

Reparations should strive to be transformative, including in design, implementation and impact.

Development cooperation should support States’ obligation to ensure access to reparations.

Meaningful participation and consultation of victims in the mapping, design, implementation, monitoring and evaluation of reparations should be ensured.

Urgent interim reparations to address immediate needs and avoid irreparable harm should be made available.

Adequate procedural rules for proceedings involving sexual violence and reparations should be in place.²³

Past reparations programs have tended to emphasise restoring victims to the position they were in before the conflict began, usually through the award of restitution, compensation or rehabilitation measures. Yet for many women and girls, this focus fails to acknowledge the structural and economic inequality experienced before the conflict and the contribution of such inequality to sexual violence before, during and after conflict. Gender scholars consider that these forms of reparations often fail to address these structural inequalities.²⁴ For example, measures of restitution could return women to conditions that gave rise to the violence in the first place.²⁵

Instead, it is suggested that ‘reparations should strive to have a transformative effect on these inequalities, rather than reinstate or reinforce the structural conditions within society that uphold such practices and beliefs that inform the perpetration of sexual violence’.²⁶ Importantly, reparations can be designed ‘to trigger important changes even if they alone cannot transform the root causes of conflict-related sexual violence or the structural conditions that made such violence possible’.²⁷ Those designing reparations measures should look to the full range of reparations measures beyond compensation or rehabilitation, and consider measures based on satisfaction (public statements, apologies, memorials) and guarantees of non-repetition, which suggest the need for structural, legal and institutional reform.

Participants in the workshop were asked to consider how reparations at the ECCC could be designed to restructure the political, economic and social conditions that enable sexual and gender-based violence, thus potentially contributing to reducing and preventing its recurrence.



OVERVIEW OF SESSIONS

The workshop was designed to combine short presentations with small group discussions and broader participant question and answer sessions. See Annex B for the full program.

The program consisted of four sessions. In the first, Session 1, Hang Vannak (VSS) and Katrina Natale (Lead Co-Lawyers Section) reviewed the reparations awarded by the ECCC to date and included an update on the possible scope of reparations in Case 002/02. In Session 2, Sarah Williams and Emma Palmer (UNSW) provided an introduction to the concept of ‘transformative reparations’ and small groups discussed the meaning of ‘transformation’ in the particular context of Cambodia and the reparations requested in Cases 001 and 002/01.

In Session 3, Theresa De Langis and Sok Mina Sao presented important new research regarding the harms suffered by civil parties and victims relevant to Case 002/02. Katrina Natale highlighted some of the specific harms suffered by civil parties. Finally, in Session 4, workshop participants again divided into small groups to design and discuss possible transformative reparations projects addressing sexual and gender-based violence. Each of these sessions is described in more detail below.

WELCOME

Melanie Hyde (AIJI), Wenny Kusuma (UN Women) and Sarah Williams (UNSW) welcomed participants to the workshop.

Melanie Hyde hoped participants would leave the workshop with a greater understanding of the potential and challenges for transformative reparations in Case 002 and beyond.

Wenny Kusuma distinguished between ‘knowing about’ and ‘understanding’ the DK period, observing that alongside the process of truly understanding a topic there arises a responsibility to do something about it. Transformative responses to sexual and gender-based violence would need to be multi-faceted and intergenerational. It is important to keep encouraging consistent support to such initiatives, including from the United Nations.

Sarah Williams explained that the concept of transformation is not necessarily a solution, but an approach or idea that might inform how the design of projects is conceived in a particular context. She hoped to see how the concept of transformation might be interpreted and applied in the Cambodian context.

SESSION 1 – EXPERIENCES SO FAR FOR REPARATIONS AT THE ECCC

Objectives of session

The first session aimed to refresh participants’ awareness of the progress of implementing reparations in Case 002/01 and to provide an update regarding Case 002/02. Both speakers were invited to discuss how these cases provided scope to address the harm suffered by victims of sexual and gender-based violence.

Panel

Chair: Christoph Sperfeldt, Australian National University



Speakers: Hang Vannak, ECCC VSS and Katrina Natale, Lead Co-Lawyers Section, ECCC.

Implementing reparations in Case 002/01: Progress to date and relevant projects for SGBV survivors [Hang Vannak – VSS]

Hang Vannak, the Chief of the VSS and Reparation and Non-Judicial Measures Program Manager, explained how allowing victims to participate in ECCC proceedings as civil parties is generally something that makes them feel acknowledged, which helps in restoring their dignity. Of the 13 reparations projects requested by the civil parties in Case 002/01, only 11 were awarded by the Trial Chamber. The VSS is working alongside civil society partners to help coordinate the implementation of these 11 projects, most of which are now operational. There are also three non-judicial reparations projects including: the project with UN Women, TPO and CDP that is intended to focus on gender equity and access to justice for women and victims of sexual violence under the DK regime; a community learning centre; and a memorial stupa in Phnom Penh.

Other relevant projects for victims of sexual and gender-based violence in Cambodia include the testimonial therapy project operated by TPO, a radio talk show in which civil parties can call and ask questions, and the Women's Hearings organised by CDP. Hang Vannak explained that these projects demonstrate that sexual and gender-based violence issues are no longer a silent matter in Cambodia, but have now become subjects for open discussion. The ECCC has also widened its scope in Case 002/02 to consider forced marriage on a nationwide basis and forced marriage is now something that is being discussed formally within the Court, but also outside in the provinces and villages.

An update on Case 002/02 and its scope to consider forced marriage and SGBV

Katrina Natale, Civil Party Co-Lead Lawyers Section, began by referring to some of the uncertainties of the ECCC proceedings, including the changing trial schedules and delays. She reviewed the crime sites and topics that will be considered in Case 002/02, and highlighted the locations and charges that would be relevant to sexual and gender-based violence. She outlined the crimes that would be relevant to prosecuting sexual and gender-based violence, including the other inhumane acts of forced marriage and sexual violence and rape. While noting that the Trial Chamber has accepted the civil parties' request that forced marriage be considered on a nationwide basis, Ms Natale indicated that the civil parties will also argue that Case 002/02 should consider the charge of rape (as an other inhumane act) in the Tram Kok cooperatives, S-21, and Kraing Ta Chan, as well as in the context of forced marriage, based on the annex to the April 2014 severance decision.

Ms Natale indicated that the Trial Chamber's approach to considering these charges will impact on the development of judicial reparations, which must be linked to the harm suffered as a result of the crimes for which the accused is convicted. However, non-judicial measures are not dependent on the scope of the trial or the specific crimes it considers. While the judicial reparations have a narrower scope, both judicial and non-judicial reparations projects have the potential to benefit civil parties, victims and the general public.

Ms Natale emphasised that efforts to address the structural elements in society that contribute to crimes like sexual and gender-based violence are maximised by engaging the state. In October 2013 the CEDAW Committee urged Cambodia, as a state party, 'to provide effective redress to victims of [gender-based violence] especially under the KR regime, and develop effective non-judicial transitional justice programs, including adequate reparations, psychological and other appropriate support'. The ECCC does not have the power to award reparations against the

state of Cambodia, however there are opportunities for cooperation and engagement based on shared interests. Finally, Ms Natale observed that participation in the reparations process itself can be reparative if it is undertaken thoughtfully and carefully.

Questions and Discussion

- One participant commented on Ms Natale's mention of state engagement with the reparations process. He observed that in South Africa, the government that took over from the Apartheid era had fought an armed struggle against the former government and was in no way associated with it. However, the new democratically elected government took on the responsibilities of the state for the actions of the apartheid era, including by providing reparations to its victims. Mr Hang responded that as far as he is aware, the Cambodian government has not said that the state has no responsibility for what happened during the Khmer Rouge period. Indeed there has been a gradual expansion of activities in this area, for instance in the development of the reparations rules and the government's support for the reparations projects that have been awarded. It is important to have patience in this regard.
- The same participant also raised the question of the effectiveness of the asset forfeiture regime in post-conflict societies, including at the ECCC. The accused at the ECCC were found to be indigent, but there are concerns that assets were dissipated to others through 'gifts'. He suggested there may be a role for more sophisticated asset forfeiture regimes that consider this issue. Ms Natale noted that this issue was something the civil parties' were aware of and that the Civil Party Lead Co-Lawyers had asked the Court for a forensic investigation of the accused, but the Court had found it did not clearly have the authority to do so.

SESSION 2 – INTRODUCING TRANSFORMATIVE REPARATIONS

Objectives of session

The aim of Session 2 was to introduce the concept of 'transformation' by providing an overview of some possible meanings and examples of transformative reparations (see Annex C). Workshop participants were divided into small groups and allocated one of three topics: to discuss the possible meanings of 'transformation' in the context of Cambodia; to consider how reparations projects requested in Case 001 were or might have been transformative; and to have a similar discussion regarding the reparations projects in Case 002/01.

A list of the requested Case 001 reparations projects is provided in Annex D and requested Case 002/01 reparations projects in Annex E.

Panel

Speakers: Sarah Williams and Emma Palmer (UNSW)

Transformative Reparations

Sarah Williams first discussed the aim of transformative reparations. She noted that criminal accountability focuses on retribution and the responsibility of the individual accused. Reparations, in contrast, are based on restorative principles that restore the victim to the position he or she was in *before* the violence occurred. However, for many victims merely putting them back in the position they were before the violence does not address the underlying causes of the conflict or the reasons that violence occurred in the first place.

In contrast, transformative reparations seek to look forward, to address and to change the basic societal conditions that led to violence so that the society will not relapse into conflict. Dr Williams pointed out that transformative reparations alone will not solve the root causes of conflict or violence, but can trigger important discussions and provide a way to think about reparations that is forward-focused.

Transformative reparations are therefore not limited to sexual and gender-based violence, but aim to address forms of social marginalisation such as inequality, discrimination and societal violence that are often experienced by women and girls. Thus scholars such as Ruth Rubio-Marin²⁸ have called for a transformative approach to reparations that considers those underlying social structures that contribute to the ways in which women experience conflict. Women and girls may experience conflict differently to men, including being more likely to be the target of sexual violence, and may disproportionately bear the burden of forced displacement and interruption to 'ordinary' services, such as education, medical and social services.²⁹ These distinct forms of harm may not be recognised by international criminal tribunals, which generally focus on questions of individual criminal responsibility and specific physical violations, rather than longer-term or more complex effects of conflict or, for sexual and gender-based crimes, why those specific crimes occurred.³⁰

Where reparations are available, including through large-scale national reparations schemes, human rights courts, or alongside truth and reconciliation style commissions, they tend to emphasise restitution, compensation and rehabilitation; that is, trying to restore the victim to the position they were in before the violence occurred. In contrast, transformative reparations measures should look beyond stand-alone compensation or rehabilitation programs and consider a fuller range of reparations measures available, including measures based on the principles of *'satisfaction'* (such as public statements, formal apologies, and memorials commemorating the harm suffered) and *'guarantees of non-repetition'*, which suggest the need for structural, legal and institutional reform to build assurances that a regression back to violence does not occur.

Emerging literature from reparations and gender scholars suggest that transformative reparations should be context specific. There is no standard or correct approach. Instead it is necessary to consider the particular harms, needs and structural challenges in each post-conflict situation. The most successful reparations processes may take an interdisciplinary approach and deploy a combination of measures. It seems that reparations are more likely to achieve this transformative potential where they: encourage the *representation* and *recognition* of the agency of women and girls through their participation in the design and implementation of reparations; *recognise* the particular harms suffered by women and girls in conflict, for example, the harm caused by bearing the child born of rape or the impact of stigma; and address the need for *redistribution* of social and economic resources, for example through enabling access to education or the means to secure financial independence.³¹

Transformative reparations should address violations of all forms of rights, including social and economic rights, recognising that the needs of women and girls are complex and often intersect with other factors, including age or race. They include recognition of victim and harm, representation of women and girls in design, selection, and implementation of measures, and address the need for redistribution of social and economic resources, paying special attention to the engagement of women and girls and their ability to transform their own economic and social capacity.

Comparative perspective from other countries

Emma Palmer then explained how reparations measures with transformative potential have been developed in other contexts and suggest a wide range of possible measures that could be used in combination. Examples include: educational support to children of victims; skills training, micro-credit and micro projects for individuals and collective groups of beneficiaries; legal and institutional reforms, including repeal of discriminatory legislation in areas such as land ownership and enactment of gender-progressive laws; judgments or reports confirming that sexual violence is criminal; and symbolic reparations, for example, public apologies for failure to protect women and girls from sexual violence, state commitments to further gender equality and memorials to victims of sexual violence. However, measures specifically targeted at victims of sexual violence must address the particular barriers to participation, in particular stigmatisation.

In the 2009 'Cotton Field' case before the Inter-American Court of Human Rights, the Court linked structural gender discrimination to the investigation of crimes to the responsibility of the Mexican government in engaging in measures that would address structural issues, such as ongoing work on protocols for personnel working on sexual violence issues. The Court explicitly noted that, 'bearing in mind the context of structural discrimination in which the facts of this case occurred, ... the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification. In this regard, reestablishment of the same structural context of violence and discrimination is not acceptable'.³²

In Sierra Leone, approximately 12,000 victims participated in the Truth and Reconciliation Commission, including about 1,000 victims of sexual violence. Women were a key focus of the reparations program based on their direct suffering and as the main caretakers of children. Projects included access to mental and physical healthcare, skills training and micro-credit programs, the proposed repeal of discriminatory legislation and enactment of progressive legislation, a public apology from the President and political representation quotas for women.³³

Possibilities and challenges in the Cambodian context

Designing and implementing transformative reparations involves several challenges. First, reparations measures that might have a transformative effect generally require action by the state or at least the cooperation of relevant state actors. Human rights bodies and truth commissions can direct their recommendations to the relevant government. International and internationalised criminal courts (including the ECCC) cannot do so, yet there is a need to engage governments and relevant state actors.

Implementation of proposed reparations mechanisms has also been a particular challenge, so it is important to ensure that appropriate funds and arrangements are in place so that victims are not further harmed by the false expectations created by reparations measures ordered but not implemented. For judicial reparations in international criminal tribunals, there must also be a link between the victim and the harm they suffered, crimes

charged and the accused. It is important for example to recognise that harm in a crime like forced marriage also affects men and the children of the forced marriage. Similarly, reparations projects should take into account the particular sensitivities for survivors of sexual and gender-based violence in consulting, designing and implementing projects to ensure they are given agency in the process. Moreover, reparations will not be a solution to all of a society's problems, but are just one mechanism that will need to complement other reforms or strategies.

All of this raises a number of questions in considering the possible scope for transformative reparations in Cambodia. What is it that can be transformed by reparations in Cambodia? Are the root causes of the violence still relevant? How did women/girls experience violence during DK differ from that of men/boys? How do women/girls experience violence now and is that linked to historic violence? What harms have resulted from that violence? Has the nature of those harms changed over time? If so, how? Do women and girls face different harms than men/boys? What are the opportunities and limits in the ECCC framework for transformative reparations?

Questions and Discussion

What are the meanings of “transformation” in Cambodia?

Group 1 considered what was unique about the Cambodian context and the potential for transformation. Cambodia is already in a state of transformation, which provides a ‘moment’ and a context that could be capitalised upon. There are new forms of democracy, including through the use of new technology by the youth and with a young generation of judges and prosecutors, including the appointment of female judges. There are opportunities for enhanced education, for facilitating the ascent of young women through the hierarchies of authority, and for considering gender representation in the process of judicial appointments.

Group 2 considered the need to address the ‘root causes’ of the harms suffered by victims. They recognised that socially in Cambodia, public-private distinctions remain wherein domestic violence is considered a ‘private matter’. There could be more policies to ensure effective child support. Women often stay silent concerning their experiences, due to shame and stigma and society calling this a private matter. To overcome these structural issues, it is important to build education programs and awareness-building campaigns that make these so-called private matters more public and effectuate an extra focus on women and sexual and gender-based violence.

Which of the Case 001 and Case 002/01 reparations projects could be described as transformative? How might any of those projects have been designed or implemented with transformative elements?

See Annexes D, E and F for a list of the proposed Case 001, Case 002/01 and Case 002/02 reparations projects. As noted above, these projects were not specifically directed towards sexual and gender-based violence and so provided an opportunity to explore various possible meanings of ‘transformation’ in the Cambodian context.

Group 1 proposed that the requested Case 001 reparations were moral and collective, as well as being victim-specific and crime-specific, and they addressed specific harm. Some members proposed that examples of projects with transformative elements from Case 001 included state apologies, provision of medical care and educational measures. They suggested that a state apology is a declaration of specific harm, which is a fundamental basis for transformative reparations in terms of the ‘satisfaction’ aspects. Outreach and education proposals could be considered guarantees of non-repetition and aimed at raising awareness in terms of providing a history of what has occurred and preventing it from occurring in the future. Scholarship funding and microenterprise loans and business training could also be transformative, and resemble an affirmative action program to rebalance structural violence against specific groups in a way that has more forward-looking social impact.

The group pointed out that something else to consider is the extent to which these reparations projects have been developed or prompted by international actors. For example, there have been suggestions that international actors drove the inclusion of sexual and gender-based crimes and forced marriage at the ECCC, since forced marriage was not necessarily considered by some Cambodian people to be a crime. There are therefore also important cultural considerations to be aware of.

Group 2 focused on education and suggested that the integration of the ECCC verdicts into public education could encourage transformation. Specific reparations projects that target high schools should be adapted for working with universities. Other projects that could be transformative include bringing people to memorial sites to promote more discussions about what happened - especially to create space to talk about these issues among younger generations. It is important also to address the Cambodian context for any possible state apology, since it was suggested that many people want to hear from the state concerning the past. To help civil parties today, there needs to be more projects that provide medical services, which requires encouraging the government to take more action especially regarding psychological services in hospitals and counselling for gender-based violence survivors. A special focus is needed on engaging young people and people living in rural areas.

Group 3 discussed how nationwide recognition of the experiences would allow greater discussion, which can itself

be transformative – through the National Day of Remembrance, for example. Discussion of forced transfers and Tuol Po Chrey in educational materials will be transformative by providing for a change in historical understanding. Access to mental health services can be transformative, as no one had access to these kinds of mental support previously. Now, thanks to the existence of the Court, there is more access to these services, including for victims of sexual and gender-based violence. These services cannot provide complete healing but they are helping victims to restore and build confidence and in many other ways. Mobile exhibitions will also allow greater education around the country, allowing for more discussion about the past and what it means today.

Group 4 identified that the Case 002/01 projects affecting the communities and wider society that have been the most successful include the educational chapters in the teachers' manual, permanent exhibitions and mobile exhibitions. These reach a wider range of people. The group commented that the proposed Case 002/02 reparations focus on memorialisation, but also touch on the field of rehabilitation (projects of testimony, therapy), documentation, and also education. In implementing these projects, there is an attempt to move them to different sites to provide an aspect of representation. These projects are also trying to touch upon different effects suffered by the civil parties, such as the Vietnamese who suffered in certain ways.

SESSION 3 – TRANSFORMATIVE REPARATIONS FOR SGBV CRIMES FOR FUTURE CASES

Objectives of session

The aim of Session 3 was to present a snapshot of existing and forthcoming research into past and present experiences of sexual and gender-based violence for Khmer Rouge survivors. The three panellists each presented the methodology and findings (where available) of research conducted on the particular harms suffered by: women survivors of forced marriage; lesbian, gay, bisexual, transgender and intersexed individuals (LGBTI); and other forms of sexual and gender-based violence. This research was then linked back to the question posed in the previous session, namely, what is the possible scope for transformative reparations given what we know about how certain groups experienced violence during the Khmer Rouge and continue to experience violence today in Cambodia?

Panel

Chair: Melanie Hyde, Asian International Justice Initiative.

Speakers: Theresa de Langis, Independent Researcher, Katrina Natale, Lead Co-Lawyers Section, ECCC, and Sok Mina Sao, Assistant to Nakagawa Kasumi, student of Pannasastra University of Cambodia.

Transformative Reparations related to Forced Marriage and enforced conjugal relations

Theresa de Langis commenced her presentation by introducing the participants to research conducted on forced marriage and conjugal relations in collaboration with TPO. The report entitled "Like Ghost Changes Body", launched in October 2014, aimed to understand the experience and impact of forced marriages under the Khmer Regime from a gender-responsive, trauma-informed perspective.³⁴ The study included both qualitative and quantitative analysis of a sample of 106 female and male respondents—all civil parties to the Case 002 proceedings.

The key findings of the report are of particular relevance to the charges in Case 002/02 relating to forced marriage. The study found that the policy of forced marriage and enforced conjugal relations was pervasively instituted by the Khmer Rouge, and in the words of one of the respondents, was used to 'terrorise' the people. Moreover, the practice itself had stripped people of their fundamental right to choice and consent and perpetuated a culture of state institutionalised rape and abuse.

Reflecting on the differences between marriages prior to and during the Khmer Rouge, Dr de Langis highlighted the importance of marriage in Cambodian society. She raised a number of factors that distinguish forced marriage during the DK regime from consensually arranged marriages, including: a) loss of choice and consent; b) loss of the traditional ceremony and its associated religious and spiritual meanings; and c) enforced conjugal relations. According to her research, 70 per cent of the respondents initially attempted to resist the marriage. This indicated that for many respondents, and especially for women, marriage was equated with survival. In relation to rape within and outside of forced marriage, couples had reported being kept together for three days following the marriage and instructed to have sex. Some obeyed, some pretended to have sex, and some husbands used the policy as a cover to abuse their wives. Addressing the question of consent, Dr de Langis claimed that the situation was so coercive there was unlikely to have been any true consent.

Turning to the impact of the policy on the respondents, although both men and women had experienced forced marriage and over 70 per cent of respondents reported ongoing mental health problems as a result of the forced marriage, gendered differences resulted in disparate impacts between men and women. For example, following the fall of the DK regime, the radical shift in gender roles and responsibilities resulted in high numbers of female

heads of households (due to partner desertion, death, polygamy and remarriage), disproportionate responsibility for the care for children (76 per cent of respondents had children), restrictive gender roles, social exclusion and discrimination against those forced to marry in communities, and a lack of support networks for elderly women. Despite this, more than half of the respondents reported that they had stayed together following the fall of the DK regime. Half of those that did stay together (53 per cent) also reported experiencing present-day spousal abuse; a figure that Dr de Langis indicated is approximately double the national average.

Dr de Langis concluded by referring participants to the recommendations of the TPO report and the Women's Hearings. Linking the research to present day experiences of sexual violence, she also reflected on the importance of the principle of non-repetition as a means to prevent crimes from recurring.

SGBV against LGBTI women under the Khmer Rouge: Intersections between discrimination, violence and the scope for transformative reparations

Sok Mina Sao introduced research he is currently working on in his capacity as an assistant to lead researcher Nakagawa Kasumi. The research is the first of its kind in Cambodia and investigates: a) whether sexual and gender-based violence perpetrated against sexual minorities differed from the mainstream Cambodian population; b) the identify of the perpetrators of that violence; and c) the particular characteristics of the violence and the impact of the violence (then and now) for the victims.

Although the research has not yet been finalised, Mr Sao shared some preliminary findings that suggest homosexual and transgender people who had been interviewed for the study did experience sexual and gender-based violence differently from the mainstream Cambodian population during the Khmer Rouge period. Preliminary recommendations to the ECCC focused on ensuring that the ECCC included new evidence of special types of violence perpetrated against sexual minorities in the ongoing and new cases. The research will be finalised in early 2015.

The scope for further gender-sensitive reparations at the ECCC

Ms Natale's presentation addressed three main areas including types of sexual and gender-based violence perpetrated during the Khmer Rouge period, types of harm suffered as a consequence of the crimes, and the importance of gender sensitivity in reparations. She reminded participants of research she had conducted with CDP in 2011, which had identified a range of sexual and gender-based violence perpetrated during the Khmer Rouge period including rape (gang rape, mass rape, rape before execution and rape of targeted populations), sexualised mutilation and torture, sexualised humiliation and abuse.³⁵ In relation to the high number of victims of forced marriage, approximately 40 per cent of civil parties admitted as direct victims in Case 002 are male and 60 per cent are female.

The harms suffered as a consequence of forced marriage and sexual and gender-based violence range from psychological and physical trauma, discrimination, social stigmatisation and abusive relationships, and unwanted pregnancy and/or children, to financial instability, lack of education and livelihood opportunities. These harms are lasting and intergenerational, evidenced by reports of acute emotional trauma experienced even 35 years later amongst direct victims, and the transmission of harms across generations to children of forced marriage.

Ms Natale concluded by emphasising the importance of gender-sensitivity to ensure that reparations projects are designed to address the particular experiences and harms suffered by women and girls. She outlined a number of guiding principles that would assist organisations in the development of reparations projects including: 1) adopting do no harm approaches; 2) non-discrimination; 3) consultation on gender relations, power imbalances and biases; 4) considering practical issues for women; 5) inclusion of women in processes; 6) fair assessment of harm; 7) equal access to and benefit from reparations; and 8) state responsibility and engagement.

Questions and Discussion

- One participant asked Sok Mina Sao if his research touched on the experience of LGBTI individuals before the Khmer Rouge regime. Mr Sao responded that the research was limited to respondents' experience during and following the DK regime, however, he added that there was a need for further research in this area.
- Drawing on his understanding of rape as an 'immoral act' during the Khmer Rouge period, one participant asked whether the policy of forced marriage was written or had merely been implemented at the local level. Ms de Langis responded that research had universally confirmed that a policy was read aloud in order to prepare people for marriage. This policy was also inferred from code number six, which prohibited sexual relations between unmarried couples. Although the code has been interpreted as an anti-rape policy, Ms de Langis stated that it could also be interpreted to suggest that there was no need to rape or have sex outside of marriage, because everyone would be married according to Angkar's wishes.

Different implementation regimes also applied to different populations. For example, high-ranking people were

often able to choose their spouse whereas civilians were not. Ms Natale added that the policy was not entirely uniform and varied according to the actors involved, timing and other factors. However, she stressed that 100 per cent uniformity is not required to show the existence of a policy. Another participant added that the most compelling evidence of a systematic policy of forced marriage arises from the direct participation of the CPK Standing Committee in arranging the marriage of 40 – 80 disabled cadres and their knowledge and participation in the enforced conjugal relations afterwards.

SESSION 4 – DESIGNING TRANSFORMATIVE REPARATIONS FOR SGBV CRIMES

Objectives of session

In the final session, participants were again divided into small groups. This time each group was provided with a worksheet and, for reference, a list of some of the possible Case 002/02 reparations projects suggested in the 30 July 2014 initial hearing, see Annex E.36 Each group was asked to think about possible reparations projects and consider: how they might relate to victims of sexual and gender-based violence; possible transformative aspects of the projects; obstacles or challenges for design and implementation; and recommendations for design and implementation.

Chair: Katrina Natale, Lead Co-Lawyers Section, ECCC.

Questions and Discussion

Participants were asked to consider the following questions:

- What additional projects could be designed to address sexual and gender-based crimes in the upcoming cases?
- How can gender-sensitivity be mainstreamed at each stage of the design process?
- How could these projects be designed to have a ‘transformative’ impact?
- What are the key challenges for designing and implementing transformative reparations at the ECCC?

Result of group discussions

The results of the group discussions, addressing the questions posed to participants, were shared with the larger group at the conclusion of the session. A record of the projects discussed in each group is provided in the tables below.

Group 1:

Possible Project (relates to S/GBV)	How can be designed/implemented with gender-sensitivity?	Possible transformative aspects?	Obstacles /Challenges	Recommendations: Identification & Design
Health Care Services for GBV survivors.	Including SGBV survivors.	Good cooperation with the government.	Budget constraints. Government may not support.	Printing the ID card for SGBV Civil Parties (free services for GBV survivors and their families). ID card should be confidential.
Inclusion of SGBV stories during the Khmer Rouge in the high school curriculum.	High school students.	Cooperation with the teaching book produced by DC-Cam.	Budget constraints.	Allows the young generation to talk about and acknowledge the stories of SGBV survivors.

Group 2:

Possible Project (relates to S/ GBV)	How can be designed/ implemented with gender- sensitivity?	Possible transformative aspects?	Obstacles/ Challenges	Recommendations: Identification & Design
Voluntary public ceremony with state marriage certificate and blessing by monk honouring the subsistence of the marriage.	Social stigma affecting forced marriage disproportionately affects women, honours the resilience of the Cambodian people.	State and community validation of marriage, legitimacy of the marriage, public recognition.	Absence of coherent evidence base in the form of properly funded prevalence research.	<p>Guiding principles</p> <ol style="list-style-type: none"> 1. Victim centred; 2. Victim makes choices; 3. Victim is empowered and respected in their choices.
Legal and other assistance (economic) for spouses wishing to divorce.	Women are systematically economically disadvantaged in ongoing but unwanted relationship.	Enacts gender equality commitments, enhancing women, self-determination – primarily restorative, also reduces stigma of divorce.		
Supplementing of Office of the High Commissioner of Human Rights annotated code of criminal procedure with guidelines on investigation of SGBV.	High rates of impunity for SGBV in the national justice system.	Links ECCC to national legal system in a way that heightens accountability of that system to address SGBV.		
Public relations interventions on what does a healthy marriage look like? What is a healthy family?	If it transforms previously restrictive gender roles; will target violence against women; and the lack of good role models.	Revives victims of SGBV, addresses intergenerational consequences, doesn't reinstate restrictive gender roles.		

Group 3:

Possible Project (relates to S/ GBV)	How can be designed/ implemented with gender- sensitivity?	Possible transformative aspects?	Obstacles /Challenges	Recommendations: Identification & Design
<p>Micro lending project [on wide scale].</p> <p>Can be used to set up networks focused on other subjects such as health care provision.</p>	<p>Empowers victims/civil parties as contact or start-up leader of a local project.</p> <p>Putting victims in leadership role also supports recognition.</p>	<p>Redistributive element of enfranchising previously marginalised women and giving them opportunity to develop or build income and livelihood.</p> <p>Also to act in leadership role which would combat stigma that consigns them to hide in the background.</p>	<p>Finding good candidates.</p> <p>Existing knowledge base.</p> <p>Scaling up across communities/provinces.</p> <p>Convince court of link to harm suffered.</p> <p>Finding money.</p> <p>Wider issues with microfinance programs.</p> <p>Avoid duplication of other projects.</p> <p>Participation / education.</p> <p>Aging direct victims.</p>	<p>Ensure gender representative in local communities.</p> <p>Use single models first, study or a few.</p> <p>Start with victims of SGBV/FM then in crime sites or security centers.</p> <p>Key to design, use local consultations.</p> <p>Community/committee involvement.</p> <p>Engage children of victims who will then support parents.</p>
<p>Health care research and provision.</p>	<p>Redistributive aspect of providing victims with access to health care especially as they age.</p>	<p>Transform local healthcare systems as long-term goal.</p> <p>Main focus of project is on researching health care in communities.</p>	<p>Time frame.</p>	
<p>Training / hiring of children of GBV victims specifically in health fields.</p>	<p>Target this kind of scholarship or vocational training to children of GBV victims.</p>	<p>Provide livelihood.</p> <p>Build healthcare system.</p> <p>Enable victims to be recognised as leaders.</p>	<p>Difficult to convince link to harm.</p> <p>Stress scholarship needs of children as indirect victims.</p> <p>Also collective in attention to community health.</p>	<p>Consult with communities.</p> <p>Civil party as the initiator.</p> <p>Develop submission to court.</p> <p>Make all of process representative even beyond Civil Parties.</p>

Group 4:

Possible Project (relates to S/GBV)	How can be designed/ implemented with gender- sensitivity?	Possible transformative aspects?	Obstacles /Challenges	Recommendations: Identification & Design
<p>Domestic violence in forced marriages – using media (TV or radio) to reinforce positive messages [entertainment/soap drama etc].</p> <p>KAP chain approach:</p> <ul style="list-style-type: none"> -Knowledge -Attitude -Practice 	Integrates survivors into the process.	<p>Addresses a range of issues.</p> <p>Connect the past experience of SGBV with the present.</p>	<p>Differing comfort levels among communities.</p> <p>Propensity to tell personal stories.</p> <p>High cost.</p> <p>Basic training required on broader objectives of positive messaging in the media form.</p>	<p>Include civil parties in the script writing team.</p> <p>Bring youth and older generation together.</p> <p>Storyline workshops bringing together script writers and survivors.</p>



CONCLUSIONS, RECOMMENDATIONS AND NEXT STEPS

The workshop proved to be a stimulating event involving broad participation and discussion from the ECCC and civil society. It built upon earlier workshops such as the November 2013 training on gender sensitive reparations and, as was pointed out during the day, it also followed important events such as the Women's Hearings held in 2011, 2012 and 2013.³⁷

The workshop also drew upon research regarding sexual and gender-based violence such as the detailed reports by Nakagawa and Natale,³⁸ as well as more recent reports including the recently launched report by TPO and the gender sensitivity Baseline Study undertaken in 2012.³⁹ These events and reports have already resulted in a range of recommendations for the ECCC, the Cambodian government, civil society and others.

We have drawn on previous recommendations from all of these sources in arriving at the following conclusions and recommendations.

1. Further research should be conducted to examine the nature of the harm suffered by women and girls during the DK regime and the links between past harms and current sexual and gender-based violence in Cambodia. In particular, the research should address the intergenerational impacts of forced marriage, including its impact on children born within forced marriages and on particular groups (for example, Vietnamese and Cham, as well as LGBTI individuals).
2. Research should also explore the impact of forced marriage on men, including by providing a greater focus on male experiences of these crimes and subsequent disruptions of gender roles and identities, masculinities and male trauma and the possible contribution of these experiences to the attitudes towards violence and sexual violence perpetrated by men in Cambodia today.
3. Wherever appropriate, the experiences of men, women and girls who suffered sexual and gender-based violence during the DK regime and the nature and extent of the harm suffered as a result should be drawn to the attention of the ECCC Trial Chamber, as evidence led during trial, in civil party statements and in written and oral submissions on reparations. The Trial Chamber should be encouraged to recognise specifically the harm suffered as a result of sexual and gender-based violence in its judgment in Case 002/02 and beyond.
4. The Lead Co-Lawyers for Civil Parties and the VSS, in partnership with civil society and victim representatives, should continue to develop a range of comprehensive and meaningful reparation projects to address the full scope of material, psycho-social and other adverse impacts of the crime of forced marriage and enforced conjugal relations, as well as other sexual and gender-based violence during the DK period.
5. The VSS, in partnership with civil society actors and victim representatives, should continue to develop a range of non-judicial measures that seek to empower survivors and acknowledge their experiences of forced marriages and enforced conjugal relations, as well as other sexual and gender-based violence during the DK period.
6. The Lead Co-Lawyers for Civil Parties and the VSS should design and implement protocols so that the consultation process ensures representation and participation of women and girl survivors of sexual and gender-based violence in the process of identifying, designing and implementing reparations projects. The consultation process should serve as a means of raising awareness of gender-based violence at local and national levels and also to enhance the agency of survivors.
7. The range of reparations projects should be designed so that the projects address: recognition of the particular harm suffered as a result of sexual and gender-based violence; the need to ensure representation of women and girl survivors in the process of designing and implementing projects; and the importance of addressing underlying social and economic disadvantage wherever possible. No single reparations project will suffice to achieve these aims; therefore, designers should consider a combination of projects with differing focuses, including memorialisation, rehabilitation and education.
8. Given the limited reparations mandate of the ECCC, project design should focus on collective reparations projects, recognising that collective reparations projects have the potential to benefit a larger number of victims and to achieve broad societal change.
9. All sections of the Court should consider how to integrate international best practices for investigating and prosecuting sexual and gender-based violence into its own procedures, investigations and trials, including reference to the International Protocol on the Documentation and Investigation of Sexual

Violence in Conflict. The Court should serve as a model of such practices for actors within the Cambodian national justice system. The transfer of best practices to the national justice system is a means of realising non-repetition through the transformation of cultural practices that perpetuate and normalise gender-inequality and gender-based violence at the national level.

10. The Public Affairs Section of the Court should provide information to the public on how the Court is responding to the gender-based crimes of the Khmer Rouge generally, and forced marriage and enforced conjugal relations in particular. This information should include a clear and concise explanation of the gender-based crimes prosecuted at the Court, as well details of those crimes that are not being prosecuted and the reasons, legal and otherwise, why this is the case. This will go far in diminishing public perceptions of impunity for these crimes, especially among the survivors of gender-based violence under the DK regime, and it will set an important example for how present-day gender-based violence in Cambodia should be addressed by courts, government and policymakers.
11. The Royal Government of Cambodia should be encouraged to engage in the design, selection and implementation of reparations projects, particularly in the light of the Government's existing obligations arising from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁴⁰ Security Council Resolutions including those specified in UN SCRs 1325, 1820, 1888, 1889, 1960, 2016 and 2122 and Article 16 of the United Nations 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.

ENDNOTES

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- 11 Christoph Sperfeldt, 2012, 'Collective Reparations at the Extraordinary Chambers in the Courts of Cambodia,' *International Criminal Law Review* Vol. 12, pp 457-489, p 460.
- 12 Article 12(1), Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea (ECCC Agreement), 6 June 2003, <http://www.eccc.gov.kh/en/documents/legal/agreement-between-united-nations-and-royal-government-cambodia-concerning-prosecutio>.
- 13 The Law on the Establishment of the Extraordinary Chambers as amended, 27 October 2004, <http://www.eccc.gov.kh/en/documents/legal/law-establishment-extraordinary-chambers-amended>.
- 14 ECCC, *Prosecutor v Kaing Guek Eav (Duch)*, Case 001 Appeal Judgment, 3 February 2012, at [641-643].
- 15 Internal Rules, 12 June 2007, <http://www.eccc.gov.kh/en/documents/legal/internal-rules>.

- 16 See Part VII, above n 14.
- 17 For the most recent version of the rules, see Internal Rules [Rev.8], 12 August 2011, <http://www.eccc.gov.kh/en/document/legal/internal-rules-rev8>.
- 18 See for example, Request for Clarification on Reparations Projects, 19 December 2013, <http://www.eccc.gov.kh/en/document/court/trial-chamber-memorandum-entitled-request-clarification-reparations-projects>.
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- 31 This analysis draws on gender scholars in note 28 above, but also on the theory advanced by social scientist, Nancy Fraser, 2010, *Scales of Justice: Reimagining Political Space in a Globalizing World*, New York, Columbia University Press. See in particular Andrea Durbach and Louise Chappell, 2014, 'Leaving Behind the Age of Impunity: Victims of Gender Violence and the Promise of Reparations', in *International Feminist Journal of Politics*, Vol 16(4), p 543.
- 32 Inter-American Court of Human Rights, Case of González et al. ("Cotton Field") v. Mexico, Judgment of November 16, 2009, (Preliminary Objection, Merits, Reparations, and Costs), para 450, http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf.
- 33 Guidance Note, above n 23, p 9.
- 34 TPO, above, n 6.
- 35 Nakagawa, above n 2.
- 36 Transcripts, ECCC, Initial Hearing Case 002/02, 30 July 2014, <http://www.eccc.gov.kh/en/document/court/transcript-initial-hearing-30-july-2014>, pp 12-17.
- 37 CDP, above n7.
- 38 Nakagawa, above n 2 and Natale, above n 3.
- 39 TPO, above n 6; Theresa de Langis, 2012, 'Final Results for ECCC Baseline Study', ECCC Baseline Study on Gender Sensitivity in transitional Justice Processes in Cambodia, Victims Support Section, Extraordinary Chambers in the Courts of Cambodia, <http://gbvkr.org/wp-content/uploads/2013/01/Results-of-the-ECCC-Baseline-on-Gender-Sensitivity-in-Transitional-Justice-Processes-in-Cambodia-20121.pdf>.
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- 41 Guidance Note, above n 23.

ANNEX A - PARTICIPANT LIST

No.	Name	Organisation	Function/Institution
1	Christoph Sperfeldt	AIJI	Australia National University / Regional Coordinator
2	Sarah Williams	University of New South Wales	
3	Emma Palmer	University of New South Wales	
4	Sara Hakansson	UN Women	UN Women
5	Melanie Hyde	AIJI	Country Coordinator
6	Marcos Smith	GIZ	Coordinator, Civil Peace Service Program
7	Sonja Meyer	GIZ/Kdei Karuna	Advisor
8	Inala Fathimath	UN Women	EVAW Programme Specialist
9	Hang Vannak	VSS	Chief of VSS
10	Heng Youleng	VSS	Complaints and Applications Manager
11	Thomas Truemper	VSS	Consultant
12	Heng Kimhuch	VSS	Program Associate
13	Katrina Natale	LCL	Legal Officer
14	Noy Sophary	DSS	Case Manager of DSS
15	Nicholas Koumjian	OCP	Co-Prosecutor
16	Salim Nakhjavani	OCP	Assistant Prosecutor
17	Doung Savorn	CDP	Project Coordinator
18	Kim San	DOA	Associate Legal Officer
19	Marie Guiraud	LCL	International Lead Co-Lawyer
20	Maria Lobato	Heinrich Boell Foundation	Legal Adviser
21	Chy Terith	DC-Cam	Executive Officer
22	Huy Samphors	DC-Cam	
23	Ly Vichuta	LSWC	
24	Linda Maria Behnke	CHRAC	Legal Adviser
25	Hun SeangHak	CHRAC	KRT Project Officer
26	Lach Srey Touch	CHRAC	KRT Project Assistant
27	Chet Vanly	ECCC	Civil Party Lawyer
28	Sao Kanharoat	ECCC	Legal Assistant
29	Julian Poluda		Final Evaluation Consultant
32	Theresa de Langis		Researcher
33	Sao SokMina	Pannasastra University of Cambodia	Researcher
34	Lyma Nguyen	ECCC	Civil Party Lawyer
35	Pich Ang	ECCC	National Lead Co-lawyer
36	Kun Sothy	ECCC	Legal Officer
37	Ty Srinna	ECCC	Civil Party Lawyer
38	Chhim Chanvatha	CDP	Legal Assistant
39	Laura McGrew		Researcher
40	Wendy Lowbein	ECCC	Witness Protection Unit
41	Thomas Truemper	GIZ	Advisor

42	Gavin Cowings	CDP	Advisor
43	Daniel Mattes	AIJI	Lead International Monitor
44	Nhem Rahmet	GIZ	Advisor
45	Chim Sreysen	ECCC	
46	Anna Chrisophsen	27D	
47	Eleanor Fernandez	ECCC	Legal Officer, Lead Co-Lawyers Section
48	Lisa Wienart	TPO	
49	Om Chaniya	TPO	Project Consultant
50	Chor Sonary	TPO	Psychologist
51	Seng Phalla	YFP	Consultant
52	Lina Tay	AIJI	KRT Monitor
53	Sok Leang	N/A	Interpreter
54	Long Khet	Youth For Peace	Director



ANNEX B - PROGRAMME

Transformative Reparations for Sexual and Gender-Based Violence at the Extraordinary Chambers in the Courts of Cambodia

PROGRAMME

Khmer Surin South Gate
Street 57, Sangkat Boeung Keng Kang I, Khan Chamkarmon
Phnom Penh, Cambodia

FRIDAY, 28 NOVEMBER 2014

8:15am Registration

8:30-8:45

WELCOME

Melanie HYDE, Asian International Justice Initiative
Wenny KUSUMA, UN Women
Sarah WILLIAMS, University of New South Wales

8:45-10:00

SESSION 1 – Experiences so Far

Chair: Christoph SPERFELDT, AIJI

- 1) HANG Vannak, ECCC VSS: *Implementing reparations in Case 002/01: Progress to date and relevant projects for S/GBV survivors.*
- 2) Katrina NATALE, Lead Co-Lawyers Section: *An update on Case 002/02 and its scope to consider forced marriage and S/GBV.*

Question and Answer session

10:00-10:30 Morning Tea

10:30-12:00

SESSION 2 – Introducing Transformative Reparations

Sarah WILLIAMS and Emma PALMER, UNSW Australia: Introducing Transformative Reparations

Group Session – The ECCC’s existing reparations projects and sexual and gender-based violence.

Discuss:

- A) What are the possible meanings of “transformation” in Cambodia?
- B) Which of the reparations projects in Cases 001 and 002/01 could be described as “transformative”?
- C) How could any of those projects have been designed or implemented with transformative elements?

Report back and group discussion

12:00-1:30 Lunch

1:30-2:45

SESSION 3 – Transformative Reparations for S/GBV Crimes for Future Cases

Chair: Melanie HYDE, AIJ

1) Theresa DE LANGIS: Transformative reparations related to forced marriage and enforced conjugal relations.

2) Sok Mina SAO: GBV against LGBT women under the Khmer Rouge: Intersections between discrimination, violence and the scope for transformative reparations

3) Katrina NATALE: The scope for further gender-sensitive reparations at the ECCC.

Question and Answer session

2:45-3:15 Afternoon Tea

SESSION 4 Designing Transformative Reparations for S/GBV Crimes for Future Cases

Chair: Katrina NATALE, ECCC

3:15-4:00

Group session – Designing transformative gender-sensitive reparations for the remaining ECCC cases.

Discuss:

A) What additional projects could be designed to address S/GBV crimes in the upcoming cases? How can gender-sensitivity be mainstreamed at each stage of the design process?

B) How could these projects be designed to have “transformative” impact?

C) What are the key challenges for designing and implementing transformative reparations at the ECCC?

4:00-4:30

Report back and group discussion

4:30-4:45

CLOSING REMARKS

Christoph SPERFELDT, Australian National University

Sarah WILLIAMS, University of New South Wales

ANNEX C - CONCEPT NOTE

CONCEPT NOTE: TRANSFORMATIVE REPARATIONS FOR SEXUAL AND GENDER-BASED VIOLENCE

Phnom Penh, 28 November 2014

Several international criminal tribunals may award reparations through judicial reparations programs or 'assistance' mechanisms. However, reparations programs have tended to emphasise restoring victims to the position they were in before the conflict began, usually through the award of restitution, compensation or rehabilitation measures. Yet for many women and girls, this focus fails to acknowledge the structural and economic inequality experienced before the conflict, and the contribution of such inequality to sexual violence before, during and after conflict.

Instead, it is suggested that 'reparations should strive to have a transformative effect on these inequalities, rather than reinstate or reinforce the structural conditions within society that uphold such practices and beliefs that inform the perpetration of sexual violence'. Importantly, reparations can be designed 'to trigger important changes even if they alone cannot transform the root causes of conflict-related sexual violence or the structural conditions that made such violence possible'.⁴¹ Those designing reparations measures should look to the full range of reparations measures beyond compensation or rehabilitation, and consider measures based on *satisfaction* (public statements, apologies, memorials) and *guarantees of non-repetition*, which suggest the need for structural, legal and institutional reform.

Reparations are more likely to achieve this transformative potential where they: encourage the *recognition* of the *agency* of women and girls through their participation in the design and implementation of reparations; *recognise* the particular harms suffered by women and girls in conflict, for example, the harm caused by bearing the child born of rape or the impact of stigma; and address the need for *redistribution* of social and economic resources, for example through enabling access to education or the means to secure financial independence. Reparations should address violations of *all* forms of rights, including social and economic rights, recognizing that the needs of women and girls are complex and often intersect with other factors, including age or race. Transformative potential may also be achieved by an *interdisciplinary* approach and using a combination of measures, including those that are considered 'development' measures.

Examples of reparations measures with transformative potential have been developed in other contexts and suggest a wide range of possible measures including: educational support to children of victims; skills training, micro-credit and micro projects for individuals and collective groups of beneficiaries; legal and institutional reforms, including repeal of discriminatory legislation in areas such as land ownership and enactment of gender-progressive laws; judgments or reports confirming that sexual violence is criminal; and symbolic reparations, for example, public apologies for failure to protect women and girls from sexual violence, state commitments to further gender equality and memorials to victims of sexual violence. However, measures specifically targeted at victims of sexual violence must address the particular barriers to participation, in particular stigmatisation.

ANNEX D - SELECTED CASE 001 PROPOSED REPARATIONS PROJECTS

Category description	Description and Changes Made
Outreach, publication and dissemination of information (Apology)	Compilation and dissemination of apologetic statements made by Duch throughout the trial which acknowledge the pain and suffering of victims, including the comments of Civil Parties on these apologies
Provision of medical care	Access to free medical care, including psychological and physical care and transportation to medical facilities
Education programs	The funding of educational programs, both in schools and museums, that inform Cambodians of the crimes that took place under the Khmer Rouge and at S-21 in particular.
Memorialization	The erection of memorials, pagodas and pagoda fences both at S-21 (Cheung Ek and Prey Sar) as well as in the local communities of Civil Parties [Clarification in Final Submission: S-21/Choeng Ek: black lettering on white marble with info about victims in Khmer, English & French of up to 200 words, and photos; Prey Sar a memorial site following an international architectural competition – other groups supported similar suggestions: eg Gp 3 engraving names on external wall of S-21 as part of S-21 Victims’ Memorial, construction of a walkway along S-21 and preservation of buildings, Vann Nath paintings and archives there as well as the Choeung Ek site]
Memorialisation	Include the names of all the Civil Parties in this case in any final judgment, including a specification as to their connection with S-21
Outreach	Express recognition in the final judgment of the right to reparation
State Apology	State apology, led by the accused ‘writing an open letter to the Royal Cambodian government, on behalf of the Civil Parties, requesting an official, serious genuine and truthful apology’ [14] (CPs emphasised that ‘the practice of public apology is not limited to the West’ [10])
Memorialization	Visits of the memorial sites Tuol Sleng, Choeung Ek and Prey Sar by civil parties up to 3x per year for up to 4 days
Outreach, dissemination	Awareness building, at least 100hrs of audio and video of the trial produced and summarised and distributed across Cambodia, at least 10 photos of the trial distributed in each commune
Memorialization	Naming public buildings: ‘Each Civil Party should have the right to choose a public building like a hospital to be named on behalf of the victim for whom he/she represents’ w 17 public ceremonies [20]
Monetary compensation	Requested the accused submit a public letter to RGC ‘requesting them to participate in the reparation process by setting aside funds for the Civil Parties’ [21] including that CPs receive 1/3 of entrance fees from Tuol Sleng and Cheung Ek
Outreach / Dissemination	Judgment: The distribution of trial findings through outreach and various media outlets, including, but not limited to, print media, television and radio [ii]
Education	Increased effort in education including documentation of ‘truth’ in textbooks but also ‘Any form of reparations can be allocated to the salaries and training of teachers, provision of facilities, curriculum design, publication of educational materials, and ongoing training for local participants in the <i>rights education program</i> .’ [vii]
Education	Scholarship fund and vocational training, micro-enterprise loans and business skill straining for CPs
Memorialization	National commemoration day – recognising 7 Jan ‘centers on political victories rather than the suffering and pain caused to victims’
Monetary	‘The full and frank disclosure of assets in name of the Accused.’
Apology	(Beyond statements of remorse at trial or Duch’s guilty plea) a full and ‘sincere acknowledgement of the truth, at the very least, of the crimes for which the Accused is being prosecuted’ [148]
Outreach	Dissemination of the trial as above but also noting ‘could take the form of exhibits including photographs and audiovisual material’

Annex 2: Overview of Civil Party Reparation Requests in Case 002/01

Name	Main Project Partners	Description	Donors
6. Self-Help Groups for Rehabilitation	Transcultural Psychosocial Organization (TPO)	Project will create locally-based and professionally facilitated self-help groups, which are voluntary associations of people that meet to help themselves and each other increase their level of well-being, develop coping skills and overcome traumatic suffering.	<ul style="list-style-type: none"> ▪ German Federal Ministry for Economic Cooperation and Development (BMZ) ▪ Stiftung Kriegstrauma-Therapie ▪ Commonwealth of Australia
7. Permanent Exhibition on Forced Transfer & Tuol Po Chrey	Documentation Center of Cambodia (DC-Cam)	Permanent exhibitions on forced transfer and the executions at Tuol Po Chrey will be established in five Cambodian provincial museums at Battambang, Banteay Meanchey, Kampong Thom, Takeo, and Svay Rieng provinces. While the exhibition will initially be focused on forced transfer and Tuol Po Chrey, the specific topics may change over time to reflect other aspects of victims' and civil parties' experiences.	<ul style="list-style-type: none"> ▪ German Federal Ministry for Economic Cooperation and Development (BMZ)
8. Mobile Exhibition on Forced Transfer & Tuol Po Chrey	Kdei Karuna (KdK) & Youth for Peace (YIP)	The project is an interactive exhibition that educates Cambodians about Khmer Rouge History, the ECCC and personal experiences of civil parties, especially forced transfers, through a multimedia exhibition combining film and other audiovisual material with participatory activities that encourage visitors to expand their knowledge and deeply reflect on the issues presented, relating them to their personal lives and contemporary Cambodian society.	<ul style="list-style-type: none"> ▪ German Federal Ministry for Economic Cooperation and Development (BMZ) ▪ German Institute for Foreign Relations (IFA) ▪ Narrowcasters Pty. Ltd.
9. New Chapter on Forced Transfer & Tuol Po Chrey in Teacher's Guidebook	Documentation Center of Cambodia (DC-Cam)	An additional chapter on forced transfer and the Tuol Po Chrey execution site will be included in the <i>Teacher's Guidebook: The Teaching of A History of Democratic Kampuchea (1975-1979)</i> which is used in all DC-Cam's genocide education programs, in collaboration with the Cambodian Ministry of Education, Youth and Sport. The chapter will be interactive and focused on student-centered learning methodologies for the purpose of cultivating critical thinking, independent learning activities, reflection, and engagement on the history of Democratic Kampuchea and the experiences of victims and civil parties.	<ul style="list-style-type: none"> ▪ Gesellschaft für internationale Zusammenarbeit (GIZ)

Civil Party Lead Co-Lawyers' Section

Last Updated: 4 April 2014

Annex 2: Overview of Civil Party Reparation Requests in Case 002/01

Name	Main Project Partners	Description	Donors
<p>10. Community Peace Learning Center in Samrong Khnong</p>	<p>Youth for Peace (YFP)</p>	<p>A Community Peace Learning Center (CPLC) will be constructed and maintained in Samrong Khnong village, Battambang province—a historical sight where mass killings of the Khmer Rouge Regime occurred. The CPLC will consist of an information center, a museum and a dialogue room. The community will contribute human and financial resources to the development and maintenance of the CPLC which aims to transform the site's negative past into a positive future by engaging the local community and civil parties in transforming the site into a place of commemoration, remembrance, dialogue and education.</p>	<ul style="list-style-type: none"> ▪ Swiss Agency for Development and Cooperation (SDC)
<p>11. Illustrated Civil Party Storybook</p>	<p>Cambodian Human Rights Action Committee (CHRAC)</p>	<p>The project will produce a second edition of CHRAC's book of civil party stories. The book project transforms civil parties into narrators, telling their stories both in written narratives and illustrative artworks. The book will allow those whose voices are normally perceived as powerless, and marginalized to be heard and a sense of justice delivered through recognition and acknowledgment.</p>	<ul style="list-style-type: none"> ▪ Gesellschaft für internationale Zusammenarbeit (GIZ)
<p>12. Publication & Distribution of Case 002/01 Judgment</p>	<p>Civil Party Lead Co-Lawyer Section (LCLS) Victims Support Section Public Affairs Section</p>	<p>This project seeks to provide civil parties with the Case 002/01 judgment both in its full text as well as a summary version. The summary version will be the official ECCC summary and/or a specially developed summary text intended to be accessible and interesting to civil parties, their families and the general public. It will explain the judgment and civil party participation in the proceedings in layperson's terms. The text will be accompanied by informative and entertaining illustrations that will help to explain the main points of the text.</p>	<ul style="list-style-type: none"> ▪ German Federal Ministry for Economic Cooperation and Development (BMZ) ▪ Public Affairs Section ▪ Ambassador David Scheffler
<p>13. Publication of Civil Party Names on ECCC Website</p>	<p>Civil Party Lead Co-Lawyers Section (LCLS) Victims Support Section Public Affairs Section</p>	<p>Civil party names and basic identifying information will be published in the Trial Chamber's written judgment in Case 002/01 as well being published on the ECCC website as a means to recognize the harm suffered by civil parties and acknowledge their participation in the proceedings.</p>	<p>Not Applicable</p>
<p align="right">Total Funds Secured:</p>			<p align="right"><u>\$770,275.80</u></p>

Civil Party Lead Co-Lawyers' Section

Last Updated: 4 April 2014

ANNEX F - INITIAL SPECIFICATION OF REPARATIONS PROJECTS FOR CASE 002/02

Category	Initial Hearing 30 July 2014, Transcripts
Memorialization	Construct stupa [pg 12]
Memorialization	Construct buildings 'for group discussions amongst the civil parties, youth, and the local authorities' [12]
Memorialization	Build statues 'depicting the activities of the victims ... namely depicting forced marriage and the living conditions' during DK [12]
Memorialization	Exploration and maintenance of the remains of the victims 'as well as the traditional ceremonies with the participation of the civil parties' [unclear if this is one proposal or two] [12]
Memorialization	Naming bridges or roads that plan to construct in provinces/municipalities 'in order to remind people of the occurrence of the crimes in Cambodia' [13]
Rehabilitation	Treatment with psychologists [12]
Rehabilitation	'Consultation groups between the civil parties or with the participation from the community' [12]
Rehabilitation	Physical health support, particularly for CP's who 'can't afford it or who are elderly' [12]
Rehabilitation	Health centre construction [12]
Rehabilitation	Meditation Centre [12]
Rehabilitation	Support 'as well as the empowerment of civil parties to specific groups, for example, those who suffered from gender violence or sexual violence as well as the victims in the minority groups' via establishing Associations for support, rehabilitation and consultation 'so that they can participate in mainstream society' [14]
Rehabilitation	Identification cards to 'promote the value of their participation' and access health services
Rehabilitation	Conversation with the accused (toward reconciliation and reintegration) [14]
Documentation and Education	(Existing) Publication of full and summary of judgment [13]
Documentation and Education	(Existing) Book on participation of the civil parties in proceedings [13]
Documentation and Education	(Existing) Summary of crime sites and charges within scope [13]
Documentation and Education	(Existing) Chapter on KR history in curriculum [13]
Documentation and Education	(Existing) Webpage with names of civil parties at the tribunal [13]
Documentation and Education	(Existing) Documentation centre of the Khmer Rouge regime [13]
Documentation and Education	(Existing) Mobile and fixed exhibit [13]
Documentation and Education	Scholarship or training programs for civil parties' children who were the result of forced marriage [13]
Documentation and Education	Project on 'consultation and discussion about good governance and the history of the Khmer Rouge' [13]
Documentation and Education	Other documents or books that could be 'authored by the civil parties, which provide the brief summary of the facts concerning the crimes' and charges [15] and published to explain to the younger generation what happened.
Documentation and Education	Exhibition with digital recording showing the background of the KR, process for justice etc.
Documentation and Education	Video showing the efforts of the civil parties in pursuit of justice [16]
Documentation and Education	Oral history of Cambodian women. [16] 'They can talk about their sufferings, and youths are invited to listen...'
Documentation and Education	Group discussions on gender in respective communities led by civil parties – some volunteer civil parties will be trained on gender issues to 'meet in their community and share their experience concerning gender-based violence in the Khmer Rouge period' [17]

Documentation and Education	A project that 'will highlight some good culture of Cambodia' and promote 'positive culture' with some 'artistic and musical aspect, sport, as well as storytelling so that the younger generation would see the positive aspect of it' (culture) [17]
Other Requests	Cambodian nationality
Other Requests	A 'consistent request' for 'individual reparation and the monetary reparation' though understand limitations, obliged to raise it since requested to by the civil parties.



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