



RESEARCH REPORT

Urgent Steps to Ensure Right to Remedy for Victims of Sexual and Gender-based Violence in ASEAN

Comparative Lessons on Reparations from Six Countries
in South-East Asia from Indonesia, Timor Leste, Thailand,
the Philippines, Myanmar, and Cambodia



Cover photo: A Burmese woman shared her stories through participatory research to Asia Justice and Rights explore how women experience conflict and state violence, and in its aftermath, struggle to survive in situations where impunity is the norm. © Asia Justice and Rights/Anne-Cécile Esteve

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Table of Contents

Foreword	iv
1. Introduction	1
2. ASEAN's right to remedy	3
3. International principles of gender justice and reparation	5
4. Country Studies	8
· Indonesia, Aceh	8
· Myanmar	12
· Thailand, Southern region	19
· Cambodia	22
· The Philippines	28
· Timor-Leste	33
5. Analysis: Challenges	40
6. Analysis: Key lessons	46
7. Recommendations for steps forward	55

Foreword

In 1997, ASEAN leaders made a commitment that by 2020 the association would have established “a peaceful and stable Southeast Asia where each nation is at peace with itself and where the causes for conflict have been eliminated, through abiding respect for justice and the rule of law and through the strengthening of national and regional resilience.”

Of course, they could not have predicted that 2020 was the year of living with a pandemic – a pandemic that revealed much about the fragility of democracy in our countries and across the region. As a consequence, a number of ASEAN member states slipped into authoritarianism, while others reduced their civic space and freedoms in the name of progress. We are still far from eliminating the roots of conflict, while justice for mass crimes and the rule of law remains a distant dream.

For over a year, the Transitional Justice Asia Network collected information on how five members of ASEAN had dealt with legacies of conflict, focusing specifically in the areas of gender and reparations. The five studies included Aceh in Indonesia, Myanmar, southern Thailand, Cambodia, and Philippines. A case study from Timor-Leste was also included in anticipation of its membership to the community of nations.

The studies found that women and other survivors of gender-based violence in conflict are mostly invisible and forgotten by their governments. In some contexts, survivors are ageing and facing new challenges. Although women and girls were overwhelmingly the target of sexual and other gender-based violence, we found men and boys also suffered. In addition, LGBTQI+ people in some contexts were specifically targeted for violence because of their sexual orientation or gender identity.

In many contexts, years after conflict layers of invisibility are still being peeled away. This invisibility means a generation has lost the opportunity to learn from history and the chance to commit to transforming gender norms that have contributed to such widespread violence. In other contexts, fresh violence has highlighted the need to find innovative ways to provide urgent reparative measures for survivors.

Policy-makers have deprioritized pushing for accountability for sexual and other gender-based violence during conflict, and have denied victims recognition and repair. A wall of official denial and silence, enabled by male-dominated justice systems, means that generations of victims in countries across ASEAN continue to suffer without recognition or adequate support, let alone justice and reparations. Many remain vulnerable to further violence.

We hope this report will lead to a reaffirmation of the promise of remedy and repair, and that ASEAN countries can renew their commitment to a culture of accountability and care for victims of human rights violations in our communities.

Galuh Wandita

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“... we have to go on with our lives and should take care of our children. And (we need to have) legal knowledge on rights, equality, and justice. I feel unfair to what I've come across and the law is unfair and unequal”

A, women survivor from South Thailand

I lost everything, my husband, my sons. The military slit their throats. When I close my eyes, I see my husband and my sons. I saw the military kill someone else's baby. After they raped me, I just lay on the ground, I couldn't do anything. I cry rivers of tears. I won't be able to stop crying until I get my dignity, until I get justice for my husband and my children.

Nesrine, Rohingya Refugee¹

I experienced violence all over my body. My heart is still in pain, it still has not healed. Sometimes (it feels like) blood comes out, my chest hurts and I cannot breath ... Why did they treat us with so little humanity? I need to treat my medical condition, as I have been sick ever since. Twice a day I drink milk and take medicine to reduce the pain. I've never received any assistance from anyone.

Saudah, Survivor in Aceh²

1 After the Dark, I Bloom Like a Flower: Recognition and Healing for Rohingya Survivors of Sexual and Gender-based Violence, AJAR and LWM, August 2021.

2 Enduring Impunity, AJAR, 2015, p. 108

1. Introduction

Sexual and other gender-based violence has been a terrible and common feature of armed conflicts and oppressive crackdowns in countries across the ASEAN region. In some countries, and specific areas within countries, this violence and its impact are ongoing crises. Women and girls are overwhelmingly the target of sexual and other gender-based violence, though men and boys also suffer. LGBTQI+ people are specifically targeted for violence due to their sexual orientation or gender identity.

The harms suffered by victims of sexual and other gender-based violence are profound and usually long-lasting. They include loss of life. Surviving victims often face family, community and wider social stigmatisation, ostracism and marginalisation of themselves and their children that leads to or compounds poverty. A wall of official denial and silence and male-dominated justice systems do not adequately prioritise sexual and other gender-based violence. Generations of victims in countries across the ASEAN region continue to suffer without recognition or adequate support, let alone justice and reparations. Many remain vulnerable to further violence.

ASEAN countries have individually and collectively recognised that violence against women is intrinsically linked to discrimination and inequality, through ratification of international treaties and conventions and ASEAN declarations. ASEAN is also in an ongoing process of evolving and strengthening its institutional and normative approach to human rights. The ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Human Rights Declaration (AHRD) each provide platforms for collective regional action, even as they require strengthening to ensure compliance with and promotion of international human rights standards.

International human rights law recognises the right to remedy for victims of human rights violations. Established international principles set out victims' right to adequate, effective and prompt reparation for harm suffered. There are five basic forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

The ASEAN Declaration of Human Rights recognises victims' right to remedy

However, countries in the ASEAN region have a poor track record on delivering on their obligation to provide reparation to victims of human rights violations, in particular for sexual and other gender-based violence during armed conflicts and other situations of mass violations.

In ASEAN, many governments have generally shown reluctance to establish such large-scale reparations programs, even when other transitional justice mechanisms such as prosecutions and truth commissions have been implemented. Where programs have been initiated, victims face many obstacles to access support - not least the lack of judicial and investigative focus on sexual and other gender-based crimes, which also exacerbates social pressures on victims to remain silent.

In response, civil society has often worked to partially fill the gap of official inaction. While supporting victims to advocate for their rights, civil society organisations have also delivered programs including practical support for food, physical and mental health, housing, education and livelihoods. Women's rights organisations, including community-based organisations, have played the leading role in both advocacy and practical support for victims of sexual and other gender-based violence. At times international agencies have played an important role, especially in situations of humanitarian emergency related to conflict and violence.

This research was conducted by members of the Transitional Justice Asia Network (TJAN)¹, focusing on the right to reparations for victims of sexual and gender-based violations during conflict. The case studies in this report cover five members of ASEAN: Indonesia (Aceh), Myanmar, Thailand (Southern), Cambodia, and the Philippines. A case study from Timor-Leste is also included, in anticipation of its membership to the community. The case studies demonstrate both the prevalence of sexual and other gender-based violence in the region during times of conflict and political repression, as well as mechanisms for accountability and a wide range of approaches toward practical support to victims of violence including efforts to achieve reparations, and notes key innovations in each context.

The case studies also demonstrate that countries, especially governments, in the region must do better. Governments need to shift their mentality with regard to remedy and reparations, acknowledging it is a legal right of victims and an obligation of governments - not an optional policy decision. And much more needs to be done to focus justice systems, including transitional justice mechanisms, on addressing sexual and other gender-based violence. Victims themselves, especially women, need much more agency in shaping official responses such as reparations programs.

At the same time, the case studies show that while civil society advocates for governments to take action in accordance with their obligations, immediate creative practical measures to support victims are both possible and essential. Victims cannot wait. A range of innovative programs have been delivered in countries across the region, albeit at a scale that has not reached all victims or met all their needs. At times there have been valuable partnerships between civil society and states/governments - both in court-issued reparations programs and in government-supported services. Given the reluctance of governments to commit to reparations programs, these measures are sometimes interim practical initiatives without the element of official recognition of victims which is part of the right to reparations. Much can be learned from these experiences to inform civil society-government partnerships including in future official reparations programs.

¹ The Transitional Justice Asia Network (TJAN) is an Asian regional hub of transitional justice experts, which aims to facilitate learning and knowledge-building on transitional justice and accountability initiatives across the region. Established in February 2017, TJAN member organisations include Asia Justice and Rights as network secretariat and KontraS Aceh (Indonesia), ND-Burma (Myanmar), Suriya Women's Development Centre (Sri Lanka), Alternative Law Groups (Philippines), Cross-Cultural Foundation (Thailand), Advocacy Forum (Nepal), Liberation War Museum (Bangladesh) and the May 18 Memorial Foundation (South Korea).

2. ASEAN's right to remedy

All member states of ASEAN, and Timor-Leste, have ratified the key international treaties and conventions binding them to international human rights standards including those on justice and reparations in relation to mass human rights violations.

In 2009, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was established as a mechanism to promote protection of human rights across the region. The ASEAN Human Rights Declaration (AHRD) was adopted in 2012, and guarantees the right to an effective remedy for victims under Article 5 of the General Principles:

“Every person has the right to an effective and enforceable remedy, to be determined by a court or other competent authorities, for acts violating the rights granted to that person by the constitution or by law.”¹

The Declaration is non-binding on member states. At the time of its adoption, the United Nations as well as international and regional civil society organisations criticised terms of the Declaration due to language which potentially could be used to restrict human rights in ways inconsistent with international law and standards. This included language which balances human rights with duties, as well as provisions which subject human rights protection to matters of cultural, religious and historical backgrounds as well as issues of national security and public morality. The draft was also prepared with little to no consultation with civil society, presenting a lost opportunity given the leading role of civil society in the region in working with victims of mass human rights violations.²

In addition, in 2004 ASEAN issued the Declaration on the Elimination of Violence Against Women in the ASEAN Region, which built upon the 1988 Declaration of the Advancement of Women in the ASEAN Region, committing to greater individual country and collective action to eliminate violence against women.³ In 2017, ASEAN member states also issued the Joint Statement on Promoting Women, Peace and Security in ASEAN.⁴

The situation in practice

Despite international legal obligations and specific regional commitments, the gap between obligation and delivery of reparations across countries in the ASEAN region remains significant. In some respects, this failure across ASEAN member states to live up to legal obligations to deliver reparations can be seen in the wider pattern of impunity for mass human rights violations and the inability or lack of will of regional mechanisms to hold member states to account according to international standards.

In a number of countries in the region, there are policies of denial of the truth of mass violations. For example, in Myanmar with regard to the Rohingya people, as well as other ethnic

1 ASEAN Human Rights Declaration 2009. [https://asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20\(7.%20Jul\)%20-%20ASEAN%20Human%20Rights%20Declaration%20\(AHRD\)%20and%20Its%20Translation.pdf](https://asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20(7.%20Jul)%20-%20ASEAN%20Human%20Rights%20Declaration%20(AHRD)%20and%20Its%20Translation.pdf)

2 See for example press releases by the UN High Commissioner for Human Rights, <https://www.ohchr.org/en/press-releases/2012/11/asean-human-rights-declaration-should-maintain-international-standards-urge?LangID=E&NewsID=12796>; the UN Human Rights Council Independent Experts, <https://www.ohchr.org/en/press-releases/2012/11/asean-human-rights-declaration-should-maintain-international-standards-urge?LangID=E&NewsID=12796>; and Amnesty International, <https://www.amnesty.org/en/documents/ior64/005/2012/en/>

3 <https://asean.org/declaration-on-the-elimination-of-violence-against-women-in-the-asean-region/>

4 <https://asean.org/wp-content/uploads/2021/01/Joint-Statement-on-Promoting-Women-Peace-and-Security-in-ASEAN.pdf>

groups - including official denial of well-documented mass sexual violence. Even in cases where officially recognised State entities such as national human rights commissions and truth commissions have recommended reparations, governments have been reluctant to take action on reparations (see case studies on Timor-Leste and Indonesia). In other countries, such as Cambodia, governments have left the issue of reparations entirely to judicial processes which inevitably focus on a small number of cases and a relatively small proportion of victims.

In this context of denial of mass violence, obstruction of accountability and justice and failure or refusal to act on delivering reparations, victims in countries in the ASEAN region often languish with prolonged and even compounded harms. It has generally been left to civil society organisations, often working with victims' groups, to take the initiative to try to fill the gap left by government reluctance and inaction. The case studies in this report outline examples of innovative programs including some partnerships with government agencies to deliver support to victims, including in health, housing, livelihoods and education. Increasingly civil society organisations are emphasising that reparative work with victims needs to be holistic - focusing on the whole lives of victims, seeking to engage and empower them with support over time so that they can have agency in transforming their own lives. NGO work with women survivors in Timor-Leste highlights the ongoing and multi-dimensional nature of this work, quite different to one-off payments or only material support.

Civil society organisations' work to fill this gap highlights the need for urgent and interim reparative programs - even while advocating for government engagement and delivery of wider, official reparations programs. This includes the situation during humanitarian emergencies in the context of conflict and violent repression, responding to the needs of large displaced populations due to mass violence and forced displacement. For example, the Rohingya population is still in Rakhine State in Myanmar as well as those forced to Bangladesh, and ethnic minority communities in Myanmar are affected by long-running armed conflicts and political repression. Many humanitarian interventions are the only support available to victims, and with political stalemates often become medium and even long-term support systems.

3. International principles of gender justice and reparation

In 2005, the UN General Assembly recognised the right to reparations when it adopted 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. Specifically, the Basic Principles provide that victims' right to remedies for gross violations include a) equal and effective access to justice; b) adequate, effective and prompt reparation for harm suffered, and; c) access to relevant information concerning violations and reparation mechanisms. The Basic Principles set out five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹ In practice, no single reparations program achieves all five forms, and it is essential that reparations measures complement each other for a holistic impact.

In addition, the right to an effective remedy and reparation is firmly established in international law. International instruments which enshrine this right include the Universal Declaration of Human Rights (article 8), the International Covenant on Civil and Political Rights (article 2), the International Convention on the Elimination of All Forms of Racial Discrimination (article 6), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (article 14) and the Convention on the Rights of the Child (article 39). The right is also acknowledged in other international instruments related to international humanitarian law (the laws of war) and international criminal law, including the Regulations concerning the Laws and Customs of War on Land (article 3), the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (article 91) and the Rome Statute of the International Criminal Court (articles 68 and 75).

At the same time, national, regional and international courts continue to develop a growing body of jurisprudence on the right to reparations, applying it in specific circumstances. For instance, the International Court of Justice, the Inter-American Court of Human Rights and the European Court of Human Rights have considered a large number of individual cases and group claims arising from periods of mass violations.

The state obligation to provide reparation extends beyond monetary compensation and includes additional requirements such as public investigation and prosecution, legal reform, restitution of liberty, employment or property, medical care, and expressions of public apology and official recognition of the State's responsibility for violations.²

In order for something to count as reparation, as a justice measure, it has to be accompanied by an acknowledgement of responsibility and it has to be linked to truth, justice and guarantees of non-recurrence.

1 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. General Assembly Resolution 60/147. 16 December 2005. <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

2 Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, to the United Nations General Assembly. 14 October 2014. A/69/518. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/564/67/PDF/N1456467.pdf?OpenElement>; see also Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, to the United Nations General Assembly. 11 July 2019. A/HRC/42/45. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/213/93/PDF/G1921393.pdf?OpenElement>

Gender justice and reparations

The UN High Commissioner for Human Rights has stated that gender-based violence is considered to be any harmful act directed against individuals or groups of individuals on the basis of their gender. This may include sexual violence, domestic violence, trafficking, forced/early marriage and harmful traditional practices. Sexual violence is a type of gender-based violence and takes many forms including rape, sexual abuse, forced pregnancy, forced sterilization, forced abortion, forced prostitution, trafficking, sexual enslavement, forced circumcision, castration and forced nudity.³

Women and girls are disproportionately the victims of such violence, though men and boys are also targeted. LGBTQI+ people are also targeted specifically due to their sexual orientation or gender identities. During armed conflict as well as other periods of mass violations sexual violence is often used as a tactic to humiliate, dominate and instil fear. In conflicts, it may be used to disperse and/or forcibly relocate civilian members of a community or ethnic group. Ethnic cleansing and the destruction of the fabric of family and community are often also part of the deliberate strategies of warring parties.⁴

Globally and in the ASEAN region, reparation efforts have often overlooked women's and girls' needs and concerns. As the case studies in this report demonstrate, victims face many obstacles in pursuing justice including reparations. The common failure — including in countries in the ASEAN region — to adequately prosecute sexual and other gender-based crimes, or even to investigate and document them officially, creates further obstacles. The invisibility of women and girl victims is a major impediment to their inclusion in all justice measures, including reparations. Pervasive stigma attached to victims, especially of sexual violence, exacerbates this invisibility.

Largely growing from the work of women's and other civil society organisations worldwide, increased attention has been focused on addressing these obstacles to reparations for victims of sexual and other gender-based violence.

In 2007, Nairobi Declaration on Women's and Girls' Rights to a Remedy and Reparation was a significant milestone and contribution on how to address reparations for women and girl survivors. The Declaration was issued at the culmination of the International Meeting on Women's and Girls' Right to a Remedy and Reparation, held by women's rights advocates and activists as well as survivors of sexual violence in situations of conflict from Africa, Asia, Europe, Central, North and South America. The Declaration set out a comprehensive agenda, focusing on basic principles relating to women's and girls' right to a remedy and reparation; access to reparation; and key aspects of reparation for women and girls. Rooted in international law, the Declaration made a powerful argument both for the obligations of the state and the critical role of civil society. It emphasised the integral role of reparations to contribute to the guarantee of non-repetition of violence. It also declared the key transformative function of reparations in post-conflict situations, to overcome socio-cultural injustices and political and structural inequalities that shape the lives of women and girls and which often pre-dated conflict. Fundamentally, the Declaration said that women and girl victims themselves must define the approach to and the form of reparations for their needs, interests and priorities.

Gradually the United Nations human rights system has built upon the work led by civil society and victims themselves, creating a stronger normative framework for reparations related to sexual and other gender-based violence during conflict and other periods of mass violations.

In 2014, the UN High Commissioner for Human Rights issued an official report, the *Analytical study focusing on gender-based and sexual violence in relation to transitional justice*. Around the same time that year, the UN Secretary-General issued a Guidance Note on Reparations for Conflict-related Sexual Violence.⁵ The Note acknowledged the significance of the Nairobi Declaration, and in its guiding principles emphasised that reparation for victims of conflict-related sexual violence entails a combination of different forms of reparations, including individual and

3 Analytical study focusing on gender-based and sexual violence in relation to transitional justice Report of the Office of the United Nations High Commissioner for Human Rights. 30 June 2014. A/HRC/27/21. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/068/34/PDF/G1406834.pdf?OpenElement>

4 Ibid, paragraph 5.

5 See <https://www.ohchr.org/sites/default/files/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>

collective reparations. The Note highlighted that reparations should aim to be transformative of the structural inequalities and discrimination that underpin violence against women. Among other points, the Note underlined the importance of urgent or interim reparations schemes which can address the immediate needs of victims. It also emphasised the need for adequate and gender-sensitive procedures for reparations programs involving sexual violence.

The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has twice issued reports on reparations, in 2014 and 2019.⁶ In the 2014 report, noting the “scandalous proportions” of the gap between states’ obligations and actual implementation of reparations programs, the Special Rapporteur highlighted “the gender insensitivity of a majority of reparation programmes, which results in too few victims of gender-related violations receiving any reparation.”

The more recent 2019 report highlighted two specific challenges that require urgent attention: rehabilitation, and reparation for victims in a vulnerable situation, including victims of sexual violence. The report emphasised that “[s]exual violence remains a pervasive crime and its victims remain invisible or ignored in society. As a consequence, they have often been excluded as beneficiaries in domestic reparation programmes.”⁷

Despite this significant progress in thinking and conceptual frameworks, the gap between state obligations and actual delivery of reparations remains vast, not least in countries in the ASEAN region.

6 Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, to the United Nations General Assembly. 14 October 2014. A/69/518. Page 2/23. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/564/67/PDF/N1456467.pdf?OpenElement>

7 Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, to the United Nations General Assembly. 11 July 2019. A/HRC/42/45. Paragraph 14. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/213/93/PDF/G1921393.pdf?OpenElement>

4. Country Studies


4.1 Indonesia, Aceh



Ummi Kalsum had to endure the pain and trauma after her husband had to flee to the mountain when the military came to her village. She was then taken by the military and detained for the absence of her husband, leaving her 7-year old daughter. She was left with loss and sadness when her husband was detained and never came back © Asia Justice and Rights/Okky Ardy

Background

Indonesia declared independence from Dutch colonial rule in 1945 following a long struggle. The new state was internationally recognised at the United Nations in 1949. Since independence, Indonesia has undergone multiple contexts — time periods and regional situations — in which gross human rights violations have been committed. This paper focuses on the situation of Aceh, in the west of the archipelago.



Aceh is a province in Indonesia with a predominantly Islamic community with a history of self-rule prior to independence. The Acehnese struggled against Dutch rule and, following the declaration of independence, local Islamists rebelled in 1945-46 and again in 1953-1959. In the 1970s under the authoritarian Soeharto New Order regime, multinational corporate gas exploitation in Aceh led to increased tensions which were exacerbated when the national government militarised the mining area leading to violence against communities. In 1976, the Free Aceh Movement (*Gerakan Aceh Merdeka*, GAM) was formed to lead an armed insurgency and declared independence. The military violently suppressed the insurgency. Soeharto's government declared Aceh a military operation zone between 1989-1998, leading to widespread human rights violations including extra-judicial killings, detention, sexual violence and torture. While most violations were committed by the Indonesian military, GAM also committed violations against migrants and those thought to be informers. Even after the fall of President Soeharto in 1998, the conflict continued and, following failed peace talks in 2003 in Tokyo, the national government declared martial law which led to renewed escalation of human rights violations. It was only after the devastating December 2004 tsunami, which killed more than 170,000 people in Aceh, that 2005 peace talks succeeded in Helsinki.

Women suffered direct gender-based human rights violations including rape and other sexual violence, as well as being targeted due to real or perceived support for GAM by male family members, including violations such as illegal detention and torture and sexualised harassment. Thousands of women were also widowed due to the conflict, causing impoverishment and further vulnerability. Due to the length of the conflict, suffering was inter-generational for many families, with grandparents, parents and children suffering repeated cycles of violations. Human rights organisations estimate that between 10-30,000 people, mostly civilians, were killed in the decades-long conflict.¹

Today, the patriarchal dimension of conflict and the Acehnese society makes it difficult for women to be more open about their experiences. There are powerful legal and social norms which prevent women from speaking up about sexual and other gender-based violence. Institutionally, accusing someone of rape or assault against women involves Syariah Law: if the woman victim cannot prove her case, she may even be accused of adultery and suffer public corporal punishment such as beating. Victim-blaming is still a recurrent reason why many women hesitate to speak. These legal and social restrictions push many women victims into silence.

The Framework of the Helsinki Peace Agreement 2005

Following the devastating tsunami of December 2004, the Helsinki Agreement brought the 29-year conflict to an end. The Agreement paved the way for Aceh to receive special autonomy status within Indonesia. The Agreement also set out terms to address root causes of the conflict, including:

- Amnesties for persons detained/imprisoned for being members of GAM.
- Demobilization, disarmament and decommissioning of GAM combatants and withdrawal of Indonesian security forces.
- A reintegration program for former combatants, political prisoners and support for civilians who suffered a demonstrable loss.
- The establishment of a Truth and Reconciliation Commission for Aceh and a human rights court with jurisdiction over crimes against humanity and genocide.
- Institutional reform to strengthen accountability and rule of law.

Local autonomy provided significant local legislative authority, enabling provincial lawmakers to introduce Syariah law in Aceh. The patriarchal views that heavily influence implementation of the Syariah law have had a significant impact on women's rights and their ability to speak out about the violence they suffered during the conflict, especially sexual violence.

¹ See for example Amnesty International: A "lost decade" for victims of Indonesia's Aceh conflict. 13 August 2015. <https://www.amnesty.org/en/latest/news/2015/08/a-lost-decade-for-victims-of-indonesias-aceh-conflict/>

Transitional mechanisms

The peace process and transitional period have seen the establishment of key official bodies related to transitional justice. In early 2006, the Aceh government established a coordination body for reintegration activities called the Bapel Reintegrasi dan Damai Aceh (BRDA). The BRDA comprises the Aceh Reintegration Body, responsible for the development of reintegration programmes; Forum for Aceh Peace Support, to advise the integration body and garner support from a wide range of stakeholders; and Monitoring Board for the integration body.

In its early years, the peace process in Aceh focused mainly on the security sector and political reform. GAM disbanded in 2005, its members forming a political organisation. The task of disarming and decommissioning both sides was the first priority. The establishment of local political parties and a relatively peaceful election process were considered successful. However, the provisions on justice and accountability were largely ignored.

The Helsinki peace agreement had set out plans for a truth and reconciliation commission in Aceh. However, in 2004 the Indonesian Constitutional Court struck down legislation for a nationwide truth commission and this also stalled the process in Aceh. During this time, victims groups in North Aceh, in Pidie, and an Aceh-wide association, actively spoke about their demands for justice and truth. Although there were provisions to provide support for “conflict-affected” civilians, victims were mostly invisible to government officials.

Initial investigations

A series of investigations began into human rights abuses committed during the 29-year conflict soon after the fall of the New Order regime in 1998. These included a parliamentary investigation team in July 1998, as well as the first investigations by the National Commission for Human Rights (Komnas HAM) in July-August 1998 into the 10-year special military operations period of 1989-1998. In 1999, new President Habibie established the Independent Commission for the Investigation of Violence in Aceh (*Komisi Independen Pengusutan Tindak Kekerasan di Aceh*, KPTKA), made up of representatives of the National Human Rights Commission, government agencies, NGOs, universities and community leaders.

The KPTKA investigated violations during the 10-year special military operations period, and in its final report it said it had received about 5,000 cases of human rights violations, including unlawful killings, “disappearances”, torture, arbitrary detention, rape and other sexual violence.² Following the collapse of peace talks in 2003, Komnas HAM recorded further cases of rape and other forms of sexual violence, as well as other violations. Komnas HAM undertook a *pro justicia* investigation, recommending prosecutions for three cases, including for sexual violence in the Rumah Geudong, Pidie case (1997-98). However, the Attorney General did not pursue the cases.

Indonesia’s National Commission on Violence Against Women (Komnas Perempuan), established after the fall of the New Order regime, has also investigated human rights violations in Aceh. Komnas Perempuan documented 103 cases of violence against women from the period of the military operation zone in 1989 to the transitional period of 2006.³ In 2015, Komnas Perempuan worked with civil society organisations to co-publish a report documenting the stories of 60 women from across Indonesia including Acehnese women.⁴

Aceh Truth and Reconciliation Commission (KKR Aceh)

Despite a long hiatus, victims groups and civil society continued advocacy for a truth commission, and in 2013 the Aceh Parliament passed a law to mandate a TRC for Aceh with a 3-fold mandate: uncovering the truth behind past human rights violations to strengthen peace initiatives; helping promote reconciliation between perpetrators of human rights violations (i.e. both individuals

² See *Time to Face the Past: Justice for past abuses in Indonesia’s Aceh Province*. Amnesty International. 2013. Page 24

³ *Acehnese Women Seek Justice*. Report of the National Commission on Violence Against Women. January 2007.

⁴ *Enduring Impunity: Women Surviving Atrocities in the Absence of Justice*. National Commission on Violence Against Women. 2015

and institutions) and victims; and recommending comprehensive reparations for victims of human rights violations.⁵

The law establishing the KKR Aceh included among the Commission's principles, "gender perspective" (Article 4(k)). It also set out clear parameters for the Commission to recommend reparations programs, and for their implementation. It provided for a 2-stage approach to reparations: short-term, in the form of immediate services for the most vulnerable victims; and long-term, by collecting information to design mandatory programs for the government. The law also provided that the Aceh government could appoint an entity to implement the recommended reparations programs.⁶

Following further delays, due largely to obstacles from the central government in Jakarta, in 2016 the Aceh House of Representatives appointed seven commissioners to the KKR Aceh. The Commission operated from 2016-2021. Seven working groups carried out the work, including one focused on women and another on reparations. Despite significant funding and political challenges, the KKR completed its truth-seeking work, collecting statements from 5,264 victims and witnesses of human rights violations across all 14 regencies and cities in Aceh Province and delivering its final report in December 2021. KKR Aceh held public hearings and women survivors of gender-based violence bravely spoke out at hearings on torture and forced disappearances. The KKR Aceh is expected to release its final report in December 2022.

Reparations programs and other assistance to victims

Prior to the Helsinki Agreement, some measures were taken to support victims of human rights violations, through civil society and local government services. In 2002, the governor of Aceh developed a compensation scheme under Islamic tradition, called *diyat*, for the families of those killed or disappeared. The scheme provided a small grant of three million Indonesian Rupiah (approximately USD 200-300) for 20,000 widows. The scheme continued to be implemented following the peace agreement, but payments were made without any kind of acknowledgement or apology for the killing or disappearance of spouses. Victims of sexual violence were not included in the scheme. There were also problems with transparency in implementation. Many victims were left dissatisfied.⁷

Later, Aceh's Reintegration Agency (BRA) distributed aid for conflict-affected communities. This was also done without any process to listen to victims living in these communities, thus providing little reparative impact for victims.

Civil society organisations have also provided support to women survivors of gender-based violence. Local NGOs have worked with AJAR to implement participatory action research programs with women survivors, integrating human rights, legal, and psycho-social approaches to assist victims, particularly victims of sexual violence. Research activities address human rights violations, the social and political impacts of violations, and aim to provide an environment where healing and empowerment can take place.

Urgent reparations recommended by KKR Aceh

During its operations, KKR Aceh recommended that 245 especially vulnerable individuals receive urgent reparations (106 out of the 245 are women), immediate measures for emergency assistance such as medical and psychological support and social assistance. The Governor of Aceh signed a decree on 27 May 2020 to fulfil these urgent reparations which were to be implemented by the Reintegration Body. However, to date this commitment has not been realised. Other examples of collective reparations implemented by partnering organisations during the KKR Aceh's operations are the building of houses funded by CSR Bank Aceh in the conflict-affected

5 Aceh Qanun Number 17 of 2013 concerning the Aceh TRC, by order of Law Number 11 of 2006 concerning the Government of Aceh, as a continuation of the Memorandum of Understanding of the Government of the Republic of Indonesia and the Free Aceh Movement (GAM), August 15, 2005 in Helsinki, Finland.

6 Ibid, Law 17 Articles 27-29.

7 See Transitional Justice: Indonesia Case Study. Page 4. Asia Justice and Rights.
<https://asia-ajar.org/wp-content/uploads/2020/09/English-Indonesia-Case-Study.pdf>

community of Cet Langet, and aid by a local organisation to 60 particularly poor victims of human rights violations.

In its final report, KKR Aceh is expected to make recommendations for a comprehensive reparations program.

Innovations:

- Victims' groups and civil society organisations persisted with advocacy despite major obstacles presented by the national government in implementing the justice commitments of the peace agreement (the human rights court and the truth commission). This led to the provincial government bypassing the national level and establishing the Aceh truth commission (KKR Aceh).
- The provincial law establishing the KKR Aceh allowed for both urgent reparations and a long term reparations program. The KKR Aceh recommended urgent reparations for 245 of the most vulnerable survivors during the lifetime of its operations.
- A proud tradition and identity of Islam characterised Acehnese communities during the long conflict. At the same time, following the peace agreement the introduction of Syariah Law and deep patriarchal values threaten to push women survivors of sexual and gender-based violence further into the shadows. This includes legal provisions which threaten victims of sexual violence with charges of adultery. Despite these obstacles, some women victims bravely spoke out at KKR Aceh public hearings and continue to receive support from human rights and women's NGOs.

4.2 Myanmar

Background

Myanmar has a decades-long history of ongoing multiple armed conflicts between the military and different ethnic groups, alongside pervasive authoritarian rule by military governments. Colonised by Britain, Myanmar achieved independence in 1948, but since that time the military (known as the Tatmadaw) has maintained control over the country's governance and has continually suppressed civilian efforts to develop genuine democracy and respect for human rights.

Since the February 2021 coup by the Tatmadaw, conflict has escalated in Myanmar on several fronts. Violent crackdowns on mass peaceful demonstrations and brutal repression of political

opposition by the military have led to the emergence of popular resistance groups, known as People's Defense Forces (PDFs). These PDFs are engaged in open conflict with the central military and its allies throughout the country. The coup also led to escalation of a number of old conflicts with ethnic armed groups, with disastrous consequences for human rights. Politically, the National Unity Government (NUG) has established itself as a legitimate governing body in the eyes of the people, in contrast to the junta regime, although it is still vying for international recognition.

Historically, widespread human rights violations - including sexual violence - characterise the Tatmadaw's operations in all armed conflicts. In addition to civil society, various UN bodies have repeatedly drawn attention to the history of Myanmar's security



With the decades-long armed conflicts in Myanmar, women have been particularly exposed to high militarisation and political repression. Roi Ji, Ma Bawk and Maran Kaw had to bear the brunt of loss and trauma when the fighting broke out in their village. They lost their family members, their home, and their livelihood. © Asia Justice and Rights/Anne-Cécile Esteve

forces perpetrating sexual violence as part of a military policy, including highlighting that “sexual and gender-based violence was a hallmark of the Tatmadaw’s operations”.⁸

In addition to violations against ethnic groups such as the Kachin, Shan, Ta’ang, Karen and other communities, the Tatmadaw has carried out well-documented campaigns of mass violence against the Rohingya Muslim community. The UN documented that each of the three waves of extreme violence against the Rohingya (in 2012, 2016 and 2017) was accompanied by systematic and widespread sexual and other gender-based violence against Rohingya women and girls as an integral part of the Tatmadaw’s strategy.⁹ The UN Independent Fact-Finding Mission concluded that “the sexual violence perpetrated against women and girls that began on 25 August 2017 was a ... factor that indicated the Tatmadaw’s genocidal intent to destroy the Rohingya people”.¹⁰

Sexual and other gender-based violence by the military is overwhelmingly targeted against women and girls. At the same time, the UN has documented the use of sexual violence against men and boys. The vast majority of human rights violations in Myanmar have been perpetrated by the Tatmadaw, though to a lesser extent ethnic armed organizations have also committed violations.

Political repression by military-led governments over decades has also led to waves of violent suppression of dissent, including massacres, arbitrary detention and torture. The latest wave of violent crackdowns, since the military coup of February 2021, has led to mass arrests and violence against civilians including reports of sexual violence against detained women protesters.

At the same time, Myanmar is a deeply patriarchal society, and women and girls experience widespread discrimination leading to a high prevalence of gender-based violence, especially domestic violence. The country ranks 148^{out} of 189 in the United Nations’ Gender Inequality Index.¹¹

Applicable laws

Following the 2021 military coup, the domestic legal framework applicable in Myanmar is complicated and evolving. The military’s State Administration Council (SAC), which attempts to hold power by force, aims to continue to apply the 2008 Constitution and laws enacted during decades of military-dominated legislatures.

On the other hand, the Committee Representing the Pyidaungsu Hluttaw (CRPH), a body made of ousted parliament members elected in the 2020 election, has repealed the 2008 Constitution, passed a Federal Democracy Charter in March 2021, and formed an interim National Unity Government (NUG). These bodies are enacting new legal provisions, although their capacity to enforce these laws and policies in practice is limited.

The legal framework described in the present paper refers mainly to the laws that existed before the 2021 coup. It might be argued that at least some of these laws are not applicable anymore.

Crimes and human rights violations committed by military and police

Under the 2008 Constitution and relevant laws, the civilian justice system had no effective authority over military and police: crimes and human rights violations committed by the military were generally handled by military courts, under 1959 legislation - in very rare cases they have been transferred to civilian courts; police violations were similarly handled by special police courts, under 1995 legislation. In practice, there has been no oversight by the civilian justice system and both military and police enjoyed near complete impunity for human rights violations. This includes the well-documented use of sexual violence against women and girls during their operations, as well as against women detainees rounded up in the protest movement since the 2021 coup.

In terms of the widespread sexual violence against Rohingya women and girls, the prospects for justice are even more remote. In May 2020, under the NLD government, the President’s

8 Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts (A/HRC/42/CRP.4). 2019. UN Independent Fact Finding Mission on Myanmar.

9 Ibid; and UN Secretary-General, “Report of the Secretary-General on Conflict-Related Sexual Violence”, UN Doc S/2018/250 2018, par. 25.

10 Ibid.

11 <http://hdr.undp.org/en/content/gender-inequality-index-gii>

Office formed the “Criminal Investigation and Prosecution Body” to investigate and prosecute cases in Rakhine State based on the recommendations of the Independent Commission of Enquiry (ICOE). However, the ICOE dismissed evidence of sexual violence which means subsequent investigations would not even consider it. The February 2021 coup has blocked any such investigations in any case.

Civilian legal and policy framework

More broadly, Myanmar’s Penal Code dates back to 1860 and, while it includes crimes of rape and other sexual assault, it is outdated and generally inadequate to ensure the rights to accountability and reparations of victims of sexual violence. The criminal law includes some provisions aimed at facilitating remedies and reparations but these are not used in practice. Further, laws governing the security forces do not reference these provisions. While there have been limited instances of Myanmar security forces paying “financial compensation” to victims of military human rights abuses such payments have been made without official acknowledgement of or apology for the violations.¹²

Since 2014, a Draft Prevention and Protection of Violence against Women Law was being developed but the process stalled following the 2021 coup. When it was in power, the NLD-led government took two specific initiatives to promote gender equality and women’s empowerment: the National Strategic Plan for the Advancement of Women 2013-2022; and the Joint Communiqué with the U.N. Special Representative on Sexual Violence in Conflict. But even before the 2021 coup, there had been little or no implementation of either initiative.

A Department of Social Welfare was established under the NLD government, which included a “Women’s Section” to promote the welfare of women. But its capacity was extremely limited. Since the 2021 coup, local groups have mostly stopped working with the Department.

The Myanmar National Human Rights Commission (MNHRC) is mandated to consider complaints against State actors. In theory, the Commission must address concerns related to remedies and reparations when it responds to complaints. In practice, the Commission lacks independence and impartiality and has no capacity or willingness to handle human rights violations committed by security forces. It has not so far been an effective institution for victims of sexual and other gender-based violence committed by state actors.

During the brief window of civilian governance between 2015 and early 2021, the government conducted two investigations into the violence against the Rohingya community. While the so-called Kofi Annan Commission - the 2016-27 Advisory Commission on Rakhine State, led by former UN Secretary-General Kofi Annan - was generally considered a legitimate process with important recommendations, implementation has not been followed through.

In addition, the Federal Democracy Charter, issued by the CRPH following the 2021 coup, includes the creation of a commission to address gender-based violence though this remains to be implemented.

International conventions applicable to Myanmar

Myanmar is a party to the Convention for the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on the Prevention and Punishment of the Crime of Genocide and the Geneva Conventions. All contain key clauses related to sexual and other gender-based violence which are therefore applicable to Myanmar.

United Nations security, political and human rights mechanisms, and international justice mechanisms on Myanmar

Myanmar’s history of ongoing armed conflicts and violent and repressive military governments has led to a wide range of UN engagement in the security, political and human rights situations in the country. This engagement intensified following the 2016-17 waves of violence against

¹² Achieving accountability for gross human rights violations in Myanmar, January 2018. International Commission of Jurists. <https://www.icj.org/myanmar-reverse-laws-and-practices-that-perpetuate-military-impunity-new-icj-report/>

the Rohingya people. Since 2017, the UN General Assembly and Security Council have passed resolutions and statements on Myanmar, especially in relation to the Rohingya community and following the 2021 coup.

The UN Human Rights Council has established two key mechanisms: The International Fact-Finding Mission on Myanmar (FFM) operated from 2017-2019; and the ongoing Independent Investigative Mechanism for Myanmar (IIMM) began work in August 2019. Their mandates include documenting human rights violations and international crimes committed in Myanmar since 2011, and for the ongoing IIMM to prepare cases for future prosecution. In September 2019, the FFM released a thematic report entitled “Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts”.¹³ The IIMM has declared that sexual and gender-based crimes will be at the heart of their work.¹⁴

International justice mechanisms

There are currently three international justice mechanisms active on Myanmar. The International Criminal Court (ICC), the International Court of Justice (ICJ) and an Argentinian court applying the principle of universal jurisdiction, are all considering cases of crimes against humanity and/or genocide against the Rohingya people. It remains to be seen to what extent these cases will include sexual and gender-based crimes.

UN Secretariat political and human rights ongoing involvement

The UN Secretariat also has a number of other mechanisms which support human rights in Myanmar. Since 1995, the Secretary-General has appointed a Special Envoy on Myanmar. The UN Special Representative of the Secretary-General on Sexual Violence in Conflict reports on the situation in Myanmar, as does the UN Special Representative of the Secretary-General on Children in Armed Conflict. In addition, the UN Office of the High Commissioner for Human Rights (OHCHR) maintains a Myanmar team to actively work on the human rights situation, producing regular reports and briefings to the Human Rights Council and General Assembly.

Official reparations programs

Despite decades of abuses against civilians, there has been little or no official recognition of mass human rights violations by the state and no official reparations programs, including for victims of sexual and gender-based violence. Some very limited examples of restorative action by the state have taken place, but without the reparative effect of acknowledgement or apology. For example, some action has been taken in relation to land confiscation,¹⁵ and in 2017, 28 Burmese expatriates had their citizenship reinstated after having lost it due to taking foreign citizenship or residency.¹⁶

Government service provision as assistance to victims

Military governments prior to the 2015 NLD government did not invest in public services, a fact reflected in very low spending on public health and education. While the NLD government did establish the Women’s Section in the Social Welfare Department, this relied heavily on civil society groups to deliver support and programs and since the 2021 coup, these partnerships are largely no longer functional.

¹³ A/HRC/42/CRP.4. 12 September 2019.
<https://digitallibrary.un.org/record/3862818>

¹⁴ A/HRC/45/60. 7 July 2020. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/164/93/PDF/G2016493.pdf?OpenElement>

¹⁵ Myanmar Case Study, Transitional justice, ND-Burma / AJAR / TJAN, 2017.

¹⁶ Ibid.

Humanitarian aid

Ongoing violence has resulted in multiple humanitarian crises over time, in which local groups have been at the frontline to deliver practical assistance to victims and their communities. Under the tight control of the Myanmar military, this has also included the involvement of international humanitarian agencies, coordinated by the UN, who are often working with local organisations as service providers. Such assistance is not based on human rights principles of reparation for violations - it is delivered based on humanitarian principles of need. Nevertheless, humanitarian aid is in many instances the first and only assistance provided to women and girl survivors of rape and other gender-based violence. As such it is critical that humanitarian aid supports survivors in ways that are gender-sensitive and transformative. Equally, there are important lessons to be learned from the years of frontline humanitarian assistance to survivors - while humanitarian do generally aim to apply gender principles to their assistance, it is questionable if they are equipped to adequately support the needs of survivors of sexual violence.

Many people living in IDP or refugee camps are direct victims of violent human rights violations, including women survivors of conflict and victims of gender-based violence. The types of assistance and services provided vary and can cover a broad range of needs. For example, in IDP camps in Kachin State, assistance includes financial support, medical care, food, shelter, sanitary, water, electricity, as well as vocational training, and in very limited cases psychosocial support/counselling. For displaced Rohingya communities in Rakhine State, humanitarian aid, while inadequate in terms of long-term protection or development, is a critical lifeline.

In Bangladesh, more than one million Rohingya refugees from the waves of violence since 2012 rely on humanitarian aid for shelter materials, basic food rations, and other household items as well as access to basic health care services. There are “victims centres” which aim to offer various kinds of services, including to women victims of violence. However, services are stretched beyond capacity in what is becoming a long-term intervention. In particular, access to adequate livelihoods, education and health care are lacking.

Civil society transitional justice approaches

Historically, a number of Myanmar civil society organizations developed significant expertise relating to transitional justice, including documentation of violations, commemoration, trauma healing and emergency assistance for victims. Some of these initiatives included women survivors and victims of gender-based violence. For example, local women’s organizations in ethnic communities affected by conflict and violence promote accountability for human rights violations committed by state actors, as well as provide much-needed services to survivors. Since the coup, many human rights workers have been targeted in government/military crackdowns. Human rights and transitional justice programs inside the country have been forced to shut down and many workers have fled the country, trying to maintain human rights and transitional justice work from neighbouring and far-away countries.

From the early 2000s, human rights documentation was a key focus of civil society. Many groups, particularly those linked to ethnic minorities, independently published reports and briefings exposing human rights violations. In recent years, many groups have shared information with the UN investigative bodies, the FFM and IIMM.

In addition, civil society and victims’ groups also took the lead in reparative assistance through the provision of services to survivors.¹⁷ Assistance included financial support, educational stipends, health care, psychosocial or mental health support, as well as employment opportunities or livelihood assistance to victims and their families.¹⁸

Several women’s organizations also conducted projects with women survivors of human rights violations that seek to address victims’ needs in a holistic way with the goal to support them in organizing themselves. These small-scale projects include trauma healing, self-care, acknowledgement, documentation, advocacy, skills development, limited livelihood activities and emergency assistance, in addition to providing safe spaces. They aim to empower women survivors, building their resilience to enable them to take action within their communities.

¹⁷ Ibid.

¹⁸ Ibid; RWG 2018 Report

Generally, it has been left to women's organisations to focus on supporting victims of sexual and gender-based violence. There is little gender mainstreaming by other organisations. For example, the main Myanmar survivors' group, the Assistance Association for Political Prisoners (AAPP), does not have any criteria or policy to ensure that women former political prisoners are proactively included in its initiatives, and there is no specific strategy to reach out to women or to identify them during data collection efforts across the country.

Between 2015 and early 2021, civil society groups tested the waters with a range of truth-telling initiatives and commemorative events.¹⁹ Key events included commemorating the war in Kachin State and remembering the rape and murder of two Kachin teachers, the 88 Generation Peace and Open Society's Uprising Museum, AAPP's Museum on Political Prisoners, truth-telling symposiums with former political prisoners in Yangon, Mandalay and central Burma, an event honouring fallen political prisoners, and 88 memorials in Taunggyi and Bago. These events were usually confined to cities and larger towns where there is less security surveillance.

Civil society Reparations Working Group (RWG)

Starting in 2015, the RWG initiative was led by ND-Burma, aimed at bringing together civil society groups across the country working on transitional justice issues. Groups included human rights organizations, former political prisoners' groups and ethnic women's organizations. The RWG held a series of workshops aimed at developing knowledge, research, policy, and advocacy for reparations initiatives. In 2018, it produced an assessment of victims' needs based on interviews with survivors of human rights violations and former political prisoners, including victims of conflict-related violence and land grabs - setting out the impact of violations, reparations needs of victims and civil society's efforts to meet the needs.²⁰ However, the process and report lacked adequate inclusion and analysis of the experiences, needs and views of women survivors and victims of sexual and gender-based violence. Since the coup, with the escalation of a whole new round of state-perpetrated human rights violations, the initiative is on hold.

Innovations:

- As democratic space gradually opened up in Myanmar after 2008, and especially after 2015, human rights and civil society organisations quickly brought focus to transitional justice needs including reparations for victims.
- In extremely constrained operating situations in parts of the country, such as ethnic conflict-affected areas, assistance provided by local women's organizations as well as various humanitarian programs have brought some measure of gender-focused support to victims of sexual and gender-based violence even if they do not necessarily fit within human rights reparations principles.
- In Bangladesh, civil society organisations and UN humanitarian partners have provided some elements of reparative assistance to Rohingya women and girl survivors of sexual and gender-based violence. Much more investment is required.
- In 2018, a coalition of civil society organisations in Myanmar laid out the basis of a framework for reparations for survivors of human rights violations, though this required a stronger focus on survivors of sexual and other gender-based violence.
- In the face of large-scale repression and renewed armed conflicts following the 2021 military coup, the newly established Myanmar National Unity Government has made commitments to human rights including support to women survivors of violations. Human rights and transitional justice civil society organisations forced to close operations inside junta-controlled areas of Myanmar have taken what steps they can to re-establish operations outside the country.

¹⁹ Ibid.

²⁰ Ibid.

4.3 Thailand, Southern region

Background

Patani is the southernmost region of Thailand, home to around two million people, mostly ethnic Malay who follow the Muslim religion and speak Malay. Today, the situation in southern Thailand is one of an ongoing armed insurgency in support of political aims and fragile talks between the main insurgent group and the Thai government.



Tusnanee and her son was going to the market when an explosion happened in Pattani, 2013. Her son passed away and she needed to undergo multiple surgeries for months after that, before having to wait a year to be able to walk again. Her husband filed for divorce after the incident—she has remarried now and has a one-year-old daughter who gives her life a purpose. © Duayjai/Waasmee Waemano

From the 15th century, Patani was a largely separate sultanate until 1786 when it was conquered and annexed by Siam (modern-day Thailand). The last sultan was deposed in 1902, and in 1909 Siam signed the Anglo-Siamese Treaty with Britain establishing the modern-day border with Malaysia - dividing Patani between the two states.

From the 1930s, the Thai central government increasingly enforced a policy of “Thaification”, aimed at cultural assimilation of the Patani population. In the 1950s a Patani nationalist movement began to grow, leading to armed insurgency in southern Thailand with the broad aim of secession to form a new state. Violence escalated in the 1970s, as a variety of insurgent groups pursued both violent and non-violent strategies while Thai military and police conducted crackdowns and sweeps which affected large sectors of the community. By the 1990s armed insurgent groups had nearly

collapsed, as many members took advantage of government amnesties. However, the Thai government did not act to comprehensively address the grievances of Patani communities. Relative calm ended in 2004 with a renewed insurgency and violent Thai military and police crackdown which in part continues today.

In 2004, the Thai government declared martial law. A peaceful demonstration against this declaration saw a violent crackdown against 2,000 protesters with more than 80 killed in what became known as “Tak Bai Massacre”. This led to wider popular support for insurgents. Under emergency laws, Thai police conduct sweeps and raids, and indiscriminate mass arrests and detention. Reports of torture are common. No military or police have been held accountable for human rights abuses. Insurgents carry out sabotage, assassinations of alleged state collaborators including civilians, attacks using improvised explosive devices and ambushes on security forces.

Since 2004, more than 650 women and children have been killed and more than 2,400 wounded. When male family members are accused of involvement with the insurgency, women are subject to raids and sieges, are detained and some have been prosecuted. The police collection of women’s DNA without consent has been an emerging pattern. Women also face social and economic impacts when male family members are detained or killed. Sexual violence is surrounded by stigma in the largely conservative Muslim communities, and there is a likelihood of under-reporting. NGOs record one known case of sexual violence against a girl by security forces.

Beyond the conflict, women’s organisations report that gender-based violence is also common and that the Covid-19 pandemic has made it worse.

Official dialogue between the Thai government and insurgents began in 2013 but has been fragile. It recently resulted in the endorsement of the General Principles of the Peace Dialogue Process. In 2021, casualties associated with the insurgency rose for the first time since 2004. The conflict has killed over 7,300 people and wounded more than 13,500.

National legal framework

The affected provinces in southern Thailand are governed by national laws, as Thailand is a unitary state. In addition, the southern conflict-affected areas are subject to three specific laws: the Martial Law Act 2547, the Emergency Decree since July 2005, as well as the Internal Security Act 2008. These laws create conditions for human rights violations by State security forces as well as their impunity, shielding them from civil, criminal and disciplinary liability.

The Thai criminal code defines crimes of sexual violence. A gap exists in treating sexual harassment as a minor crime, which does not necessarily encompass the types of conduct by Thai security forces against Muslim women in the conflict-affected provinces. At the same time, the Code does not adequately address the context of human rights violations by State actors such as the security forces and police - who, in any case, enjoy impunity due to martial law and the emergency decree. The Criminal Code does set out provisions for compensating victims of crimes but, again, state actors are shielded from these provisions.

Specifically in the context of the armed conflict, the Southern Border Provinces Development Strategic Committee has issued regulations which set out processes for victims of conflict-related violence by both state and non-state actors to receive reparations. In 2005, the “Committee on Policy and Remedy for People Affected by the Incident in Southern Borders Provinces” was established. After delays, in 2012 guidelines were developed for reparations for victims of human rights abuses: for example, for imprisonment or incarceration without charge or loss of liberty, enforced disappearances, and assassinations. In theory, this includes women survivors of gender-based violence but much of the conduct experienced by women as gender-based violence is not covered by the scheme, such as sexual harassment by security forces (see below).

State reparations

The state reparations program is designed to apply to victims of abuses by both state and non-state actors. However, civil society organisations report that victims of human rights violations perpetrated by state actors confront significant obstacles to accessing the reparations program, in contrast to those who have suffered violations by armed groups. This includes fear of and ongoing intimidation by state security forces, reticence to accept reparations for harm done to family members by the state while the conflict continues, and in cases of enforced disappearance a lack of witnesses in relation to the identity of the perpetrators.

In order to be eligible for reparations, a victim's case needs to be signed off by the police, the security forces and the provincial civilian administration. A number of government departments and services collaborate to provide services as part of the reparations program, including the Ministry of Social Development and Human Security for financial, occupational and funeral services to children, youth, women, the disadvantaged, disabled and elderly; the Ministry of Education with annual scholarships to surviving children; the Department of Justice with a fund to assist defendants in security cases to obtain bail as well as financial compensation in cases of Supreme Court litigation; the Ministry of Public Health, both local hospitals and mental health services, for care and rehabilitation.

State reparations have taken various forms. For example, support for the rehabilitation of victims to recover physical and mental health following incidents of violence. In addition to medical care, the state has supported family members of those killed in the conflict to undertake pilgrimages such as the *Haj* for Muslims and for Buddhists to travel to India. Financial and economic support has been paid to families members of those killed, including paying for ten years of children's education costs, as well as supporting occupational training and work opportunities. Specific monetary payments are established for violations including death and disabling injuries. In some communities, support has been provided to Buddhist communities to restore religious temples. For family members of people who have been forcibly disappeared, there is a lengthy legal process to recognise the fact before they can seek compensation.

Civil society reparative and support programs

Civil society organisations also provide reparative support and programs to victims and their families, in particular covering gaps for vulnerable groups not assisted by the state system. Women activists and organisations work to support peace efforts and women victims of conflict-related violence. However, resources are limited.

For example, the Network of Civic Women for Peace in the Southern Border Provinces and the Sauguna Group have supported the rehabilitation of women affected by the armed conflict, both Buddhist and Muslim, through a process of psychological support and promoting life skills. Other programs focus on compensating women whose husbands have been detained, providing psycho-social support as well as building awareness of human rights and the laws and developing women's support networks. NGOs also monitor human rights violations and advocate for legal changes to strengthen accountability and support for victims.

Specific gender dimensions

Many of the direct victims of abuses such as detention and torture are men, and so more men have directly benefited from the state reparations program. In addition, the representatives of the police, security forces and state civilian administration who must approve reparations applications are nearly always all men - a further obstacle for women to apply. Communities also report conduct by security forces which is experienced as gender-based abuse but which is not covered by the terms of the reparations program: for example, soldiers sexually harassing women and girls, or intimidating them during search and sweeping operations, or when women detainees are required to provide DNA samples to police against their will. Many victims lack information about or understanding of the reparations program and procedures, and this is often exacerbated in the case of women. In particular, there is a lack of understanding in relation to rights and procedures on gender-based violations. Civil society organisations also report that in many cases, husbands pressure wives and other family members not to apply for the state reparations program as a matter of principle. Groups also report that LGBTQI+ people are stigmatised in the community, and that therefore there are no programs or support for them.

Innovations:

- As the official provincial reparations program has largely overlooked women survivors of gender-based violence, civil society organisations have implemented some programs for urgent assistance including to access physical and mental health services, as well as limited support for livelihood activities.
- Women activists have sought to engage support from influential community-based leaders of both Muslim and Buddhist faith communities to address the issue of social stigma against women survivors of gender-based violence.
- Women activists and civil society organisations play an important role in promoting peace at the local level as well as providing support to women victims.

4.4 Cambodia

Background

The people of Cambodia suffered mass violence and enormous loss of life between the late 1960s to 1991, in five different periods of conflict and violent oppression which devastated the lives of individuals, families and the society as a whole.

In the late 1960s during the Vietnam War, the United States carried out secret mass aerial bombardments across the country killing an estimated 50-150,000 civilians.²¹ A military coup

²¹ Bombs Over Cambodia. Taylor Owen and Ben Kiernan. The Walrus. Yale University. October 2006. https://gsp.yale.edu/sites/default/files/walrus_cambodiabombing_octo6.pdf

in 1970 against the royal government led to civil war, with estimates of a death toll between 150,000 to 300,000.²² In 1975, the Khmer Rouge declared victory in this civil war, marking the start of the nearly 4-year period of Democratic Kampuchea, when between 1.7-2.5 million people were killed or died as a result of Khmer Rouge policies and violence.²³ The Khmer Rouge were removed from power in 1979 by Vietnamese forces, though they fought a violent insurgency until a peace agreement was signed in 1991. About 500,000 civilians fled the violence across the border into Thailand. The Khmer Rouge only disbanded on the death of its leader Pol Pot in 1997.

In 1992 the United Nations established its largest ever peacekeeping mission, the United Nations Transitional Authority in Cambodia (UNTAC). After years of international isolation and mass violations, the international community became fully engaged in Cambodia. In 1993, the UN supervised the general election which resulted in the country again becoming the Kingdom of Cambodia, a constitutional monarchy.

The Khmer Rouge was a radical Marxist-Leninist regime which aimed to destroy the previous social order and install a peasant-led agrarian society. It forced entire populations out of cities and towns to labour on the land. The Khmer Rouge aimed to control all aspects of people's lives, deliberately breaking social structures such as the family, regulating relationships including nullifying parental relationships with children, and banning religion. Individual rights were not recognised. Education and healthcare services were closed. They notoriously targeted urban, educated people. Mass detention, torture and executions were routinely carried out in a number of centres. Mass deaths resulted from starvation, exhaustion and illness as well as executions.

There has been relatively little focus on sexual and other gender-based violence by the Khmer Rouge, as well as the broader gendered impact of their violence. In part, this may reflect the traditionally patriarchal nature of Cambodian society as well as the stigma imposed on women victims of sexual violence. In addition, a myth that the Khmer Rouge banned rape as a moral issue emerged due to its policy known as Code 6 - banning sex between unmarried people. But survivors of sexual violence and researchers conclude that this policy was more about control than a moral prohibition.

One widespread practice of sexualised violence by the Khmer Rouge was forced marriage, as a means to both control sexuality and increase the population. Forced marriages were often carried out in large-scale ceremonies. If women refused, they were punished including by rape by Khmer Rouge cadres. Studies indicate that hundreds of thousands of such marriages were enforced on women and men.²⁴

Studies have also shown patterns of rape outside forced marriages, by Khmer Rouge cadres at all levels, including gang and mass rapes especially prior to executions at killing sites, rapes in Khmer Rouge installations and cooperatives, rape through sexual exploitation and sexual slavery, rape by medical staff, and rape which occurred in the periods of conflict both before and after the regime. In addition, women from certain ethnic groups were targeted, such as the Vietnamese and Cham minorities.²⁵ Studies with women survivors have indicated other forms of sexualized and gender-based violence including survival sex, forced sexual services, sexual mutilation and sexual humiliation.

22 Cambodia: U.S. bombing and civil war. Mass Atrocity Endings. World Peace Foundation at The Fletcher School, Tufts University. 7 August 7, 2015. <https://sites.tufts.edu/atrocityendings/2015/08/07/cambodia-u-s-bombing-civil-war-khmer-rouge/>

23 Cambodia under the Khmer Rouge. Mass Atrocity Endings. World Peace Foundation at The Fletcher School, Tufts University. 30 December 2019. <https://sites.tufts.edu/atrocityendings/2019/12/30/cambodia-under-the-khmer-rouge/>

24 For a useful summary of sexual and other gender-based violence by the Khmer Rouge, see Promoting gender equality and improving access to justice for female survivors and victims of gender-based violence under the Khmer Rouge regime: Final evaluation report of the ECCC non-judicial gender project. Phnom Penh, Cambodia: UN Trust Fund to End Violence against Women, Victims Support Section of the Extraordinary Chambers in the Courts of Cambodia, Transcultural Psychosocial Organization Cambodia. 2015. Pages 14-15. <http://gbvkr.org/wp-content/uploads/2015/05/264-final-evaluation-report.pdf>

25 See Sexual violence against ethnic minorities during the Khmer Rouge regime. Rochelle Braaf. Cambodian Defenders Project. 2014. http://gbvkr.org/wp-content/uploads/2014/05/Sexual-violence_ethnic-minorities_KR-regime_CDP-2014-Lo-Res.pdf

There were also reports of rape of men by the Khmer Rouge, as well as the fact that men also experienced widespread sexual and gender-based violence being forced into marriages. There has been very limited research in this area.

Transitional justice

Transitional justice measures in Cambodia focused only on the Khmer Rouge era, not the earlier periods of armed conflict and mass violations. The main focus of official transitional justice in Cambodia has been the hybrid Cambodian-UN Extraordinary Chambers in the Courts of Cambodia (ECCC), established in 2006 following an agreement between the government and the UN which was ratified by Cambodia's National Assembly. The court is also informally known as the Khmer Rouge Tribunal or the Cambodia Tribunal. In 2022, after 16 years, the ECCC is nearing completion of its work. The ECCC was the first hybrid tribunal to be established in Asia.

Following early experiences of the ECCC failing to adequately focus on sexual and other gender-based violence, a joint ECCC-civil society Non-Judicial Gender project was initiated with funding support by the UN Trust Fund to End Violence Against Women. The project, sometimes called the Women and Transitional Justice project, was a partnership between the victim support team of the ECCC and two leading Cambodian NGOs - the Transcultural Psychosocial Organisation Cambodia (TPO) and the Cambodian Defenders Project (CDP). The project ran in two phases, from 2011-2014, and then, as evaluations clearly demonstrated ongoing needs, a second phase from 2016-2019 (see below on Women's Hearings).

In the years since the fall of the Khmer Rouge, civil society organisations have undertaken a range of transitional justice initiatives, both before and during the ECCC work — including to prepare the way for prosecutions (eg. the evidence and documentation work of DC-Cambodia), as well as working in concert with the ECCC especially to support victims and communities to participate meaningfully in the court process, and to support implementation of reparative measures following ECCC decisions (see below, Women and Transitional Justice project).

The ECCC mandate and gender-based violence limitations

The ECCC is an independent Cambodian court which applies international standards, with a mix of Cambodian and international judges and staff. The court can only prosecute two categories of alleged perpetrators for crimes committed between 17 April 1975 and 6 January 1979: senior leaders of Democratic Kampuchea; and those believed to be most responsible for grave violations of national and international law.

Prosecutors have announced that there will be no new cases. In total, the ECCC has conducted four cases, charging 11 Khmer Rouge leaders. Three were convicted, charges were dismissed against two, and for three, proceedings were terminated following the death (in two cases) and ill-health of the accused (in one case).

Sexualised and gender-based violence was initially under-investigated at the ECCC and was not part of the initial prosecutorial strategy. This was in part due to lack of gender-focused research prior to the establishment of the ECCC.

However, the ECCC has an important feature not previously seen in international and hybrid courts which is linked to the Cambodian (and French, the former colonial) legal system: in addition to the prosecutor bringing the case, "Civil Parties" who have an interest in or link to the case can join the proceedings. It was largely through Civil Parties that cases of sexual and other gender-based violence were brought before the ECCC, leading to some investigations and indictments though no convictions. In particular, in 2010 in Case 02/02, 780 people joined the proceedings as Civil Parties in relation to violations of forced marriages, though the case did not proceed. In Case 002/02 forced marriage was included by the court in the scope of the case, though cases of rape in detention were excluded. The co-investigating judges in Case 002/02 concluded that it was "clearly established that crimes against humanity of rape were committed in diverse circumstances"²⁶

²⁶ ECCC, Prosecutor v Nuon Chea, Ieng Sary, Khieu Samphan, Ieng Thirith, Case 002, Closing Order, at 1426.

These proceedings helped to some degree to break the silence surrounding sexual and other gender-based violence against women by the Khmer Rouge.²⁷

Non-judicial Women's Hearings

As part of the joint ECCC-civil society Non-Judicial Gender Project, between 2011-2013, the CDP coordinated Cambodian civil society organisations to conduct three public Women's Hearings. Eighteen women survivors of sexual and other gender-based violence testified before panels about their experiences under the Khmer Rouge. Inspired in part by the women's hearing of Timor-Leste's truth commission (the CAVR), each hearing had a different theme: in 2011 on sexual violence, in 2012 an Asia-Pacific Regional Women's Hearing focused on patterns of sexual and other gender-based violence in conflict situations, and in 2013 the hearing focused on the post-war youth generation with the panel comprised Cambodian university students. Each panel issued a report, including findings and recommendations. Around 1,000 people participated in the hearings, which were also filmed and covered by the media.

Contemporary gender equality, and legal and policy framework

Cambodia has a largely patriarchal culture, with gender roles involving women's subordination to men. The CEDAW Committee has expressed concerns about the strong gender stereotyping in Cambodia which legitimises discrimination against women. A Cambodian saying is that "Men are gold, women are cloth", emphasising that women can be worn and stained; that men are stronger and more valuable. There is also a Khmer traditional code of conduct called *chbab srey*, or "women's law", and the CEDAW Committee has expressed concerns about how it influences discrimination against women.²⁸ In 2020 Cambodia ranked 89th on the World Economic Forum's Global Gender Gap Index in 2020, compared to 112th in 2016.

A 2015 survey found that 1 out of 5 women reported experiencing physical and/or sexual violence, and a 2013 survey of men found that 1 in 5 reported having committed rape. UN Women also report on the need for more action to overcome inequalities including addressing violence against women and girls: in 2018, 9.1% of women aged 15-49 years reported that they had been subject to physical and/or sexual violence by a current or former intimate partner in the previous 12 months.²⁹

Legal framework

Cambodia has ratified the Convention on the Elimination of Violence Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), as well as other key treaties and conventions related to violence.

Domestically, key legislation includes the Cambodian Criminal Code 2009 and Criminal Procedure Code 2007, as well as the Cambodian Civil Code 2007 and Civil Procedure Code 2006 which states that every family member shall respect each others' rights, freedom and prevent domestic violence. The Prevention of Domestic Violence and Protection of Victims Act 2005 specifically addresses domestic violence.

ECCC reparations framework

There has not been any state program of reparations for victims of the Khmer Rouge regime. The only official reparations are those ordered by the ECCC. The ECCC is one of the few

27 For a useful summary of the gradual inclusion of sexual and other gender-based violations in ECCC cases, see Promoting gender equality and improving access to justice for female survivors and victims of gender-based violence under the Khmer Rouge regime: Final evaluation of the ECCC non-judicial gender project. Op cit. Pages 15-17. <http://gbvkr.org/wp-content/uploads/2015/05/264-final-evaluation-report.pdf>

28 Breaking the Silence: Sexual Violence in Cambodia. Amnesty International. 2010. Pages 45-46. <https://www.justice.gov/eoir/page/file/1051061/download>

29 See Ending Violence Against Women and Girls in Cambodia: Opportunities and Challenges for Collaborative and Integrative Approaches. UN Women, UNFPA, UNICEF. 2020. Cites various national surveys and data. <https://www.unicef.org/eap/media/8631/file/Ending%20Violence%20against%20Women%20and%20Children%20in%20Cambodia.pdf>

internationalised criminal courts with a reparations mandate. However, the internal rules of the tribunal define the right to reparations as “collective and moral reparations”, meaning that there can be no individual reparations. Initially, the ECCC was restricted to reparations funded by perpetrators; however, these rules were amended to allow third-party funding, and reparations programs have been funded by international donors with implementation support largely led by Cambodian civil society organisations (see below).

Victim support to Civil Parties in ECCC cases

The ECCC established a strong Victim Support team as part of its structure. From 2007, the ECCC maintained a memorandum of understanding with Cambodia’s leading NGO for mental health services, the Transcultural Psychosocial Organization Cambodia (TPO). The victim support team partnership with civil society organisations—including TPO—under the Non-Judicial Gender Project (see above), also focused on providing psycho-social support to all 2,200 women, and 240 men, Civil Parties in Case 002. In particular, the project targeted civil parties who were admitted based on forced marriage and rape inside of forced marriage. The project also provided support to around 600 women and 150 men survivors of gender-based violence who were not admitted as civil parties.

Reparations programs following ECCC cases

More than 20 community-based projects have been initiated as reparations flowing from ECCC cases. These include mental and physical healthcare for victims, and documentation of victims’ experiences especially from marginalised ethnic communities. Further research and documentation of the experiences of women survivors of forced marriage have also been funded. Music, theatre, storybook, mobile exhibitions and other cultural activities, as well as the development of school curricula materials, have also been central to third-party funded reparations activities. Cambodian NGOs have managed the activities of these reparations projects, while the Ministry of Education, Youth and Sport has also been involved in some projects.

Ongoing needs of women survivors

Studies linked to the Women and Transitional Justice project have documented severe ongoing suffering by many women survivors of sexual and other gender-based violence by the Khmer Rouge. This includes ongoing and untreated physical and mental health problems, poverty, experiences of stigma and ongoing sense of shame and guilt leading to increased isolation preventing women seeking help.³⁰

Studies by the Women and Transitional Justice project which surveyed women who joined ECCC cases as Civil Parties found that survivors prioritized prosecution and punishment of perpetrators, psychological care and monetary compensation. Some indicated that a memorial would help them so they can pray for the dead.³¹

30 Promoting gender equality and improving access to justice for female survivors and victims of gender-based violence under the Khmer Rouge regime: Final evaluation of the ECCC non-judicial gender project. Phnom Penh, Cambodia: UN Trust Fund to End Violence against Women, Victims Support Section of the Extraordinary Chambers in the Courts of Cambodia, Transcultural Psychosocial Organization Cambodia. 2015.
<http://gbvkr.org/wp-content/uploads/2015/05/264-final-evaluation-report.pdf>

31 A Study about Victims’ Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge Regime. Judith Strasser, Thida Kim, Silke Studzinsky, Sopheap Taing Transcultural Psychosocial Organization Cambodia. September 2015.
https://tpocambodia.org/wp-content/uploads/2014/06/TPO_GBV-under-the-Khmer-Rouge_Report_20151.pdf

Innovations:

- The ECCC was the first hybrid national-international court in Asia. The ECCC also had an innovative mandate to include reparations and, when the terms of this mandate were too narrow, it took measures to formally revise the mandate to expand the capacity to deliver reparations.
- The ECCC included a Victim Support Section at the heart of its operations, which worked closely with key civil society organisations. From 2007, based on a Memorandum of Understanding with the ECCC, the Transcultural Psychosocial Organization Cambodia (TPO - Cambodia's leading NGO in the field of mental health care and psychosocial support), provided psychosocial services to ECCC Civil Parties. These ranged from on-site support at the tribunal, culturally-sensitive trauma therapy and self-help groups to truth-telling activities and research projects.
- The ECCC was the first international/hybrid tribunal to include the Civil Party system, which enabled victims to join proceedings and push for investigations into specific violations. After early cases of the ECCC largely overlooked sexual and gender-based violence, civil society and prosecutors were able to utilise the unusual Civil Party system for victims to join proceedings and bring sexual and gender-based violence into court proceedings. Without the Civil Party mechanism, sexual and gender-based violence may have been largely ignored by the ECCC.
- Following the early challenges to address the experience of women survivors in ECCC cases, the innovative joint ECCC-civil society Non-Judicial Gender Project brought together the ECCC through its victim support team with leading Cambodian NGOs in the mental health and human rights/legal services fields to increase women survivors' access to transitional justice measures. The project leveraged funds by the UN Trust Fund to End Violence Against Women. This was a highly innovative approach by a judicial entity to foster and support non-judicial transitional justice mechanisms to complement prosecutions. Activities included psycho-social support to victims, truth telling and research initiatives. However, after being extended for a second phase until 2019, the project was wound up despite significant ongoing needs in relation to reparations.
- The three non-judicial women's public hearings coordinated by Cambodian NGOs, with support of the Women's Transitional Justice project, were an innovative form of focused truth telling providing recognition to women survivors who courageously spoke out despite the pressures of pervasive social stigma.
- In the face of open and sustained government hostility to the independent ECCC, civil society and the international community have played creative roles in partnering with the tribunal including in developing and delivering collective reparations programs following convictions in two cases.

4.5 The Philippines

Background

The Philippines is made up of more than 7,000 islands. It was colonised by Spain for four hundred years until 1898, when Spain ceded it to the United States as part of the treaty to end the Spanish-American War. US colonial rule was brought to an end by the Second World War when Japan occupied the country, and the Philippines achieved independence in 1946.

Since independence, there have been several key contexts for mass human rights violations. These include the 21-year dictatorship of President Marcos, the 40-year ethnoreligious conflict in the southern region of Mindanao, the long-running and ongoing communist insurgency since the 1960s, as well as recent violent crackdowns under the Duterte government including the ongoing "War on Drugs" as well as the conduct of the 2017, 5-month military operation against



Dapolog Gipoay seemed to live in two different worlds before and after the siege took place in Marawi. She and her husband had to leave their home and didn't know where to go or whom to ask for help during that time. At present, Dapo worries about when they will be able to go back to ground zero and when they will be able to claim their land. © BALAOOD Mindanaw/Loi Alian Cabaluna

Islamic State-allied militants in the city of Marawi. Human rights violations in each of these contexts include specific gender-based violence as well as particular impacts of the violence on women and girls. In addition, prior to independence, during the Second World War, the Japanese military targeted Philippine women for sexual slavery as so-called “comfort women.”

Transitional justice initiatives in the Philippines have focused on violations during the Marcos years and in relation to the Mindanao conflict, with some advocacy seeking to address justice for so-called “comfort women.”

- **Marcos era violations:** The 21 years of the Marcos dictatorship, 1965-86, were characterised by widespread human rights abuses and rampant corruption. During a period of more than ten years of martial

law armed forces and other state agents carried out extra-judicial killings, disappearances, illegal detention and torture. Estimates of the number of victims of human rights abuses vary; an oft-quoted source puts the figures at 70,000 people jailed, 35,000 tortured, 737 disappeared, and 3,257 summarily executed.³² Women played a prominent role in the movement against the Marcos regime, especially students. Gender-based violence by state actors during this period has received limited attention, but women survivors reported sexualised torture and rape, including gang rape, in detention. The World Bank and UN estimate that Marcos and his family stole between US\$5-10 billion.³³ In 1986, Marcos was ousted by a popular uprising known as the People’s Power, or ESDA, Revolution.

- **The Mindanao conflict:** Mindanao, in the southern Philippines, is rich in natural resources and the second largest island in the country, though it has been both neglected and exploited by successive governments going back to US colonial times. It is home to a largely Muslim community (known as Moro), as well as non-Muslim Indigenous communities (known as the Lumid peoples). Both groups are distinct from the Catholic majority of the Philippines. Prior to Spanish colonisation, around the 14th century, the area came under the influence of Islam. In the 1960s a Muslim-led armed insurgency arose following mass migration policies of the central government.

The Mindanao conflict ran for 40 years until the Comprehensive Peace Agreement on the Bangsamoro was signed in 2014. During this time, an estimated 120,000 people lost their lives, there were widespread and repeated patterns of displacement and land dispossession, sexual and other gender-based violence and other human rights violations.³⁴ Women and girls have told truth-telling processes of patterns of Philippine soldiers abducting, raping as well as killing some of their victims of sexual abuse. Survivors are often silenced as they face stigma and ostracism in their communities, which have strong patriarchal traditions and power dynamics. More than three million people became displaced

32 “Dark Legacy: Human Rights Under the Marcos Regime”. Alfred McCoy. In *Memory, Truth Telling and the Pursuit of Justice: A Conference on the Legacies of the Marcos Dictatorship*. 2001, pp. 129-144. <http://www.hartford-hwp.com/archives/54a/062.html> and 3,257: Fact checking the Marcos killings, 1975-1985. Rachel L A.G. Reyes. The Manila Times. 12 April 2016. <https://www.manilatimes.net/2016/04/12/featured-columns/columnists/3257-fact-checking-the-marcos-killings-1975-1985/255735>

33 Asset Recovery Initiative: Challenges, Opportunities and Action Plan. The World Bank and UN Office on Drugs and Crime. 2007. <https://documents1.worldbank.org/curated/en/846731468338347772/pdf/438540WPOBox327377BoStaro1PUBLIC1.pdf>

34 In its 2016 final report, the TJRC noted with regret that there is no consolidated database or generally accepted record of human losses that documents those who were killed or went missing during the decades of conflict. Page 66 [http://cdn.viiworksdemo.com/download/zis6-TJRC%20Report%20-%20second%20print%20\(May%202016\).pdf](http://cdn.viiworksdemo.com/download/zis6-TJRC%20Report%20-%20second%20print%20(May%202016).pdf)

by violence in the Mindanao conflict, with women and children making up the majority who were more vulnerable to violence in the temporary displacement camps. Large numbers of women are trafficked from Mindanao, mostly from conflict-affected communities.

A further gendered impact of the violence is the land situation faced by Moro and Indigenous widows whose husbands were killed in the conflict. These women have no legal basis to take over ownership of land that is held in their husband's names, leaving them and their families in a very precarious situation.

- World War II: sexual slavery by the Japanese military: Japan occupied the Philippines during the Second World War and, as in other parts of Asia, women were forced into sexual slavery as so-called *jugun ianfu*, or “comfort women.” It is estimated that approximately 1,000 women were enslaved and sexually abused, over a period of three years of military occupation.

National legal and policy framework

Following the fall of President Marcos, the Philippines undertook a period of legal and policy reform aimed at protecting democratic rights as well as a number of initiatives specifically aimed at recovering wealth stolen by Marcos and providing a measure of reparations and assistance to victims. Immediate steps were taken to remove large numbers of government officials at all levels who had close ties to the Marcos regime. A new constitution was developed and ratified through a national plebiscite in 1987. It restored the pre-martial law system including civilian authority over the military and police and including a Bill of Rights, among other key reforms and led to the creation of the Commission on Human Rights. The constitution also recognized the valuable role of civil society organizations. Efforts were made to reform both the judicial and security sectors, with limited success. New anti-corruption institutions and systems were put in place.

On reparations, a number of laws and policies were instituted. The new government quickly established the Presidential Commission on Good Governance (PCGG), in 1986, and one of its mandated tasks was to recover the ill-gotten wealth accumulated by former President Marcos, his immediate family, relatives, subordinates and close associates. It continues this task, and in more than 30 years has recovered around USD\$4 billion of assets. Government policy is generally to apply recovered funds for social programs rather than individual reparations. However, when the PCGG successfully recovered more than USD\$500 million from Swiss bank accounts, the government passed legislation establishing the Human Rights Victims Claims Board to distribute the funds, as the Swiss court stipulated in the judgement that released funds must be used to compensate victims (see below).

In addition to these state-sanctioned policies of reparations, a legal class action by victims of abuses was undertaken in the US Federal Court in Hawai'i (where Marcos and his wife fled into exile), resulting in significant funds for reparations (see below).

Following the 2022 election to President of the son of former President Marcos, the future of some of these ongoing initiatives is in doubt.

In relation to the Mindanao conflict, the Comprehensive Peace Agreement (CPA) on the Bangsamoro was signed in 2014 and in 2016 a ceasefire was put in place. In 2018 the Bangsamoro Organic Law was passed and in 2019 the Bangsamoro Transition Authority was established to lead a 3-year transition. The four pillars of the peace agreement are security arrangements, socio-economic development, confidence-building measures, and transitional justice and reconciliation. The CPA included the terms of reference of the Transitional Justice and Reconciliation Commission (TJRC) whose truth-seeking mandate on human rights violations - including large-scale land dispossession - included assisting healing and reconciliation. The TJRC concluded its work - which included extensive “listening processes” with victims and communities - and delivered its final report in 2016. The TJRC recommendations included a broad recommendation on reparations, but so far there has been no follow-up (see below).

In relation to the so-called “comfort women” of World War II, there is no national or international legal framework for reparations. In 2019, a bill was filed in the Philippines Congress, the Comfort Women Compensation and Benefit Act (HB 1182) proposing specific measures, but it has not been passed into law. Internationally, advocacy on the issue of “comfort women” began to make headlines in 1991; during this period initially, 44 Philippine women came forward to

advocate. In 1995 the Japanese Government set up the Asian Women's Fund for the benefit of women across Asia who were sexually enslaved during the Second World War. In the Philippines in 2001, following consultations with women survivors and NGOs, the Department of Social Welfare and Development utilised funds from the AWF to assist women survivors in the Lola Project (see below).

Reparations for Marcos-era violations

There has been a range of initiatives related to reparations for Marcos-era violations. These include a class action by victims of abuses in the US Federal Court in Hawai'i, reparations through the Human Rights Claims Board established by legislation following the recovery of more than US\$500 million from Swiss bank accounts, and the ongoing processes of the Presidential Commission on Good Governance.

US Federal Court decision

The first action toward reparations for Marcos-era violations did not come from government action, but from private court action. In 1986, a joint court action was taken by more than 9,500 victims in the Hawai'i (USA) courts, since Marcos was in exile in Hawai'i. Lawyers based the claim on a 200-year-old US law, the Alien Tort Claims Act (1789), which is a civil law which enables victims to claim compensation for harms done. This law provides US federal courts with jurisdiction over violations of international law such as those involving gross violations of human rights no matter when or where they have occurred (universal jurisdiction).

The US Federal District Court of Honolulu ordered Marcos to pay more than US\$ 2 billion to victims. Recovering stolen assets has been difficult and slow. In 2011, US\$10 million was recovered; in 2014 another US\$10 million; and in 2019 a further US\$13.5 million. Funds were paid to the Philippines government, which insists they be used for government initiatives rather than individual reparations for victims. Lawyers continue to pursue the case for further assets.

Presidential Commission on Good Governance

Starting in 1986, the PCGG continues to try to recover assets from Marcos-era corruption. Government policy has generally been to apply these funds to social programs which will assist communities where many victims live, rather than individual victims. There has not been a specific gender lense in these programs aiming to target support to affected women. The exception to this broad policy is the USD\$500 million recovered through legal action in Switzerland, distributed by the Human Rights Victims Claims Board.

The Human Rights Victims Claims Board (HRVCB)

The HRVCB was established by law in 2013, following the successful petition to the Swiss Federal Court by the Presidential Commission on Good Governance which saw more than US\$500 million of Marcos's stolen assets recovered from Swiss bank accounts. When it released the assets, the Swiss court stipulated that the funds must be used to compensate individual victims, and the Board established a system to distribute the funds.

The Board finalised its work in 2018, ultimately compensating 11,103 individual victims from more than 75,000 applicants. The Board established a points system to rank the seriousness of violations to determine the levels of compensation: killings and forced disappearances - 2,326 cases; torture (rape and forcible abduction) - 238 cases; torture (mutilation, sexual abuse involving minors) - 217 cases; torture (involving psychological, mental and emotional harm) - 1,467 cases; cruel, inhumane and degrading treatment - 182 cases; arbitrary detention (more than 6 months) - 699 cases; arbitrary detention (between 15 days-6 months) - 1,417 cases; arbitrary detention (36 hours-15 days) - 1,239 cases; involuntary exile (involving takeover of business) - 579 cases; involuntary exile (involving intimidation and physical injuries) - 2,739 cases.³⁵

³⁵ Official List of Victims as recognised by the Human Rights Victims' Claims Board. <https://hrvvcemcom.gov.ph/list-of-victims-recognized-motu-proprio/>

The process of verifying criteria for eligibility was strict, and was criticised by some as disadvantaging victims who are poor and illiterate - which may have further marginalised women victims already facing obstacles of stigma surrounding sexualised abuses.³⁶ In addition to monetary payments, recognised victims also received support from government social services.

Reparations for victims in the Mindanao conflict

Despite the general recommendation of the truth commission in 2016, there have been no reparations programs implemented in Mindanao for victims of violations. While transitional justice is one of the four pillars of the peace agreement, it has not moved forward significantly since the truth commission completed its work in 2016. Transitional authorities rely heavily on civil society organisations, and most focus since the completion of the truth commission has been on capacity building of transitional authorities and local civil society organisations and advocacy for follow up. The national parliament and central government have shown little interest in the recommendations of the truth commission.

Reparations for “comfort women” enslaved during Second World War

Across Asia, advocacy by women who had been enslaved by the Japanese military as “comfort women” achieved prominence in the early 1990s. In 1993, 19 women from the Philippines filed a lawsuit at the Tokyo District Court demanding that the Japanese Government issue an apology and pay compensation. They lost the case, including on appeal to the Supreme Court. In 1995, the government of Japan established the Asian Women’s Fund to benefit women victims of the “comfort women” abuses. Funds were privately sourced from Japanese citizens, and support included a letter of apology from the Prime Minister of Japan. Support to victims was more in the form of humanitarian assistance than reparations as such.

From 1997-2002 the Philippines Department of Social Welfare and Development distributed AWF funds to victims through the Lola Project. The project assisted 106 women, with a focus on medical assistance as well as counselling, housing assistance in terms of home improvements and household appliances as well as utility costs, some food and transport assistance. Funds amounted to the equivalent of 1.2 million Japanese Yen per victim (around USD\$9,000).³⁷

Two statues had been erected in memory of former “comfort women”, but in recent years these were taken down - reportedly because the government of Japan was unhappy about them.

Innovations:

- The Philippines took a broad approach to democratic reform following the end of the 21-year Marcos dictatorship, with fundamental reforms such as the new rights-based constitution.
- With successive governments favouring the provision of social services to affected communities rather than individual reparations, two international court cases have resulted in unlocking funds stolen by former President Marcos and creating conditions for individual reparations: the US Federal Court decision in Hawai’i, and the Swiss courts.
- Civil society has played and continues to play a critical role - in the overthrow of President Marcos, in achievements providing assistance to victims, and it will continue to be critical in the future in a fragile political context for human rights. Women’s organisations require consistent support to ensure focus on the rights of women and girls.

36 Disrupting Cycles of Discontent: Transitional Justice and Prevention in the Philippines. Robert Francis B. Garcia. International Center for Transitional Justice. June 2021, pp22-23.

<https://www.ictj.org/publication/disrupting-cycles-discontent-transitional-justice-and-prevention-philippines>

37 An Evaluative Research in the Implementation of Assistance to Lolas in Crisis Project. Department of Social Welfare and Development, Philippines, and Asian Women’s Fund. <https://www.awf.or.jp/pdf/ALCS.pdf> and more generally, Asian Women’s Fund Philippines page <https://www.awf.or.jp/e3/philippine-01.html>

- The Mindanao truth commission was an important early transitional justice process. Significantly, the truth commission brought focus to violations against Indigenous as well as Muslim communities in Mindanao, pointing to the need for much more work with women survivors including supporting the growth of local civil society especially women's organisations. So far, the lack of follow up has limited its impact on the right to reparations.
- The activism of Philippine former “comfort women” in the 1990s, especially in bringing court action in Japan, contributed to region-wide pressure which resulted in a Japanese program which provided some measure of reparative assistance.

4.6 Timor-Leste

Background

Timor-Leste was invaded by Indonesia in 1975, at the height of the Cold War and following a hasty and failed decolonisation process by Portugal, which had colonised the territory from the 16th century. The UN Security Council and General Assembly condemned the invasion, affirming the Timorese people's right to self-determination. After 24 years of violent militarised occupation and conflict, in 1999 political changes in Indonesia following the fall of authoritarian President Soeharto led to a UN-organised referendum. The Timorese people voted overwhelmingly for independence.



Maria de Fatima's husband had to leave Timor for 15 years in 1977, after frequently threatened and accused of clandestine activities. She was left with their two children. When her husband left, Indonesian soldiers began to visit her in her house and took her to Hotel Flamboyan—one of the most famous torture sites in Baucau, Timor-Leste. She continues the struggle to remind the government to implement the Reparations and Institute of Memory Act for women survivors. © Asia Justice and Rights/Anne-Cécile Esteve

In response to the results of this vote, a coordinated campaign of mass violence was unleashed by militias under the control of the Indonesian military. Mass forced displacement, massacres and other killings and sexual violence were committed. Under intense international pressure, Indonesia accepted the results of the UN-organised ballot and in late 1999 the UN Security Council established a UN transitional administration for East Timor (UNTAET). UNTAET administered the territory until the restoration of independence in May 2002.

Across all 24 years of occupation, widespread human rights violations were committed against civilians, including massacres, sexual violence, torture of prisoners and other forms of political repression. War-caused famine and mass starvation killed large numbers of people. The Indonesian military and its Timorese proxies were overwhelmingly responsible for violations. Later truth-seeking bodies concluded

that between 100-183,000 civilians lost their lives.

In its final report, *Chega! (Enough!)* the Commission for Reception Truth and Reconciliation (CAVR) found that rape, sexual torture and other sexual violence were systematic and widespread throughout the 24-year occupation. The CAVR found that rape occurred in every year of the Indonesian occupation, and in every district as well as in West Timor, Indonesia. It also found that Indonesian military officers forced Timorese women into sexual slavery. Noting the likely high level of under-reporting of rape, due to the stigma still attached to the violation, the CAVR concluded that thousands of Timorese women were raped. It noted that 51% of reported rapes were committed during the invasion and the initial years of the occupation, and 23% occurred

between 1985 and 1998; the remaining 26% of rapes were committed during the ballot-related violence in 1999.³⁸

The Commission found that throughout the 24 years of occupation, there was total impunity for perpetrators of rape and other sexual violence. It highlighted the impact of sexual violence on survivors and their children, with social stigma and ostracism continuing to re-victimize victims. Today in Timor-Leste, the Government has acknowledged that women survivors of conflict-era sexual violence continue to languish without adequate support and that gender-based violence is a pervasive problem in the country - especially in the domestic setting.

Transitional justice

Timor-Leste has experienced probably the most comprehensive approach to transitional justice in all post-conflict countries in Asia. From 1999 to 2008 the main transitional justice mechanisms were implemented, including high-level inquiries, prosecutions in Timor-Leste and Indonesia and two truth commissions. There has been no comprehensive national reparations program for survivors of conflict-era violations, though various assistance programs have brought limited relief to some survivors. Women survivors of sexual and other gender-based violence have received limited state recognition or support.

Prosecutions

In the immediate aftermath of the orchestrated mass violence of 1999, the UN conducted a number of high level fact-finding missions and inquiries, as did the Indonesian Human Rights Commission (Komnas HAM). Amidst calls for an international tribunal, including from the UN itself, a compromise was reached that saw a special human rights tribunal established in Indonesia and a hybrid national-UN tribunal set up in Timor-Leste. Each tribunal focused on the events of 1999, rather than the full period of occupation and conflict. However, judicial accountability proved elusive. After appeals, the Indonesian tribunal did not record a single conviction; in Timor-Leste, around 80 convictions were recorded though only for relatively low-level Timorese militia members.

Neither court had a strategy for sexual and gender-based crimes. In Indonesia, the prosecutor did not present any cases of sexual violence. In Timor-Leste, only six of the 95 indictments were for gender-based violence; sexual slavery was never charged, nor was joint criminal or command responsibility for rape included in the national indictment against seven Indonesian military and police commanders and the former Governor of East Timor.

Truth commissions

The CAVR was recognised in the country's new constitution and between 2002-2005 conducted a country-wide program of statement taking, community reconciliation and other public hearings and victim support work. The CAVR included a dedicated research team on women and the conflict, working with a leading Timorese women's NGO. It held a high profile national public hearing on women and the conflict which focused on sexual and other gender-based violence. Individual women victims of sexual violence testified publicly, displaying tremendous courage in the face of pervasive social stigma. The final report, *Chega! (Enough!)*, included a chapter of sexual violence and its recommendations set out a detailed framework for a national reparations program (see below).

In 2006 the bilateral Commission of Truth and Friendship (CTF) was the first ever joint truth commission, established by the Presidents of Indonesia and Timor-Leste. The CTF was a leadership initiative, and did not have a constitutional or parliamentary mandate. It focused exclusively on events in 1999, and was largely a review of documents from previous mechanisms such as the high level inquiries and prosecutions. In 2008, the CTF delivered its final report (*Per Memorium Ad Spem - Through Memory to Hope*), which made findings broadly in line with

³⁸ *Chega!* Chapter 7.7 Sexual Violence paragraphs 34 and 47.
<https://chega.tl/downloads/#chegareport>

previous high level inquiries and the CAVR. It concluded that in 1999 there had been systematic rape which showed a high degree of organisation and logistical support indicating that the Indonesian military bore institutional responsibility.³⁹ The CTF recommended the establishment of a centre to develop, among other work, comprehensive and inclusive survivor healing programs, particularly for victims of sexual violence and torture.

Centro Nacional Chega!/National Centre for Chega! (2017-)

The CAVR final report and its recommendations languished for more than a decade, as the national parliament refused to debate the report. Civil society and victims' groups maintained advocacy, and in 2016 the Prime Minister issued a law by decree which established the Centro Nacional Chega! (CNC - National Centre for Chega!) to coordinate government implementation of the CAVR and CTF recommendations (see below).

Domestic legal and policy framework on contemporary gender-based violence

Timor-Leste's constitution and laws are generally progressive on gender equality and the protection of children. The 2002 Constitution contains a wide range of rights-based provisions, including guaranteeing equality of women and men. The Constitution also gives considerable weight to international law, which strengthens the significance of both the Convention on the Elimination of Discrimination Against Women and the Convention on the Rights of the Child. However, there are no laws which specifically define and address discrimination against women, despite repeated recommendations from the UN CEDAW Committee. The 2009 Penal Code includes rape and other sexual violence and makes domestic violence a public crime. In 2010, a law against domestic violence was passed which included provisions for a wide range of initiatives relating to prevention, health and social services support and justice for domestic violence, including instituting national action plans on gender-based violence. Timor-Leste is currently preparing its third national action plan. This has been part of a process of seeking to shift the major problem of domestic violence out from family and customary practices into the public legal and social services sphere.

In 2016, Timor-Leste also initiated its first national action plan on UN Security Council Resolution 1325, Women Peace and Security, 2016-2020. A second plan is being prepared. The plan acknowledges that women survivors of conflict-era sexual and other gender-based violence continue to suffer and aims to advance implementation of the CAVR recommendations including reparations for women survivors.

Government action on gender equality and gender-based violence is coordinated by a Secretary of State for Equality and Inclusion.

Reparations programs

CAVR victim support program and urgent reparations scheme

During the course of its operations, the CAVR brought some measure of assistance and reparations to victims of violations. The Commission structured its district teams to include equal numbers of women in key positions of statement takers and victim support roles to maximise accessibility of women survivors. At the national level, a special victim support team worked with a Timorese women's human rights organisation to deliver six healing workshops for small groups of survivors, with women making up more than 50% of participants - many from remote rural areas.

The CAVR also instituted an urgent reparations program during its period of operations, with the financial support of a World Bank fund for vulnerable people. This included small cash grants of USD200 to help people meet urgent immediate needs, supporting 712 individuals (516

³⁹ Per Memorium Ad Spem, pp 236-7.
<https://chega.tl/downloads/#permemoriamadspem>

men and 196 women). The program also supported local health NGOs to provide direct assistance to around 400 survivors, and partnered with three NGOs (including two women's NGOs) to deliver a 6-month program of collective reparations in a number of hard hit rural communities. One of the women's NGOs developed follow-up programs of counselling and economic activities for women survivors in six districts.

CAVR recommendations for a national reparations program

In proposing its framework for a reparations program, the CAVR's working definition of the most vulnerable included victims of sexual violence, including women who were raped and forced into sexual slavery or marriage, widows and single mothers including widows and women who bore children from rape, and children who became orphaned or disabled due to conflict, and children born from rape. It recommended specific rehabilitative measures including provision of services for single mothers and their children such as counselling, peer support, livelihood skills training, micro-credit and healthcare for the women, and scholarships for the children; and similar services for victims who are disabled, widows, and survivors of sexual violence and torture. The commission proposed that 50% of reparations resources be earmarked for women beneficiaries. Until today, the national parliament has never debated the CAVR final report or its recommendations for a national reparations scheme.

Civil society

When the CAVR closed at the end of 2005 there was a lack of parliamentary or government commitment to follow up on its recommendations. Civil society organisations worked to fill the gap, and took steps to facilitate support for some of the most vulnerable victims while also working with victims groups to advocate for a national reparations program.

ACbit (*Chega!* for Us Association) is a Timorese NGO established in 2010 with the specific focus on building on the work of the CAVR, including advocating for implementation of its recommendations. ACbit has a strong focus on working with women survivors, especially in rural and remote communities. In partnership with the regional NGO AJAR (Asia Justice and Rights), it works to empower women survivors to advocate for their rights while facilitating support from government agencies and development NGOs to improve their daily living conditions such as health support, skills training and small grants for livelihood activities. ACbit has utilised music and the arts to help women survivors tell their stories and advocate, supported women survivors to lead human rights tours of their towns for younger generations as they explain the violence they suffered, and has pushed government to include women survivors in high profile national commemorations which usually focus on valorising male former combatants. In addition, ACbit has established eight centres for women's groups in six municipalities across the country.

With AJAR, ACbit also implements an ongoing program of reuniting "stolen children" with their families in Timor-Leste, addressing the legacy of Indonesian soldiers and administrators taking children away from their families to Indonesia during the conflict years.

National Victims' Association

In 2009, the first National Victims Congress was held as part of strengthening victims' voices for advocacy and resulted in the establishment of the National Victims Association (NVA). Today the NVA works closely with the CNC, and is a member of the National Working Group for Reparations.

Centro Nacional Chega! (CNC) coordinating government assistance

Since it began operations in 2017, the CNC has placed its relationship with victims and survivors at the heart of its programs. Pending a more systematic approach to reparations, the CNC has coordinated with government Ministries, as well as the NVA and NGOs, to provide assistance to some of the most vulnerable survivors of violence. Health and housing are two areas of critical need identified by many victims.

In October 2021 the National Working Group on Reparations was established, chaired by the CNC and comprising government Ministries, Secretariats and Offices as well as key Timorese and one international NGO, the National Victims' Association and the Association of Former Political Prisoners. The Working Group is tasked with developing a National Action Plan for Reparations. This initiative represents the best opportunity to establish a systematic reparations approach and program since the completion of the CAVR in 2005.

Ministry of Social Solidarity

The government's Ministry of Social Solidarity has played an important role in partnering with civil society organisations following the close of the CAVR. It now also works with the CNC in delivering targeted assistance to some of those identified as the most vulnerable survivors of past violence. Support has been channeled through existing programs for vulnerable people. For example, the Ministry allocates an annual budget of US\$80,000 for CNC-coordinated assistance aiming to reach 150 people per year. Cash grants of USD\$500 are made, usually to survivors who have not received other government assistance. The Ministry is a key member of the newly formed National Working Group on Reparations. NGOs such as ACbit play a key role in advocating for assistance to focus on vulnerable women survivors.

Innovations:

- The CAVR took a proactive approach to its mandate to restore the dignity of victims, including a gender-sensitive staffing policy of equal numbers of women and men in key community-engagement roles. Its urgent reparations program delivered some financial, health and other support to more than 700 individuals as well as a number of rural communities. The CAVR creatively leveraged funds for survivors through a World Bank program for vulnerable people, as well as the gender expertise of women's NGOs to deliver support programs for women survivors.
- The CAVR also made a detailed proposal for a reparations framework in the recommendations of its final report, which gave strong focus to women survivors of sexual and other gender-based violence.
- Women's leadership in the CAVR was a key ingredient of gender-based policies and focus in the commission's work: key commissioners and senior staff and advisors had long associations with the Timorese women's movement.
- The bilateral Indonesia-Timor-Leste Commission of Truth and Friendship is a unique example of former warring countries joining together to establish a truth telling process. While the CTF came under considerable criticism by human rights organisations, and the UN, it did largely affirm the truth of mass human rights violations in 1999, including widespread sexual violence.
- When the CAVR closed in 2005, a creative partnership between international, Asian regional and Timorese NGOs maintained focus on advocating for and facilitating support to some of the most vulnerable victims, including a strong focus on women survivors. This civil society work has been critical in a context of parliamentary and government reluctance to deal with reparations but rather establishing programs which valorise and provide significant material support to (mostly male) Veterans of the armed, clandestine and political resistance movement.
- This civil society partnership joined with the state's Provedor for Human Rights and Justice and the human rights team of the UN peacekeeping mission to prepare draft legislation for a national reparations program. Unfortunately, despite engagement from a parliamentary committee, the national parliament failed to consider the legislation.

- The establishment of the National Victims' Association was a creative and important step in building sustained advocacy by victims themselves. This took sustained commitment by civil society to engage with victims across the country, and build their organisational and advocacy capacity. Even with this association, NGOs have found it important to give additional and specific support to empower women survivors and to ensure a more gendered lens in discussions on support and reparations.
- ACbit and AJAR have implemented holistic programs of empowering and supporting women survivors. This has included ongoing truth telling processes, to address the needs of women survivors of sexual and gender-based violence who often need more time and multiple avenues to be able to speak up about the violations they suffered. These holistic programs address physical, psychological, family, social and economic harms including addressing social stigma. These ongoing programs have also been essential for reaching and including women who did not come forward to the CAVR during its limited period of operations.
- Timor-Leste adopted a National Action Plan on UN Security Council Resolution 1325(2000) on Women, Peace and Security which gave official acknowledgement of the ongoing needs of women survivors of conflict-era sexual and other gender-based violence and committed the government to act on the recommendations of the CAVR report to support them.
- Through the CAVR urgent reparations and victims support programs, and ongoing civil society- and now CNC- advocacy with key government ministries, creative ways have been found to bring some measure of support to vulnerable victims while ongoing advocacy for a full reparations program continues.
- The establishment of the Centro Nacional Chega!, while delayed for more than a decade since the closure of the CAVR, is a rare and creative example of an official State entity being established to coordinate the implementation of the recommendations of a truth commission. The CNC has been able to leverage its position as an entity within the Prime Minister's Office to build cooperation from many Ministries and agencies. The CNC's leadership of the recently established National Working Group on Reparations offers renewed hope and opportunities for a national reparations scheme.

5. Analysis: Challenges

Challenge 1: The term reparations - in theory and in practice

The experience of each woman, and each community and country, of gross human rights violations is specific and particular. At the same time, common themes are apparent when considering the experiences of women and gross human rights violations during conflict and authoritarian regimes. This applies not only to women's experiences and the gendered impact of violations but also to the challenges and opportunities in responding with measures which might broadly be called "reparations".

The term "reparations" itself presents challenges. For one thing, it is a source of confusion or ambiguity. Even for those operating in English, many will not have a clear sense of its meaning. And those who do understand the term – for example lawyers – know it to be a concept so broad, embracing so many very different possibilities, that its use without elaboration conveys very little with clarity. Speaking of "reparations" is in this sense similar to speaking about "justice". And the problem of lack of precision and misunderstanding may be exacerbated further depending on the language(s) being used.

There is also no consensus on where the line lies which divides "reparations" from other forms of assistance or recompense directed at victims. For example, can public services (health, education, welfare etc) which are in-principle available to all citizens ever be considered reparations when they are sought by victims? Can a special service or payment made to victims in recognition of their suffering still be considered reparations if the entity making payment or funding the service is not the party responsible for the victims' suffering? What if the payment does come from the wrongdoer but is not accompanied by any acknowledgment of responsibility? There is no one predominant concept of reparation which answers these questions, and the case studies demonstrate a range of approaches.

There are other, perhaps more fundamental problems with the concept. First, the clear link to the concept of "repair" implies that reparations are a response to something which is repairable, and suggests a return to a prior, trouble-free condition. This is at odds with the experience of many, perhaps most victims of sexual and gender-based crimes. They may hope for a response to the wrong done to them, and for it to improve their lives, but the harm done cannot be erased. And too often these victims already faced multiple inequities and wrongs long before experiencing crimes, such that they don't aspire to return to the *before* so much as to move to a better future. The adjective "transformative" is increasingly added to "reparations," to acknowledge this need and aspiration.

However, for now, until a more nuanced terminology is developed, the concept of "reparations" itself continues to be used. In this report, a deliberately wide interpretation is taken, so that all measures provided to assist victims of gross human rights violations might potentially be considered reparations. Within this deliberately broad approach, consideration can be given to which measures of "reparations" are the most meaningful and desirable for victims.

Challenge 2: Specific challenges in the ASEAN context

- *Lack of human rights international standard-setting in the region.*

Victims of mass atrocities in the ASEAN region face particular challenges to accessing any kind of justice, including reparations. Several factors contribute to a lack of human rights international standard setting across the region and the failure of many governments to create or implement laws and policies on justice and reparations for victims of human rights violations.

Firstly, despite its increasing political importance ASEAN is noteworthy for the weakness of its approach in the field of human rights. In the 1990s, the narrative of “Asian values” was used by authoritarian leaders to argue for a sense of collective rights at the expense of individual rights enshrined in the Universal Declaration of Human Rights. This set a tone for an approach of relativism in relation to human rights. In 2013, the ASEAN Human Rights Declaration (AHRD) was passed amidst controversy, including criticism by the United Nations. It did not create binding standards. In place of a binding convention it was a non-binding declaration, developed without adequate consultation with civil society and with specific language compromising commitments under the Universal Declaration. Equally, binding mechanisms for dealing with human rights violations do not exist.

In place of a human rights court, such as exists in the Americas, Africa and Europe, in 2009 ASEAN established the ASEAN Intergovernmental Commission on Human Rights as a “consultative body”¹, mandated to be “constructive and non-confrontational” and use an “evolutionary approach” to promoting human rights in the region while respecting the paramount sovereignty of each member state.² Victims of human rights violations have no regional forum in which to raise a personal complaint. The Commission focuses more on promoting, rather than protecting human rights.

Nor is there a sense that governments in the region are able to be pressured by reference to international standards on human rights. The principle of non-interference was set out in ASEAN’s foundation document, the 1967 Bangkok Declaration, and it has continued as the fundamental guide for regional relations between member states. The Bangkok Declaration of 1993 reinforced this principle, emphasising sovereignty and non-interference over regional accountability in relation to human rights. This has led to many controversies when ASEAN member states have been responsible for mass atrocities, most recently in Myanmar in the situation of mass violence against the Rohingya people and the 2021 military coup and subsequent violence. Overall, a low bar is set for human rights, in particular for dealing with past crimes. ASEAN states tend to mutually support each other in an approach which encourages leaving the past behind, such as in the case of the Indonesia-Timor-Leste Commission of Truth and Friendship.

- *Impunity and lack of official effort on accountability in ASEAN countries is an obstacle to recognition of victims’ experiences and a pathway to reparations, especially for victims of sexual violence.*

Across countries in the ASEAN region there is a poor track record of holding to account those responsible for mass human rights violations. Trials and judicial processes - let alone convictions - are rare, even when recommended by national human rights commissions. For example, in multiple contexts in Indonesia including West Papua, Aceh and in Java the national human rights commission and other official investigations have recommended prosecutions which were not undertaken. In other contexts in the region, official investigations are used as a tool to deflect attention from prosecutions and accountability and even to deny mass violations - for example, the plethora of official commissions in Myanmar on mass violence against the Rohingya people, which have made findings which deny that mass sexual violence took place despite extensive evidence.

In the rare situations where courts have been established, there has been a poor track record on prosecuting crimes of sexual violence. This includes international hybrid tribunals in Cambodia and Timor-Leste, as well as national tribunals such as in Indonesia (see case studies). In each case, there was a failure to develop and implement a strategy to prosecute sexual and other gender-based crimes contributing to both the lack of accountability of perpetrators as well as the invisibility of these crimes and their victims. The reasons for this failure to prioritise prosecution of crimes of sexual violence among mass atrocities may be complex and layered. Part of the problem is the status of women in many countries of the region, and the “normalisation” of discrimination and violence against them. Another factor is that judicial systems are male-

1 ASEAN Intergovernmental Commission on Human Rights, Terms of Reference, section 3.

2 ASEAN Intergovernmental Commission on Human Rights, Terms of Reference, especially sections 2.1, 2.4, and 2.5.

dominated and have generally lacked the perspective, consciousness and gender expertise to adequately prioritise, develop and implement effective prosecution strategies for sexual and other gender-based violence.

Official investigations, prosecutions and convictions are an important part of the pathway to recognition of harms done and reparations for victims. Official truth commissions also play a role in this regard. Therefore, the persistent failure to investigate and pursue accountability for human rights violations in countries across the ASEAN region is a significant obstacle for states to establish effective reparations programs in accordance with their legal obligations.

- ***Weak domestic rule of law and justice systems, as well as poor social services in many countries***

Countries in the region have a history of colonialism, conflict and corruption which has left their legal systems and public sectors weak - presenting obstacles to fulfilling obligations in relation to reparations. Many countries are at best marginally democratic, making it difficult to establish laws and policies which promote the well-being of the people. Even where laws are created which appear – on their face – to establish beneficial systems, implementation is often weak or non-existent. A common theme among the case studies is that apparently positive laws and court decisions are not enforced. In some countries, such as Myanmar, few laws beneficial to victims even exist. Domestic frameworks are lacking, or unimplemented.

Compounding this problem – in most of the countries considered in this study – are weak and overstretched public services for the citizenry in general. Poorer citizens of these countries likely find themselves without access to quality health, education or other social services. Mental health services are largely non-existent in many areas. Poverty and increasing wealth disparity mean that many millions of people are in extreme need of assistance. Few services are available. This situation means that well-intended service providers, whether in state institutions or civil society, struggle to help all of those in need including victims of mass atrocity. Obstacles are exacerbated for those on the margins of societies, such as Indigenous peoples, some ethnic minorities and people with disabilities and LGBTQI+ people. This situation is also at times used as a justification by governments which are unwilling to address victims' needs: "there are too many in need, we don't have the means to assist", a claim belied by contexts in which considerable sums of money are found for the benefit of other groups, such as war veterans, and for grandiose infrastructure projects.

However, it is also true that in the immediate aftermath of conflict or political transition, such as in Timor-Leste and Indonesia, governments face numerous competing priorities and pressure from various groups. Victims can struggle to have their voices heard among many others; women victims are often doubly marginalised, and women from groups such as ethnic and sexual and gender-identity minorities and Indigenous communities even more so.

All of this means that there are manifold challenges for *all* victims of mass atrocities to seek reparations in South-East Asia. Women and other victims of sexual and other gender-based violence face even greater challenges.

- ***Status of women: discrimination and marginalisation contributes both to violence and barriers to justice and reparations for women survivors***

The difficult situation of women victims and survivors is compounded by gender norms across the region which are largely founded on patriarchy, male dominance of public power and the subservience of women and girls. These gender norms are reinforced by different religions in the region - including Islam, Catholicism and Buddhism - as well as traditional cultural practices. Male-dominated parliamentary and justice systems further marginalise women and often fail to address issues related to them.

Pervasive gender-based discrimination means, among other things, that girls and women have unequal access to education, property and livelihoods, and are disproportionately burdened with reproduction and child-rearing. Cultural and religious practices in many contexts in the region demand that women be passive and demure. For these women, multiple obstacles limit

their ability to access services – including poor access to information, poverty, sheer physical distance which makes travel to services prohibitively expensive and time-consuming, a lack of any time in which work and child-minding is not required, and social barriers to advocating for their own interests - ranging from low confidence to stigmatization. Women in rural and remote communities face heightened barriers, as do other women such as those from ethnic minorities, Indigenous women, lesbian, bisexual and transgender women and women with disabilities.

These challenges are all at play even for existing and “regular” needs, such as accessing healthcare in the event of illness. They also present obstacles where a heightened need arises for survivors of human rights violations for support, justice and reparations.

All ASEAN member countries, plus Timor-Leste, have separately ratified the Convention on the Elimination of Discrimination Against Women (CEDAW). In addition, ASEAN has made various declarations, statements and plans in relation to women’s equality, ending violence against women and girls, and women, peace and security.³ However, the ASEAN 2017 Statement on Promoting Women, Peace and Security lacks any reference to justice or reparations for women and girl survivors of conflict-related sexual and other gender-based violence. As the case studies demonstrate, in practice there are major gaps between the rhetoric and the reality of the experiences and barriers faced by women survivors of violations.

Gendered nature of harm

As the case studies outline, women and girls in the region have experienced widespread sexual and other gender-based violence in multiple and often long-running conflicts, as well as in other contexts of mass violations by state actors. Women and girls experience human rights violations differently from men and boys.

Most obviously, some crimes are committed with particular frequency against women and girls. During a conflict or period of atrocities, crimes are never *entirely* differentiated along gender lines. Nonetheless, it is almost inevitably the case that men are more frequently the victims of detention and killings, and women are more frequently the victims of sexual violence and reproductive crimes.

Partly as a result of these patterns, men and women will suffer different kinds of harm. Most notably, women are often left widowed by the deaths of their husbands, with emotional as well as economic and social consequences.

These women might often be seen as secondary victims of violations committed principally against their husbands. However, they are frequently also the victims of other crimes. Crimes not directly linked to physical integrity, such as displacement/deportation, and forms of persecution depriving people of citizenship, property and education will often directly affect women but be little discussed or addressed in comparison with killings and torture.

Even where men and women experience the same kinds of violations, these will usually result in different experiences and different forms of lasting harm. Sexual violence may cause differing forms of social stigma in women and men. In both instances, the abuse relates to significant but different social taboos - for male victims, they may be ostracised due to perceived homosexuality; women may face alienation from spouses, families and communities for a perceived improper sexual contact implying adultery, loss of virginity or promiscuity.

Displacement and the theft or destruction of property may cause greater impact on women – particularly single and widowed women – in legal and cultural contexts which make it harder for women to obtain property and earn a living.

It is not possible to generalise that women always suffer harms which are *worse* than men where they are affected by serious crimes. But it remains the case that these harms are different. And the continuing effects of these crimes are often experienced by women for a longer time and with more severity as a result of the fact that women are already marginalised. Women’s

3 For example: Joint Statement on Promoting Women, Peace and Security in ASEAN. Manila, Philippines. 13 November 2017 <https://asean.org/wp-content/uploads/2021/01/Joint-Statement-on-Promoting-Women-Peace-and-Security-in-ASEAN.pdf> ; Declaration on the Elimination of Violence Against Women. Jakarta, Indonesia. 30 June 2004. <https://asean.org/declaration-on-the-elimination-of-violence-against-women-in-the-asean-region>; Declaration of the Advancement of Women in the ASEAN Region. Bangkok Thailand 5 July 1988. <https://asean.org/declaration-of-the-advancement-of-women-in-the-asean-region-bangkok-thailand-5-july-1988/>

experiences are frequently overlooked by governments and service providers and even if they are recognised may be given less priority than the challenges faced by men. Such challenges are compounded for those women who are marginalised not only because of their sex but also for other reasons, for example their membership of minority ethnic or Indigenous groups or women with disabilities. These factors exacerbate women's powerlessness and inability to access services which might in principle be available to them. These gendered disparities in access to services mean that over time, some victims – particularly women – are more likely to experience undiminished and continuing harm as a result of the atrocities they experienced.

- *Invisibility and stigma for women victims*

Women's suffering often remains invisible, despite the factors which frequently lead women victims to experience different, exacerbated, and longer-lasting forms of harm as a result of atrocities. As indicated above, this is related to broader discrimination against women and the status of women in many countries of the region.

For example, male decision-makers at all levels are often unaware of – and do not ask about – women's experiences. Women are under-represented in law-making parliaments, justice systems and all levels of governance. In contexts where women do not have established channels for advocacy such as a women's commission or well-resourced women's rights NGOs, women's specific difficulties often remain invisible to decision-makers.

These problems are more extreme in respect of sexual violence. The case studies repeatedly highlight the stigma and pressures faced by victims who have experienced sexual violence. Victims themselves may feel such shame that they don't relate their experiences to others, or postpone doing so for many years. Pressure *not* to speak about sexual violence often comes from those close to the victims, within their own families and communities. These groups themselves feel humiliated by the revelations of sexual violence, as seen in Aceh. Cultural and religious beliefs are seen to play a clear role in this stigma, including in Thailand. In Aceh, Syariah Law makes it even harder for women to speak out about sexual violence, since they may be punished if they are not believed.

Other community dynamics can also serve to silence victims. This often arises around local armed groups and divided perspectives on them. In Myanmar, those who suffered violations at the hands of local ethnic armed groups are fearful to speak out within their communities who support those groups. In Aceh, conversely, those who are perceived as being linked to GAM have been shunned. In other contexts, women from minority communities were both targeted and faced greater obstacles to speak out about their experiences - such as women from the Vietnamese and Cham minority communities in Cambodia.

Women and girls are not the only victims who may face stigma and other obstacles to speaking out about their experiences. In many cases their marginalised status in communities may exacerbate these challenges. However some groups of boys and men will also face particular forms of stigma. This is most clearly the case for men and boys who have suffered sexual violence, breaking taboos around male sexuality. In addition, LGBTI+ persons also face particular forms of vulnerability to violence, stigmatisation and exclusion. Indigenous communities have commonly been stigmatised in different countries in the region, making them both more vulnerable to violence. These victims also typically receive minimal access to services and programs from state or international agencies and local civil society organisations. Transitional justice strategies and mechanisms in the region do not have a good track record of engaging with such marginalised groups; an exception may be the truth commission in the Philippines, in terms of engaging with Indigenous communities.

There are various consequences of this invisibility. Victims who do not speak out are less likely to seek justice through formal mechanisms. Their experiences are not heard by those who design reparations programs or establish general state services, with the consequence that their needs are often not met by these mechanisms. And invisibility does not only lead to a loss of these formal types of assistance, but also deprives victims of informal means of support, such as they might otherwise access from their family, victims' networks and community.

One of the huge challenges of achieving "reparations" therefore remains seeking out avenues to counteract this stigma and invisibility, so that all victims can access support.

6. Analysis: Key lessons



Maria de Fatima and her friends are determined to continue reminding the government of Timor-Leste to implement the Reparations and Institute of Memory Act so that the state can protect the women who became victims.

She explained, "The government has only paid attention to male victims because they carried weapons. Is the law only on the side of men who carried weapons while us women were used as they wished: detained, tortured, burnt? Is our struggle not counted and valued by the government?". © Asia Justice and Rights/Anne-Cécile Esteve

The case studies present the experiences of those struggling to achieve meaningful reparations across six South-East Asian contexts. In some instances, such as Myanmar, the overwhelming sense is of a failure to achieve justice for victims. But in most others, some success stories are apparent. In some cases, effective government-led initiatives have been established. In many others, civil society has taken the lead to address weaknesses in official responses. In others, there have been important government-civil society partnerships. This section identifies some key lessons from both the positive and negative experiences of the six contexts.

Lesson 1: Creative innovative programs of interim reparations and assistance to victims are needed, while the long struggle for accountability, justice and official reparations continues.

When states either deny the occurrence of mass violations or refuse to act to bring the facts to light and hold perpetrators accountable - common patterns across countries in the ASEAN region - it becomes very difficult to establish a foundation for official recognition of and reparations for victims.

A lesson from countries in the region is that in the absence of official investigations, prosecutions and acknowledgement of the truth of past violence, civil society organisations work to fill the gap. The struggle for truth and accountability is usually very long and in many instances may never be satisfactorily fulfilled. For example, in Timor-Leste it is 23 years since the end of the conflict, yet there has been no official reparations program. In the meantime, the harms caused to victims are often compounded over time as they deal with health problems, social stigma and exclusion, impoverishment and discrimination against and disadvantages suffered by their children. As the case studies show, women victims of sexual violence and their children are often among the most marginalised and excluded.

Agencies of the state - such as human rights commissions as well as service-oriented ministries and departments such as health, housing, education and social support - should work with civil society and victims' groups to deliver targeted support utilising existing social programs for disadvantaged persons as well as developing specific programs. While this may not be a substitute for official reparations programs, this urgently needed support can be delivered with some measure of recognition.

Lesson 2: Lack of commitment by most countries in ASEAN region to a normative approach to the right to remedy from human rights violations.

Across most countries in the ASEAN region where mass human rights violations have been committed, even when there have been transitional justice initiatives such as truth commissions and prosecutions, there has been limited or no commitment to including reparations programs for victims. For example, in Timor-Leste which included two sets of tribunals (in Timor-Leste and Indonesia) as well as two truth commissions, there is yet to be a reparations program for victims of well-documented widespread human rights violations. In Cambodia, reparations related to convictions in the hybrid tribunal were tightly circumscribed by the rules of the court, and what limited collective reparations programs have been implemented came after ten years of trials and have only been possible due to financial support from international donors. This pattern is related to and reinforced by the relatively weak commitment to international standards of human rights, the lack of binding regional human rights mechanisms and ASEAN's policy of non-interference contributing to a lack of regional accountability.

Lesson 3: Barriers to access, inclusion and participation for existing reparations programs.

In addition to the challenge of securing reparations programs from governments are the challenges confronted by victims to accessing initiatives and support that are in place. There are many obstacles to fair and maximum access. Victims face many barriers, some inadvertent:

- Often victims do not receive information about what measures of support or recompense have been set up. Thus even where potentially helpful programs exist, these might not be accessed if victims don't know about them. Existing power dynamics play into the availability of information, so that those who are already disempowered are less likely to receive information – including women, the economically marginalised, ethnic and religious minority groups and Indigenous peoples, those living in remote rural areas, those who do not speak or read and write official national languages, and women with disabilities.
- Specific marginalized groups are often overlooked, such that programs are not directed to them. This has particularly been reported in relation to LGBTQI+ victims and male victims of sexual violence.
- The invisibility of much sexual and other gender-based violence can cause broader victim support networks and programs to overlook victims of these crimes.
- Even where victims obtain information about programs available to them, other barriers may limit their willingness to seek help. Continuing trauma from the crimes themselves may inhibit victims' ability to retell their experiences. Speaking out may also risk stigma,

ostracism and family and community divisions. In some contexts, speaking about violations may lead to retaliation against victims and service providers.

- The timeframe of transitional justice mechanisms such as truth commissions and prosecutions is usually too brief for many victims of sexual violence to safely come forward and participate. Experience in countries such as Timor-Leste shows that women survivors of sexual violence must be able to come forward in their own time, in accordance with what is psychologically and emotionally safe for them and their families. Avenues to reparative measures for survivors of sexual violence need to remain open long after official processes like truth commissions and prosecutions.
- These short timeframes are replicated in the administrative processes of some reparations schemes, which provide only a brief window of time for victims to apply for support. For example, in the Philippines reparations scheme implemented following recovery of Marcos-era stolen assets from Swiss bank accounts.
- Victims, or those aiming to assist them, might not have the logistical means necessary to reach each other. This can be a great challenge for victims living in remote areas, as well as for victims with disabilities.
- Where various programs are implemented by different agencies a lack of coordination and effective information management can allow some victims to fall through the cracks.
- In many contexts where victims organisations are formed, such as in Timor-Leste, these are often male-dominated. Men are often more represented among former political prisoners, a group who often receive special attention in post-conflict periods - as seen in Timor-Leste and Myanmar.
- Some reparations or assistance programs are deliberately drawn up in a narrow way, or otherwise implemented so as to exclude specific categories of victims. This is seen most obviously where programs are established to address one category, geographical area, or period of wrongdoings, while similar wrongs are ignored. This is common, for example, when incumbent regimes are politically selective in which crimes they wish to recognise and address - for example ignoring violations committed by their own forces. Such selectivity may not in itself be a reason to reject those programs, if some victims are assisted. However, non-state actors such as civil society organizations should have these issues in mind in determining their own focus, so as to address those not receiving government assistance. Such organisations should also keep under review their own criteria to identify areas of focus.
- Related to this is the potential obstacle of the mechanism to screen and consider applications for reparations. The membership of such a mechanism can act as a block to victims, if it includes representatives of groups responsible for the harm. For example, in southern Thailand the state-led process was established to recognise and provide redress to victims but significant involvement from state actors in the assessment of eligibility led to skewed access. Victims of armed groups were able to readily access reparations while victims of state violence were excluded. The heavy involvement of the state in the process made some victims fearful to even apply, while others are thought to have been unfairly rejected.

Lesson 4: Opportunities and needs to design and implement programs and other assistance for victims.

The case studies demonstrate a range of lessons for the design and implementation of reparations programs, including:

- The risk of delayed state and government response in developing reparations programs in countries in the ASEAN region demonstrates the need to engage multiple avenues of support for rehabilitation of victims while continuing to advocate for official reparations: for example, from the terms of a peace agreement and constitutional provisions, to emergency humanitarian or social assistance as well as social inclusion and development programs.
- Where courts are established to try gross human rights violations, specific structures and resources are required to support victims to meaningfully participate, and mandates can

include provision for reparations. For example, the Victim Support Section of the Cambodian played a key role in partnership with civil society organisations initiating creative processes to support victims. The court also had a formal mandate on reparations, and an unusual Civil Party system that enabled victims to join proceedings and bring the issue of sexual and other gender-based violence to light. By contrast, the hybrid tribunal in Timor-Leste had very limited support for victims and its mandated trust fund for victims was never operationalised.

- Strengthening victims' capacity to advocate for their own inclusion should be seen as part of the national goal to facilitate citizens' participation in a new democracy.
- Victims of human rights violations should themselves be included in mechanisms and processes designing reparations programs - including women and other survivors of sexual and other gender-based violence. Victims should be proactively consulted on various issues, including barriers to access and how to overcome them, types of measures, priorities, timeframes, criteria for eligibility and procedures for establishing it. They should also be represented among decision-makers within the design process itself, in order to co-design programs. Importantly, victims identified for these purposes must reflect the diversity of the broader victim universe. In many contexts, male victims (often predominant among former political prisoners) are included in reparations design and it is assumed that their voices speak for all victims. Where this is the case, experience shows that programs are frequently designed in a way which ignores and fails to address the particular circumstances of women.
- Those responsible for designing reparations programs need to ensure that they engage gender expertise at all stages of the design process to ensure they take into account all aspects of gendered harm and needs including effective ways to engage with women and other survivors of gender-based violence. Partnerships with specialist civil society organisations working on women's rights, as well as other groups such as LGBTQI+ people, people with disabilities, ethnic or religious minorities and Indigenous communities, are critical.
- Where a truth commission or court has recommended a reparations program, there needs to be ongoing monitoring of implementation of such recommendations, domestic agitation supported by international interest from civil society, the United Nations and other partners in order to maintain pressure for and achieve government action.
- When reparations programs are developed, careful attention needs to be given to how information about reparations programs is provided to communities. Various means need to be used, but with a particular consideration given to the barriers which might prevent some people from receiving or understanding the material. Careful thought should be given to the circumstances of marginalised groups, including Indigenous peoples, minority ethnic groups, disabled persons, the very poor, those in remote areas, women and LGBTI+ people. Specialised NGOs and community-based organisations may often be the most appropriate bridge-builders to these marginalised communities.
- Engagements with victim communities - including information provision, dialogues to allow victims to ask questions and request access to services - should be undertaken in a way which enables privacy and offers appropriate support so that victims feel as safe as possible to engage. Particular attention should be given to creating a range of ways for women survivors to meaningfully participate, and not be dominated by male survivors. Parallel mental health or psychosocial services should be offered to assist in this process.
- When a reparations program is developed, it is critical to ensure an independent mechanism for determining eligibility. This could involve public officials who are sufficiently independent (for example, independent judges, if existent) or non-state decision-makers such as relevant technical experts (lawyers, medical and mental health workers, civil society and human rights workers). Victims themselves should be included, especially women. And mechanisms must be designed to allow transparency and accountability so that consequences are seen to follow in the event of corrupt or poor decision-making.
- Governments, donors and implementers should carefully assess the time and resources required to effectively implement reparations initiatives. There is some evidence to suggest

that it is more effective to make annual allocations from the state budget rather than seeking to raise a large lump sum before beginning implementation.

- Active coordination is required between implementing agencies. This is likely to raise challenging questions about information sharing. Good quality data collection and management is necessary - including disaggregation according to sex, as well as other aspects. Consideration must be given from the beginning to questions of privacy which could arise in connection with information sharing, so that appropriate informed consent can be sought and victims can be reassured that other uses will not be made of their personal information.

Lesson 5: Adopting holistic approaches, including long-term work to counter stigma.

The case studies demonstrate clearly the point that the measures sought by victims as forms of reparations are as diverse as the victims themselves and the forms of harm which they continue to suffer. However despite this diversity, some themes emerge. The multi-dimensional nature of the harms experienced by victims of sexual and other gender-based violence means that a holistic approach should be taken to reparations and assistance programs to work with survivors to address the physical, psychological, family, social and economic harm. This includes addressing social stigma attached to such violence, which is a major factor in the ongoing isolation and marginalisation of many victims. This is also long term work, beyond the lifespan of a transitional justice mechanism.

In many areas, medical treatments and educational programs are requested. Almost universally, psychosocial support or mental health treatments are seen as an important priority. This is something which is noted as assisting not only the individual who directly receives the assistance, but also their families and communities who feel the impact of the victim's trauma. These forms of support also enhance the accessibility of reparations programs more generally, by assisting victims to speak about their experiences and suffering, in turn allowing them to access support.

Livelihood support and employment opportunities likewise figure prominently as measures which are frequently sought. These are seen as having multiple benefits for victims. Beyond the direct impact of improving material circumstances, they also help restore victims' dignity, allowing them to have recognition as independent agents from their families and communities. Pre-existing and intergenerational wealth inequities can also be addressed, to some extent, through such measures, making them at least potentially "transformative".

A perennial subject of controversy is whether reparations should include individual financial payments. Many victims wish for cash payments, and there is evidence of the potentially transformative effect of even one-off payments. However, challenges are also consistently noted with financial compensation, particularly in the determination of amounts so as to ensure equity. Experience in the Philippines demonstrates that well-intended attempts to grade payments according to the severity of violations can be overly simplistic. The Philippines' approach overlooked the way in which similar violations caused differential impact, depending on the situation of different victims. Among other things, experiences of harm will be impacted by economic, gender and other pre-existing inequalities among victims, as well as their differential access to informal support. Creating a system which provides differentiated financial compensation payments based on actual levels of suffering is likely to be impossible. Conversely, in contexts such as Aceh, where *diyat* payments were made according to a simple set amount, this was also seen as perpetuating inequality between victims. Such drawbacks appear unavoidable in circumstances where cash payments are made.

Lesson 6: The importance of recognition

Regardless of what forms of material and services assistance are provided, experience shows that the question of recognition must also be addressed. No fixed formula exists for what could amount to recognition, but it implies that reparations programs include – whether expressly or implicitly – an acknowledgment of the wrong which was done to the victims. Programs which

offer otherwise helpful access to financial resources or support services have been seen as deficient where they involve no element of recognition. This is the case, for example, where the proposed solution for victims is simply for them to access universally available public services such as state healthcare. Even if such programs do provide useful medical treatment, access to a service which is already available to all lacks an acknowledgment of the special status of victims. This is not to suggest that services linking victims to generally available public services are problematic. However consideration should be given to how an additional element of recognition could be introduced.

An important question is the extent to which recognition needs to be provided by the party responsible for the wrongs. Some view it as unacceptable if measures involving recognition are provided only by a third party (see for example the case of the “comfort women” in the Philippines). However, in many cases, the individuals, institutions or government in question will never accept responsibility, or even accept that wrongs occurred.

In such instances it may be preferable for victims to receive recognition from a third party, rather than no recognition at all. It is also not essential that recognition and material assistance are provided by the same entity. For example, the problem of measures which are universally available, identified above, can be addressed through civil society providing a special additional service to facilitate connections between vulnerable survivors and public services, as has occurred in Timor-Leste. Similar consideration needs to be given even where programs specifically target victims of atrocities for services or financial compensation, to ensure that these measures are sufficiently incorporating elements of recognition.

The importance of recognition in the provision of reparations is partly what separates reparations proper from other forms of support provided to victims of atrocities, such as humanitarian assistance. This makes clear that humanitarian action cannot be treated as a substitute for reparations. However despite this, the material aspects of humanitarian programs may be instructive to those designing reparations programs, both in terms of which measures are beneficial to victims, and also how to maximise access. This includes potential lessons about how to ensure access to women and other marginalised persons.

Lesson 7: Critical role of civil society

It was once assumed that reparations work must be implemented by state institutions. If there was a role for non-state entities, such as human rights organisations and victim groups, it was in advocating for the initiation of reparations programs and monitoring their implementation. More recent experience shows, as illustrated in the case studies, that civil society has a crucial role to play in the design and delivery of reparations programs and related assistance.

Some key advantages can be identified in the use of civil society organisations for reparations programming and partnerships. Principally civil society is often seen as being more in touch with victims than government institutions, allowing civil society actors to co-design reparations programs that are better suited to the needs of victims and more accessible to them. Civil society programs also tend to be more flexible and therefore able to adapt to victims’ needs and evolving circumstances. This is reflected in the fact that in practice civil society groups have attempted a wider and more creative range of measures than state-led programs. They have also found creative ways to address obstacles to reaching victims. For example, women’s groups in Myanmar set up crisis centres for women survivors under the cover of establishing a “library”. Civil society groups have also tended to be more inclusive of victims, frequently employing victims themselves to form networks in order to contact other victims, thus facilitating agency and community. As a result of these differences, victims in some contexts where both government and civil society programs have been run, such as Aceh, reported that civil society programs were more accessible for women, offered greater agency to victims and avoided the dehumanizing bureaucracy of state-implemented programs.

The primary disadvantage of civil society programs, when compared with government initiatives, is a lack of resources. This is demonstrated in the case studies. Not only are financial resources constrained, but often human resources and the range of available skills will also be limited. An additional challenge for civil society groups is the extent to which they can offer the same level of “recognition” or legitimacy of victims’ experiences as an official government body.

For some, this is an important differentiation. However, it is also the case that many civil society groups have found methods to assist victims in feeling recognised on a more personal level.

Ultimately, however, the solution is not to focus on government initiatives *or* civil society work, but ideally to benefit from both approaches in a manner which is complementary. Government programs have the advantage of additional formal recognition, and more sizeable and potentially sustainable resources. However experience shows that government programs are rarely sufficient on their own. Gaps exist either in the types of measures offered or in the ability of some victims to access government programs. In such instances, civil society schemes become even more valuable in order to address potential inequity. For example in Thailand, where victims of state violence have struggled to obtain assistance from the government reparations scheme, civil society groups have focused on addressing that gap.

Ultimately, it may be hoped that a symbiosis between civil society and state institutions could be achieved, such that good quality civil society programming is picked up and expanded by the state. Some form of this relationship can be seen in Timor-Leste, where during a period of state inactivity for more than ten years, human rights organizations began to establish grassroots programs to link victims to state welfare agencies, and to search for the families of “stolen children”. By doing so, civil society not only kept the issue alive and in the public eye, they also demonstrated what was possible. Now that a state funded public institution has been established to lead work on memorialization and reparations, it looks to the work done by civil society to inform its programming, and continues to work with partners in civil society. In such instances, once a state institution is operative, civil society also has an important role – using established expertise – to monitor that body and hold it to account if it does not deliver.

At the same time it is important to also monitor civil society actors. These organisations inevitably reflect power dynamics from the context in which they operate. Most significantly, many leading human rights organisations are themselves led by men. Groups advocating for victims’ interests are, in several countries, led by former political prisoners, who tend more frequently to be men and who sometimes carry significant political cache. Where this occurs it may be that civil society contributes to the problem of overlooking women’s experiences and failing to address their needs. The same problem is likely to befall LGBTQI+ persons, Indigenous peoples and members of other marginalised groups such as people with disabilities. There is a need for civil society to continue scrutinizing its own makeup, policies and activities to ensure an inclusive and gender-sensitive approach. The same is true where civil society actors move into positions in state-led initiatives.

Additionally, it is important that civil society involvement is not seen as an end in itself. Civil society should not be seen as a surrogate for victims themselves. Continuing efforts are required to ensure that agency is built among victim groups – including all of their diverse memberships - with the goal of supporting victim-led advocacy (see Timor-Leste case study).

Lesson 8: Push for innovative and transformative reparations

There is increasing recognition that reparations should not aim to return victims to their circumstances prior to the crimes. Rather, it is acknowledged that in many, if not most cases this pre-crime situation likely also involved inequities - which sometimes contributed to people’s vulnerability to abuse. This is particularly the case for women victims in the six countries considered here. The focus of transformative reparations is therefore to contribute to an overall betterment of victims’ circumstances, addressing not only the harm caused by the crimes, but also broader structural causes of oppression, violence and inequality.

In the countries examined in the case studies, the issue of equality of and discrimination against women is deeply linked to the issue of recognition and reparations for the harms of past violations.

The concept of transformative reparations sees the potential for reparations programs to contribute to this broader change. Some efforts described in the case studies have demonstrated the potential for achieving this.

- Partnerships between government agencies and civil society organisations to deliver urgent interim reparations, holistic reparations and other assistance have the potential to transform government programs, changing attitudes and addressing prejudices.

- Socio-economic empowerment is particularly important for women victims. It has the potential to reduce dependency on men in their families or communities. The creation of livelihoods or income has the ability to enable other forms of recovery by reducing the strain on women and providing them with improved access to other services. Supporting women to engage in employment and/or establish businesses or other revenue streams also has other benefits, especially by changing the attitudes of communities about women's roles and capabilities and by improving women's sense of independence and agency.
- Carefully designed reparations activities can also serve to enhance community dynamics so as to address divisions and build solidarity among victims. In Aceh civil society groups worked to create spaces in which women could speak with other female victims about their problems, (rather than only with family members, in order to establish connections and a sense of community. This also enables victims to learn from each other on various issues – including material challenges, and strategies for coping with trauma. Over time, victims are able to build a community for mutual support and advocacy. In the Philippines some victims pooled their money from the state reparations scheme so that together they could afford to invest in land or a business venture.
- In several of the contexts considered in the case studies, human rights groups have consciously sought to implement a holistic package of support to victims. These packages provide support for trauma healing, self-care, documentation, advocacy, skills-development and livelihoods. Feminist concepts are also introduced with women victims to provide tools for analysing their situations and organising for advocacy and mutual support. For example, in Timor-Leste, civil society-led programs have brought women survivors together from isolated rural communities in participatory action research which aims to empower women survivors by strengthening their sense of agency in their lives including their capacity to advocate for themselves. They have utilised collaborative creative arts projects like theatre and exhibitions with women survivors and young artists, and women survivors have taken on the roles of teaching younger generations about the impact of past violence in securing a non-violent future. In Cambodia, collective reparations programs following trials have involved civil society organisations working closely with victims and communities, often utilising the creative arts to help intergenerational learning and restore the dignity of victims.

7. Recommendations for steps forward

To the ASEAN Intergovernmental Commission on Human Rights

- Build expertise on gender and reparations within the Commission through training, specialist staffing and targeted consultancies as well as partnerships with expert civil society organisations in the region and specialist international agencies.
- Establish working partnerships with like-minded national human rights commissions and civil society organisations in the region with expertise in gender and reparations, dedicated to finding innovative approaches to providing urgent interim reparations for survivors of sexual and gender-based violence, and creating pathways to transformative reparations that fully engage victims and survivors.
- Partner with national human rights institutions in the region to develop guidelines, working with specialist experienced civil society organisations, for member states on the right to remedy in accordance with international human rights standards.
- Strengthen data collection and information management from member states - government, civil society and victims groups - across the region, to develop a continuing and up-to-date picture of challenges, initiatives and lessons learned in relation to reparations. Ensure that data and information is sex and age disaggregated, as well as identifying other key factors such as membership of minority and marginalised communities such as minority religious, ethnic, Indigenous, LGBTQI+ and disabilities communities. Make this information publicly available, including in key regional languages.
- Commission thematic research on situations, needs and initiatives on reparations and other assistance to victims of human rights violations in individual states and communities in the region, and publish accessible papers aimed at parliamentary, government and civil society practitioners to help build regional understanding, cross-learning and capacity. In particular, prioritise two thematic research reports on regional experience and practice:
 - On best practices of states and civil society organisations in engaging with, consulting and co-designing with victims reparations or other assistance measures, including urgent or interim measures.
 - On innovative state-civil society partnerships to deliver interim reparations and assistance to victims in the absence of a judicial or legislative framework for reparations programs.
- Convene meetings and events of victims groups, civil society and key government agencies across the region to share experiences and lessons learned and foster commitment to human rights standards in relation to reparations.
- Promote understanding of the inclusive dimensions of gender-based violence in the region, so that the experiences of LGBTQI+ people and non-LGBTQI+ male victims of sexual and other gender-based violence are included in discussions and initiatives on reparations.
- Take special measures to ensure that women from marginalised communities - such as Indigenous communities, ethnic and religious minorities, women with disabilities, LGBTQI+ women - are included in all reparations research, activities and programs of the Commission.