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Exposing Coercive Control in the Commission of Forced Marriage: A Cambodian Case Study

1. Introduction

This article discusses the processes through which practices of coercive control in the commission of sexualised and gender based violence (SGBV) can be rendered visible through victim participation in criminal justice processes. Specifically, it explores the ways in which victims’ participation in the work of the Extraordinary Chambers in the Courts of Cambodia (ECCC) has exposed the crime of forced marriage during the Khmer Rouge regime. In doing so, this article connects the theory of coercive control to crimes perpetrated by state actors. While discussions around the perpetration of coercive control have not been blind to the role which can be played by the state, such discussions have ordinarily focused on the failure of states to fulfil their positive obligations to protect citizens.1 However, in the Khmer Rouge context, what is exposed is an incidence of state actors failing in their negative obligation to do no harm, and engaging in behaviour which causes fear of violence, serious alarm and distress, with a substantial adverse effect on the lives of victims.2 What will be demonstrated is that through a systematic process of intimidation and fear, victims were coerced into marrying and having sexual relationships with individuals chosen by the state. Thus, the victims’ bodily integrity was violated, and their liberty and freedom eroded by state actors.3 This analysis reasserts coercive control’s ‘generality’,4 through which coercive control connects to a broader

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2 Serious Crime Act 2015 s 76(1).
3 International Covenant on Civil and Political Rights 1966 Article 18.
human rights discourse, while also linking state actions to the sexual and gender based context of coercive control.5

The visibility of certain harms over others has long been a source of discussion and analysis by criminologists and victimologists, who have sought to both expose unseen crimes and victimisations, and explore why it is possible for particular forms of harm to go unacknowledged, unregulated and uncontrolled.6 Feminist, radical and critical traditions of criminology have argued in favour of looking beyond the crimes which are visible within the ‘mainstream’, by challenging the processes that ‘go on behind our backs’ which contribute to the victimisations we ‘see’ as opposed to that which we do not ‘see’.7 In the context of SGBV, they have sought to make unseen gendered harms visible, by incorporating the voices and experiences of women into crime and victimisation discourse.8 The development of coercive control theory emerged within this context, as a way of exposing and rendering criminal forms of ‘deliberate and malevolent’ oppression which might otherwise go unnoticed.9

Early feminist interventions into international criminal law have similarly focused on increasing visibility,10 through the securing of accountability for SGBV perpetrated during conflict and periods of transition.11 Historically, the invisibility of such violence has often

8 Ibid.
9 Stark, op cit n 5 at 200.
continued long after a conflict ends, and victims of SGBV have struggled to see their harms recognised within official responses to atrocity. As will be explored below, this invisibility can be attributed in part to the social stigma and entrenched patriarchal normative structures which allow for crimes more frequently perpetrated against women to go unnoticed. As observed by Stark ‘abuse can only be kept secret on any substantial scale with the collusion of a range of actors’, and this can extend to professionals within the criminal justice system. However, feminist advocacy has undoubtedly contributed to the increased visibility of conflict-related SGBV, leading to legal and policy developments which have enabled greater accountability to be pursued. For example, the inclusion of a number of SGBV crimes within international humanitarian and criminal law has led to the prosecution of rape as a war crime, a crime against humanity and genocide.

While these advances in accountability have been praised, critiques have emerged which highlight the ongoing selective visibility of SGBV-related harm within legal processes. It has been noted that the selection of charges by the prosecution and the focus on establishing the guilt or innocence of the accused can create limited, simplified records of victims’

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14 Stark, op cit n 1 at 194-195.
15 Davies, op cit n 10.
19 Ibid.
experiences. ‘Elitist blind spots’ can manifest in these contexts. For example, feminists and others have critiqued international criminal courts for their inconsistent efforts to investigate and prosecute SGBV, arguing that the visibility of such harms remains limited within the jurisprudence. Brown has argued that the fixation on rape as the universal experience of women has reduced women to passive, vulnerable objects of law excluded consideration of other gendered harms, and rendered sexual violence against males invisible within analyses of conflict-related SGBV. More broadly, Conaghan, Ní Aolain and others have argued that criminal courts’ focus on bodily violence obscures the reality of social harms, which are both shaped by social realities and impact on families, communities and social structures. While international crime recognises harm caused to groups, for example through genocide and crimes against humanity, it continues to overlook the interrelationships between harm, human relationships and societal structures. Such arguments have strong parallels with Stark’s

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coercive control approach to domestic violence, and the argument that a focus on physical violence obscures the reality of harm.30

This article seeks to contribute to the feminist goal of rendering harm visible, through an exploration of the coercive control practices utilised by the Khmer Rouge in their perpetration of forced marriage, and the processes through which this harm has been rendered visible. Drawing on an analysis of the prosecution of forced marriage in Case 002/02 at the Extraordinary Chambers in the Courts of Cambodia (ECCC), the involvement of victims as Civil Parties at the ECCC is examined. Consideration will be given as to whether enabling victims to actively participate within international criminal courts can serve as a means of countering the critiques identified above, by allowing victims and their representatives to challenge both the limited visibility of SGBV, and the ‘elitist blind spots’ which often emerge during judicial engagement with such crimes. It will be argued that while victim participation in international criminal proceedings can serve an important function in enhancing the visibility of conflict-related SGBV, the legal frameworks and procedures of international criminal courts continue to place limitations on that visibility. Victim participation is a key concern both at an international and a national level, and as noted by Doak, there is increasing evidence of legal cross-fertilisation in this area.31 Human rights and criminal law are no longer clearly distinct, and domestic, regional and international courts demonstrate increased willingness to draw on the standards and jurisprudence of each other.32 Thus, consideration of the role of victims within the context of ECCC is arguably of relevance to broader analyses of the potential for and limitations of victim participation to expose coercive controlling practices.

32 Ibid.
2. Background and Methodology

In 1975, a radical communist organisation known as the Communist Party of Kampuchea (CPK), or the ‘Khmer Rouge’ seized power in Cambodia, and commenced their pursuit of an agrarian revolution. To this end, the regime emptied towns and cities, forced the population to form cooperatives and introduced a country-wide policy of forced labour. Over the next three years, eight months and twenty days at least 1.7 individuals are believed to have died, as a result of both the Khmer Rouge’s failure to provide adequate food and medical care, and the regime’s increasingly paranoid targeting of those it perceived to be enemies of the revolution.

While this article focuses on the practice of forced marriage, many aspects of the regime’s treatment of its people reflect the practices highlighted through the theory of coercive control. As is the case within the coercive control model, violence and the threat of violence were used by the Khmer Rouge, but were also accompanied by a variety of other tactics which formed a pattern of domination. For example, the population was isolated, both from the outside world, through the expulsion of journalists and the sealing of borders, and from each other, through the separation of families and prohibition of personal attachments. A sense of fear and confusion was cultivated by the deliberate erasure of traditional legal structures and social conventions: religion and traditional cultural practices were banned, as were normal schooling

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and the free market. Further reflecting the coercive control model, the Khmer Rouge based their society on rules about how their citizens should behave, a rule book which extended into their familial and sexual relationships. The result was a state-wide situation of entrapment, in which citizens’ autonomy, rights and liberties were restricted. Within this context, the practice of forced marriages became a particularly acute example of coercive practices by state actors.

The state policy known as the ‘regulation of marriage’, involved members of the Khmer Rouge forcing civilians to marry a spouse chosen by the regime, in order ‘to control the interaction between individuals, such that they were only permitted to marry and have sexual relations in accordance with… policy.’ This appears to have been in furtherance of two competing goals: the first being to prohibit sexual relationships on the grounds that they would distract from the work of the revolution, and the second being to increase the population. Evidence suggests that this policy was widespread, and involved individuals being informed that they were to be married, sometimes only a short time before the ceremony. Most couples had no choice as to their spouse, and refusal to comply could result in imprisonment, torture or death. Couples were expected to consummate the marriages, and were sometimes spied upon to ensure this occurred. As a result, a culture of state-sanctioned SGBV was created, men and women were

37 Stark, op cit n 5.
41 Ibid.
denied autonomy over their sexual lives, and women were additionally denied autonomy over their reproductive choices.

The ECCC was established by the UN and the Royal Government of Cambodia to prosecute the crimes of the Khmer Rouge. The ECCC allows victims to participate as Civil Parties, with rights similar to the prosecution and the defence. Civil Parties are entitled to legal representation, can request investigative action, testify without being under oath and are given opportunities to participate in victim impact hearings, and to provide ‘statements of suffering’ when testifying as witnesses. For many years, the predominant narrative was that SGBV had been rare during the Khmer Rouge era and, unlike other conflicts, not part of a deliberate strategy. This belief was for a long time reflected in the work of the ECCC, with the initial indictment in Case 002 containing no reference to SGBV. The following sections will explore the reasons for this initial invisibility, before considering the extent to which the creation of a Civil Party system enabled victims’ representatives to advocate for charges of SGBV to be included within the indictment in Case

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43 The case also initially included Ieng Thirith and Ieng Sary as defendants, both of whom have subsequently died, see Case 002, Decision on IENG Thirith's Fitness to Stand Trial, 002/19-09-2007/ECCC/TC, 17 November 2011; Case 002, Termination of the Proceedings Against the Accused IENG Sary, ECCC Trial Chamber, 002/19-09-2007/ECCC/TC, 14 March 2013; Case 002, Termination of the Proceedings Against the Accused IENG Thirith, 002/19-09-2007/ECCC/TC, 27 August 2015.
44 ECCC Internal Rules, Rule 59(5).
45 Statements of suffering are an innovation of the Trial Chamber President, who invited Civil Parties ‘to address your suffering and harms you have incurred’. The process was formalised in Case 002, Decision on Request to Recall Civil Party TCCp-187, for Review of Procedure Concerning Civil Parties’ Statements of Suffering and Related Motions and Responses, 002/19-0902007-ECCC-TC, 2 May 2013.
An analysis will be undertaken of the ways in which Civil Parties have rendered harm visible through the provision of testimony and ‘statements of suffering’ in Case 002/02 considering the extent to which their statements challenge assumptions about forced marriage and sexual violence more broadly.49

To conduct this analysis, the author accessed Civil Party testimony through the ECCC’s website,50 and through the Cambodia Tribunal Monitor website.51 This form of research is inevitably limited, given its reliance on a small range of testimony, and the issues related to translation and the use of a tribunal observer. While acknowledging these limitations, it is intended that this study can begin to draw out some of the coercive control and gendered harms the Civil Parties have rendered visible, and demonstrate the ways in which their testimony challenges dominant narratives which often surround conflict-related SGBV.52 It will be argued that while the Civil Parties’ testimony can enhance a more nuanced understanding of harm experienced as a result of forced marriage, the ECCC’s focus on specific legal categories of harm may limit the extent to which Civil Parties’ experiences are rendered visible in the Court’s official pronouncements.53

3. Challenging Invisibility through Victim Representation

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48 Case 002, Closing Order, op cit n 38.
49 Elander, op cit n 47.
51 See www.cambodiatribunal.org/category/trial-observer/. ECCC transcripts would have been a preferable source, but not all relevant days had been made accessible at the time of writing.
52 See also Sankey, op cit n 28 for an analysis of the role of Civil Parties in highlighting gendered harms through their testimony in Case 002/01.
53 Elander, op cit n 47.
Narratives around SGBV, even within states with progressive legal frameworks, are often characterised by the prevalence of myths, and the evolution of SGBV’s criminalisation has been slowed by underlying assumptions, from the belief that sexualised violence is an unavoidable by-product of war, to the classification as a crime against honour. This reality has been reflected in the work of the ECCC. The existence of an official Khmer Rouge policy, known as Code No. 6, was instrumental in the creation of an accepted thesis that SGBV had not been an intentional policy of the Khmer Rouge leaders. The Code prohibited what it termed ‘moral misconduct against women’, which was initially interpreted as constituting a prohibition of sexualised violence. However, it has since been argued that this interpretation ignores the broader meaning of the Code, which focuses on the prohibition of extra-marital sexual activity, rather than sexual crime. Indeed, the Khmer Rouge were known for imposing a strict moral code on their cadres and citizens, and for punishing romantic connections as being a distraction from the revolution. Thus, the Code might better be interpreted as a means of imposing strict patriarchal moral standards, controlling the status of women, and of exerting coercive control over the sexual and reproductive choices of individuals. Nevertheless, the presence of the Code appears to have contributed to the Court investigators’ initial decision not to prioritise investigations into SGBV. The absence of any explicit policy relating to forced

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57 de Langis, T, ‘”This is Now the Most Important Trial in the World”: A New Reading of Code #6, the Rule Against Immoral Offenses Under the Khmer Rouge Regime’ [2014] *The Cambodian Law and Policy Journal*.

58 Ibid. It is the latter interpretation has been favoured by Cambodian analysts, see e.g. Padevat, N, *Female Revolutionaries, Stories of the Khmer Rouge from Female Cadre* (Phnom Penh: Youth for Peace, 2012).

59 Becker, Op cit n 39.

60 Elander, Op cit n 47, 166; Killean op cit 24; Studzinsky, S, ‘Challenges to a Successful Prosecution of Sexualized and Gender-Based Crimes’ paper presented at the International Conference on Bangladesh Genocide and the Issue of Justice, Heidelberg, Germany, 4–5 July 2013.
marriage further obfuscated the reality of marriage under the regime, a situation which was exacerbated by the fact that very limited research had been conducted into the international crime of forced marriage at the time. It is probable that the absence of prior criminalisation and prosecution contributed to the failure to investigate whether such a crime might have occurred.

These investigative assumptions initially went unchallenged by victims. This is unsurprising; research has demonstrated that in order for victims to speak out, a non-judgmental environment is needed to provide the confidence that they will be believed and will not face condemnation or shame. In Cambodia, it is likely that a fear of stigmatisation and social exclusion initially prevented survivors of SGBV from coming forward. Nor were the methods of investigation likely to induce victims to be explicit. The Court’s investigatory team was initially all male, and has been criticised for its lack of ‘gender competence’, reducing the ability to conduct effective and sensitive victim interviewing with an awareness of the specific psychosocial stigmatization associated with SGBV within Cambodia. While a former Co-Prosecutor has claimed that the Court never ‘ignored gender-based crimes’, a former member of the team has opined that SGBV was not a priority during initial investigations. As has been noted in the coercive control literature, normative patriarchal structures can often render SGBV invisible, and it may have been that stereotypical notions of male and female relationships, and

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61 Ibid.
62 The Special Court for Sierra Leone was not to finish its first forced marriage trial until two years later, see Prosecutor v Brima, Kamara and Kanu, Appeals Judgment, Case no SCSL-04-16-A, 22 February 2008.
63 Davies, Francis and Wyatt op cit n 6 at 18.
65 ‘Rape During the Khmer Rouge’, GBV under the Khmer Rouge Information Platform, available online at gbvkr.org/gender-based-violence-under-khmer-rouge/facts-and-figures/rape-during-the-khmer-rouge/.
66 De Langis and Studzinsky, op cit n 56.
67 As the ECCC is a hybrid court, all main posts are shared by one national and one international staff.
68 Andrew, A ‘KR’s Female Victims Were Not Forgotten’ Phnom Penh Post, 1 June, 2012.
69 Killean, op cit n 24.
a failure to investigate beyond the apparent traditional marital structure, may have further shielded the practice of forced marriage from the investigators.\textsuperscript{70} Myths and assumptions, under-reporting and insufficient training thus contributed to the overlooking of SGBV. Woven through these factors was also the socio-legal context in which the initial investigations took place;\textsuperscript{71} due to the Court’s dominant role in investigating the Khmer Rouge regime’s crimes, the investigators had significant power in determining the visibility of harms within official discourses about the regime.\textsuperscript{72} However, through the creation of a unique victim participation mechanism, the Court enabled alternative narratives to be introduced by victims and their legal representatives.

Haslam has highlighted the value of providing space for contestation and a plurality of voices within the arena of transitional justice, arguing that allowing for justice to be contested amongst multiple actors enhances the overall legitimacy of the project.\textsuperscript{73} Indeed, while courts have historically tended to see themselves as the sole purveyors of ‘justice’,\textsuperscript{74} since the end of the Cold War there has been a surge in literature which has exposed the significant role played by civil society in the development and implementation of international criminal law.\textsuperscript{75} Civil society has lobbied states to create transitional justice mechanisms, advocated for victims’

\textsuperscript{70} Stark, \textit{op cit} n 5 at 194-195.
\textsuperscript{71} Davies, Francis and Wyatt, \textit{op cit} n 6 at 17.
\textsuperscript{72} \textit{Ibid.}
\textsuperscript{75} Glasius, M, \textit{The International Criminal Court: A Global Civil Society Achievement} (London: Routledge 2006);
rights,\textsuperscript{76} and challenged the overlooking of traditionally marginalised victim groups.\textsuperscript{77} In the context of SGBV, women’s movements have been central to combating impunity for gendered crimes, with NGOs repeatedly intervening to ensure the ad hoc tribunals for Rwanda and the former Yugoslavia incorporated SGBV within their jurisprudence, and the Women’s Caucus for Gender Justice playing a crucial role in seeing sexualised crimes included within the ICC Statute.\textsuperscript{78} Civil society has also historically played a central role in linking sexual violence to broader policies of gender discrimination, leading to an acknowledgment for example within the Committee for the Elimination of Discrimination Against Women that sexual violence can deprive women of their autonomy.\textsuperscript{79} These examples underline one of the main benefits a strong civil society can bring to the development of transitional justice: an ability to contest the terms of justice, and highlight ‘elitist blind spots’.\textsuperscript{80}

At the ECCC, civil society has played a crucial role in the implementation of the Court’s unique Civil Party system. Due to the Court’s limited funding, civil society was given primary responsibility for reaching out to potential Civil Party applicants,\textsuperscript{81} assisting in the application process, and funding legal teams to represent the Civil Parties in Court.\textsuperscript{82} This influx of funding and research, combined with the creation of a victim participation system, arguably provided the catalyst for the invisibility of SGBV to be challenged, first, by increasing the number of organisations conducting research into the Khmer Rouge, and second by giving

\textsuperscript{78} Ibid.
\textsuperscript{80} Rajagopal, \textit{op cit} n 23 at 406.
survivors access to legal teams with greater gender balance and competence than the investigators encountered before. As explained by a member of staff from the ECCC’s Victim Support Services:

...you know for some people the first time they cannot talk... because in Cambodia we know they don’t want to talk about their secret story with the men, even if you are a lawyer...but when they become civil parties...we ask do you want a female lawyer they say yes, and then when we organise a meeting with their clients, the lawyers have their own technical [sic], so when they ask about their story again, it comes out.83

From 2006 onwards, civil society organisations began to conduct research which sought to shed light on the reality of SGBV during the Khmer Rouge.84 Evidence soon began to emerge of a variety of SGBV related harms, including a wide range of rape scenarios, forced nudity, sexual mutilation, abuse of pregnant women, gendered punishments and forced marriage.85 In light of this emerging evidence, a number of Civil Party representatives began to advocate to see SGBV included in the crimes charged at the ECCC.86 The need for further investigations into forced marriage in particular was initially highlighted in 2009 by two Civil Party Lawyers when four of their clients, one couple and two women, filed Civil Party applications referring

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83 Interview with VSS Staff 1, 27 November 2013.
86 Case 002, Forwarding Order to the Office of the Co-Prosecutors, 002/19-09-2007-ECCC/OClJ, 13 March 2009; Case 002, Closing Order, op cit n 38 paras. 216 - 220.
to being forced to marry during the regime. Further investigations followed, and over 780 Civil Party applicants identified themselves as victims of forced marriage. As a result, the final indictment in Case 002 identified the ‘regulation of marriage’ as one of the Khmer Rouge policies, and included two charges: forced marriage as an inhumane act constituting a crime against humanity, and rape within the context of forced marriage. The indictment, while not framing it as such, acknowledged the coercive controlling behaviours which enabled the policy of forced marriage to be pursued. Thus, the Order noted that victims were forced into conjugal relations with the aim of enforced procreation, that marriages took place without traditional rituals or family rituals and that violence, death threats and executions were used against dissenters.

Whilst the inclusion of forced marriage within Case 002 was applauded for casting light on gender-based crime within the Khmer Rouge, it can also be cited as evidence of the important challenges to invisibility that can result from allowing transitional justice processes to become places of contest and negotiation amongst diverse actors. The acknowledgment of forced marriage originated not from the ‘mainstream’ international criminal institution, but from the victims and their advocates. This activism can be classified as an example of ‘transitional justice from below’ in which victim participation and the ongoing work of civil society

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90 Case 002, Closing Order, op cit n 38 at 1430, 1442.
91 Ibid, paras 1430-1447.
93 Haslam, op cit n 73.
95 McEvoy and McGregor op cit n 74.
provided a counter-narrative to that originally favoured by the Court. However, it is also important to note the limitations of Civil Party participation as a way of contesting the terms of justice. Civil parties are unable to initiate investigations themselves.96 Thus, although they were successful in prompting investigations into forced marriage, they would not have been able to do so without the Co-Prosecutors’ cooperation.97 The inability of Civil Parties to compel the prosecution of certain crimes has been evidenced by the failure of their representatives to see rape outside the context of forced marriage included within the Court’s work, despite repeated attempts.98 Case 001’s indictment, against the former chairman of a notorious security centre, included only one incident of rape.99 When evidence of other rapes emerged, the Trial Chamber refused to admit the allegations on the grounds that they were raised late in the proceedings and there would be difficulties obtaining evidence within a reasonable time.100 In Case 002, the indictment acknowledges that rape occurred, but cites the existence of Code No. 6 as proof that such crimes could not be linked to the former senior leaders of the regime.101 Despite requests for this approach to be amended, the Trial Chamber has continued to defend the exclusion of rape outside the context of forced marriage.102 However, Civil Party participation may yet prompt a change in approach, the International Co-Prosecutor has more recently requested investigations into sexual violence both inside and outside forced marriage in Cases 003 and 004, citing the evidence of Civil Parties as a motivating factor.103 Such

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96 ECCC Internal Rules, Rule 49(1); Case 002, Order on the Admissibility of Civil Party Applicants from Current Residents of Svay Rieng Province, Case No. 002/19-09-2007- ECCC-OCIJ, 9 September 2010.
98 Killean, op cit n 24.
100 Case 001, Decision on Parties’ Requests to Put Certain Matters before the Chamber Pursuant to Rule 87(2), 001/18-07-2007-ECCC-TC, 28 October 2009.
101 Case 002, Closing Order, op cit n 38 at para 1426.
102 Case 002, Decision on Additional Severance of Case 002 and Scope of Case 002/02, 002/19-09-2007-ECCC-TC, 4 April 2014.
incidents simultaneously reinforces the important role that can be played by Civil Parties and their representatives in rendering harm visible, and the limitations posed by their reliance on prosecutorial support.

4. Rendering Harm Visible through Participation

Criminologists and victimologists have long acknowledged the role of criminal trials in recognising and exposing harm.\textsuperscript{104} Trials have been identified as a means through which violations can be ‘dramatized’ and ‘registered in discourse’.\textsuperscript{105} However, due to the ‘theft of the conflict’ by a breadth of politicians, lawyers and criminal justice professionals, victims have historically had only limited influence over the harms which are exposed within the courtroom.\textsuperscript{106} Yet, uncovering harm, realising that it is a criminal act and identifying it as such is a process which depends on the existence and cooperation of witnesses and recognised victims.\textsuperscript{107} Since the 1970s, advocates of victim participation have identified enhanced procedural rights as a means of exposing the realities of harm and allowing victims’ experiences to be heard within criminal trials.\textsuperscript{108} Feminist advocates have further argued that victim participation can assist in addressing the under or misrepresentation of victims of SGBV, whose ‘perceptions and needs are – in all cultures of the world – frequently ignored, presumed, or misunderstood.’\textsuperscript{109} Indeed, the projects of enhancing victims’ rights and

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\textsuperscript{104} Davies, Francis and Wyatt, \textsuperscript{op cit n 6.}
\textsuperscript{105} Cornelia, V, “Rejouer les crimes” Theater vs Video’ [2001] Cardozo Studies in Law and Literature 119 at 124–125; Elander op cit n 47.
\textsuperscript{107} Davies, Francis and Wyatt \textsuperscript{op cit n 6 at 3.}
rendering SGBV visible have intertwined histories: the feminist campaign to have the experiences of women incorporated into the criminal justice system was influenced in part by a desire to draw attention to the crimes more frequently experienced by women,\textsuperscript{110} and in turn facilitated discussions of the ways in which criminal justice systems have historically failed to address victims’ harms.\textsuperscript{111}

Transnational advocacy has since contributed to the enhancement of victims’ rights within a number of national and international systems.\textsuperscript{112} Within international criminal law, the inclusion of victim participation in courts such as the ECCC was initially hailed as providing a means for victims to share their experiences in a way that they had been unable to do so in previous tribunals,\textsuperscript{113} thereby furthering the feminist goal of exposing SGBV within the context of conflict and transition.\textsuperscript{114} However, critiques have since emerged which question the extent to which victims’ experiences are truly rendered visible through participation,\textsuperscript{115} due to the adversarial nature of trials and the restrictions placed on victims’ ability to discuss harms outside the scope of the charges.\textsuperscript{116} At the ECCC, the inability of victims to influence the charges brought,\textsuperscript{117} the introduction of collective representation,\textsuperscript{118} the curtailment of testimony

\textsuperscript{115} SaCouto op cit n 97 336.
\textsuperscript{116} Ibid.
\textsuperscript{117} Ibid at 339.
outside the scope of the trial and the discouragement of displays of emotion have all been documented as impacting on the ability of victims to render their experiences visible within judicial proceedings. As with other tribunals, the ECCC has directed and interpreted victims’ testimony to meet the needs of the criminal trial. Nevertheless, along with others, it is contended that Civil Party testimony has provided an important space in which survivors have been able to share their experiences and render their harm visible within the courtroom. Through their testimony, Civil Parties have rendered visible complex perpetrator and victim identities, contesting narratives that would define SGBV as a harm perpetrated solely by men against women and demonstrating the role of state actors in creating a context of coercive control. Furthermore, by exposing a range of physical, psychological and social harms, the Civil Parties’ testimony arguably challenges the Court’s legal characterisation of forced marriage as a predominantly sexual harm. Mirroring arguments made in the coercive control literature, testimony demonstrates that forced marriage was a policy which can better be understood through this framework, as it included a range of tactics, including the imposition of rules and the denial of autonomy, and inflicted harm on ‘dignity, liberty, autonomy and personhood as well as to physical and psychological integrity.

4.1. Coercive Control, State Complicity and Complex Victimhood

123 See also Sankey op cit n 28.
124 Stark, op cit n 5.
The practice of forced marriage under the Khmer Rouge had a number of distinctive qualities, and differed in several respects from the harms which characterized the previous prosecution of forced marriage at the Special Court for Sierra Leone, and the crimes which have been documented in Uganda, Liberia and Rwanda.\footnote{125 For a comprehensive overview of the practice of forced marriage in Africa see Bunting, A, Lawrence, B, and Roberts, R (eds) *Marriage by Force?* (Athens, Ohio: Ohio University Press 2016).} In those contexts, women were kidnapped, raped, forced to provide domestic services, impregnated and controlled by their captors.\footnote{126 Bunting, A, ‘“Forced Marriage” in Conflict Situations: Researching and Prosecuting Old Harms and New Crimes’ [2012] Canadian Journal of Human Rights 166.} In contrast, the role of state agents in enforcing the policy is reflected in the Closing Order, and in the testimony of Civil Parties. The role of ‘Angkar’ (the term used to identify the state and its agents)\footnote{127 Marston, J, ‘Metaphors of the Khmer Rouge’ in Ebihara, M, et al., *Cambodian Culture since 1975: Homeland and Exile* (Ithaca, New York: Cornell University Press, 1994), 108.} in pursuing the policy of forced marriage was highlighted by a number of Civil Parties during the Cases 002/02 hearings. For example:

\begin{quote}
I was matched by Angkar to a man whom I did not like [...] I was forced to marry the man that was not my choice.\footnote{128 Case 002 Trial Proceedings, 19 September 2016, Civil Party Sa Lai Heang (2-TCCP-251) Statement of Suffering, E3/436; ‘“This Forced Them To Committ Suicide”, Civil Party Says about Forced Marriage’ www.cambodiatribunal.org/2016/09/19/this-forced-them-to-committ-suicide-civil-party-says-about-forced-marriage/.}
\end{quote}

\begin{quote}
They educated the men that today, all of you would be married by Angkar, and they gave instructions in many aspects...I was so afraid that I and that woman would be killed and that my relatives would also be killed.\footnote{129 Case 002 Trial Proceedings, 25 August 2016, Anonymous Civil Party (2-TCCP-232); ‘“It was like living in hell”, Civil Party Says’ www.cambodiatribunal.org/2016/08/25/it-was-like-living-in-hell-civil-party-says/.}
\end{quote}

Thus, the coercive control practices of intimidation and control were used to limit the choices available to Civil Parties, placing restrictions on their freedom to choose a sexual partner and
manage their own matrimonial relationships. Such practices demonstrate the role of the state in depriving women and men of their rights, and in assuming a dominant role of control over their lives.\textsuperscript{130}

As will be argued below, the Khmer Rouge policy of forced marriage should not be defined as an entirely sexually violent crime. However, evidence suggests that sexual violence was a frequent element;\textsuperscript{131} and a number of Civil Parties drew attention to the role of Khmer Rouge cadres as indirect perpetrators of sexual violence through threats of violence, and as more direct perpetrators through the use of violence as a means of forcing couples to consummate their marriage:

\begin{quote}
They warned that if we did not consummate and if they found out, we would be smashed.\textsuperscript{132}
\end{quote}

\begin{quote}
The militiamen had a torch to shed light on us and guns. We had no choice but to take off our clothes [...]. They threatened us again and they used the torch on us, and they got hold of his penis and to insert it into mine. It was so disgusting. We had no choice.\textsuperscript{133}
\end{quote}

These examples shine light on a victim/perpetrator dynamic which seems to have little precedent within the literature of conflict-related SGBV. While incidences of ‘enforced rape’ have been noted in other contexts, such acts tend to feature males being forced to rape members

\begin{footnotes}
\item Stark, \textit{op cit} n 5.
\item D Chen, ‘Only “Lovers” Left Alive’ Aljazeera, 13 February 2016, projects.aljazeera.com/2016/02/cambodia-love/
\item Case 002 Trial Proceedings, 16 September 2016, Civil Party Mom Vun (2-TCCP-283), E3/7234; ‘Civil Party Was First Raped, Then Forced To Marry’ www.cambodiatribunal.org/2016/09/16/civil-party-was-first-raped-then-forced-to-marry/#_ftn8 (accessed 14 December 2016).
\end{footnotes}
of their community or family, being forced to engage in homosexual activity, or being forced to witness the sexual abuse of their loved ones.\textsuperscript{134} The victimization of males in particular through SGBV has been interpreted as being intended to diminish the victims' masculinity, thereby subordinating, demoralising and dehumanising him.\textsuperscript{135} In contrast, the Civil Parties testimony exposes a policy-driven practice of conjugal relations enforced against both unwilling participants.\textsuperscript{136} The inclusion of this testimony, and indeed the charges related to the regulation of marriage, allows the ECCC to challenge dominant narratives surrounding forced marriage, which frame it as a crime with predominantly female victims and male perpetrators.\textsuperscript{137} Research on conflict related SGBV has frequently focused on women and girls,\textsuperscript{138} indeed Stark’s conception of coercive control is designed to expose behaviours exhibited by men over female partners. Men are generally conceptualised as perpetrators of SGBV, making it challenging to visualise them as victims.\textsuperscript{139} As a result, their victimisations are frequently overlooked by both scholars and those who seek to respond to conflict related SGBV.\textsuperscript{140} However, it has been argued that international criminal law offers the best prospects for redress for male victims of SGBV due to its gender neutral conceptions of SGBV, which therefore allow for the ‘broadest recognition of sexual violence against men.’\textsuperscript{141} This argument finds weight in the ECCC’s gender inclusive approach to forced marriage and forced


\textsuperscript{136} Strasser, J, et al, \textit{A Study about Victims’ Participation at the Extraordinary Chambers in the Courts of Cambodia and Gender-Based Violence under the Khmer Rouge Regime} (Phnom Penh: Transcultural Psychosocial Organisation, 2014) at 22.

\textsuperscript{137} See e.g. Bunting, Lawrence and Roberts, \textit{op cit} n 126.

\textsuperscript{138} Feron, E, ‘Suffering in Silence? The Silencing of Sexual Violence against Men in War-Torn Countries’ [2014] Social Indicators Research Series 31; Marcus, \textit{op cit} n 25.

\textsuperscript{139} \textit{Ibid.}


\textsuperscript{141} Refugee Law Project, \textit{op cit} n 27; Schulz, \textit{op cit} n 135.
consummation, with its definition of rape featuring the gender neutral phrasing of ‘a physical invasion of a sexual nature…in coercive circumstances.’ This phrasing, and the recognition of male Civil Parties as victims of these crimes, provides an important opportunity to recognise and prosecute SGBV perpetrated against men.

Just as dominant narratives often overlook the SGBV perpetrated against men, a tendency remains to paint men as the only perpetrators of SGBV and to avoid engagement with women’s identities as perpetrators of violence. Research into female perpetrators of both mass atrocities in general and sexual violence in particular is increasing, and female perpetrators have been identified in Sierra Leone, DRC, Iraq, Rwanda, Liberia, Haiti, Ivory Coast, and the former Yugoslavia. However, acknowledgment of female perpetrators of SGBV within international criminal courts continues to be limited. At the ECCC, Civil Parties have highlighted the role women played in the ordering and facilitating of sexual violence. For example:

*) Comrade Om [a female unit chief] refashioned me [a euphemism for punishment] once during day time. I was told that militiamen monitored us and had said that we had not

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142 Closing Order, op cit n 38, para 1431. The ICC has explicitly identified the term ‘invasion’ as gender neutral, see ICC Elements of Crime, Art 7(1)(g)-1.1 Fn 15.
145 Smeulers, op cit n 143; Cohen, D, ‘Female Combatants in Armed Groups: Women and Wartime Rape in the Sierra Leone Civil War’ [2013] World Politics 383.
146 See Prosecutor v Nyiramasuhuko et al (Butare) (ICTR-98-42) at the International Criminal Tribunal for Rwanda, and Prosecutor v Plavšić (IT-00-39 & 40/1) at the International Criminal Tribunal for the former Yugoslavia.
consummated our marriage. I begged Om for mercy. Female cadres would advise the female side and the male cadres the male side.  

Thus, in addition to drawing attention to a seemingly unprecedented form of state-sanctioned forced marriage, Civil Parties have been instrumental in challenging the conceptualization of conflict-related SGBV perpetration as inherently masculine. Their testimony exposes a more complex history, which contradicts harmful binaries that paint women as passive and peaceful victims, and men as being naturally inclined towards violence. This is an important project; as noted by O’Rourke, ‘it is a narrow victimhood that does not accommodate male victims, violent females, and the women who do not measure up as orthodox victims.’

While challenging the male perpetrator/female victim narrative is an important contribution to understanding the harm caused by conflict-related SGBV, it is worth noting that the coercive control exercised through the imposition of forced marriage was also a gendered harm, which sought to assert and enforce gendered stereotypes and traditional patriarchal power/privilege dynamics within relationships. It should be acknowledged that patriarchal power structures asserted themselves throughout the Khmer Rouge regime; as opined by one survivor ‘the regime treated women the worst.’ Certainly in the context of SGBV, quantitative studies conducted within Cambodia suggest that women were subjected to additional and more frequent forms of SGBV. Such data mirrors global figures, which continue to indicate that

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151 Report on the Asia-Pacific Regional Women’s Hearing on Gender-Based Violence in Conflict (Phnom Penh: Cambodian Defenders Project, 2012) at 43.  
women represent the majority of victims of such harms. Patriarchal structures continue to render women vulnerable to forms of sexual violence which are experienced less (or reported less) by men, and there is a need to recognise that experiences of violence and repression are not gender-neutral.

Similarly, female Civil Parties have shared experiences of forms of violence, which have not been visible in the testimony of male Civil Parties. For example, one woman shared her story of being raped for refusing to consummate her marriage:

He said that if he raped me and I shouted, then I would be shot dead. And after that warning, after that rape, that I had to shut my mouth and had to agree to live with my newlywed husband.

Another shared her story of being gang-raped prior to her marriage:

I was told that I would re-marry, and I was called to go up to the rice storage. […]. They planned to mistreat me before the wedding day. There were five of them and they planned to rape me one by one. And I was raped. I could barely walk […] and I wept.


Ibid, 648.

Ní Aolain, op cit n 94 at 48-49.

Sou Sotheavy, op cit n 132.

Mom Vun, Op cit n 133.
Such experiences demonstrate the role of intimidation and violence within the coercive control practice of forced marriage, and an assertion of male domination, oppression and sexual inequality through the particular violent targeting of women.\textsuperscript{158} Women also shared their experience of being raped or mistreated by their husbands. For example:

\begin{quote}
He did not try to console me. He simply wanted to have sex with me. My husband did what he wanted to do.\textsuperscript{159}
\end{quote}

\begin{quote}
That night he slapped me, he beat me up.\textsuperscript{160}
\end{quote}

\begin{quote}
I saw his hands on my body, he tore my clothes, my shirt, my trousers, and took off my bra, and then he raped me. That was the first day he raped me.\textsuperscript{161}
\end{quote}

Studies conducted by civil society organisations have drawn attention to men who perpetrated sexual violence against their spouses and who used the forced marriage structure to coerce women into being their partners.\textsuperscript{162} These forms of violence reflect in part the traditional Cambodian view that women are obliged to have sex with their husbands, a view that was seemingly adopted by the Khmer Rouge.\textsuperscript{163} However, by listening to the Civil Parties’ experiences, further nuances in victim/perpetrator identities are revealed. Thus, the third Civil Party cited above noted that her husband had justified his rape by telling her that if they did not

\begin{itemize}
\item \textsuperscript{158} Stark, \textit{op cit} n 5.
\item \textsuperscript{159} Sou Sotheavy, \textit{op cit} n 132.
\item \textsuperscript{160} Pen Sochan, \textit{op cit} n 148.
\item \textsuperscript{162} Nakagawa, \textit{op cit} n 152.
\item \textsuperscript{163} Surtees, R, ‘Rape and Sexual Transgression in Cambodia’ in Bennett, L and Manderson, L (eds) \textit{Gender Inequality and Technologies of Violence: Violence Against Women in Asian Societies} (London: Routledge, 2003), at 97-98.
\end{itemize}
consummate their marriage, they ‘would both be killed.’\textsuperscript{164} This does not negate the husband’s direct role in the rape, but evidences the complex layers of coercion and violence that characterised the crime. By threatening couples with violence and potential death, a state-enforced culture of rape was created, and violence within the context of marriage normalised.\textsuperscript{165}

As every conflict and violent regime is different, so are the motivations and performances of SGBV. Research which exposes the complexities which can emerge around victim and perpetrator identities can enhance our understanding of the forms conflict-related SGBV can take, thereby enhancing our ability to develop ways to prevent and address it.\textsuperscript{166} This section has demonstrated that by listening to the experiences of survivors, complex victim/perpetrator identities can be exposed, and assumptions about the forms and motivations of SGBV can be challenged. However, it must be acknowledged that while Civil Parties may have rendered harms visible within the courtroom, the law is not always able to fully capture this complexity. This is revealed and explored in the following section through an analysis of the ECCC’s classification of forced marriage.

4.2. Seeing Beyond Rape: Forced Marriage

While the increasing willingness of international criminal tribunals to identify and prosecute SGBV has been applauded,\textsuperscript{167} critiques have been offered which problematize international criminal law’s fixation on rape as excluding consideration of other gendered harms, and

\textsuperscript{164} Preap Sokhouem, \textit{op cit} n 161 at 96.
\textsuperscript{165} De Langis, \textit{op cit} n 57 at 65.
\textsuperscript{166} De Brouwer, \textit{op cit} n 149.
creating hierarchies of harm.\textsuperscript{168} Linked to this criticism is the tendency within law to focus on harm as something physical, and suffered by the individual.\textsuperscript{169} As explored above, Stark’s theory of coercive control as a way of assessing domestic violence emerged in response to such limitations, by exposing broader ongoing practices of domination and control. Stark has argued persuasively that by acknowledging a broader range of harmful practices, law, policy and other interventions can better protect the rights and liberties which are being infringed.\textsuperscript{170} In addition, feminist research has sought to render visible the social aspects of harm.\textsuperscript{171} Such an approach highlights that harm can impact on families and communities,\textsuperscript{172} but also that an individual’s experience of harm is likely to be influenced by their social location, their relationships and their social understandings.\textsuperscript{173} As Sankey has noted, by placing the social nature of harm at the centre of analysis, one can move away from a focus on sexualised violence, and gain a deeper understanding of the lived experiences of violence, particularly those forms of violence which attack human relationships and social structures.\textsuperscript{174} Drawing from these perspectives, a dissonance is revealed between the ECCC’s formulation of forced marriage, and the experiences and harms which Civil Parties have sought to expose through their testimony.

A number of scholars have explored the complex nature of the harm caused by forced marriage.\textsuperscript{175} However, as Frances Nguyen acknowledges, there is a need for greater legal

\begin{footnotesize}
\begin{enumerate}
\item Henry, \textit{op cit} 26; Grewal, \textit{op cit} n 26; Ni Aolain, \textit{op cit} n 26.
\item Stark, \textit{op cit} n 5.
\item Conaghan, \textit{op cit} n 28.
\item Godwin Phelps, \textit{op cit} n 167 at 173-174.
\item Sankey, \textit{op cit} 28 at 14.
\end{enumerate}
\end{footnotesize}
acknowledgment of the multi-layered harms caused by this crime.\textsuperscript{176} This article argues that looking at the broader coercive and controlling behaviours utilised to enforce the policy allows for a more nuanced understanding of this type of harm, as does an analysis which looks beyond individualistic physical harm. As was explored above, the regulation of marriage constituted a crime perpetrated against individuals, and was on some occasions accompanied by physical sexualised violence. However, it was also a crime against the traditional familial, cultural, religious and societal structures and institutions which formed the foundation of Cambodian society.\textsuperscript{177} This reality has not been fully reflected in the charges against the accused, which contain one count of rape in the context of forced marriage, and one count of forced marriage itself, defined as being ‘forced to enter into conjugal relationships in coercive circumstances’\textsuperscript{178} Although the indictment makes reference to forced ceremonies and the damaging of tradition and societal structures, the focal point of the forced marriage charge relates to the ‘consummation of marriage’, and to a lesser extent, forced procreation.\textsuperscript{179} As noted by Elander, this approach resonates ‘all too well with stereotypical images of the female subject in law and war’,\textsuperscript{180} and can be critiqued for rendering visible only the body which is raped and/or childbearing. Furthermore, such a focus prioritises the physical individualised aspect of the harm in respect of both genders. While the prosecution of forced marriage is therefore an important contribution to the feminist and victimological goal of rendering crime

\textsuperscript{176} Nguyen, \textit{ibid}.


\textsuperscript{178} Other examples of ‘other inhumane acts’ have included the plundering of Jewish property, beatings and general inhumane treatment, and sexual violence in the form of forced public nudity. These examples demonstrate that ‘other inhumane acts’ can provide an inclusive category for crimes not specifically identified as crimes against humanity.

\textsuperscript{179} Elander \textit{op cit n 47}. See also Dianne, O ‘Lost in Translation: Re-scripting the Sexed Subjects of International Human Rights Law’ in Orford, A (ed.) \textit{International Law and its Others} (Cambridge: Cambridge University Press, 2006) at 325.

\textsuperscript{180} Ibid.
visible, it risks obscuring the actual experiences of survivors.\textsuperscript{181} By listening to the experiences of the Civil Parties, the social harm caused by the exclusion of family and tradition is exposed. For example, while Civil Parties often dwelt on the aspect of consent, their focus was not only on their own inability to consent to their marriage, but on the lack of family consent and denial of family participation within the wedding ceremony:

\textit{I was so painful [sic], particularly when I was forced to get married. I lived my life unhappily. And I got married without the consent and agreement from my parent and siblings.}\textsuperscript{182}

\textit{That was the point that made me suffer: The wedding took place without the participation of my siblings and relatives.}\textsuperscript{183}

\textit{At the time we were weeping. We wanted to have the presence of our parents.}\textsuperscript{184}

This tactic again resonates with the coercive control framework. Isolation is identified by Stark as a central tactic, which instils dependence, destroys support networks, and asserts exclusive possession (in this case by the state over its citizens).\textsuperscript{185} By denying victims their family involvement, the Khmer Rouge further limited the autonomy and dignity of the victims, causing a harm which consisted of both individualistic and social aspects. As noted above, an individual’s experience of harm is likely to be influenced by their social location, their


\textsuperscript{182} Case 002, Trial Proceedings, 30 August – 31 August 2016, Chea Dieb (2-TCCP-286), Statement of Suffering; ‘Segment on Forced Marriage Continues’ \texttt{www.cambodiatribunal.org/2016/08/31/segment-on-forced-marriage-continues/}.

\textsuperscript{183} Pen Sochan, \textit{op cit} n 148.

\textsuperscript{184} Preap Sokhouem, \textit{op cit} n 161 at 84.

\textsuperscript{185} Stark, \textit{op cit} n 5.
relationships and their social understandings. In this case, the harm caused by the lack of parental consent and participation is reflective of the specific societal context in which the Civil Parties lived, where arranged marriages were common practice and family consent and involvement was deemed a crucial part in obtaining a legitimate marriage. Consent is considered a fundamental human right within the context of marriage. However, as Nguyen has highlighted, it is important to recognise the contrasts between arranged marriage and forced marriage. While both forced and arranged marriage diminish the level of consent, the ways in which this is done, and the extent to which consent is eroded, can differ significantly. The involvement of family members in arranged marriages may be interpreted as constituting a form of consent, based on the fiduciary relationship between the family members. This conclusion is arguably supported by the ways in which Civil Parties have reflected upon their experiences of forced marriage, identifying the exclusion of family as a specific harm, and in some cases explicitly drawing a distinction between earlier arranged marriages, and their later forced marriages during the regime. An interlinked social harm which was frequently cited by Civil Parties was the lack of traditional rituals in the forced marriage ceremonies:

_I did not dare to talk about my second marriage, because I was ashamed of it. It was not a proper marriage according to the tradition of law._

_The wedding ceremony was not organized according to Khmer tradition. Instead, it was held according to Angkar’s plan. We were forced. There was nothing played over the_

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186 Ni Aolain, _op cit_ n 28; Nedelsky _op cit_ n 173.
187 See e.g. Universal Declaration of Human Rights, 10 December 1948, 217 A (III) Art. 16 (2); International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, 179, Art. 23 (3); Convention on the Elimination of All Forms of Discrimination Against Women, 3 September 1981, 1249 UNTS 13, 20, Art. 16.
188 Nguyen, _op cit_ n 175 at 19.
189 Jain, _op cit_ n 40 at 1028.
191 Mom Vun, _op cit_ n 133.
loudspeaker...They spoke about producing children for Angkar, having respect for Angkar, [...] so the marriage was not organized according to the traditions.192

It was cruel. And they did not have any gifts for us, but clubs and knives.193

The harm caused by the lack of familial involvement and traditional practices has been emphasised by researchers and civil society actors who worked with the Civil Parties. As noted by Teresa De Langis: ‘By far, what people seemed to miss the most was this presence of ancestral rites. Your parents have to be there, your community has to validate it, the ancestors have to be called so that the union would be prosperous. We are talking about rituals that are thousands of years old, and to not have that was very sad for many people.’194 Similarly, as explained by Kim Thida, a psychologist who worked with TPO on the forced marriage studies: ‘These rituals are crucial to many Cambodian families as they’re considered a way for brides and grooms to express gratitude to their parents. Because weddings during the Khmer Rouge reign didn’t include these rites, they’re often considered illegitimate.’195 This framing of forced marriage as a harmful breach of Cambodian societal structures and practices has also been explored by LeVine, who has defined the Khmer Rouge’s attack on family structures and cultural and religious practices as ‘ritualcide’, and described the practice of forced marriage as having ‘violated the culture’ and damaging the Cambodian people’s ‘psycho-emotional, familial, cultural and spirit-based infrastructures’.196

192 Sou Sotheavy, op cit n 132.
193 2-TCCP-232, op cit n 129.
194 Chen, op cit n 131.
195 Ibid.
196 LeVine, P, Love and Dread in Cambodia: Weddings, Births and Ritual Harm under the Khmer Rouge (Singapore: National University of Singapore Press, 2010).
Civil Parties shared stories of harms which go beyond the physical individualistic harm caused by forced consummation and sexual violence, and which expose the social and individual harms caused by the Khmer Rouge’s coercive and controlling policy of forced marriage. Their testimony is therefore valuable in its contribution to the historical record and to understandings of the harm caused by SGBV. However, the social harms expressed may be obscured or rendered entirely invisible within the official pronouncements of the Court, due to the nature of the criminal charges, and their focus on sexualised individual physical harm. As has been widely observed, law only ever incompletely captures ‘justice’, and the gap between law and justice can become particularly wide in the context of transitional justice. Legal responses to harm will inevitably bring certain interpretations and formulations to bear which may render harm both visible and invisible. In the case of the ECCC, the harms which are rendered visible by its judgments will necessarily be limited by its legal confines, and as has been acknowledged by O’Rourke and others, familial and social harms cannot be easily shoehorned into the existing legal categories of international criminal law. The ‘ritualcide’ highlighted by LeVine is not a recognised crime; the accused may only be found guilty of other inhumane acts through rape and forced marriage. Thus, while victims may render social harms visible within the courtroom, the limitations of accountability to categories which are prescribed by law means that such harms may not be recognised as a legal matter.

However, it may be that the ECCC could nonetheless serve an expressivist function by rendering social harm visible within the contextual narrative contained within its judgment. Expressivism sees trials as narrations, and emphasizes the communicative aspects of criminal

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197 Haslam, op cit n 73.
processes.\textsuperscript{201} Adopting a perspective which focuses on the performative and communicative function of a trial,\textsuperscript{202} it could be argued that a judgment in Case 002/02 (expected in late 2017)\textsuperscript{203} which contained acknowledgment of the range of harms experienced by the Civil Parties would render complex harms visible within the historical narrative, without infringing the rights of the accused. Tribunals do not do ‘justice’ in a vacuum, but respond to and in turn affect the culture around them;\textsuperscript{204} thus, what is communicated by a court can influence how victimisation and victimhood is understood. As Sankey argues, ‘the ECCC will necessarily play a part in producing a narrative of the Khmer Rouge regime, shaping understandings both in Cambodia and internationally, and promoting certain responses to the on-going experiences of survivors.’\textsuperscript{205} By embracing its ability to contribute to the official narrative of the Khmer Rouge regime, the Court could formally incorporate into its judgment the harms which Civil Parties have rendered visible within its courtroom, and acknowledge the broader coercive controlling practices adopted by the Khmer Rouge. Such an approach, while not legally binding, would further enable meaningful discussion about the potential for the law to respond to practices of coercive control by state agents rather than individuals.

5. Conclusion

The above analysis illustrates that the enhancement of victims’ procedural rights within international criminal law can to some extent further the criminologist goal of exposing unseen crimes and victimisations.\textsuperscript{206} In particular, it has argued that victim and civil society engagement can counter ‘elitist blind spots’, and highlight the narrow formulations of

\textsuperscript{201} Elander, \textit{op cit} n 118.
\textsuperscript{203} ECCC Completion Plan, Revision 10, 30 September 2016.
\textsuperscript{204} Godwin Phelps \textit{op cit} n 167 at 174.
\textsuperscript{205} Sankey, n 28 at 24.
\textsuperscript{206} Davis, Francis and Wyatt, \textit{op cit} n 6, at 2-3.
victimhood and victimisation which can form within international criminal processes. Utilising a coercive control framework usually applied to intimate partner violence, this article has highlighted a state enforced criminal policy of forced marriage, through the use of coercive and controlling practices, from violence to isolation, to control the sexual relationships and reproductive choices of victims. Drawing on feminist critiques of international criminal law, and using the ECCC as a case study, it has been demonstrated that Civil Party participation has enhanced the visibility of these practices, and challenged dominant narratives which continue to surround understandings of conflict-related SGBV. It has explored the ways in which victims and civil society have successfully pursued the inclusion of forced marriage within the ECCC’s charges against former senior leaders of the Khmer Rouge. In doing this, they have arguably furthered the feminist project of challenging the continued inconsistent efforts of international criminal courts to investigate and prosecute SGBV. Testimony of Civil Parties has highlighted that gender binaries which identify females as the only victims and males as the only perpetrators of SGBV fail to grasp the reality of SGBV, and paint simplistic pictures of victims’ experiences. Their testimony has also shone light on the multitude of harms which resulted from forced marriage, challenging the ECCC’s formulation of forced marriage as a predominantly sexual crime. The Civil Parties’ focus on the violation of their familial, cultural and religious practices demonstrate the social harms which resulted from the practice of forced marriage, again furthering the feminist goal of pushing back against conceptions of harm which focus on the physical and the individualistic.

Despite observing that Civil Party participation has constituted an important tool in increasing the visibility of previously overlooked harms, limitations are placed on victims’ ability to

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207 Pritchett, op cit n 24; SáCouto & Cleary, op cit n 24; Killean, op cit n 24.
208 de Brouwer, op cit n 149.
209 Conaghan, op cit n 28; Ní Aoláin op cit n 28; Sankey, op cit n 28.
render their harms more visible. In particular, it has been demonstrated that without the support of court practitioners, victims at the ECCC can do little to force the Court to pursue certain charges; this is evidenced by the ongoing failure of the ECCC to prosecute rape outside the context of forced marriage. It has also noted that the ECCC’s focus on forced marriage as being a predominantly sexual violation, continues to obscure the social harms caused by the crime. The feminist critique that international criminal law creates narrow formulations of victimhood and victimisation continues to find traction within this analysis. Just as Stark has utilised coercive control to broaden our understandings and responses to domestic violence, it is argued here that an approach which looks beyond physical harm, and which considers the coercive and controlling contexts within which SGBV can occur, can assist in furthering our understanding of conflict-related SGBV. Certainly, it is hoped that this approach has illustrated the grave and pervasive nature of the harm caused by the Khmer Rouge’s policy of forced marriage.

Despite the legal limitations, the involvement of Civil Parties has provided a valuable challenge to a number of assumptions about the nature of conflict-related SGBV, and it is possible that the narrative in Case 002/02’s judgment will communicate the experiences shared by the Civil Parties. The judgment in Case 002/02, and the remaining testimony of Civil Parties in its trial proceedings, are therefore of significant interest to those with an interest in enhancing our understanding of these forms of victimisation. More broadly, the experience of the ECCC is arguably strong evidence in support of the value of allowing international criminal justice to be a place of contestation, with the inclusion of alternative views and perspectives allowing blind spots to be challenged and a more inclusive range of harms acknowledged.

210 O’Rourke, op cit n 150 at 17.