

## **KR's Female Victims Were Not Forgotten**

**By Andrew Cayley**

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I am writing in response to the letter from Margot Wallström published on May 29 [“Victims of Khmer Rouge Sexual Violence Still Seek Justice”], in the hope of clarifying certain aspects of the ECCC’s record with regard to prosecuting crimes of sexual violence perpetrated during the Khmer Rouge regime.

Ms Wallström writes that “sexual crimes have not been integrated into the court’s strategies, whether forensic, investigative or prosecutorial”. This characterisation of prosecutorial policy at the ECCC could easily mislead readers into believing that the Office of Co-Prosecutors (OCP) has ignored gender-based crimes. That has never been the position of this office.

During preliminary investigations, in 2006 and 2007, OCP investigators determined that rape and other crimes of sexual violence were perpetrated on a widespread basis during the DK regime. That is why my predecessor, Robert Petit, and my national counterpart, Chea Leang, included charges of rape and other forms of sexual violence as crimes against humanity in the Introductory Submission that they forwarded to the Office of Co-Investigating Judges in July 2007.

At trial in Case 001, Kaing Geuk Eav, alias Duch, was prosecuted for rape as a crime against humanity. The Trial Chamber found an act of rape had taken place at S21. The rape had been committed during an interrogation in which information was being extracted from the female victim.

Because of the special circumstances of this rape, the Trial Chamber found Duch individually criminally responsible for the crime against of humanity of torture. On 3 February 2012 the Supreme Court Chamber upheld Duch’s conviction for torture in respect of this act of rape.

In the Co-Prosecutor’s Final Submission to the Co-Investigating Judges in respect of Case 002 we stated: “Throughout the DK regime, thousands of civilians were the victims of rape and sexual violence sanctioned, perpetrated, approved or condoned by the authorities.” This submission covered not just forced marriage but also rapes committed at Security Centres and against Cham women. We requested that for all these acts the accused in Case 002 should be charged with rape as a crime against humanity.

The Co-Investigating Judges did not accept all of our submissions and in their Closing Order, which charged the accused, found that official CPK policy was to prevent rape and punish perpetrators of this crime. That was not the factual position of the OCP, but our submission to charge those rapes which took place in DK Security Centres was rejected.

The Co-Investigating Judges did find that rape had taken place in the context of forced marriage and charged that as the crime against humanity of rape. The closing order was subsequently appealed to the Pre-Trial Chamber. In this appeal the accused submitted that rape did not exist as a crime against humanity in 1975.

The Co-Prosecutors argued against this but the Pre-Trial Chamber accepted the defence argument that rape was not a stand-alone crime against humanity in 1975. The Pre-Trial Chamber did find that the crime against humanity of “other inhumane acts” existed in 1975 and that the rape alleged in the Closing Order could constitute an inhumane act.

Thus, in Case 002, the rape committed in forced marriages is now charged as the crime against humanity of “other inhumane acts” and the determination of alleged episodes of rape will eventually take place on this legal basis.

While I take issue with the characterisation of OCP policy towards crimes of sexual violence, the wider message of Margot Wallström is an important one. Many women in this country go on suffering in silence as a result of serious sexual assault and violence that took place over thirty years ago.

Shame and stigma surrounds them. They deserve compassion and they deserve justice. But the ECCC cannot meet all the needs of these victims. As Margot Wallström advocates, there must be serious consideration of alternative mechanisms to acknowledge crimes of sexual violence.

The survivors must be supported. Individual and community trauma must be addressed and treated. And current acts of violence against women condemned and properly prosecuted before the domestic courts of this country.