

**BEFORE THE CO-INVESTIGATING JUDGES
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 004/07-09-2009-ECCC/OCIJ **Party Filing:** International Co-Prosecutor**Filed to:** Co-Investigating Judges **Original Language:** English**Date of Document:** 20 November 2015**CLASSIFICATION****Classification of the document
suggested by the filing party:** CONFIDENTIAL with ONE CONFIDENTIAL
ANNEX**Classification by OCIJ:** សម្ងាត់/Confidential**Classification Status:****Review of Interim Classification:****Records Officer Name:****Signature:**

**RESPONSE TO FORWARDING ORDER DATED 5 NOVEMBER 2015 AND
SUPPLEMENTARY SUBMISSION REGARDING THE SCOPE OF
INVESTIGATION INTO FORCED MARRIAGE IN SECTORS 1 AND 4**

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I. INTRODUCTION

1. Pursuant to Internal Rules 55(2) and (3),¹ the International Co-Prosecutor (“ICP”) hereby responds to the International Co-Investigating Judge’s (“ICIJ”) Forwarding Order dated 26 October 2015.²
2. In the Forwarding Order, the ICIJ informs the Co-Prosecutors that the ongoing investigation in Case 004 suggests that:
 - a. Reang Kesei Pagoda, located in Reang Kesei Commune, Sangkae District, and the area of Sangkae District encompassed within the current Kampong Preang Commune where there is evidence that forced marriages occurred during 1977 and 1978, were administered by Sector 4 but are not located within the “northwest half of current Sangkae District”³ as is suggested in paragraphs 4 to 6 of the Co-Prosecutors’ Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence dated 24 April 2014 (“Supplementary Submission”);⁴ and
 - b. forced marriages may have occurred in other Northwest Zone districts in addition to Sangkae District, namely MOUNG RUESSEI District, KOAS KRALA District and SAMLAUT District.⁵
3. The ICIJ therefore requests clarification on:
 - a. whether Reang Kesei Pagoda, the area of Sangkae District encompassed within the current Kampong Preang Commune, MOUNG RUESSEI District, KOAS KRALA District and SAMLAUT District fall within the scope of the aforementioned judicial investigation into forced marriage;⁶
 - b. the exact locations during the DK regime that are intended to be encompassed by the “northwest half of current Sangkae District”;⁷ and
 - c. which crimes the phrase “other crimes” in paragraph 6 of the Supplementary Submission is intended to encompass.⁸

¹ Extraordinary Chambers in the Courts of Cambodia (“ECCC”), ‘Internal Rules (Rev. 9)’, as revised on 16 January 2015 (“Internal Rules”).

² D272 Forwarding Order, 5 November 2015.

³ D272 Forwarding Order, 5 November 2015, para. A.2.

⁴ D191 Supplementary Submission, 24 April 2014.

⁵ D272 Forwarding Order, 5 November 2015, para. B.1.

⁶ D272 Forwarding Order, 5 November 2015, paras. A.3a and B.2.

⁷ D272 Forwarding Order, 5 November 2015, para. A.3b referring to para. 6 of the Supplementary Submission.

II. RESPONSE TO FORWARDING ORDER

4. Having considered the evidence cited in the Forwarding Order, the ICP informs the Co-Investigating Judges (“CIJs”) that pursuant to paragraphs 1 and 4 to 6 of the Supplementary Submission, the CIJs are seized and authorized to conduct a full investigation into forced marriages that may have been committed under the authority of YIM Tith⁹ in 1978 in Sangkae District, which encompasses:
 - a. the area of Sangkae District when it was part of Sector 1 of the Northwest Zone during the DK regime and “included the eastern part of what is now Banan District”¹⁰; and
 - b. locations that are within the current boundaries of Sangkae District, regardless of whether such locations were part of Sector 1 or Sector 4 during the DK regime.
5. The ICP clarifies that paragraph 6 of the Supplementary Submission should have referred to the northeast half rather than the northwest half when seeking to describe the location of Sector 4 during the DK regime within current Sangkae District. At the time of filing the Supplementary Submission, the precise boundary between Sectors 1 and 4 had not been established, though it was believed that Sector 4 included the areas northeast of either the railway line¹¹ or National Road 5¹² (respectively highlighted as green and orange in the two maps in **Annex A**).
6. In general, the Supplementary Submission was intended to request the CIJs to investigate forced marriages in these locations, whether they were part of Sectors 1 or 4 during the DK period. Therefore, the scope of the judicial investigation includes the area of Sangkae District encompassed within the current Kampong Preang Commune and, as evidenced in paragraph 4 of the Supplementary Submission:
 - a. Reang Kesei Pagoda¹³ and Reang Kesei Village¹⁴ in Reang Kesei Commune;

⁸ **D272** Forwarding Order, 5 November 2015, para. A.3c.

⁹ As detailed in **D191** Supplementary Submission, 24 April 2014, paras. 5-6.

¹⁰ **D191** Supplementary Submission, 24 April 2014, para. 5.

¹¹ **D6.1.173** UM Saroeun Written Record of Interview Witness, 19 June 2008, ENG 000274618 as cited at **D191** Supplementary Submission, 24 April 2014, fn 22.

¹² **D118/102**, TOAT Thoeun Written Record of Witness Interview, 10 September 2013, A27 as cited at **D191** Supplementary Submission, 24 April 2014, fn 22.

¹³ **D191.1.6** CHECH Sopha Report on Civil Party Application, 12 May 2010 and **D191.1.7** CHECH Sopha Summary of Supplementary Information, 4 August 2010; **D191.1.81** REACH Sary Summary of Supplementary Information, 4 August 2010.

¹⁴ **D191.1.87** SORM Vanna Summary of Supplementary Information, 4 August 2010; **D191.1.49** LONG Chhoeum Report on Civil Party Application, 30 April 2010 and **D191.1.50** LONG Chhoeum Summary of

- b. pagoda near Kang Hât dam in current Banan District;¹⁵
 - c. Kach Rotéh Village in Kampong Prieng Commune;¹⁶ and
 - d. Kampong Preah Commune including Thmei Village.¹⁷
7. The ICP further clarifies that the reference to “other crimes” in paragraph 6 of the Supplementary Submission was not intended to expand the investigation beyond the scope previously defined by the Co-Prosecutors’ Third Introductory Submission, but to recognize that the investigation included two security centers – Wat Samdech Security Center and Wat Po Laingka – that were possibly in the northeastern part of Sangkae District and which may have been part of Sector 4 during the DK regime, and that such areas were under the authority of YIM Tith.¹⁸
8. Finally, the ICP does not consider it necessary to expand the investigation to include forced marriages in Moung Ruessei and Koas Krala Districts as detailed in the Forwarding Order.¹⁹ The ICP seeks a compact and efficient investigation and believes that “a fair, meaningful and expeditious judicial process”²⁰ does not necessitate an investigation into every alleged incident of forced marriage committed in areas under the authority of YIM Tith to prove the criminal offences set out at below paragraphs 13 and 14.
9. However, the investigation should be expanded to include forced marriages in Samlaut District for the reasons set out in the below paragraphs. Therefore, pursuant to Internal Rules 53 and 55(3), the ICP hereby makes the following Supplementary Submission:

III. SUPPLEMENTARY SUBMISSION

Supplementary Information, 4 August 2010. (Although these documents concerning LONG Chhoeun suggest that he was married in Reang Kesei Commune, he states he was married in Kampong Preah Commune at A5 of **D219/207** LONG Chhoeun Written Record of Interview, 25 February 2015.)

¹⁵ **D65.1.5b** BUT Noeun Summary of Supplementary Information, 4 August 2010 and subsequently clarified in **D219/647** Written Record of Investigation Action, 18 January 2016.

¹⁶ **D191.1.18** IM Bun Chhoeun Report on Civil Party Application, 12 May 2010 and **D191.1.20** IM Bun Chhoeun Summary of Supplementary Information, 04 August 2010; **D191.1.29** KHOEUN Choem Report on Civil Party Application, 30 April 2010 and **D191.1.31** KHOEUN Choem Summary of Supplementary Information, 4 August 2010; **D191.1.90** SREY Soeum Report on Civil Party Application, 30 April 2010 and **D191.1.92** SREY Soeum Supplementary Information, 4 August 2010.

¹⁷ **D65.1.29b** SOEUNG Chanton Report on Civil Party Application, 30 April 2010 and **D191.1.86** SOEUNG Chanton Summary of Supplementary Information, 4 August 2010.

¹⁸ See **D1** Co-Prosecutors’ Third Introductory Submission, 20 November 2008, paragraphs 68-69.

¹⁹ **D272** Forwarding Order, 5 November 2015, para. B.1.

²⁰ Internal Rule 66*bis*.

10. Ongoing investigations by the Office of the Co-Investigating Judges establish that approximately 40 couples were forced to marry on 20 August 1978 at the former Samlaut District Office in Samlaut District, Sector 1 of the Northwest Zone during the DK regime.²¹ These marriages were presided over by Ta Mok and YIM Tith.²²
11. In 1978, Samlaut District was under the authority of Sector 1 Secretary YIM Tith,²³ during a period when he was also on the Northwest Zone Committee.²⁴ YIM Tith provided written instructions and reports,²⁵ chaired and spoke at sector/district meetings,²⁶ and advised district representatives in Sector 1 at meetings or during his visits to sites on various matters including “smash[ing] any enemy that opposed Angkar”²⁷ and security concerns.²⁸ He therefore had the authority to implement policies such as the forced marriage of civilians in Samlaut District.
12. As a result, the ICP requests that a judicial investigation be opened into forced marriage in Samlaut District during 1978 when YIM Tith had authority over Sector 1, including the incident on 20 August 1978.
13. The ICP has reason to believe that the facts described above constitute crimes within the jurisdiction of the Extraordinary Chambers in the Courts of Cambodia including but not limited to:
 - a. Torture, in violation of the **1956 PENAL CODE** (Article 500), punishable under Articles 3 (new), 29 (new) and 39 (new) of the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea (“ECCC Law”);²⁹ and

²¹ **D219/62**, Written Record of Interview of Witness PREAP Kap, 3 November 2014, A31, A44-47, A50-51 and A59; **D118/285** Written Record of Interview of NOP Ngim, 12 August 2014, A73 and **D219/298** Written Record of Interview of NOP Ngim, 7 May 2015, A6.

²² **D219/62**, Written Record of Interview of Witness PREAP Kap, 3 November 2014, A31, A44-74, A51 and A59; **D118/285** Written Record of Interview of NOP Ngim, 12 August 2014, A73 and **D219/298** Written Record of Interview of NOP Ngim, 7 May 2015, A6.

²³ **D219/62**, Written Record of Interview of Witness PREAP Kap, 3 November 2014, A44; **D118/285** Written Record of Interview of NOP Ngim, 12 August 2014, A7.

²⁴ See **D1** Co-Prosecutors’ Third Introductory Submission, 20 November 2008, paras. 3, 58, 67, 94, and 95; **D191** Supplementary Submission, 24 April 2014, para. 8.

²⁵ **D118/285** Written Record of Interview of NOP Ngim, 12 August 2014, A44, A51, and A82.

²⁶ **D118/285** Written Record of Interview of NOP Ngim, 12 August 2014, A55 and **D219/298** Written Record of Interview of NOP Ngim, 7 May 2015, A14.


²⁷ **D118/285** Written Record of Interview of NOP Ngim, 12 August 2014, A55-56 and A92, and **D219/298** Written Record of Interview of NOP Ngim, 7 May 2015, A16.

²⁸ **D219/298** Written Record of Interview of NOP Ngim, 7 May 2015, A22.

²⁹ 27 October 2004 (NS/RKM/1004/006).

- b. Enslavement, Imprisonment, Torture, Rape, Persecutions on political grounds, and other Inhumane Acts, which constitute **CRIMES AGAINST HUMANITY** punishable under Articles 5, 29 (new) and 39 (new) of the ECCC Law.
14. The ICP also has reason to believe that **YIM Tith alias Ta Tith, AO An alias Ta An, IM Chaem** and other senior leaders of the Democratic Kampuchea regime, including **NUON Chea** and **KHIEU Samphan**, committed, planned, instigated, ordered or aided and abetted the specific criminal acts described in this Supplementary Submission and the Third Introductory Submission which constitute offences under the ECCC Law. These acts were part of a common criminal plan or joint criminal enterprise, as described in paragraph 21 of the Co-Prosecutors' Supplementary Submission dated 18 July 2011³⁰ and paragraphs 16 to 17 of the Co-Prosecutor's Third Introductory Submission dated 20 November 2008.³¹
15. This Supplementary Submission is signed by only the International Co-Prosecutor and is therefore submitted subject to Internal Rule 71(3). A record of this disagreement has been placed in the register kept by the Greffier of the Co-Prosecutors, pursuant to Internal Rule 71(1).

Respectfully submitted,

Date	Name	Place	Signature
20 November 2015	Nicholas KOUMJIAN International Co-Prosecutor	Phnom Penh	

³⁰ **D65** Co-Prosecutors' Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom, 18 July 2011.

³¹ **D1** Co-Prosecutors' Third Introductory Submission, 20 November 2008.