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**BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CO-LAWYERS FOR THE CIVIL PARTIES' FOURTH INVESTIGATIVE REQUEST
CONCERNING FORCED MARRIAGES AND SEXUALLY RELATED CRIMES**

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FROM: D 268

Case File No. 002/19-09-2007-ECCC/OCIJ

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Unrepresented Civil Parties

I. INTRODUCTION

1. On 5 November 2009, the Office of the Co-Investigation Judges ("*OCIJ*") stated publicly for the first time the scope of the judicial investigations of case 002/19-09-2007-ECCC-OCIJ¹. In this statement the OCIJ broadened the scope of the investigation to include "*Forced Marriage throughout the Democratic Kampuchea*" as acts directed against the population and/or groups of persons, thus abdicating any limitation on the prosecution of forced marriage that occurred under the regime of Democratic Kampuchea.
2. This affirmation of the subject matter within the jurisdiction of the ECCC of these crimes, concurs with and supports the requests in the Second Request for Investigative Action of the Civil Parties concerning Forced Marriages and Forced Sexual Relations ("*Second Request*")². With the absence of any restriction on the investigation of the matter, the OCIJ affirms the gravity and scale on which this crime has been committed in a planned and organized manner throughout the country.

II. INVESTIGATIVE ACTION REQUEST

3. Co-Lawyers for Civil Parties note that Forced Marriages and other sexually related crimes have been mentioned *propriu moto* by a number of witnesses of whose testimony is already on the case file. But they were never questioned about the circumstances and details of these crimes. In any case, these witnesses testimony is only a fraction of the whole picture.
4. The purpose of this investigative request is to show that Forced Marriages and Forced Mass Marriages occurred throughout the country as a part of an intentional plan of the Charged Persons in which they attempted to reshape and restructure the Cambodian society as a means of a population policy. The questioning of witnesses should concentrate on the organization of these marriages and the orders given within the Khmer Rouge hierarchy concerning marriages, , the

¹ Public statement OCIJ, 5 November 2009, http://www.eccc.gov.kh/english/news.view.aspx?doc_id=322.

² *Case against Nuon Chea et. al.*, 002/19-09-2007-ECCC-OCIJ, Second Request for Investigative Actions concerning forced marriages and forced sexual relations, Doc. No. D188.

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punishments for refusing to follow such orders and the direct order and insistence of the Khmer Rouge of having conjugal sex after the wedding.

5. In the cases concerning sexually related crimes the investigation should explore and elucidate what was considered 'immoral behavior' and if this also encompassed sexually related crimes. Furthermore, it is requested the OCIJ examine the details and the level of occurrence of sexually related crimes, the background information and if certain practices were general in the Khmer Rouge regime (e.g. the 'inspections of virginity' mentioned by the witness HEM Sambth, see footnote 45).
6. Given the well known difficulties that victims of sexually related crimes, including forced marriages, have in telling details about shameful events in the past, events that they often have blocked out of their lives, events that could have an impact on their living conditions today, mental and physical health of the victims needs to be dealt with utmost sensitivity.

Therefore, Co-Lawyers of Civil Parties submit that the questioning of those witnesses and victims shall be conducted with gender trained and experienced investigators and interpreters, preferably women, as most of the victims are women.³

7. In addition, Co-Lawyers for Civil Parties submit that experts could assist OCIJ and the Trial Chamber in determining the specificity of sexual crimes as international crimes in general, and their elements as international crimes against humanity and war crimes and in particular report on the circumstances of sexual related crimes under the DK regime.

Ms. Nakagawa Kasumi, Dr. Peg LeVine and Dr. Kelly D. Askin are experienced experts on these subject matters.

In 2006, Ms. Nakagawa Kasumi conducted the first systematic research on sexual crimes during the DK period and made qualitative interviews with nearly 100 persons who are direct victims or eye witnesses of sexual crimes.⁴ She could

³ *Case against KAIING Guek Eav*, 001/18-07-2007-ECCC/TC; Civil Parties' Co-Lawyers' Request For Female Interpreter And Female Investigator For Investigation On Sexual Crimes, Doc. No. E11/1.

⁴ Nakagawa, Kasumi, (2008) *Gender-Based Violence during the Khmer Rouge Regime: Stories of survivors from the Democratic Kampuchea* by Nakagawa Kasumi, Phnom Penh.

refute the common view that sexual crimes were not committed and if so, the victims were all killed. Her study was complemented in 2008 by students' who conducted interviews with victims of sexual violence. She is lecturer for Gender Studies at the Pannasastra University of Cambodia and advisor to the Ministry of Women's Affairs in Cambodia.

Dr. Peg LeVine is leader of the Mental Health team at the University Department of Rural Health at the University of Tasmania, Australia. She is a registered clinical psychologist in Japan and Southeast Asia with strong clinical training in anxiety-based disorders. She brings a strong village model to rural health care as a means to build infrastructure within communities and assist the development of "therapeutic" environments in mental health services. She is a practitioner and scholar of Morita therapy and did her clinical supervision and training in Japan under the late Akihisa Kondo, MD.

Over a period of seven years she traced the pattern of marriages and births during the DK period and repeatedly conducted qualitative interviews with 192 women and men.⁵ The results give an overview of the widespread and systematic manner in which group weddings were obviously organized and ordered from the highest level.

Dr. Kelly D. Askin⁶ is a legal advisor to the judges of the International Criminal Tribunal for the former Yugoslavia and for Rwanda, and an expert consultant, legal advisor, an international law trainer to prosecutors, judges and registry at those tribunals and others in East Timor, Sierra Leone, and Cambodia, as well as at the International Criminal Court. She has published extensively on international criminal law, international humanitarian law, and gender justice.

She will contribute with her extensive expert knowledge in assisting the assessment of sexual violence as international crimes and contribute to help intensify their legal classification.

⁵ LeVine, Peg. (2007) *A Contextual Study into the Marriages Under the Khmer Rouge: The Ritual Revolution*. (PhD Thesis, Asian Studies/Anthropology) Monash University, Australia and (2009), (in press) *Love and Dread in Cambodia. Weddings and Births under the Khmer Rouge*. National University of Singapore Press (NUS Press, Singapore).

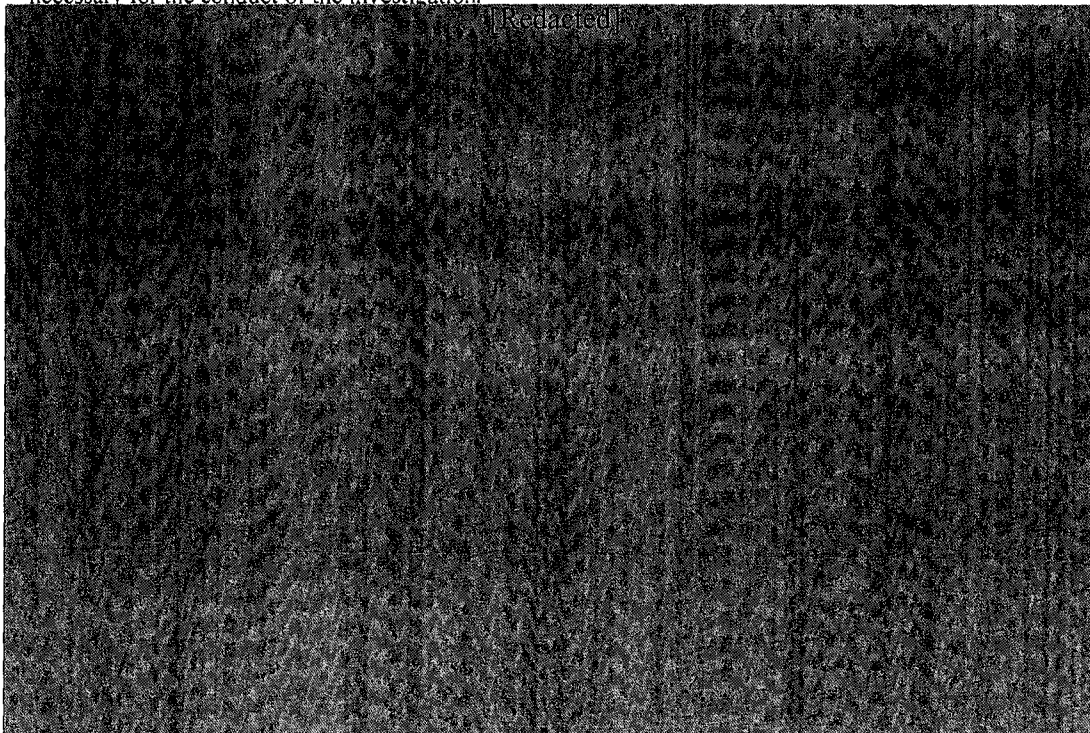
⁶ Dr. Askin, D. Kelly, see for example (1997), *War Crimes Against Women*. Kluwer Law International.

8. Referring to the Second Request of Co-Lawyers for Civil Parties on the matter of judicial qualification of Forced Marriage and the admissibility of the investigative request, and pursuant to ECCC Internal Rule 55 (10)⁷ it is requested that OCIJ identifies and investigates witnesses and obtains advice of experts as follows:

a) crime of forced marriage:

- i. forced marriages that occurred in Svay Rieng: (i) [Redacted]
[Redacted]
- ii. forced marriages in Kampong Cham: (i) [Redacted]
[Redacted]
- iii. forced marriages in Monduliri: (i) [Redacted]
[Redacted]
- iv. forced marriages in Kandal: (i) [Redacted]
[Redacted]

⁷ Stating that, “[a]t any time during an investigation, the Co-Prosecutors, a Charged Person or a Civil Party may request the Co-Investigation Judges [...] undertake such investigative action as they consider necessary for the conduct of the investigation.”



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- v. forced marriages in Battambang: (i) [Redacted]
- vi. forced marriages in Kompong Thom: [Redacted]
- vii. forced marriages in Stung Treng: [Redacted]

[Redacted]

¹⁹ *Id.*, said that KR forced a woman to marry an amputee and then spied on them in their house at night to see that they were "getting on well with each other."

[Redacted]

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viii. forced marriages from other provinces : [Redacted]

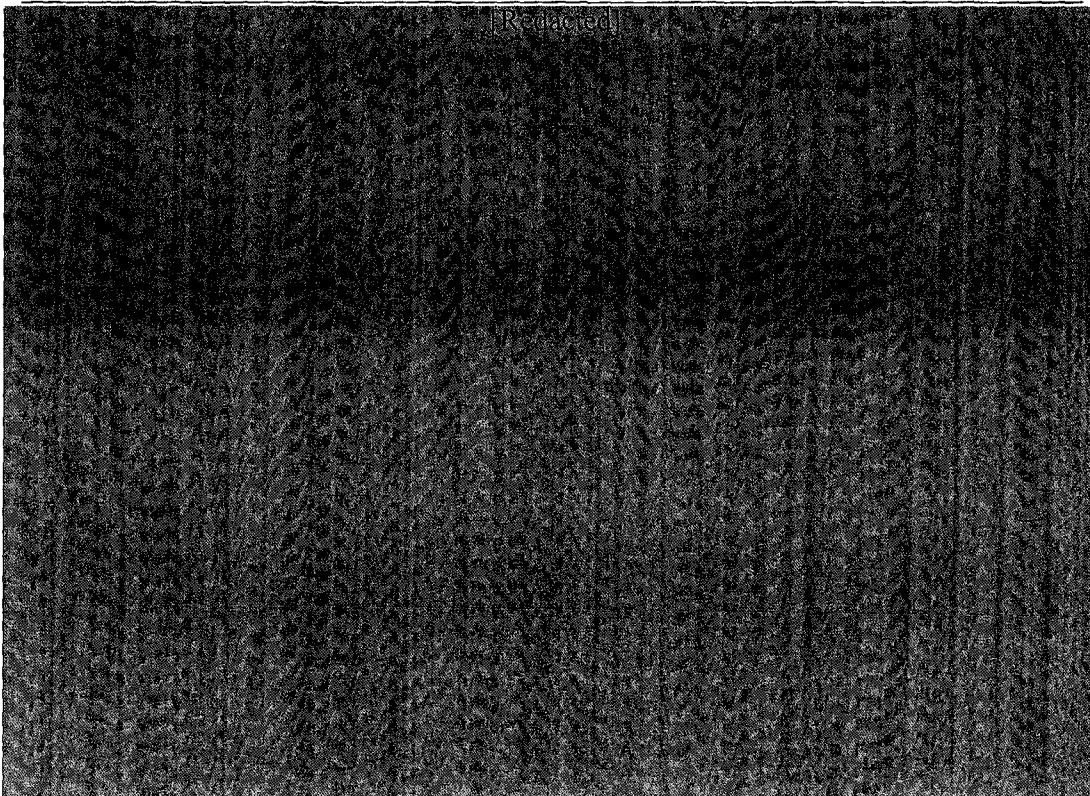
b) sexually related crimes: [Redacted]

[Redacted]



c) in order to obtaining experts' advice on the crime of Forced Marriage and other sexually related crimes both in general as international crimes against humanity and war crimes; and in particular in Cambodia during the DK period, we request to obtain expert advice on these subject matters provided by (i) Nakagawa Kasumi; (ii) Dr. Peg LeVine and (iii) Dr. Kelly D. Askin.

d) Furthermore, we request the interviews conducted by gender trained female investigators and interpreted by gender trained female interpreters.



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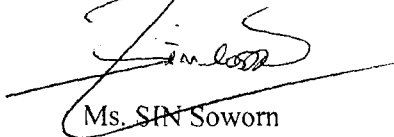
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Respectfully submitted by Co-Lawyers for Civil Parties,

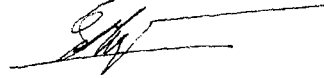


Mr. HONG Kimsuon

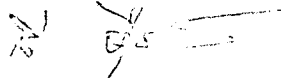
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Mr. NY Chandy



Ms. Silke STUDZINSKY

Ms. Lyma NGUYEN

Mr. David BLACKMAN

Mr. Mahdev MOHAN



Ms. CHET Vanly

Mr. PICH Ang

Signed in Phnom Penh, on 4 December 2009.