

BEFORE THE CO-INVESTIGATING JUDGES
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIAFILING DETAILS

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INTERNATIONAL CO-PROSECUTOR'S RESPONSE TO
CIVIL PARTY LAWYERS' REQUEST FOR INVESTIGATIVE ACTION
CONCERNING THE CRIME OF FORCED PREGNANCYFiled by:International
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I. INTRODUCTION

1. The International Co-Prosecutor (“ICP”) hereby responds to the Civil Party Lawyers’ request for investigative action regarding the crime of forced pregnancy (“Investigative Request”).¹ In their Investigative Request, the Civil Party Lawyers urge the Office of the Co-Investigating Judges (“OCIJ”) to find that forced pregnancy falls within the definition of ‘other inhumane acts’ of crimes against humanity, punishable under Article 5 of the Law on the Establishment of the ECCC (“ECCC Statute”).² Additionally, the Civil Party Lawyers argue that the elements of forced pregnancy as an ‘other inhumane act’ are identical to the elements of the crime of ‘forced pregnancy’ defined in Article 7(2)(f) of the Rome Statute of the International Criminal Court (“Rome Statute”).³
2. The ICP supports the Civil Party Lawyers’ request for further investigation of the facts as to whether women and girls were forced or coerced to become pregnant during the Democratic Kampuchea (“DK”) regime, as to the relationship between these forced impregnations and the DK policy regarding the regulation of marriage, and as to the effect forced impregnation had on the suffering of women and girls.
3. However, as discussed below in more detail, the ICP submits that the Rome Statute’s definition of the crime of forced pregnancy does not reflect customary international law in 1975. Rather, the ICP submits that certainly by 1975 it was recognised that forcing or coercing women and girls to become pregnant against their will within the context of a widespread or systematic attack directed against a civilian population satisfies the elements of ‘other inhumane acts’ and would constitute a crime against humanity. Unlike the Rome Statute’s definition of forced pregnancy, this crime does not require proof that the victim was unlawfully confined nor that the perpetrator had the specific intent to affect the ethnic composition of a population or to carry out other grave violations of international law. Finally, the ICP submits that the legal characterisation of the facts in Case 004, including the legal characterisation of policies to force women

¹ **D301** Civil Party Lawyers’ Request for Investigative Action Against Ao An and Yim Tith Concerning the Crime of Forced Pregnancy, 4 March 2016 (“Investigative Request”). The ICP does not oppose the Civil Party Lawyers’ request for an extended page limit.

² Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, as promulgated on 27 October 2004 (“ECCC Statute”).

³ Rome Statute of the International Criminal Court, adopted on 17 July 1998, entered into force on 1 July 2002 (“Rome Statute”).

and girls to become pregnant, is best considered at the conclusion of the investigations against Ao An and Yim Tith once those facts have been fully investigated.

II. APPLICABLE LAW

4. ECCC jurisprudence holds that ‘other inhumane acts’ as crimes against humanity have the following legal elements in addition to the *chapeau* requirements in Article 5 of the ECCC Statute:⁴

- (1) there is an act or omission;
- (2) that causes serious bodily or mental harm or constitutes a serious attack on human dignity;
- (3) that is performed deliberately with the intent to inflict serious bodily or mental harm or commit a serious attack upon the human dignity of the victim at the time of the act or omission; and
- (4) the act or omission is of a nature and gravity similar to other enumerated crimes against humanity.

The severity of the act or omission is to be assessed on a case-by-case basis with due regard for the individual circumstances of the case.⁵

5. ‘Other inhumane acts’ is a residual category intended to capture all conduct of such gravity rather than to leave voids where imaginative perpetrators would enjoy impunity.⁶

⁴ See Case 002/01-E313 Judgement, 7 August 2014, para. 437.

⁵ See Case 002/01-E313 Judgement, 7 August 2014, para. 438.

⁶ *Prosecutor v. Blaškić*, IT-95-14-T, Judgement, 3 March 2000, para. 237, which discusses ‘other inhumane acts’ and quotes J. Pictet, *Commentary on the 1st Geneva Convention of 12 August 1949*, 1954, p. 54: “[...] it is always dangerous to try to go into too much detail – especially in this domain [defining ‘humane treatment’ in Article 3]. However much care were taken in establishing a list of all the various forms of infliction, one would never be able to catch up with the imagination of future torturers who wished to satisfy their bestial instinct; and the more specific and complete a list tries to be, the more restrictive it becomes.” See also Case 001-E188 Judgement, 26 July 2010, para. 367: “Other inhumane acts comprise a residual offence which is intended to criminalise conduct which meets the criteria of a crime against humanity but does not fit within one of the other specified underlying crimes.”; Case 002-D427/3/15 Decision on Appeals by Nuon Chea and Ieng Thirith Against the Closing Order, 15 February 2011, para. 161: “the category of ‘other inhumane acts’ as crimes against humanity was specifically designed as a residual crime to avoid lacunae in the law, and that the term is rendered meaningless without applying an *ejusdem generis* canon of construction.”; *Prosecutor v. Brima et al.*, SCSL-04-16-A, Judgement, 22 February 2008, paras. 183 and 185: “the crime of ‘Other Inhumane Acts’ is intended to be a residual provision so as to punish criminal acts not specifically recognised as crimes against humanity, but which, in context, are of comparable gravity to the listed crimes against humanity. It is therefore inclusive in nature, intended to avoid unduly restricting the Statute’s application to crimes against humanity ... A tribunal must take care not to adopt too restrictive an interpretation of the prohibition against ‘Other Inhumane Acts’ which, as stated above, was intended to be a residual provision.”; *Prosecutor v. Stakić*, IT-97-24-A, Judgement, 22 March 2006, para. 315 quoting *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Judgement, 14 January 2000, para. 563: “the phrase ‘other inhumane acts’ was

III. ARGUMENT

A. The Definition of ‘Forced Pregnancy’ in the Rome Statute Is Inapplicable to the ECCC

6. Safeguarding the principle of legality, the ECCC’s jurisprudence confirms that its “jurisdiction ... over crimes against humanity is limited by the definition of the crimes as it stood under international law at the time of the [DK regime]” and not as set out in the Rome Statute.⁷ The Rome Statute was negotiated in 1998 and provides little or no evidence of the state of customary international law during the temporal jurisdiction of the ECCC (1975-1979). It was never meant to codify customary international law⁸ and the International Criminal Court’s own jurisprudence confirms that the issue of whether the Rome Statute conforms to customary international law is irrelevant for the purposes of its interpretation.⁹
7. Article 7(2)(f) of the Rome Statute defines ‘forced pregnancy’ as:
- the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy[.]
8. This definition was the result of negotiations between delegations where the objective of securing consensus “allowed the hostile states to ... refus[e] to accept wording favoured by the majority, thereby forcing many provisions to be watered down.”¹⁰ The

[d]eliberately designed as a residual category, as it was felt undesirable for this category to be exhaustively enumerated. An exhaustive categorization would merely create opportunities for evasion of the letter of the prohibition.”

⁷ Case 002/01-**E313** Judgement, 7 August 2014, para. 19 citing Case 001-**F28** Judgement, 3 February 2012, paras. 99-100.

⁸ The Rome Statute by its own terms does not purport to represent customary law, but only law defined prospectively for the purposes of the Statute itself: *Prosecutor v. Orić*, IT-03-68-A, Judgement, Separate and Partially Dissenting Opinion of Judge Schomburg, 3 July 2008, para. 20. Article 7 of the Rome Statute states clearly “For the purpose of *this* Statute, ‘crimes against humanity’ means ...” (emphasis added), and Article 10 states that “[n]othing in this Part [Jurisdiction, admissibility and applicable law] shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.”

⁹ See *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Katanga and Chui*, ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 September 2008, para. 508: “the first source of applicable law is the [Rome] Statute. Principles and rules of international law constitute a secondary source applicable only when the statutory material fails to prescribe a legal solution.”

¹⁰ B. Bedont and K. Martinez, *Ending Impunity for Gender Crimes under the International Criminal Court*, *The Brown Journal of World Affairs*, Vol. VI (1999), Issue 1, 65-85, at p. 67. **Regarding the Rome Statute provision on forced pregnancy**, see also: S. Jessie, *Forced Pregnancy: Codification in the Rome Statute and its Prospect as Implicit Genocide*, *New Zealand Journal of Public International Law*, Vol. 4 (2006), 311-337, at p. 328; K. Boon, *Rape and Forced Pregnancy under the ICC Statute: Human Dignity, Autonomy, and Consent*, *Columbia Human Rights Law Review*, Vol. 32 (2001), 625-674, at pp. 630 and 637-638; A. Drake, *Aimed at Protecting Ethnic Groups or Women? A look at Forced Pregnancy*

definition was heavily influenced by the particular historical moment at which it was developed. Delegations supporting the definition of forced pregnancy that was ultimately adopted wanted a definition that would reflect the entire extent of the criminality of the rape camps established during the war in Bosnia and Herzegovina, where it was alleged women and girls were raped and held captive until it was too late to terminate safely their pregnancies.¹¹ When one delegation proposed a definition of “forcible impregnation” that referred only to forcibly *making* (and not *keeping*) a woman or girl pregnant against her will, it was criticised on the basis that it did not describe fully the culpability of the perpetrators in the Bosnia and Herzegovina situation.¹² Further, the definition was also influenced by concerns to appease those who feared criminalising marital rape¹³ and the denial of abortion services.¹⁴

9. In light of this negotiating history and the fact that the Rome Statute is not determinative of customary international law during the DK regime, there is no reason to mechanically import the elements of the Rome Statute’s definition of forced pregnancy. Rather, the ICP submits that the correct approach is to examine the prohibited conduct to determine:
- (1) whether it satisfies the elements of the crime against humanity of ‘other inhumane acts’ under customary international law as of 1975; and
 - (2) whether the culpability of the perpetrator and the harm to the victim are sufficiently covered by the definitions of other crimes.

Under the Rome Statute, William & Mary Journal of Women and the Law, Vol. 18 (2012), Issue 3, 594-623, at pp. 607-608; J. Joseph, *Gender and International Law: How the International Criminal Court Can Bring Justice to Victims of Sexual Violence*, Texas Journal of Women and the Law, Vol. 18 (2008), 61-101, at pp. 82-83. **Regarding other provisions of the Rome Statute**, see e.g.,: *Prosecutor v. Orić*, IT-03-68-A, Judgement, Separate and Partially Dissenting Opinion of Judge Schomburg, 3 July 2008, para. 20: “the respective article of the ICC Statute was the subject of difficult negotiations, which resulted in ‘delicate compromises’.”

¹¹ C. Steains, *Gender Issues*, in R. Lee (ed.), *The International Criminal Court: the Making of the Rome Statute, Issues, Negotiators, and Results*, 6 September 1999, 357–390, at p. 366.

¹² C. Steains, *Gender Issues*, in R. Lee (ed.), *The International Criminal Court: the Making of the Rome Statute, Issues, Negotiators, and Results*, 6 September 1999, 357–390, at p. 366.

¹³ S. Jessie, *Forced Pregnancy: Codification in the Rome Statute and its Prospect as Implicit Genocide*, New Zealand Journal of Public International Law, Vol. 4 (2006), 311-337, at pp. 325 and 329.

¹⁴ S. Jessie, *Forced Pregnancy: Codification in the Rome Statute and its Prospect as Implicit Genocide*, New Zealand Journal of Public International Law, Vol. 4 (2006), 311-337, at pp. 322-325 and 328; B. Bedont and K. Martinez, *Ending Impunity for Gender Crimes under the International Criminal Court*, The Brown Journal of World Affairs, Vol. VI (1999), Issue 1, 65-85, at pp. 68 and 74; A. Drake, *Aimed at Protecting Ethnic Groups or Women? A look at Forced Pregnancy Under the Rome Statute*, William & Mary Journal of Women and the Law, Vol. 18 (2012), Issue 3, 594-623, at pp. 607-608; J. Joseph, *Gender and International Law: How the International Criminal Court Can Bring Justice to Victims of Sexual Violence*, Texas Journal of Women and the Law, Vol. 18 (2008), 61-101, at pp. 82-83.

B. Forced Impregnation Falls Within the Crime Against Humanity of ‘Other Inhumane Acts’

10. Crimes against humanity have been described as crimes that “shock the conscience of humankind.”¹⁵ This includes the crime of ‘other inhumane acts’, which emanates from “a set of basic rights appertaining to human beings, the infringement of which may amount, depending on the circumstances, to a crime against humanity.”¹⁶ The ICP submits that this necessarily includes inalienable human rights values such as human dignity, autonomy, equality and reproductive choice.¹⁷

¹⁵ L. Sadat, *Codifying the ‘Laws of Humanity’ and the ‘Dictates of the Public Conscience’: Towards a New Global Treaty on Crimes Against Humanity*, in M. Bergsmo and Song T. (eds.), *On the Proposed Crimes Against Humanity Convention*, 12 December 2014, 17-46, at p. 18. This concept has been reiterated in the Preamble of the Universal Declaration of Human Rights, 10 December 1948 (“UDHR”): “Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind ...”.

¹⁶ *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Judgement, 14 January 2000, para. 566.

¹⁷ S. Jessie, *Forced Pregnancy: Codification in the Rome Statute and its Prospect as Implicit Genocide*, *New Zealand Journal of Public International Law*, Vol. 4 (2006), 311-337, at p. 317: “forced pregnancy ... the underlying values of protecting autonomy, equality and reproductive choice are long-standing fundamental human rights.”; K. Boon, *Rape and Forced Pregnancy Under the ICC Statute: Human Dignity, Autonomy, and Consent*, *Columbia Human Rights Law Review*, Vol. 32 (2001), 625-674, at p. 631: “sexual crimes ... based on broader principles of human dignity, autonomy, and consent.”; Article 16 Proclamation of Tehran, Final Act of the International Conference on Human Rights 1968: “basic human right to determine freely and responsibly the number and spacing of their children.”; *Prosecutor v. Furundžija*, IT-95-17/1-T, Judgement, 10 December 1998, para. 183: “The essence of the whole corpus of international humanitarian law as well as human rights law lies in the protection of the human dignity of every person ... This principle is intended to shield human beings from outrages upon their personal dignity, whether such outrages are carried out by unlawfully attacking the body or by humiliating and debasing the honour, the self-respect or the mental well being of a person.” **See also:** Articles 7 and 10 International Covenant on Civil and Political Rights, 16 December 1966: “Article 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment ... Article 10 All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.”; Articles 1, 3 and 5 UDHR: “Article 1 All human beings are born free and equal in dignity and rights ... Article 3 Everyone has the right to life, liberty and security of person ... Article 5 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”; Articles 5 and 8 European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950: “Article 5 Right to liberty and security ... Article 8 Right to respect for private and family life”; Articles 5 and 7 American Convention on Human Rights, 22 November 1969: “Article 5 Right to Humane Treatment 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person ... Article 7. Right to Personal Liberty 1. Every person has the right to personal liberty and security.” **Regarding forced impregnation as a fundamental humanitarian and human rights violation:** Vienna Declaration and Programme of Action, 25 June 1993, paras. I.18 and II.B.3.38: “18. The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights ... the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community ... 38. In particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual ... exploitation ... the elimination of gender bias in the administration of justice ... Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular ... forced pregnancy, require a particularly effective

11. Forcibly impregnating a woman or girl against her will or under coercive circumstances patently rises to the level of an ‘other inhumane act’. Such conduct obviously causes serious mental harm, damages a woman’s or girl’s human dignity and can have serious economic, lifestyle, and health consequences. The consequences will affect the rest of her life and, thus, forced impregnation has an element of harm to the victim that is not necessarily present with the crimes of rape or forced marriage.¹⁸ Moreover, forced impregnation can possibly occur outside the context of forced marriage or rape – it is conceivable that a woman or girl who has voluntarily married, or is willing to marry, does not want to become pregnant at the time, or that a woman or girl consents to sexual intercourse but under conditions that are unlikely to render her pregnant. Any attempt to force a woman or girl in these circumstances to become pregnant has such serious consequences that the conduct is clearly of a nature and gravity that is similar to other crimes against humanity as set out in Article 5 of the ECCC Statute and, therefore, clearly sufficient to meet the threshold for ‘other inhumane acts’.

C. The Culpability and Harm for Forced Impregnation are Distinct from Forced Marriage and Rape, and of Such Severity as to Constitute a Separate Crime as an ‘Other Inhumane Act’

12. During the DK period, it was possible for forcibly married couples of both genders to be victims of rape by being forced to consummate their marriage;¹⁹ however, forced

response.”; Beijing Declaration and Platform for Action, 15 September 1995, paras. 114, 132, and 135: “114. Other acts of violence against women include the violation of the human rights of women in situations of armed conflict, in particular ... forced pregnancy ... 132 ... The Vienna Declaration and Programme of Action ... states that ‘... forced pregnancy require a particularly effective response.’ ... 135. While entire communities suffer the consequences of armed conflict and terrorism, women and girls are particularly affected because of their status in society and their sex ... The impact of violence against women and violation of the human rights of women in such situations is experienced by women of all ages ... who are victims of acts of ... forced pregnancy in situations of armed conflict ...”; U.N. Commission on Human Rights resolutions (available at: <https://www1.umn.edu/humanrts/UN/Resolutions98.html> (accessed 16 March 2016)): Res. 1998/76, 22 April 1998, para. 13(a): “calls upon all States to take all measures required ... from all acts of gender-based violence, including ... forced pregnancy, and to strengthen mechanisms to investigate and prosecute perpetrators.” which reiterates Res. 1997/78, 1997, 13(a); Res. 1998/52, 17 April 1998, para. 4: “Also condemns all violations of the human rights of women in situations of armed conflict, recognizes them to be violations of international human rights and humanitarian law and calls for a particularly effective response to violations of this kind, including in particular ... forced pregnancy” which reiterates Res. 1997/44, 11 April 1997, para. 4.

¹⁸ See paragraph 12 of this filing.

¹⁹ See *e.g.*, **D219/217** Chhen Ham Written Record of Interview, 11 March 2015, A180-183: “I had to consummate my marriage under duress. Actually, it was not based on duress but the circumstances. I could not trust anyone, even the woman who was my own wife. She might report to the Khmer Rouge that I did not agree to consummate our marriage, and she was also afraid that I would report likewise. Because of these circumstances, we had to consummate our marriage ... during that regime we had no choice but to follow orders when we became husband and wife ... the Khmer Rouge could take us to be

impregnation affected exclusively women and girls and caused distinct harms. As noted by scholars, forced impregnation exacerbates the impact of rapes by making the invasion of a woman's or girl's body "more visible and explicit, precluding victims from protecting themselves ... through silence or denials, and symbolically branding the victims with the mark of the rapes."²⁰ Victims of forced impregnation watch their bodies change as a result of the trauma to which they were subjected,²¹ often must give birth and care for a potentially unwanted child, be reminded constantly that that child is the product of a bodily invasion and victimisation, and potentially endure, along with their child, social stigma.²² Moreover, "unplanned and unwanted pregnancies have the additional and longer-term implications of motherhood, financial responsibility, and potential health difficulties."²³ A recent report concerning Yazidis women held as sex slaves by ISIS fighters demonstrates how victims often perceive the harm of forced impregnation as being distinct from and, arguably, more severe than the harm of rape.²⁴ The report stated that the victims who had been interviewed were relieved by the rapists' insistence on the use of contraception. One Yazidi woman "[m]ore than anything ... was tormented by the thought she might become pregnant with her rapist's child."

D. Investigative Questions to be Asked

13. The ICP's Supplementary Submission regarding Forced Marriage and Sexual or Gender-Based Violence ("Supplementary Submission")²⁵ seized the OCIJ with the facts

killed or warned by a senior Party Chairperson. If we refused, we would be regarded as the enemies. If they sent us to a Security Office, we would not be able to return."

²⁰ A. Drake, *Aimed at Protecting Ethnic Groups or Women? A look at Forced Pregnancy Under the Rome Statute*, William & Mary Journal of Women and the Law, Vol. 18 (2012), Issue 3, 594-623, at p. 620 citing R. Carpenter, *Forced Maternity, Children's Rights and the Genocide Convention: A Theoretical Analysis*, Journal of Genocide Research, Vol. 2 (2000), Issue 2, 213-244 at p. 223. See also, S. Jessie, *Forced Pregnancy: Codification in the Rome Statute and its Prospect as Implicit Genocide*, New Zealand Journal of Public International Law, Vol. 4 (2006), 311-337, at pp. 329-330.

²¹ A. Drake, *Aimed at Protecting Ethnic Groups or Women? A look at Forced Pregnancy Under the Rome Statute*, William & Mary Journal of Women and the Law, Vol. 18 (2012), Issue 3, 594-623, at p. 620.

²² A. Drake, *Aimed at Protecting Ethnic Groups or Women? A look at Forced Pregnancy Under the Rome Statute*, William & Mary Journal of Women and the Law, Vol. 18 (2012), Issue 3, 594-623, at p. 620. See also, S. Jessie, *Forced Pregnancy: Codification in the Rome Statute and its Prospect as Implicit Genocide*, New Zealand Journal of Public International Law, Vol. 4 (2006), 311-337, at pp. 329-330.

²³ K. Boon, *Rape and Forced Pregnancy Under the ICC Statute: Human Dignity, Autonomy, and Consent*, Columbia Human Rights Law Review, Vol. 32 (2001), 625-674, at p. 658.

²⁴ R. Callimachi, *To Maintain Supply of Sex Slaves, ISIS Pushes Birth Control*, The New York Times, 12 March 2016 (available at http://www.nytimes.com/2016/03/13/world/middleeast/to-maintain-supply-of-sex-slaves-isis-pushes-birth-control.html?_r=0 (accessed 16 March 2016)).

²⁵ **D191** Co-Prosecutors' Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence, 24 April 2014.

concerning forced marriage and its consummation. As a result, an investigation into those facts should involve questions concerning the consequence of such conduct, namely:

- (1) whether forcibly married women and girls who had become pregnant during the DK period had been made pregnant against their will or under coercive circumstances;²⁶
- (2) the circumstances which led to women and girls being forced to become and remain pregnant;²⁷


²⁶ Studies undertaken by academics and non-governmental organisations on forced marriage during the Democratic Kampuchea (“DK”) regime (1975-1979) reveal that forced consummation within forced marriages that resulted in pregnancies was widespread, prevalent and worsened from 1977 onwards. These studies include: **I. P. LeVine**, *Love and Dread in Cambodia: Weddings, Births, and Ritual Harm under the Khmer Rouge*, 2010 – From 1997 to 2005 (p. 7), the study formally interviewed multiple times 192 respondents, and involved 1000+ informal interactions (p. 20 fn. 4) with persons in 18 areas across Cambodia between 1997 and 2005 (p. 7). The 192 respondents were victims of forced marriage during the DK regime (p. 20 fn. 4), and most reported their marriage was performed in large groups with up to 300 other people (p. 192). Of the 192 respondents, 40% were “prescribed” to have sex (primarily between 1977-1980), and of the 104 females surveyed 67% became pregnant (primarily between 1978-1979), which resulted in 80% live births, 11% dead births and 8% miscarriages (none forced or self-induced) (p. 192). The “study revealed a trend towards an increase in pregnancies by 1978 across regions” (p. 87); **T. de Langis et al.**, *Like Ghosts Changes Body – A Study on the Impact of Forced Marriage under the Khmer Rouge*, October 2014 – In 2014 (p. 40), the study interviewed 106 respondents who are Civil Parties in Case 002 at the ECCC (p. 10) and came from 15 provinces across Cambodia during the DK regime (p. 48). 103 (97%) respondents, of which 83% of them were females, reported that they succumbed to the pressure of an arranged or forced marriage during the DK regime (p. 44). 88.1% reported feeling forced to have sex after the wedding (p. 54). 76% reported having children as a result of the forced marriages (note: It is unclear when those children were conceived) (p. 57). Key findings point to reproduction of the population as a motivation for forced marriages and a “spike” in forced marriages in 1978 (p. 14). “Significantly, one case study respondent mentioned the political ambition of local Khmer Rouge leaders as motivations for forced marriages and enforced conjugal relations, suggesting higher-level leaders knew about and incentivized implementation of the policy.” (p. 14). The study also indicates broadly that “pregnancy was a constant fear for women in an atmosphere of forced sex, coupled with extremely dire living conditions.” (p. 80); **3. N. Kasumi**, *Gender-Based Violence During the Khmer Rouge Regime: Stories of survivors from the Democratic Kampuchea (1975-1979)*, 2nd ed., March 2008 – The report, based on interviews, outlines qualitative data in the form of stories of survivors of gender-based violence, including of forced marriage and forced pregnancy. In the first edition (2007), 1,500 people were interviewed of which 100 people were selected to document their personal stories (p. 5). In the second edition, a further 600 people were interviewed by approximately 200 of the author’s university students (p. 4). Regarding forced sex, the author states, “After the marriage ceremony was carried out, the newly married couple was ordered to enter into a small hut and to spend the night together. According to the interviews with those who were forced to get married during the KR [Khmer Rouge] regime, newlyweds often spent two to three days together and then left the small hut to work in different locations ... The KR soldiers came around the house of newlyweds to observe if a couple was having a sexual intercourse. If a couple fails to follow the order, they could be sent to an education camp, be tortured or be sexually abused.” (pp. 16-17). While the report does not include a breakdown of the data in relation to geographic location or how many pregnancies occurred as a result of forced marriages during the DK regime, the narratives of survivors are consistent generally with the findings in the 2 abovementioned studies, broadly indicating a trend that large groups of males and females were forced to marry and pressured to consummate their marriage during the DK regime.

- (3) the effect the forced impregnation had on those women and girls during the DK regime, particularly as a result of their working and living conditions, including diet and medical care,²⁸ and the effect it continues to have on them today;
 - (4) the purpose(s) of having and consummating forced marriages; and
 - (5) who was responsible for determining and implementing those purpose(s) in paragraph 13(4).
14. The ICP submits that it is not until the end of the investigation into the ICP's Supplementary Submission that the most appropriate legal characterisation of the facts can fully be determined. But, the ICP anticipates that the evidence obtained from the above questions will either show that a separate crime against humanity in the form of an 'other inhumane act' occurred or will provide further evidence of the harm suffered by victims of forced marriages and rapes within forced marriages.

IV. CONCLUSION

15. For the abovementioned reasons, the ICP respectfully requests the OCIJ to:
- (1) grant the admissibility of the Civil Party Lawyers' Investigative Request; and
 - (2) conduct investigative actions concerning forced impregnation.

Respectfully submitted,

Date	Name	Place	Signature
1 April 2016	Nicholas Koumjian International Co-Prosecutor	Phnom Penh	

²⁷ The ICP submits that circumstances that forced women and girls to remain pregnant are relevant aggravating facts but are not an inherent legal element of the 'other inhumane act' of forced impregnation.

²⁸ See e.g., N. Kasumi, *Motherhood at War: Pregnancy During the Khmer Rouge Regime – Oral History*, December 2015, ch. 6-8 and 10; H. Ngor with R. Warner, *Survival in the Killing Fields*, 1987, ch. 29: Although the pregnancy did not occur within the context of a forced marriage, this autobiography details the effect the living conditions had on Dr. H. Ngor's pregnant wife, who died in 1978 whilst she was in labour, during when there was no "[n]o intensive-care unit, no operating room. No food for Huoy or the child. And *chhlop* hanging around, looking for trouble. Under the Khmer Rouge's puritanical rules, it was forbidden for a man to deliver his wife's baby. If I delivered it myself the neighbours would know and the *chhlop* would find out that would be the end of me. Or if I did anything that suggested I was a doctor, that would be the end." (p. 352).