



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

INTEROFFICE MEMORANDUM

19 May 2023

FROM: H.E. KONG Srim, President of the Supreme Court Chamber

DE:

TO: KONG Sam Onn, National Co-Counsel

A: Anta GUISSÉ, International Co-Counsel



CC: Judges, Supreme Court Chamber

PAR: CHEA Leang, National Co-Prosecutor
Fergal GAYNOR, International Co-Prosecutor (Reserve)

Mr. PICH Ang, National Civil Party Lead Co-Lawyer
Ms. Falguni DEBNATH, International Civil Party Lead Co-Lawyer

H.E. Mr. Tony KRANH, Acting Director Administration
Mr. Knut ROSANDHAUG, Deputy Acting Director Administration

Greffiers, Supreme Court Chamber

SUBJECT: Response to Observations filed by Co-Counsel for KHIEU Samphân Following his
OBJET: Transfer to KANDAL Provincial Prisons and Office of Administration's Response
dated 23 February 2022.

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 19-May-2023, 11:08
CMS/CFD: Sann Rada

It is hereby recalled that on 23 December 2023, the Supreme Court Chamber's published the full written reasoned Appeal Judgment in Case 002/02 against KHIEU Samphân in Khmer and

English.¹ And on 30 January 2023, he was transferred to the KANDAL Provincial Prison, as requested by the Co-Prosecutors.²

NOTING that on 23 February 2023, the Office of Administration responded³ to the Supreme Court Chamber's request for any information available regarding the adoption of a framework detailing how the residual mechanism will implement in practice its residual function to supervise the enforcement of the concurrent sentences imposed on KHIEU Samphân as well as monitor his treatment while serving those sentences⁴. Following his transfer, KHIEU Samphân came under the full jurisdiction of the General Director of the General Department of Prisons of the Ministry of Interior ("the GDP"), according to the Office of Administration.⁵ It further clarified that the Addendum to the United Nations and Royal Government of Cambodia Agreement ("Addendum to the UN-RGC Agreement") vests the ECCC with certain residual functions, including "supervis[ing] the enforcement of sentences" and "monitor[ing] the treatment of convicted persons".⁶

On 20 March 2023, KHIEU Samphân's Co-Counsel filed observations alleging difficulties with his inability *inter alia* (i) to fully examine the Appeal Judgment because he is not allowed access to his laptop at Kandal Provincial Prison, which he requires to view the judgment in enlarged font due to his poor vision (ii) to communicate directly and confidentially with his international Co-Counsel in order to receive legal advice in preparation of a possible revision of the final judgment in accordance with Rule 112.⁷ Co-Counsel request that the Office of Administration or Supreme Court Chamber determine how KHIEU Samphân can have access

¹ The French translation was filed on 30 January 2023 (F76).

² Request for Transfer of Convicted Person KHIEU Samphân (F82), 19 January 2023. Prior to his transfer the Co-Prosecutors held various discussions with the General Director of the General Department of Prisons of the Ministry of Interior ("the GDP"), and received confirmation from the Office of Administration of uninterrupted continuation of the facilitation of KHIEU Samphân's medical arrangement with Khmer Soviet Friendship hospital to receive regular medical check-up and provision of caretakers following KHIEU Samphân's transfer to Kandal Provincial Prison; *referring to* Request for Enforcement of Sentence (F80), 12 January 2023; Co-Prosecutors' Observations on Conditions of Service of Sentence (F81), 12 January 2023; Request for Transfer of Convicted Person KHIEU Samphân (F82), 19 January 2023.

³ Office of Administration's Response to the Supreme Court Chamber's Request for Information Regarding the Supervision of KHIEU Samphân's Sentence (F77/1/2), 23 February 2023 ("Office of Administration's Response").

⁴ Decision on KHIEU Samphân's Request for Information from the Co-Prosecutors on Planned Detention Conditions (F77/1/1), 22 December 2023.

⁵ Office of Administration's Response, para. 2.

⁶ Office of Administration's Response, para. 3.

⁷ Observations après le transfert de KHIEU Samphân en détention la prison provinciale de KANDAL et la réponse de l'administration en date du 23 février 2023, 20 March 2023 (notified 21 March 2023), (F83) ("KHIEU Samphân Observations"), paras 5-9 referring to the Office of Administration Response.

to his laptop, as well as a procedure that allows the national Co-Counsel to visit their client in optimal conditions.⁸ They express a lack of clarity regarding the appropriate organ to resolve issues raised and the implications thereto.⁹

Being mindful that the Co-Prosecutors do not dispute KHIEU Samphân's right to read and understand the Appeal Judgment, they respond that, unlike an ordinary appeal from a judgment, a Rule 112 revision application is an extraordinary remedy that is not primarily related to a detailed analysis of a judgment.¹⁰ The Co-Prosecutors also submit that KHIEU Samphân is subject to the full jurisdiction of the GDP and is required to observe prison regulations relating to access to a laptop or other electronic devices. They contend that Co-Counsel has not identified a general right in international human rights law for a prisoner to have access to a laptop, nor has he proven a substantial risk of prejudicing legal proceedings if he is denied access.¹¹ His observations do not show whether any efforts were taken to resolve the issues through the officials designated by the Office of Administration to deal with matters relating to KHIEU Samphân's detention.¹²

As preliminary observations, the parties are reminded that the proceedings in Case 002/02 against KHIEU Samphân have been fully adjudicated, and that the Supreme Court Chamber's appellate mandate has been fully carried out in accordance with the relevant ECCC legal compendium. Furthermore, the provisions governing the enforcement of sentence have been complied with. As such, KHIEU Samphân is currently serving his life sentence at Kandal Provincial Prison.

In response to Co-Counsel's specific observations, no infringement of KHIEU Samphân's rights is clearly identified or materially proven insofar as his inability to access his laptop or alleged lack of acceptable conditions for communicating or meeting with his lawyers. KHIEU Samphân is subject to the full jurisdiction of the GDP and Kandal Provincial Prisons, as indicated by the Co-Prosecutors, and is thus required to comply with prison regulations governing access to a laptop or other electronic devices. Co-Counsel have not demonstrated that any attempts to contact the GDP and/or authorities within Kandal Provincial Prisons for a

⁸ KHIEU Samphân Observations, para. 12.

⁹ KHIEU Samphân Observations, paras 13-16.

¹⁰ Co-Prosecutors' Response to KHIEU Samphân's Observations Following His Transfer to Kandal Provincial Prison ("Co-Prosecutors' Response the Observations"), 31 March 2023, paras 3, 9-10.

¹¹ Co-Prosecutors' Response to the Observations, para. 6.

¹² Co-Prosecutors' Response to the Observations, paras 7-8, 12.

resolution have been made. Furthermore, the practicalities of providing legible reading material for KHIEU Samphân are functions that his lawyers should perform and do not constitute a violation of defence rights. The Chamber considers that the Co-Prosecutors reasoning is sound, insofar as noting that his national Co-Counsel, who speaks Khmer, and has access to evidentiary material cited in the Judgment, can meet with him in prison to provide him with the necessary documents and to discuss and explain the Appeal Judgment.¹³ And that, KHIEU Samphân has full access to counsel, who can discreetly communicate with him in the comfort of his custom-built spacious cell between 8:00-11:00am and 2:00-5:00pm, six days a week.¹⁴ No information on the record counters this contention.

While Co-Counsel's Observations allude to the possibility of a Rule 112 application, they are considered prophylactic, and because no alleged violation has been identified, they do not warrant consideration herein.

Concerning Co-Counsel's submission that there is lack of clarity regarding the appropriate organ to resolve the issues raised and the implications,¹⁵ the Co-Prosecutors contend that the Supreme Court Chamber remains constituted and is actively carrying out its functions as outlined in the Addendum to the UN-RGC Agreement, and that there is no reason to question that it is the appropriate forum for addressing any alleged violations of KHIEU Samphân's rights.¹⁶ Notably, the Addendum to the UN-RGC Agreement, as articulated by the Office of Administration, vests the ECCC with certain residual functions, including *inter alia* "supervis[ing] the enforcement of sentences" and "monitor[ing] the treatment of convicted persons".¹⁷ These ongoing functions are for a three-year initial period. The Supreme Court Chamber remains constituted and will only perform residual functions as required in accordance with the Addendum to the UN-RGC Agreement.

Accordingly, Co-Counsel's observations do not merit action by the Chamber and are thus inadmissible.

¹³ Co-Prosecutors' Response to the Observations, para. 6.

¹⁴ Co-Prosecutors' Response to the Observations, paras 7-8, 12.

¹⁵ KHIEU Samphân Observations, paras 13-16.

¹⁶ Co-Prosecutors' Response to the Observations, paras 3, 11-12.

¹⁷ Office of Administration's Response, para. 3.