

**BEFORE THE SUPREME COURT CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

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**CO-PROSECUTORS' OBSERVATIONS ON CONDITIONS OF SERVICE OF  
SENTENCE**

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## I. Introduction

1. On 22 December 2022, the Supreme Court Chamber issued a decision granting KHIEU Samphân's 20 October 2022 request to order the Co-Prosecutors to provide information regarding the planned conditions of his detention in national prison following the Supreme Court Chamber's issuance of the full written reasons in the Case 002/02 Appeal Judgment.<sup>1</sup> The Supreme Court Chamber also requested "the Office of Administration to provide to the Chamber and parties any information available regarding the adoption of 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 sentences."<sup>2</sup>
2. On 23 December 2022, the Supreme Court Chamber issued the full written version of the appeal judgment in Case 002/02.<sup>3</sup>
3. On 29 December 2022, the Defence for KHIEU Samphân filed the "Observations en amont du transfert de KHIEU Samphân l'issue de l'exposé complet des motifs de l'arrêt dans le deuxième procès dans le cadre du dossier n° 002".<sup>4</sup> The Defence expressed concern about the care that will be given to KHIEU Samphân in detention, and sought guarantees on his medical care before transfer and an assurance that the people identified by his family would be able to provide him with the daily assistance that his age and condition require. The Defence also supported the proposal of the Co-Prosecutors that the Supreme Court Chamber establish formal monitoring or a process of transfer of responsibilities of the ECCC, as envisaged in the Addendum to the UN-RGC Agreement.<sup>5</sup>
4. On 11 January 2023, the Co-Prosecutors, in accordance with Internal Rule 113, requested the Director-General of the General Department of Prisons of the Ministry of Interior to identify an appropriate facility for KHIEU Samphan to serve the remainder of his sentence, and to guarantee adequate detention conditions for KHIEU Samphan, including all

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<sup>1</sup> **F77/1/1** Decision on Khieu Samphan's Request for Information from the Co-Prosecutors on Planned Detention Conditions, 22 December 2022 ("Decision on Detention Conditions").

<sup>2</sup> **F77/1/1** Decision on Detention Conditions, para. 30.

<sup>3</sup> **F76** Appeal Judgement, 23 December 2022.

<sup>4</sup> **F79** Observations en amont du transfert de KHIEU Samphân l'issue de l'exposé complet des motifs de l'arrêt dans le deuxième procès dans le cadre du dossier n° 002, 29 December 2022 ("Khieu Samphan Observations").

<sup>5</sup> **F79** Khieu Samphan Observations, paras 3-5.

necessary physical modifications to his cell to accommodate his mobility needs, and the continuation of KHIEU Samphan's medical care and daily caretaking in detention. The Co-Prosecutors further requested that KHIEU Samphan continue to be held at the Detention Facility at the ECCC until the Co-Prosecutors and the Director-General of the General Department of Prisons of the Ministry of Interior agree on an appropriate prison to hold KHIEU Samphan for the remainder of his sentence.

5. The purpose of this filing is to notify the Supreme Court Chamber, the Office of Administration and the Defence for KHIEU Samphan of the steps the OCP has taken to initiate the enforcement of the remainder of KHIEU Samphan's sentence in appropriate conditions of imprisonment.
6. The initiation of the enforcement of a sentence, the conditions of imprisonment, and the monitoring of those conditions are inextricably linked. The OCP has sought to ensure timely transfer to a national prison where conditions of imprisonment comply with international standards on the treatment of prisoners, including the provision of special logistical and medical arrangements that are required for KHIEU Samphan.

## **II. Circumstances of the convicted person**

7. The present circumstances are unusual, if not unique. KHIEU Samphan is 91 years old, uses a wheelchair and has limited mobility. [REDACTED]. These circumstances present challenges both for the OCP in approving the initiation of enforcement in accordance with Internal Rule 113 in appropriate conditions of detention, and for the Director General of Prisons of the Ministry of Interior in putting those conditions in place. They will also require promptness and vigilance in the ECCC's discharge of its duty under the Addendum<sup>6</sup> to the UN-RGC Agreement to monitor the treatment of the convicted person.
8. As the Supreme Court Chamber noted, the OCP in April and May 2022 made numerous efforts to access information relevant to the care of KHIEU Samphan, and raised a "variety of queries regarding inter alia KHIEU Samphan's special needs, Covid restrictions in place to facilitate visitation, visitation rights and health restrictions on visitation, availability of

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<sup>6</sup> Addendum to the Agreement between the Royal Government of Cambodia and the United Nations concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea on the Transitional Arrangements and the Completion of Work of the Extraordinary Chambers, 11 Aug 2021 and 26 Aug 2021 ("Addendum"), art. 2(1).

full time medical personnel and their titles, provisions for emergency medical care and standard operating procedures or regulations.”<sup>7</sup>

9. Further to those enquiries, the OCP received responses from Superintendent Chhem Savuth, Director General of Prisons of the Ministry of Interior, and from Thaug Soheat, on 7 July 2022 and 12 September 2022 respectively. A response to follow-up questions was received from Thaug Soheat on 21 September 2022.
10. The responses from Savuth Chhem and Soheat Thaug provided the following information:
  - a. KHIEU Samphân has severe mobility issues. [REDACTED]  
[REDACTED]  
[REDACTED];
  - b. KHIEU Samphân requires, and is currently given, a number of daily medications for the regulation of, [REDACTED]  
[REDACTED]. Further medications are prescribed on an as-needed basis to treat [REDACTED]  
[REDACTED];
  - c. [REDACTED]  
[REDACTED];
  - d. [REDACTED]; and
  - e. At the ECCC Detention Facility, the medical staff – two nurses and one doctor – are on stand-by 24 hours a day. [REDACTED]  
[REDACTED] Where emergency medical assistance including intensive care is required, he should be transferred to the Khmer Soviet Friendship Hospital.

### **III. OCP inspection of Kandal Provincial Prison on 14 September 2022**

11. The OCP conducted an inspection of Kandal Provincial Prison on 14 September 2022 and met with the Kandal Provincial Prosecutor Leav Sreng, Deputy Prosecutor Ek Sunraksmeay, and Dr. Hem Kosal, a doctor at Kandal Provincial Prison. The OCP subsequently sent a detailed memorandum of this visit to the Office of Administration.
12. During the visit, the OCP was shown two potential prison cells selected for the detention of KHIEU Samphân and then met with the Prosecutor, Deputy Prosecutor and doctor.

<sup>7</sup> F77/1/1 Decision on Detention Conditions, para. 19.

13. The first cell was the area that formerly held Kaing Guek Eav alias Duch. The OCP considered this to be unsuitable for 91-year-old KHIEU Samphân in its present condition. This was due mainly to issues that severely hinder access with a wheelchair, [REDACTED] and the lack of any space to accommodate a caretaker.
14. The OCP was also shown a location for a second possible cell which was a former staff meeting room and storage area. It had not been modified for use as a cell. [REDACTED]
15. The Prosecutor, Deputy Prosecutor, and doctor at Kandal Provincial Prison provided the following further information:
- a. The prison will not provide a care giver or any similar individual to assist KHIEU Samphân [REDACTED] Prosecutor Leav Sreng suggested that one or more of KHIEU Samphân's family members should fulfil this role and that access to the prison would be permitted for this purpose;
  - b. There are no medicines routinely kept on the prison premises. However, it was agreed that any medication prescribed by a physician to KHIEU Samphân and delivered to the prison would be stored there under the supervision of Dr. Hem Kosal and administered by the nurse at the frequency prescribed;
  - c. If KHIEU Samphân falls ill, he would be transferred to Kandal Hospital for treatment; if suitable treatment cannot be provided there, he would be moved to the Khmer Soviet Friendship Hospital in Phnom Penh;
  - d. Family/visitor access is flexible and arrangements may be possible to allow KHIEU Samphân's relatives to reside in the cell;
  - e. The budget for prisoners' food is 3,500 riels per day. With economies of scale, and supplementary food grown in the prison grounds, this suffices for two satisfactory meals a day per prisoner. Relatives are also encouraged to bring food for the inmates.
  - f. Subject to inspection, families can bring books and newspapers for the prisoners.
  - g. Procedures for the prevention of widespread Covid-19 infections have been successful to date, but no specifics as to those procedures were given.
16. The OCP communicated to the Office of Administration its assessment that there was, as of 12 September 2022, no accommodation at Kandal Provincial Prison that was suitable for KHIEU Samphân in his current state of health and mobility. The OCP also noted that another outstanding issue was the provision of a care giver. [REDACTED]

[REDACTED]  
[REDACTED] In light of his age, improvement in KHIEU Samphân's condition cannot be assumed; to the contrary, it must be assumed that it will only deteriorate. Reliance on family members to fulfil this role is not a satisfactory solution.

17. The OCP concluded that it could not recommend transfer until arrangements were put in place to ensure that all requisite medication, [REDACTED]  
[REDACTED] and that assistance by caregivers will be provided. The OCP communicated to the Office of Administration three recommendations:
- a. The second possible cell be renovated to the requisite standard, taking into account KHIEU Samphân's logistical requirements;
  - b. Arrangements be made for a care giver to be available 24 hours a day [REDACTED]  
[REDACTED] funding will be required for this purpose;
  - c. Arrangements be made for medications to be prescribed to KHIEU Samphân and delivered to the prison as required. Before his transfer, KHIEU Samphân should be medically examined and the most up-to-date prescriptions be communicated to the dispensing hospital/pharmacy.

#### **IV. OCP inspection of 26 December 2022 of Kandal Provincial Prison**

18. On 26 December 2022, the National Co-Prosecutor and the Reserve International Co-Prosecutor visited Kandal Provincial Prison and held a meeting with representatives of the General Department of Prisons of the Ministry of the Interior, including Deputy Director-General of the General Department of Prisons Mao Sophearom and Kandal Provincial Prison chief EM Nimol. Deputy Prosecutor Ek Sunraksmeay was also present.
19. The authorities at Kandal Provincial Prison showed the OCP a cell which was at an advanced stage of renovation, and which indicated that considerable progress had been made since the 14 September 2022 inspection by the OCP. This cell in the opinion of the Co-Prosecutors is satisfactory in that: it is spacious, has two beds, and therefore has sufficient space for KHIEU Samphân and a care giver; there is a private exercise yard of sufficient size; there is adequate ventilation; there is a ceiling-mounted fan; [REDACTED]  
[REDACTED] KHIEU

Samphân will be sufficiently isolated from other prisoners and, in the event of a Covid-19 outbreak in the prison, it should be possible to protect him from infection.

20. The OCP raised with the prison authorities modifications to the cell that were still to be put in place. These included the installation of a shower head, mobility bars in the bathroom, and a small ramp to ensure that the entrance to the bathroom from the bedroom area was fully wheelchair-accessible.
21. The meeting of the OCP and the General Department of Prisons of the Ministry of the Interior addressed (a) exercise by KHIEU Samphân, and visitation rights for visitors and his lawyers; (b) healthcare; (c) care givers.
22. The OCP explained that, under the terms of the Supreme Court Chamber’s decision of 22 December 2022, if arrangements that “guarantee adequate detention conditions for KHIEU Samphân remain outstanding by the time of the notification of the full written reasoned Appeal Judgment in Case 002 02 KHIEU Samphân shall not be transferred until proper arrangements are made by the Co Prosecutors”.<sup>8</sup> The Co-Prosecutors also explained that the Supreme Court Chamber had expressed the view that “the information sought by KHIEU Samphân including location of imprisonment, medical facilities, and modification of his cell to accommodate his mobility needs is reasonable and directly impacts his right to adequate and humane detention conditions”.<sup>9</sup>
23. On the subject of exercise and visitation rights, the prison authorities informed the OCP:
  - a. KHIEU Samphân will be able to move between the exercise yard and his cell at will from 0700 to 1100 and from 1400 to 1700 every day.
  - b. As KHIEU Samphân’s prison cell is private, he will not socialize with other prisoners. He can receive visitors from 0800-1100 and 1400-1700 from Monday to Saturday inclusive. His family can bring food to him during visiting hours.
  - c. His lawyers can visit and hold discussions with him during visiting hours, and can show him documents.
  - d. Visits to any prisoner, including KHIEU Samphân, take place in the presence of a prison officer.
24. On the subject of healthcare, Deputy Director-General of the General Department of Prisons Mao Sophearom said that:

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<sup>8</sup> F77/1/1 Decision on Detention Conditions, para. 23.

<sup>9</sup> F77/1/1 Decision on Detention Conditions, para. 25.

- a. He was involved in the detention of KHIEU Samphân at the ECCC, and had directed the preparation of the newly-prepared cell for KHIEU Samphân at Kandal.
  - b. In Cambodia there is no specialized detention location for holding detainees like KHIEU Samphân. KHIEU Samphân's circumstances constituted a special case and they were trying to try to build a cell accordingly.
  - c. Kandal Provincial Prison had not received a medical report from the ECCC. Medical matters relating to prisoners are the responsibility of the Ministry of Health. Kandal Provincial Prison authorities remain uninformed regarding what medicines are currently prescribed for KHIEU Samphân, and who was going to provide those medications to Kandal Provincial Prison following his transfer.
  - d. Kandal Provincial Prison can ensure that a nurse is available to administer any necessary medications to KHIEU Samphân, [REDACTED].
  - e. According to applicable prison law, the health of all prisoners falls under the Ministry of Health. Minor ailments are treated at Kandal Provincial Prison. For more serious ailments, prisoners are transferred to a hospital located less than one kilometre from Kandal Provincial Prison (Chea Chumneas Hospital).
  - f. Regarding the ECCC physicians' recommendation that KHIEU Samphân receive a checkup every six months at the Khmer Soviet Friendship Hospital, the prison authorities generally implement any recommendation made by a doctor at Kandal Provincial Hospital.
  - g. The Kandal Provincial Prison authorities would like a doctor to be assigned by the Khmer Soviet Friendship Hospital to look after KHIEU Samphân. The prison authorities accept that it is important that the treating physicians have full details of KHIEU Samphân's medical needs, as well as clear arrangements for the delivery of all necessary medications to Kandal Hospital.
  - h. For this reason, the prison authorities recommend that the current arrangement, whereby the Khmer Soviet Friendship Hospital has taken primary responsibility for treating KHIEU Samphân, and for providing all necessary medication for him, continue into the future.
  - i. The Kandal Provincial Prison authorities would also like the Khmer Soviet Friendship hospital to provide a doctor who can care for KHIEU Samphân full-time, as well as an ambulance.
25. On the subject of the provision of a care giver to deal assist KHIEU Samphân [REDACTED]  
[REDACTED], the prison authorities made the following points:
- a. In accordance with Cambodian prison law, there is no provision for a full-time care giver to assist a prisoner and Kandal Provincial Prison will not itself assign or employ a full-time care giver to assist KHIEU Samphân.
  - b. The prison authorities are aware that the care givers at the ECCC who have been looking after KHIEU Samphân understand KHIEU Samphân's medical position, and are experienced with his daily care.
  - c. The prison authorities can implement the same service at Kandal Provincial Prison, using the same care givers. The prison authorities therefore will facilitate access by



those care givers to take care of KHIEU Samphân 24 hours per day, but they will not directly employ any care givers to provide this service.

26. The Deputy Director-General of the General Department of Prisons of the Ministry of the Interior emphasized that he is committed to the implementation of the cell modifications the OCP has requested, and to compliance with the decision of the Supreme Court Chamber. He noted that he had experienced very successful cooperation with the ECCC in the past, and he would like this to continue. He asked the OCP to commit to ask the relevant authorities for the provision of the caregivers and continuation of the agreement with the Khmer Soviet Friendship Hospital. The OCP undertook to contact the Office of Administration on these two matters.

#### **V. OCP Inspection of 4 January 2023 of Kandal Provincial Prison**

27. On 4 January 2023, the National Co-Prosecutor and the Reserve International Co-Prosecutor inspected certain modifications to the cell that the Kandal Provincial Prison authorities had on 26 December 2022 undertaken to complete [REDACTED]. They are satisfied that these works have been carried out and that the cell and exercise yard are fit for purpose.

#### **VI. Conclusion and recommendations by OCP**

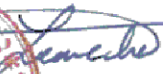
28. The Co-Prosecutors recall that the supervision of the enforcement of sentences as well as monitoring of the treatment of convicted prisoners, for an initial period of three years, is a responsibility of the ECCC under the Addendum to the UN-RGC Agreement, and that the Supreme Court Chamber has requested the Office of Administration to provide information regarding the way in which the ECCC will discharge its duties to supervise the enforcement of Khieu Samphan's sentences and monitor his treatment.<sup>10</sup> The Co-Prosecutors recognize that the medical arrangements which are ultimately put in place will need to take into account any views of the General Department of Prison and Kandal Provincial Prison. The Co-Prosecutors are also mindful of the fact that the International Committee of the Red Cross conducts regular prison inspections of prisons throughout Cambodia, including Kandal Provincial Prison.

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<sup>10</sup> **F77/1/1** Decision on Detention Conditions, para. 29.

29. In light of the information provided by the Director General of Prisons of the Ministry of Interior, and taking into account KHIEU Samphân's current age, mobility and medical needs, national and international standards of detention (including the 2011 Cambodian Law on Prisons and the UN Standard Minimum Rules for the Treatment of Prisoners), the Co-Prosecutors consider that the cell and private exercise yard at Kandal Provincial Prison for KHIEU Samphân are adequate for the continued service of his sentence.
30. The Co-Prosecutors have already communicated two further recommendations to the Office of Administration, which relate to care arrangements that are currently in place under the responsibility of the Office of Administration. As noted above, both recommendations are strongly supported by the Deputy Director-General of the General Department of Prisons. The Co-Prosecutors will be able to authorize transfer in accordance with Internal Rule 113 as soon as they have received an assurance from the Office of Administration that the following two recommendations will be implemented:
1. The continuation of the arrangement with the Khmer-Soviet Friendship Hospital to treat KHIEU Samphân, to ensure that he receives medication (both his regular medication and any additional medication he may need), regular check-ups and treatment as necessary.
  2. The continuation of the employment of the care givers that have been looking after KHIEU Samphân at the detention facility at the ECCC, so that they can continue to care for KHIEU Samphân at the location where he will be detained within Kandal Provincial Prison.

Respectfully submitted,

Date	Name	Place	Signature
12 January 2023	CHEA Leang Co-Prosecutor	Phnom Penh	
	Fergal GAYNOR (Reserve)		