



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the
Courts of Cambodia

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត

Office of the Co-Investigating Judges
Bureau des Co-juges d’instruction

សំណុំរឿងព្រហ្មទណ្ឌ

Criminal Case File /Dossier pénal

លេខ/No: 002/14-08-2006

លេខស៊ើបអង្កេត/Investigation/Instruction

លេខ/No: 002/19-09-2007-ECCC/OCIJ

ដីកាសម្រេចឃុំខ្លួនបណ្តោះអាសន្ន

Provisional Detention Order
Ordonnance de placement en
détention provisoire

We, **You Bunleng** and **Marcel Lemonde**, the Co-Investigating Judges of the
Extraordinary Chambers in the Courts of Cambodia,

Noting the Law on the establishment of the Extraordinary Chambers, dated 27 October
2004,

Noting Rule 63 of the Internal Rules of the Extraordinary Chambers,

Noting the judicial investigation opened against:

KHIEU Samphan

Alias: **Hem**

Born on 27 July 1931

Charged with Crimes against Humanity and Grave Breaches of the Geneva Conventions
of 12 August 1949, crimes defined and punishable under Articles 5, 6, 29 (new) and 39
(new) of the Law on the establishment of the Extraordinary Chambers, dated 27 October
2004.

Noting today’s adversarial hearing,

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I- STATEMENT OF THE FACTUAL AND LEGAL SITUATION

1. To date (and without prejudice to the outcome of on-going judicial investigations which may identify other offences referred to in the Introductory Submission that may implicate the Charged Person) KHIEU Samphan is being prosecuted for:
 - **Crimes Against Humanity** (Murder, Extermination, Imprisonment, Persecution and Other Inhumane Acts), and
 - **War Crimes** on the basis of Grave Breaches of the Geneva Conventions of 1949 (Wilful Killing, Wilfully Causing Great Suffering or Serious Injury to Body or Health, Wilful Deprivation of Rights to a Fair Trial of prisoners of war or civilians, unlawful deportation or transfer or unlawful confinement of a civilian),

2. He is alleged to have, throughout Cambodia during the period from 17 April 1975 to 6 January 1979:
 - in his capacity as Head of State (Chairman of the State Presidium), a leader within the Centre Political Office (Office 870), and as a full rights member of the Central Committee of the Communist Party of Kampuchea (CPK);
 - instigated, or otherwise aided and abetted in the commission of the aforementioned crimes;
 - by directing, encouraging, enforcing, or otherwise rendering support to CPK policy and practice which was characterised by murder, extermination, imprisonment, persecution on political grounds and other inhumane acts such as forcible transfers of the population, enslavement, and forced labour;
 - as part of a widespread or systematic attack targeting a civilian population; and
 - noting that there was a state of international armed conflict between Democratic Kampuchea and the Socialist Republic of Vietnam during all or part of the period between 17 April 1975 and 6 January 1979.

3. The Co-Prosecutors of the Extraordinary Chambers have requested the provisional detention of KHIEU Samphan on the grounds: that there is a danger that he will flee, as he lives near the Thai border and now faces a maximum sentence of life imprisonment if convicted; that, if he remains at liberty, this could provoke the anger of victims and the public (especially because, since arrests have been made, the number of complaints is increasing constantly); that there would, thus, be a danger of disruption of public order and acts of revenge that could place the personal security of the Charged Person at risk, as shown by the violence to which he was subjected in 1991 at the time of his return to Phnom Penh; that most of the witnesses are former subordinates of KHIEU Samphan and would no longer dare to testify if he remains at liberty. They stressed that he was Head of State of a regime responsible for 1.7 million victims; that, while it is true that he was not a member of the CPK Standing

Committee, he was present during its meetings; and that he never made the slightest declaration or intervention to prevent the crimes.

4. KHIEU Samphan disputed the acts with which he is charged, arguing that the Co-Prosecutors have done nothing more than recall the functions occupied by Mr KHIEU Samphan, which cannot suffice to justify the charges.

As regards his exact role, he claimed that he held no effective power. As Chairman of the State Presidium, he only had a representative role, comparable to that of the King in the current regime. He was never Chairman of Office 870, just a simple member whose task was to prepare a list of prices of goods for the cooperatives. He added that, within this organization, secrecy was compulsory: everyone dealt solely with his or her task and knew nothing about the tasks of the others. Regarding his position as a member of the Central Committee, he specified that all the important decisions were made by the Standing Committee, of which he was not a member. He admitted to having attended some “widened” meetings of the Standing Committee, but claimed that only general issues were discussed in his presence, such as national defence, relations with Vietnam and the resignation of Norodom Sihanouk, issues about which he had to be informed so as to be able to talk to diplomats. He argued that, given his social background, he was seen as a patriotic intellectual who would never be able to become a revolutionary leader. Concerning the absence of any declaration against the policy of the Khmer Rouge leaders, he insisted that he replaced Norodom Sihanouk as Head of State in April 1976 and that, a month later, on 14 May 1976, they received a “Vietnamese ultimatum” through the maritime boundaries issue (the written record of the meeting of the Standing Committee is published in full in the book by Ben Kiernan, entitled “The Pol Pot Regime” pp115-118). He stated that, in such circumstances, as a Khmer, he could not speak out and spread division. In conclusion with respect to his role, he claimed that there was no reason to fear that his “subordinates” would not dare to testify against him, for the simple reason that he did not have any, adding that, *“in the current circumstances, people might prefer to testify against any Khmer Rouge leader in order to obtain some benefit”*.

As regards the arguments put forward by the Co-Prosecutors in support of provisional detention, he declared that he never had the intention to escape, that the risk of disrupting public order was inexistent, noting that, since 1998 when he rallied the Government, he has lived in several houses in Pailin without any specific protection; that, on the contrary, when he had hypertension problems recently, everyone came to his home to help; and that the 1991 events, of which he was a victim, intervened in the specific context of the application of the Paris Agreements, such that political questions interfered in the case and it was not an issue of personal hatred.

In view of all of these elements, recalling the principle of the presumption of innocence and the principle that freedom is the rule and provisional detention the exception, he asked to be left at liberty.

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II - REASONS FOR THE DECISION

5. In light of the many documents and witness statements contained in the Case File, there are well-founded reasons to believe that KHIEU Samphan is criminally responsible for the acts with which he is charged. In particular, as a senior CPK leader and as Head of State, he exercised real authority, as perceived both in Cambodia and abroad. Through his acts, notably his speeches, the political training he conducted, his public approbation of the regime’s policy, and his denial in international forums of the crimes being committed (of which he was well aware), KHIEU Samphan facilitated and legitimated, at the highest level, the continued perpetration of criminal acts throughout Cambodia.
6. These crimes are of a gravity such that, 30 years after their commission, they still profoundly disrupt public order to such a degree that it is not excessive to conclude that a decision to leave the Charged Person at liberty would, in the fragile context of today’s Cambodian society, risk provoking protests of indignation which could lead to violence and perhaps imperil the very safety of the Charged Person, given that the situation is clearly no longer perceived in the same way since the official prosecution has commenced.
7. In addition, it is absolutely essential for the continuing judicial investigation to prevent any pressure on witnesses and victims. However, it may be feared that, if the Charged Person were to remain at liberty, he might attempt, and would be in a position to organize such pressure. Indeed, henceforth, KHIEU Samphan will have access to all of the elements in the case file of the judicial investigation, including the written records of interviews with specific witnesses, complaints and civil party applications. Whereas the nature of the alleged crimes makes it difficult for a suspect to identify and influence the very large number of potential witnesses before the judicial investigation begins, the same is not true once the Charged Person has knowledge of the identity of the inculpatory witnesses and victims involved in the proceedings. In view of this new situation, the fear of pressure being exercised is particularly justified.
8. The particular gravity of the crimes alleged against KHIEU Samphan renders the risks set out above even more acute, and no bail order would be rigorous enough to ensure that the abovementioned requirements would be sufficiently satisfied and therefore detention remains the only means to achieve these aims.
9. Consequently, considering that provisional detention is necessary to prevent any pressure on witnesses and victims, to preserve public order and protect the safety of the Charged Person;

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On these grounds,

We hereby order that **KHIEU Samphan** be placed in provisional detention for a period not exceeding one year.

Done at Phnom Penh, on 19 November 2007

សហចៅក្រមស៊ើបអង្កេត
Co-Investigating Judges
Co-juges d'instruction

The present order was written in Khmer and in French and then translated into English.

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We,....., have given a copy of this order to the below-mentioned persons on

Charged Person	Lawyer of Charged Person	Co-prosecutors	Office of the Administration	Delivering Agent
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Through this notification, the Charged Person is informed that :

- S/He has the right to appeal this order, pursuant to the conditions outlined in Rule 75 of the Internal Rules of the Extraordinary Chambers ;
- S/He has the right to be personally brought before the Co-Investigating Judges at least every 4 (four) months and to be given an opportunity to discuss his or her treatment and conditions during Provisional Detention ;
- During his or her presentation before the Co-Investigating Judges, s/he may formulate a request, upon which the Co-Investigating Judges shall decide ;
- S/He may submit an application for release to the Co-investigating Judges at any moment during the period of Provisional detention;
- If his or her conditions have changed since his or her last application, the Charged Person may file a further application not less than 3 (three) months after the final determination of the previous application for release.