



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

ដីកាសម្រេចឃុំឧទ្ធរណ៍បណ្តោះអាសន្ន

**Provisional Detention Order
 Ordonnance de placement en détention provisoire**

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

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

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

Noting the judicial investigation opened against:

Last Name : **NUON**

First Name : **Chea**

Born on July 7, 1926 in the village of Voat Kor, Commune Voat Kor,
 District Sangke, Battambang Province, Nationality: Khmer

Father's name: **LAO Liv** (deceased) Mother's name: **Dos Peanh** (deceased)

Wife's name: **LY Kimseng** (alive) Children: 03

Residence: Phsar Pruhm Village, Pailin District, Pailin Town,

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា មានទីតាំងស្ថិតនៅ ផ្លូវជាតិលេខ៤ សង្កាត់ ចោមចៅ ខណ្ឌ ដង្កោ ក្រុង ភ្នំពេញ ប្រអប់សំបុត្រលេខ៧១ ទូរស័ព្ទលេខ +៨៥៥(០)២៣ ២១៨៩១៤ ទូរសារលេខ +៨៥៥(០)២៣ ២១៨៩៤១។

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,

I. STATEMENT OF THE FACTUAL AND LEGAL SITUATION

1. To date (and without prejudice to the outcome of ongoing judicial investigations, which may identify other offences referred to in the introductory submission that may implicate the charged person) NUON CHEA is being prosecuted for:
 - CRIMES AGAINST HUMANITY (Murder, Torture, Imprisonment, Persecution, Extermination, Deportation, Forcible Transfer, Enslavement and Other Inhumane Acts), and
 - WAR CRIMES on the basis of Grave Breaches of the 1949 Geneva Conventions (Wilful Killing, Torture, Inhumane Acts, Wilfully Causing Great Suffering or Serious Injury to Body or Health, Wilful Deprivation of Rights to a Fair Trial, Unlawful Confinement and Unlawful Deportation or Transfer)
2. He is alleged to have, throughout Cambodia during the period from 17 April 1975 to 6 January 1979:
 - in particular in his capacity as the Deputy Secretary of the Communist Party of Kampuchea, a member of the CPK Central and Standing Committees, the Chairman of the Democratic Kampuchea People's Assembly, the acting prime minister and the Vice Chairman of the CPK Centre Military Committee,
 - planned, instigated, ordered, directed or otherwise aided and abetted in the commission of the aforementioned crimes, by exercising authority and effective control over the internal security apparatus of Democratic Kampuchea (detention centres) and by directing, implementing and enforcing Party policy characterised by forcible transfers of the population, enslavement, forced labour and other inhumane acts,
 - being a widespread or systematic policy 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 NUON CHEA on the grounds that there is a well-founded reason to believe that he participated in the crimes set out in the Introductory Submission; that provisional detention is necessary to prevent any pressure on witnesses, especially those who were under his authority, and any destruction of evidence; that detention is also necessary to ensure the presence of the charged person during the proceedings, given the danger of his fleeing, and to protect his safety; and that, finally, it is necessary to preserve public order.
4. Nuon Chea disputed the crimes with which he is charged, indicating that he would be ashamed to have committed such crimes and specifying that: *“We did not have any direct contact with the bases and we were not aware of what was happening there”*. He stated that during the Democratic Kampuchea period, all real power was in the hands of the Military Committee, of which he was not a member. He added that he was a member of the legislative power and that he never adopted any law allowing citizens to be killed. He pointed out that he personally lost around 40 family members during the events of the time. He criticised the fact that people speak incessantly about the 1.7 million victims of Democratic Kampuchea, without ever mentioning the deaths caused by others, before 1975 or after 1979. He argued that the conditions for provisional detention are not satisfied because, since he rallied the Royal Government of Cambodia, he has been living freely without any resulting disorder; he specified that he has no intention of destroying any evidence or placing pressure on anyone at all, adding that he is not of a cruel nature, having been a Buddhist monk; he emphasised that he has never been threatened by anyone and, on the contrary, has received many signs of affection; finally, he made the point that he has lived very close to the Thai border for years and that it would have been easy for him to escape if he had wanted to. He declared that he wishes to enlighten the Kampuchean people and the whole world concerning the real enemies of Cambodia, specifying that he is a patriot and not a coward and that he does not intend to tarnish the honour of his country by fleeing.

II. REASONS FOR THE DECISION

5. In light of the many documents and witness statements implicating NUON CHEA, there are well-founded reasons to believe that he committed the crimes with which he is charged. 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 the release of the charged person risks provoking, in the fragile context of today’s Cambodian society, 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 seen in the same way since the official prosecution against him has commenced. Furthermore, given NUON CHEA's specific hierarchical position ("Number 2" in the regime), it may be feared that, if he were to remain at liberty, he might attempt and would be in a position to pressure witnesses and victims, especially those who were under his authority. Finally, because NUON CHEA faces a maximum sentence of life imprisonment if convicted, it is feared that, regardless of his protestation to the contrary, he may be tempted to flee legal process.

6. Consequently, considering that provisional detention is necessary to prevent any pressure on witnesses and victims; that it is also necessary to ensure the presence of the charged person during the proceedings; and finally, that it is necessary to preserve public order and protect his safety; because furthermore, no bail order would be rigorous enough to ensure that these needs would be sufficiently satisfied and therefore detention remains the only means to achieve these aims;

On these grounds,

We order that **NUON CHEA** be placed in provisional detention for a period not exceeding one year.

Done at Phnom Penh, on 19 September 2007

សហចៅក្រមស៊ើបអង្កេត

**Co-Investigating Judges
Co-juges d'instruction**

This Order was done in Khmer and French originals. This English version is a translation.

We, **LY Chantola** and **Ham Hel**, have provided a copy of this order to the persons listed below on

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Charged Person	Lawyer of Charged Person	Co-Prosecutors	Office of the Administration	Greffiers
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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.