លេខ/No: C36/III

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

លេខស៊ើបសួរ/Investigation/Instruction

លេខ/No: 002/19-09-2007-ECCC-OCIJ

ដីកាសម្រេចបដិសេធពាក្យសុំឲ្យដោះលែង

Order refusing the request for release
Ordonnance de refus de mise en liberté

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

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

Noting Rules 64(2) of the Internal Rules of the Extraordinary Chambers,

Noting the judicial investigation opened against **KHIEU Samphan**, born on 27 July 1931

Charged with **Crimes Against Humanity** and **Grave Breaches of the Geneva Conventions of 12 August 1949**, offences 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 our provisional detention order dated 19 November 2007,

Noting the application for provisional release filed by **KHIEU Samphan's** Co-lawyers on 13 June 2008,

Noting the Observations by the Co-Prosecutors of the Extraordinary Chambers dated 19 June 2008,

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា មានទីតាំងស្ថិតនៅ ផ្លូវជាតិលេខ៤ សង្កាត់ ចោមចៅ ខណ្ឌ ដង្កោ ក្រុង ភ្នំពេញ ប្រអប់សំបុត្រលេខ៧១
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I. Relevant facts and law

1. The request for release is drafted as follows:

> During the interview held on 12 June 2008 in the detention centre of the ECCC regarding detention conditions, Mr Khieu Samphan informed you of his wish to obtain authorization to be treated at home surrounded by his wife and children, until completely restored to health. He specified that, once restored to health, he would return to the detention centre for the continued proceedings. He will willingly abide by all and any conditions fixed by the Co-Investigating Judges.
>
> The doctor has informed him he has a small cerebral problem and that his condition would require time to improve. This improvement also depends on his psychological condition. Once back in his familial environment where he will be able to receive treatment night and day, with the help of his wife in particular, his mental condition will improve, which shall result in a general improvement of his health.
>
> What Mr Khieu Samphan is asking of you is simply a provisional release in order to get well faster and come back to continue the judicial proceedings. If not, his conditions may progressively decline until the point of no return. In that case, who would be liable? Furthermore, Mr Khieu Samphan wishes to receive the help of a physiotherapist, at the tribunal expenses.
>
> For humanitarian reasons and in the interest of justice, the Defence asks you to kindly grant these wishes of Mr Khieu Samphan.

2. Pursuant to Rule 64(2) of the Internal Rules of the Extraordinary Chambers, this application is admissible.

II. Reasons for the Decision

3. Given the concerns raised by the medical condition of the detainee KHIEU Samphan (which led to his hospitalization), a medical expertise was ordered and assigned to cardiology specialists. Said experts have just filed their report and respond to the questions in the following terms:

> *(…) The patient [was] transferred to Calmette hospital for the purpose of monitoring the brain stroke with no cardiac or vascular involvement and not requiring any particular treatment.*
>
> *(…) His condition requires a hospital admission of a few days starting on 21 May 2008 for the purpose of monitoring the clinical and para-clinic evolution of the ischemic brain stroke.*

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(…) As of now, it is too early to say if the cerebral vascular event affects the period of his detention or his participation in the investigation proceedings. It requires monitoring by a specialist. We recommend his admission for a one-week observation. Should his condition improve, it should be possible for him to return to the Detention Facility.

(…) A second check-up consisting mainly of neurological exams should be performed within one month after the cerebral vascular episode, along with a scan and MRI, which can be done at Calmette hospital.

(… It is difficult to say how the brain stroke will evolve; however, it is not severe in that it is partial and/or evolution is spontaneous within 24 hours. A check-up should be performed one month after the cerebral vascular episode which occurred on 21 May 2008. The condition of the detainee's health is dominated by the brain stroke. The good news is that his health is satisfactory overall. No risk factors are present. It seems that the stroke is limited to the initial zone and has not spread beyond. Moreover, there is no heart or vascular condition that could trigger other cerebral vascular events in other areas.

4. In a separate report, following the hospitalization, the Calmette hospital doctors (who approved the detainee's return to the ECCC Detention Facility), concluded as follows:

***Conclusion**: The patient is a 77-year-old male who suffered an ischematic cerebral vascular stroke while he was recovering from subclinical hypothyroidism; he needs to undergo regular medical check-ups every two months, especially for his thyroid condition.*

In their report, in addition to the medicines prescribed, the doctors recommended a low-fat low-salt diet, moderate physical activity, kinesitheraphy and adequate rest.

5. In light of all these elements, it would be manifestly premature to affirm today that the Charged Person's medical condition is not compatible with detention. A second expertise (assigned to a neurologist) must be carried out, as the first experts recommend. It has already been ordered. Upon receipt of its conclusions, the Co-Investigating Judges will make, if necessary, all appropriate decisions regarding the detention. At present, the request can only refused, since the reasons for our provisional detention order dated 19 November 2008 still exist.

6. While waiting for the results of the second expertise, the request for physiotherapy sessions expressed by the detainee shall be granted, provided that such demand is considered appropriate by the doctor in charge of the daily monitoring of the detainee. The doctor is thus invited today to take the appropriate steps to implement such treatment if deemed useful.

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For these reasons,

hereby reject the request for release as formulated.

Done in Phnom Penh, on the 23rd day of June 2008

សហចៅក្រមស៊ើបអង្កេត

Co- Investigating Judges
Co-juges d'instruction

Marcel Lemonde **YOU Bunleng**

This Order was written in Khmer and French and then translated into English.

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We, **……** et **……,** 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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