



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:

IENG Thirith

Alias: Phea

Born on 10 March 1932.

Charged with Crimes against Humanity, defined and punishable under Articles 5, 29 (new) and 39 (new) of the Law on the establishment of the Extraordinary Chambers, dated 27 October 2004.

Noting today's adversarial hearing,

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

Extraordinary Chambers in the Courts of Cambodia, National Road 4, Choam Chao, Dangkoa Phnom Penh
 Mail Po Box 71, Phnom Penh Tel:+855(0)23 218914 Fax: +855(0) 23 218941.
 Chambres extraordinaires au sein des tribunaux cambodgiens, Route nationale 4, Choam Chao, Dangkoa, Phnom Penh
 Boite postale 71, Phnom Penh. Tel: +855(0)23 218914 Fax: +855(0) 23 218941.

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) IENG Thirith is being prosecuted for:
 - **Crimes Against Humanity** (Murder, Extermination, Imprisonment, Persecution and Other Inhumane Acts),
2. for having, throughout Cambodia during the period from 17 April 1975 to 6 January 1979:
 - in her capacity as the Minister of Social Action, exercising authority and effective control over the Ministry and all of its constituent and subordinate organs,
 - instigated, ordered, failed to prevent and punish, or otherwise aided and abetted in the commission of the aforementioned crimes;
 - by directing, encouraging, enforcing or otherwise rendering support to Communist Party of Kampuchea 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.
3. The Co-Prosecutors, who developed their factual and legal arguments in the written submissions placed on the case file on 18 October 2007 and 13 November 2007, have requested the provisional detention of IENG Thirith on the grounds that: on the one hand, being in possession of a passport, she could easily flee to another country if she were left at liberty, and that this is all the more likely since she risks life imprisonment if convicted; on the other hand, that in the absence of detention, the victims might seek revenge and that provisional detention is, thus, necessary to prevent disturbing public order and to ensure the security of the Charged Person; and finally, that there is a danger of pressure on witnesses.
4. IENG Thirith disputed the crimes which she is charged, indicating that “*the claims of the Co-Prosecutors are 100% false*”; that she has never had any relations with Nuon Chea, whom “*(she) detests, as (she) knows that he is a bad person*”. She demanded that proof of her guilt be provided, specifying that, within the framework of her functions at the Ministry of Social Action and in the health sphere, she did nothing other than helping the population and the patients, in particular by organising repairs to damaged hospitals and the fabrication of medication. She argued that there is no danger of flight since her passport was seized and she cannot see which UN member State could accept her. She pointed out that she has a home, and declared herself ready to appear whenever summoned. She also noted that she is 75 years old and

suffers from chronic physical and mental illness. Accordingly, she asked to be left at liberty, if necessary under police supervision.

II - REASONS FOR THE DECISION

5. In light of the many documents and witness statements implicating IENG Thirith, contained in the Introductory Submission, there are well-founded reasons to believe that she committed the crimes with which she is charged.
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, she might attempt, and would be in a position to organize, such pressure. Indeed, henceforth, IENG Thirith 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, especially since the Charged Person has numerous family members and sympathizers in the regions of Phnom Malai, Pailin and Phnom Penh, some of whom currently hold influential positions and even have armed guards.
8. Furthermore, numerous elements show that IENG Thirith (who has a residence abroad and has made numerous voyages outside of Cambodia) has the material means necessary to facilitate her flight to another country, especially those with which Cambodia does not have any extradition agreements. It may, thus, be feared that the Charged Person, who faces a maximum sentence of life imprisonment if convicted, will be tempted to flee the legal process.
9. The particular gravity of the crimes alleged against IENG Thirith 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.

10. To date, none of the documents produced by the defence lead us to believe that the Charged Person's state of health is incompatible with detention.
11. 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 the safety of the Charged Person;

On these grounds,

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

Done at Phnom Penh, on 14 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.

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.