



ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia  
Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers  
in the Courts of Cambodia

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត

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

សំណុំរឿងព្រហ្មទណ្ឌ

Dossier pénal/Criminal Case File

លេខ/No: 002/14-08-2006

លេខស៊ើបអង្កេត/Instruction/Investigation

លេខ/No: 002/19-09-2007-ECCC-OCIJ

ដីកាសម្រេចបដិសេធសំណើសុំដោះលែង

ឲ្យមានសេរីភាព

Ordonnance de refus de mise en liberté

Order Refusing Request for Release

Public Redacted Version

(Not mentioning witness identities and  
some medical information)

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

NOTING the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004 (“ECCC Law”),

NOTING Rule 64.2 of the Internal Rules of the Extraordinary Chambers,

NOTING the continuing judicial investigation against **Khieu Samphan** charged with **Crimes Against Humanity and Grave Breaches of the Geneva Conventions of 12 August 1949**, offences defined in and punishable by Articles 5, 6, 29 (new) and 39 (new) of the ECCC Law,

NOTING our Order, dated 19 November 2007 (C26), for the provisional detention of Khieu Samphan for a maximum period of one year,

NOTING the Defence Request for an Order for Khieu Samphan’s Provisional Release for Health Reasons, dated 13 June 2008 (C36),

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា មានទីតាំងស្ថិតនៅ ផ្លូវជាតិលេខ៤ សង្កាត់ ចោមចៅ ខណ្ឌ ដង្កោ ក្រុង ភ្នំពេញ ប្រអប់សំបុត្រលេខ៧១

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**NOTING** our Order Refusing the Request for Release, dated 4 July 2008 (C36/III),

**NOTING** the Charged Person's Application for release, dated 8 October 2008 (C40),

**NOTING** our Forwarding Order, dated 10 October 2008 (C40/I),

**NOTING** the Co-Prosecutors' Response, dated 24 October 2008 (C40/3),

**REASONS FOR THE DECISION:**

**I- Admissibility of the Application under Rule 64(3)**

1. The Co-Prosecutors submit that the request for Khieu Samphan's release should be dismissed as inadmissible, because the Request for release filed by the Co-Lawyers on 13 June 2008 would be an obstacle to a further application in the absence of any change in circumstances, pursuant to Rule 64(3) of the Internal Rules.
2. The Co-Investigating Judges consider that Rule 64(3) must be interpreted narrowly in relation to the change in circumstances, as by its nature, the passage of time could produce such change.
3. In this instance, the Request for release, dated 13 June 2008, relied on the Charged Person's state of health. Since the request was filed, two further medical examinations have been performed at the request of the Co-Investigating Judges; these examinations have provided valuable information regarding the Charged Person's state of health. Also, some of the elements contained in the request have not been invoked before: hence, the conditions laid out in Rule 63(3) have thus far not been the subject of a request for release under Rule 64(2) on the part of the Charged Person.
4. In view of all the foregoing elements, the argument that there has been no change in circumstances must not be against the Charged Person, and the Application for release is admissible.

**II- Conditions of provisional detention under Rule 63 (3) of the Internal Rules**

**(A) Rule 63 (3) a) of the Internal Rules**

5. The Co-Lawyers for the Charged Person submit that the persistence of well founded reasons to believe is "a condition *sine qua non* for the lawfulness of the continued detention" and that it is necessary to identify "clearly and specifically" the evidence on which the decision relies.
6. The Co-Prosecutors submit that the Application for release does not seriously challenge the existence of well-founded reasons to believe that the Charged Person may have committed the crimes specified in the Introductory Submission and the Supplementary Submission. They refer to the arguments contained in their Response to Khieu Samphan's Appeal against Provisional

Detention Order<sup>1</sup> and add that the investigations by the Co-Investigating Judges corroborate the elements contained in the Introductory Submission.

7. In determining “whether there are well-founded reasons to believe that the Charged Person may have committed the crime or crimes specified in the Introductory Submission”, it is necessary to ascertain “whether facts or information exist which would satisfy an objective observer that the person concerned may have committed the offence.”<sup>2</sup> This condition must always be present with the passage of time and the progress of the judicial investigations. Also, the term “committed” is understood as referring to the forms of participation specified in Article 29 of the Law on the ECCC.<sup>3</sup>
8. In their Provisional Detention Order of 19 November 2007, the Co-Investigating Judges held that in view of all the elements contained in the Introductory Submission there are well-founded reasons to believe that Khieu Samphan may have committed the crimes specified in the Introductory Submission.<sup>4</sup> In addition, although the investigation proceedings are still ongoing and that at this stage the question is not whether there are sufficient charges, the investigations conducted thus far have produced evidence to corroborate this analysis.
9. Indeed, at this stage of the investigation, there are well-founded reasons to believe that Khieu Samphan, 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, had knowledge of, facilitated and encouraged the crimes charged against him, including:
  - contrary to what he has said,<sup>5</sup> the forced transfer of people from Phnom Penh in April 1975;<sup>6</sup>
  - the forced labour and living conditions imposed on Cambodians, the executions and religious persecution, and his visits to a number of sites throughout the country<sup>7</sup> and the information he received;<sup>8</sup>
  - the dissemination of CPK ideology and policies through the speeches he made<sup>9</sup> and the political training he conducted or directed;<sup>10</sup>
  - defining PCK ideology, its dissemination and implementation throughout the country,<sup>11</sup> in his capacity as member of the Central Committee, a leader within Office 870, Head of State and

<sup>1</sup> C26/I/9, Co-Prosecutors’ Response to Khieu Samphan’s Appeal Against Provisional Detention Order of 19 November 2008, 6 February 2008, 00160767-00160795, paras. 24-26 and 33-52.

<sup>2</sup> C11/54, Pre-Trial Chamber, Decision on Appeal Against Provisional Detention Order of Nuon Chea, 20 March 2008, 00172907-00172934, para. 46; C20/I/27, Pre-Trial Chamber, Decision on Appeal Against Provisional Detention Order of Ieng Thirith, 9 July 2008, 00201633-00201649, para. 21; C22/I/73, Pre-Trial Chamber, Decision on Appeal Against Provisional Detention Order of Ieng Sary, 17 October 2008, 002328-30-00232736, para. 71.

<sup>3</sup> C11/54, Pre-Trial Chamber, Decision on Appeal Against Provisional Detention Order of Nuon Chea, 20 March 2008, 00172907-00172934, para. 47; C20/I/27, Pre-Trial Chamber, Decision on Appeal Against Provisional Detention Order of Ieng Thirith 9 July 2008, 00201633-00201649, para. 24; C22/I/73, Decision on Appeal Against Provisional Detention Order of Ieng Sary, 17 October 2008, 002328-30-00232736, para. 71.

<sup>4</sup> C26, Order for Provisional Detention of Khieu Samphan, 19 November 2007, 00156700-00156705.

<sup>5</sup> [REDACTED]

<sup>6</sup> [REDACTED]

<sup>7</sup> [REDACTED]

<sup>8</sup> [REDACTED]

<sup>9</sup> [REDACTED]

<sup>10</sup> [REDACTED]

<sup>11</sup> [REDACTED]

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា មានទីតាំងស្ថិតនៅ ផ្លូវជាតិលេខ៤ សង្កាត់ ចោមចៅ ខណ្ឌ ដង្កោ ក្រុង ភ្នំពេញ ប្រអប់សំបុត្រលេខ៧១

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his participation in meetings<sup>12</sup> including many of the Standing Committee meetings<sup>13</sup> arrests, imprisonments and executions within the ranks of the CPK<sup>14</sup> and within Office 870.<sup>15</sup>

10. The Co-Investigating Judges reiterate that there are well-founded reasons to believe that these crimes were committed as part of an international armed conflict between Democratic Kampuchea and the Socialist Republic of Vietnam and a widespread or systematic attack targeting a civilian population.<sup>16</sup>
11. Consequently, well-founded reasons still exist to believe that the Charged Person instigated the commission of crimes charged against him, namely murder, extermination, imprisonment, persecution and other inhumane acts as crimes against humanity and voluntary homicide, 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 civilians amounting to grave breaches of the Geneva Conventions of 12 August 1949, or having aided and abetted the perpetration thereof.

**(B) Regarding the conditions laid out in Rule 63 (3) b)**

12. In their Application for release, the Co-Lawyers for the Charged Person contend that the conditions for provisional detention as laid out under Rule 63(3) b) are not met. Their arguments can summarised as follows:

- Concerning the first and second conditions, namely preventing pressure on witnesses or victims, preserving evidence or preventing the destruction of any evidence, “there is no evidence that Khieu Samphan has intimidated or attempted to intimidate any witnesses”. Any risk of interference is “only theoretical” since, whereas the Charged Person has access to the case file, he does not know the identity of the potential witnesses.
- Concerning the third condition, namely ensuring the presence of the Charged Person during the proceedings, the Co-Lawyers for the Defence emphasize that “there is no risk that Khieu Samphan could escape” that he “surrendered voluntarily”. They add that because of his age and state of health the risk of absconding is highly improbable. Lastly, [they submit] he does not possess a passport.
- Concerning the fourth condition, protecting the security of the Charged Person, the Defence submits that Khieu Samphan “led a quiet life for 30 years without any significant risk to his

<sup>12</sup> [REDACTED]

<sup>13</sup> [REDACTED]

<sup>14</sup> [REDACTED]

<sup>15</sup> [REDACTED]

<sup>16</sup> See C26, Order for Provisional Detention of Khieu Samphan, 19 November 2007, 00156700-00156705. On this issue, the Pre-Trial Chamber has affirmed contextual elements relating to the entire Case File No. 002/14-08-2006, similar decisions of the Co-Investigating Judges in respect of the same Case File: C11/54, Pre-Trial Chamber, Decision on Appeal Against Provisional Detention of Nuon Chea, 20 March 2008, 00172907-00172934, para. 48; C20/I/27, Pre-Trial Chamber, Decision on Appeal Against Provisional Detention of Ieng Thirith, 9 July 2008, 00201633-00201649, para. 24; C22/I/73, Pre-Trial Chamber, Decision on Appeal against Provisional Detention of Ieng Sary, 17 October 2008, 002328-30-00232736, para. 74.

security” and that the incident which occurred in 1991, when Khieu Samphan was chased by a mob is an “isolated” one and “is no proof that there is any threat to his security”.

- Lastly, concerning preserving public order, the Co-Lawyers for the Charged Person argue that “[a] detainee must not be punished for “possible” acts of violence against him by others” and that “it is the responsibility of the local authorities, and not that of Khieu Samphan, to provide and maintain public order”.

13. In their Response to the Forwarding Order, the Co-Prosecutors made submissions concerning these arguments. Their position can be summarised as follows:

- Concerning the risk of exerting pressure on witnesses or victims and the preservation of evidence, the Co-Prosecutors emphasize the fact that the Charged Person has the whole Case File available to him and therefore knows the names of potential witnesses. The senior positions held by the Charged Person before and during Democratic Kampuchea demonstrate that he has been a powerful and influential man in Cambodia. The Co-Prosecutors also recall that Khieu Samphan publicly warned of retaliation if he was brought to trial. Lastly, they emphasize that no witness protection scheme is in place for witnesses and victims.

- The Co-Prosecutors submit that the Charged Person’s continued provisional detention is necessary to ensure his presence during the proceedings. The gravity of the crimes charged against the Charged Person is considered a factor in assessing the risk to abscond. The flight risk is real in that the Charged Person has the financial means, his home area is close to the Thai border and he possesses a passport.

- The Co-Prosecutors submit that Khieu Samphan’s safety might be in danger if he were released. His safety might be in danger now that the prosecution against him has started. The 1991 incident demonstrates that attacks against the Charged Person have occurred. The passage of time has not diminished the relevance of such risks; on the contrary, their relevance has increased.

- Lastly, concerning the preservation of public order, the Co-Prosecutors submit that releasing the Charged Person could provoke protests of indignation which could lead to violence.

14. Having thus summarised the Parties’ submissions, the Co-Investigating Judges recall that any one of the five conditions laid out in Rule 63(3) is sufficient to justify provisional detention<sup>17</sup> and that as such, the Co-Investigating Judges are not obliged to examine each of the criteria if they deem that they have sufficiently demonstrated the necessity of provisional detention in reference to one or more of the conditions stipulated in Rule 63 (3) b) at any given point in time.

15. Referring to the reasons they gave in their Provisional Detention Order of 19 November 2007 concerning conditions (i) and (ii) of Rule 63(3), the Co-Investigating Judges recall that it is absolutely essential for the continuing investigations to prevent any pressure on witnesses and victims and to preserve evidence. The passage of time since the provisional detention of the Charged Person has not eliminated the risk, on the contrary, the risk is more acute.

16. The Charged Person has access to all the elements in the case file, including the written records of interviews with specific witnesses, as well as complaints and civil party applications. Now,

<sup>17</sup> See for example, C11/54, Pre-Trial Chamber, Decision on Appeal Against Provisional Detention of Nuon Chea, 20 March 2008, 00172907-00172934, para. 83.

whereas the nature of the alleged crimes makes it difficult for a suspect to identify or 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. Clearly, the Charged Person already has access to a large body of evidence containing details on his possible role, notably within Office 870<sup>18</sup> and the evacuation of Phnom Penh.<sup>19</sup> There is a real risk that witnesses might refuse to participate in the proceedings in the future if Khieu Samphan were released. Moreover, many of these witnesses might be re-interviewed during the investigation, and, in their statements, have given other leads and named other potential witnesses who have not yet been interviewed at this stage of the investigation proceedings. There are reasons to believe that these witnesses could be subjected to pressure, either because they were the Charged Person's subordinates or, in a broader sense, because of the senior positions the Charged Person held. The risk is real and is corroborated by the Charged Person's public statements to the effect that there was a genuine risk of retaliation if he was brought to trial.<sup>20</sup> There is also a real risk of pressure being exerted, and it must be averted in order to ensure the smooth conduct of the ongoing investigation.

17. Adopting the interpretation of the Pre-Trial Chamber, the Co-Investigation Judges note that the condition of preserving public order is met if facts showing that the accused's release would actually disrupt public order exist. In addition, detention will continue to be legitimate only if public order remains actually threatened.<sup>21</sup> The phrase "facts showing" necessarily involves a measure of prediction particularly in the context of crimes within the jurisdiction of the ECCC.<sup>22</sup>
18. In the instant case, it is worth noting that 30 years on, the impact of the Khmer Rouge regime on Cambodian society is still being felt and that a whole segment of Cambodia's population suffers from post-traumatic stress disorder.<sup>23</sup> The interest of the population and the media in the Extraordinary Chambers and the ongoing proceedings are proof that this is still a major preoccupation for Cambodians.
19. The Co-Investigating Judges are cognizant of that the gravity of the crimes for which the Charged Person is under investigation is not in itself an obstacle to release. Nonetheless, this factor is relevant in assessing the criteria for deciding continued detention and its legitimacy. In this instance, it is not excessive, considering the gravity of the crimes charged against the Charged Person, to conclude that a decision to grant release within the fragile context of today's Cambodia could provoke protests of indignation which could lead to violence.
20. As for the security of the Charged Person, the argument that he lived at liberty for 30 years without any significant threat to his security cannot be retained, because the situation is obviously no longer perceived in the same way since prosecution has now started and the threat of personal acts of vengeance from one or more victims cannot be ruled out. The risks to the Charged Person

<sup>18</sup> [REDACTED]

<sup>19</sup> [REDACTED]

<sup>20</sup> [REDACTED]

<sup>21</sup> C11/54, Pre-Trial Chamber, Decision on Appeal Against Provisional Detention Order of Nuon Chea, 20 March 2008, 00192907-00192934, para. 76; C20/I/27, Pre-Trial Chamber, Decision on Appeal Against Provisional Detention Order of Ieng Thirith, 9 July 2008, 00201633-00201649, para. 64.

<sup>22</sup> C22/I/73, Pre-Trial Chamber, Decision on Appeal Against Provisional Detention Order of Ieng Sary, 17 October 2008, 002328-30-00232736, para.112.

<sup>23</sup> See for example C22/I/73, Pre-Trial Chamber, Decision on Appeal Against Provisional Detention Order of Ieng Sary, 17 October 2008, 002328-30-00232736, para. 113.

have not diminished with the passage of time; on the contrary, there are now more acute owing to media interest in the trial.

21. In the Provisional Detention Order, the Co-Investigating Judges stated – and now reiterate – that the gravity of the crimes and the threat to public order if the Charged Person was released could endanger his personal safety. In addition, while the events of 1991 during which Khieu Samphan was chased by an angry mob and struck on the head<sup>24</sup> do not in themselves help determine if there is a real risk for the Charged Person, they support the arguments *supra*, and their cannot be excluded.
22. In conclusion, the Co-Investigating Judges consider that a genuine risk that the Charged Person could exert pressure on victims and witnesses; they consider his continued provisional detention to be necessary for preserving evidence and preventing its destruction, protecting the security of the Charged Person and preserving public order.

### III- Lack of an alternative solution

23. While in their prayers, the Co-Lawyers for the Charged Person request his release only, they invoke the possibility of adopting alternative measures, such as bail. They aver that depriving a person of his liberty must be both “necessary” and “proportionate to the circumstances”, be “the only reasonable measure in light of the circumstances of the case” and that in the absence of this, if a “measure which is less restrictive to the charged person’s liberty is possible”, it should be adopted.
24. In response to this argument, the Co-Prosecutors submit that no bail order would be rigorous enough to satisfy the needs of protecting the Charged Person’s personal safety, the preservation of public order, and to prevent the Charged Person exerting pressure on witnesses and victims and therefore, destroying evidence.
25. The Co-Investigating Judges adopt the same position as the Pre-Trial Chamber, which has on several occasions, considered that the fact that the majority of the conditions of Article 63(3)(b) are met, even though any one of them alone would have been sufficient to justify the provisional detention, is a strong indication that no other form of detention can outweigh the necessity for continued provisional detention.<sup>25</sup> Also, the Co-Investigating Judges reiterate their position in this regard, as contained in the Provisional Detention Order, that the particular gravity of the crimes alleged against Khieu Samphan renders the risks set out in Rule 63(3)(a) even more acute. This is why no bail order would be rigorous enough to ensure that the abovementioned requirements would be sufficiently satisfied.

### IV- The period of provisional detention is not excessive

26. Khieu Samphan’s Co-Lawyers argue that their client has been in detention for more than 10 months and that, no matter which decision is handed down by the Judges, be it a dismissal or a

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<sup>24</sup> [REDACTED]

<sup>25</sup> For the most recent decision, see: C22/I/73, Pre-Trial Chamber, Decision on Appeal against Provisional Detention Order of Ieng Sary, 17 October 2008, 002328-30-00232736, para.121.

referral of the case, it will be months from now, and as such, the Charged Person will have been languishing in detention before “any decision is taken on his case; there is no justification for that”. Also, they argue that with the passage of time, the diligence shown in moving the case forward must be a relevant factor in reaching a decision on provisional detention.

27. The passage of time is relevant to determining the legitimacy of continued provisional determination. The time spent in provisional detention cannot be deemed unjustified if it is demonstrated that due diligence is shown in conducting the proceedings. In assessing the manner in which the judicial investigation is conducted, and by analogy with the case-law of the European Court of Human Rights concerning reasonable time, the Co-Investigating Judges take the view that it is necessary to take account of the facts of the case as a whole, including its complexity, in terms of fact and law, the conduct of the judicial authorities and that of the parties.<sup>26</sup>
28. In the instant case, the Charged Person has been in detention for nearly 12 months. This cannot be considered excessive in view of the scope of the investigations, the complexity and gravity of the crimes of which the Co-Investigating Judges are seized.<sup>27</sup>
29. Since the opening of the judicial investigation proceedings, the Co-Investigating Judges have undertaken large-scale investigations into crimes. Since the provisional detention of the Charged Person, the Co-Investigating Judges have collected a large body of evidence, at the request of the parties or *proprio motu*, and have interviewed other persons, notably regarding Khieu Samphan’s potential role. Also, 146 Written Records of Interview of witnesses have been placed on the Case File; some of the witnesses concerned have given evidence on the Charged Person’s possible role in the Regime. Additionally, numerous rogatory letters are in the course of being executed. Lastly, the Charged Person was also interviewed until he decided to exercise his right to remain silent. The right to remain silent is recognised and undisputed, but it is not conducive to speedy proceedings.
30. In view of the foregoing, the passage of time does not call into question the necessity of continued provisional detention.

**V- The Charged Person’s age and state of health are not incompatible with his continued detention**

31. The Charged Person’s Co-Lawyers invoke his age and state of health in support of their Application. They argue that his continued detention “can be considered as ill-treatment, or, at the very least, constitute sufficient grounds for release”.

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<sup>26</sup> ECHR, *Frydlender v. France*, 27 June 2000, Application No. 30979/96, para. 43; ECHR, *Pelissier and Sassi v. France*, 25 March 1999, Application No. 25444/94, para. 71; ECHR, *Vernillo v. France*, 20 February 1991, Application No.11889/85, para. 34.

<sup>27</sup> [REDACTED]



32. The Co-Prosecutors submit that the issue of the Charged Person's age was raised by the Defence in their earlier application for release. The request was refused by order of the Co-Investigating Judges. However, since the Order was issued, there has been a significant improvement in the Charged Person's state of health.
33. As noted earlier,<sup>28</sup> the release of the charged person can be decided in reliance on Article 64(2), if it is demonstrated that his state of health is incompatible with continued provisional detention. Old age in itself is not an obstacle to detention.<sup>29</sup> Compatibility of detention with a charged person's state of health is determined on a case-by-case basis in light of the overall circumstances of the case.<sup>30</sup>
34. Following a stroke, which was diagnosed on 21 March 2008, the Co-Lawyers for the Charged Person filed a Request, dated 13 June 2008, for the Co-Investigating Judges to order the release of Khieu Samphan for health reasons. In an Order dated 4 July 2008, the Co-Investigating Judges rejected the Request, on the grounds that "it would be manifestly premature to affirm today that the Charged Person's medical condition is not compatible with detention." Also, the Co-Investigating Judges recalled that a second expertise by a neurologist had been ordered and explained that they would make, "if necessary, all appropriate decisions regarding the detention."<sup>31</sup>
35. The aforementioned neurological expertise was performed by Professor Chong-Tin Tan and Dr. Chan Samleng on 24 June 2008, and their report was placed on the Case File on 1 August 2008.<sup>32</sup> The report states in substance that Khieu Samphan has made a good recovery [REDACTED]. The experts concluded that "the condition of detention currently is adequate in relation to his health" and that "by the end of July 2008 (...), he should be "physically and mentally fit to participate in the judicial investigation".
36. The Charged Person was again examined more recently by Professor Antoine Lafont and Dr. Chour Sok, both cardiologists, at the request of the Co-Investigating Judges. The expertise report, which was placed on the case file on 27 October 2008,<sup>33</sup> reveals good recovery [REDACTED].
37. [REDACTED]
38. The Co-Investigating Judges will continue to keep abreast of the Charged Person's state of health, but as of now, having examined all the elements, Khieu Samphan's state of health is compatible with his continued detention.

**FOR THESE REASONS,**

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<sup>28</sup> C36/III, Order Refusing Khieu Samphan's Request for Release, 23 June 2008, 00198508-00198512.  
<sup>29</sup> ECHR, *Papon v. France*, Application No.64666/01, 7 June 2001 (Maurice Papon was then 90 years old);  
<sup>30</sup> ECHR, *Mouisel v. France*, Application No. 67263/01, 14 November 2002, para. 37; ECHR *Papon v. France*, Application No. 64666/01, 7 June 2001; ECHR, *Priebke v. Italy*, Application No. 48799/99, 5 April 2001.  
<sup>31</sup> B11, Neurological Expertise Order: Khieu Samphan, 19 June 2008, 00196877-00196879.  
<sup>32</sup> B11/2, Neurological Expertise Report: Khieu Samphan, 1 August 2008, 00209184-00209187.  
<sup>33</sup> B13, *Ordonnance d'expertise de Khieu Samphan*, 6 October 2008, (awaiting translation); B13/1, *Rapport de d'expertise de Monsieur Khieu Samphan*, 27 October 2008, (awaiting translation).

DISMISS Khieu Samphan's Application for provisional release.

Signed in Phnom Penh, on 28 October 2008

**សហចៅក្រមស៊ើបអង្កេត**

**Co- Investigating Judges**

**Co-juges d'instruction**