

Kingdom of Cambodia

The killing of trade unionist Chea Vichea

“The highest levels of political leadership in the country must send a clear message that those responsible for this murder will be held to account. The problem of impunity remains a central obstacle to the process of building democratic institutions and advancing the enjoyment of human rights under the rule of law in Cambodia. A thorough and impartial investigation must be publicly established and undertaken, identifying both those who are immediately responsible for the killing of Chea Vichea as well as those who ordered it...”

The acting United Nations High Commissioner for Human Rights, Bertrand Ramcharan, as quoted in a United Nations press release issued on 26 January 2004.

Introduction



Chea Vichea, Source ICFTU

Chea Vichea, human rights defender and President of the Free Trade Union of Workers of the Kingdom of Cambodia (referred to in this report as the Free Trade Union of Workers), was assassinated at around 9:00 am on 22 January 2004. On a crowded Phnom Penh street, two men on a Honda motorbike drew up to a newspaper stall where Chea Vichea, as he did every morning, was reading the day's news. One of the men got off the bike and fired three shots at point-blank range. Chea Vichea was hit in the head, chest, and left arm. He died immediately. While neither the perpetrator nor his accomplice attempted to hide their identities, and numerous bystanders witnessed the events, nobody has yet been brought to justice for his death.

Chea Vichea's murder led to domestic and international outrage. His death and the subsequent police investigation created a climate of fear in Phnom Penh. There continues to be widespread concern about the investigation process, the treatment of suspects initially arrested for the killing, and the intimidation of witnesses. The case also raises serious concerns about the independence of the judiciary in Cambodia.

Amnesty International believes that the most serious human rights problem in Cambodia remains impunity. The case of Chea Vichea illustrates many facets of impunity in Cambodia today. As with many other politically motivated killings in the last 15 years, no one has yet been brought to justice for the killing of Chea Vichea. Allegations of the use of torture by the police to extract confessions from the suspects have not been taken seriously or even acknowledged by the judicial authorities.

Members of the police and military in Cambodia are able to impose their will on the civilian population and commit violations, safe in the knowledge that they will never be called to account for their actions. The government has appeared unwilling to address problems with fundamental human rights, and has more often concentrated on criticising the work of human rights defenders, including trade union activists, rather than tackling the substantive issues they raise.

This report provides background information on the political context in which Chea Vichea's killing occurred. It also provides information on problems faced by trade unions in the growing garment industry in Cambodia,¹ with which Chea Vichea was closely involved. The report outlines Amnesty International's concerns relating to the investigation of his death and provides recommendations on the lack of independence of the judiciary, the use of torture to extract confessions, and restrictions on freedom of assembly and association in Cambodia.

Background

Political violence in the context of the inconclusive elections in July 2003

Cambodian national elections were held in July 2003. The Cambodian People's Party (CPP), led by Prime Minister Hun Sen, won the largest number of votes, but not sufficient to form a government. This led to increased tensions and a political crisis when the two opposition parties, the National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC) and the Sam Rainsy Party (SRP) formed an Alliance of Democrats and refused to join a government with Hun Sen as Prime Minister. This alliance eventually dissolved amid acrimonious and lengthy negotiations between all parties. In July 2004, the CPP and FUNCINPEC finally agreed to form a coalition government.

¹ See Appendix 1 – The garment industry in Cambodia.

Before and during the 2003 election process at least 14 people were believed to have been unlawfully killed.

- In February 2003, **Om Radsady**, a senior and well-respected FUNCINPEC politician was shot and killed in Phnom Penh. Although the authorities quickly claimed that he was killed in an armed robbery² and two men were arrested, tried and sentenced to 20 years imprisonment in October 2003, it was widely believed that the killing was politically motivated and doubts persist as to the identity of the perpetrators and those behind them.³
- The killing of a senior judge, **Sok Sethamony**, in April 2003 further reinforced ongoing concerns about independence and corruption in the judiciary; the motive behind the killing remains unclear and the perpetrators have not been brought to justice.

During the political stalemate, which continued until July 2004, numerous instances of political violence and intimidation occurred, including:

- The killing of **Chhor Chetharith**, the Deputy Editor of *Ta Prohm* radio station, owned by FUNCINPEC, in October 2003.
- The attempted killing in the same month of **Touch Sunith**, a popular singer who had recorded many pro-FUNCINPEC songs, which were played extensively on Ta Prohm radio during the election period. Her mother died trying to protect her during the assassination attempt.
- In the week preceding the killing of Chea Vichea, one SRP activist in Kampong Cham province and two in Banteay Meanchey province were killed; their killings were suspected to be politically-motivated.

Trade unionism in Cambodia

Freedom of association is enshrined in Cambodia's 1997 Labour Law and in the International Covenant on Civil and Political Rights (ICCPR) to which Cambodia is a State party. However, in reality, independent trade unions in Cambodia face considerable obstacles from both factory owners and enterprises opposed to unionised work forces, as well as the authorities. In recent years an increasing number of unions have emerged with close links to the government and employers. It is unclear whether such unions have been created to

² Prime Minister affirms murder of Mr Om Radsady was not political, *Rasmei Angkor*, Vol.10, No. 600, 22 February, 2003 as reported in *The Mirror*, No 304, 16 to 22 February 2003.

³ Thun Saray, Executive Director of human rights NGO, Cambodia Human Rights and Development Association (ADHOC), was quoted as saying that "Human rights groups all over the country consider Radsady's murder politically motivated, but the people who have the information are not supplying it to us", Jailbreak renews focus on Radsady murder, *Phnom Penh Post*, 24 September to 9 October 2003.

legitimately represent workers' interests or have been used by government-backed employers to split the workforce and weaken the strength of independent trade unions.⁴

Competition between government backed unions and independent trade unions has occasionally resulted in rivalry, sometimes violent. In one instance, in March 2003, members of the Cambodian Union Federation, reported to have strong government links, beat members of the Free Trade Union of Workers who were demonstrating outside the Trinunngal Komara factory in Phnom Penh where a disputed union election was taking place.⁵ Allegations have been made that a student organization with close links to the ruling Cambodian People's Party - the Pagoda Children, Intelligentsia and Student Association, commonly known as the Pagoda Boys - has been brought into conflict situations by employers with close government links. The Pagoda Boys were implicated in much of the violence and destruction of Thai-owned property in Phnom Penh during anti-Thai rioting that broke out in Phnom Penh in January 2003.⁶ Chea Vichea is quoted as having said in October 2003 that:

“When we carry out protests such as demonstrations, the authorities sometimes send members of the ‘Pagoda Boys’, a group of young people with close links to the ruling party, who harass and sometimes attack us. The police simply look on as they destroy our loudspeaker and banners and even when they hit workers. On the other hand, when workers try to defend themselves, they are attacked by the police. There is a danger that the image of trade unions will be tarnished. Part of the population associates trade unions with violent incidents that sometimes accompany protest actions without realising that they are provoked by people who have nothing to do with free trade unions”⁷

Following the anti-Thai riots in January 2003, the authorities in Phnom Penh have consistently refused to authorize demonstrations, regardless of their purpose. Those that have gone ahead without official authorization have been met by a heavy handed police and military response often characterized by a disproportionate use of force to disperse demonstrators.⁸

⁴ Union riot a tragedy for labor rights, by George McLeod, International Liaison Officer to the Free Trade Union of Workers, *Phnom Penh Post*, Issue 12/13, 20 June to 3 July 2003.

⁵ Ibid.

⁶ On the outside, a politician, *The Cambodia Daily*, 10 to 11 October 2003; US Department of State, Bureau of East Asian and Pacific Affairs, Report to the Congress on the Anti-Thai Riots in Cambodia on January 29, 2003, May 14, 2003 (<http://www.state.gov/p/eap/rls/rpt/20565.htm>).

⁷ In the shadow of the goons, ILO, ACTRAV - Bureau for Workers' Activities (<http://www.ilo.org/public/english/dialogue/actrav/publ/133/6.pdf>).

⁸ Crackdown on gatherings and demonstrations by Phnom Penh authorities – since January 2003, Briefing Paper by the Cambodian Human Rights Action Committee (CHRAC), November 2004.

Chea Vichea

At the time of his death in January 2004, Chea Vichea, 36 years old, was a prominent and internationally respected trade union leader. He was well known as a champion for workers' rights in the growing and economically vital garment industry. His work as a trade unionist was also closely linked with his opposition political activities dating back to the 1990s.

Chea Vichea was born in Kandal province and studied agriculture in the former Soviet Union before returning to his native Cambodia on graduation in 1995. He was a founding member, together with Sam Rainsy, of the Khmer Nation Party (KNP) in 1995, renamed the Sam Rainsy Party in 1998. In early 1997 he helped to create the Free Trade Union of Workers, together with Sam Rainsy.

The KNP supported garment factory workers in a series of strikes in 1997 for improved pay and conditions. Many of the workers took part in a demonstration organised by the KNP outside the National Assembly in Phnom Penh on 30 March 1997 to protest about deficiencies of the judicial system. Four grenades were thrown into the peaceful demonstration resulting in at least 16 deaths and over 100 injured, including Chea Vichea who suffered a head injury.⁹ None of the investigations which have been carried out into the March 1997 grenade attack have been made public, nor have they resulted in those responsible being brought to justice.¹⁰

Chea Vichea was elected President of the Free Trade Union of Workers in 1999 and again in 2001 and 2003 at the expiry of each two-year term of office. Following his election he resigned from official positions in the Sam Rainsy Party, to concentrate on trade union work. During his presidency he strongly advocated improvements in working conditions, particularly for garment factory workers, such as wage increases, reduced working hours, and protection of workers' representatives against intimidation and dismissal by factory owners.¹¹

He frequently led demonstrations and strikes, which at times resulted in him becoming a target. During a factory protest in April 2002, he was reportedly beaten by an armed security guard outside the Thai Ya factory in Phnom Penh, whilst distributing leaflets calling on factory workers to attend May Day demonstrations.¹² He required hospital treatment for his injuries. Four months later, the guard was sentenced to 14 months imprisonment *in absentia* and fined. At the time Chea Vichea told *Radio Free Asia*, "I don't

⁹ Amnesty International report, *Kingdom of Cambodia: Grenade Attack on Peaceful Demonstration*, 31 March 1997, AI Index: ASA 23/05/97.

¹⁰ See Amnesty International report, *Kingdom of Cambodia: Still waiting for justice: Appeal cases* (AI Index: ASA 23/005/2002), September 2002.

¹¹ Eulogy at Chea Vichea's funeral service by Rong Chhun, President of the Cambodia Independent Teachers Association, 25 January 2004.

¹² Remembering Chea Vichea: Loss for Democracy, Social Justice, *The Cambodia Daily*, 19-23 January 2004.

believe the guilty person will ever serve this sentence because he has very powerful backers who are Generals.”¹³

Days later, on 1 May, Chea Vichea organized a peaceful rally in front of the National Assembly of some 200 garment factory workers who were calling for improved conditions including better pay.¹⁴ Despite not receiving official permission, the demonstrators marched to the Ministry of Labour and Social Affairs and then to the Municipal Court to protest about alleged corruption at the Court. Prime Minister Hun Sen, in a letter issued to mark May Day, had called upon workers with complaints to use the court system so as to avoid provoking “violent acts such as arson”. Chea Vichea, publicly disagreed claiming, “*They [complaints] are always ignored. When the worker asks to have a case investigated, the court always asks for money. Then the court always decides in favour of the factory because the factory can pay the court more money.*”¹⁵

Chea Vichea continued advocating for worker and trade union rights. In April 2003, the Free Trade Union of Workers filed a complaint with the ILO Committee on Freedom of Association in protest at the dismissal of workers for organizing unions in private textile companies.¹⁶ The first part of the complaint concerned the dismissal of Chea Vichea and Hak Bun Thoeun, respectively the President and General Secretary of the Free Trade Union of Workers, and 30 other union members from the INSM Garment Factory in Phnom Penh.¹⁷ They claimed that they had been dismissed for helping to establish a trade union at INSM. In a formal reply to the ILO in May 2003 the Cambodian government stated, “*The complaint filed by Mr. Chea Vichea is groundless, and the trade unions under his leadership represent only a small number of workers. Many other workers’ organizations, which are currently the most representative unions in Cambodia, comply with all the regulations issued by the Ministry.*”¹⁸

The ILO Committee on Freedom of Association, in its conclusions on the complaint, noted that the government had failed to provide any information regarding Chea Vichea and the 30 other union members. The ILO Committee urged the Cambodian Government to

¹³ Slain Cambodian labor leader received death threats, *Radio Free Asia*, 22 January 2004.

¹⁴ In April 2002, a report, Cambodia – The Second Synthesis Report, 12 April 2002, issued by the International Labour Organization (ILO), revealed that workers in 30 out of 34 factories claimed that they did not receive the wages that they were entitled to.

¹⁵ Peaceful Demonstrations Mark Labor Day, *The Cambodia Daily Weekly Review*, 29 April to 3 May 2002.

¹⁶ ILO Case No. 2262, Interim Report, Complaint against the Government of Cambodia presented by Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC).

¹⁷ The complaint to the ILO also included a case regarding the dismissal of Muth Sour, Vice President of the Free Trade Union of Workers, from the Top Clothes Garment Factory, and the dismissal of the President, Vice President, and Secretary of the Coalition of Cambodian Apparel Workers Democratic Union at the Splendid Chance Garment Factory.

¹⁸ See footnote No. 16.

“ensure, in cooperation with the employer concerned, that the workers concerned are reinstated, and enjoy full legal protection against acts of anti-union discrimination....”¹⁹

Chea Vichea had been appointed a member of the ILO “Projects Advisory Committee”, set up as part of the Trade Agreement on Textile and Apparel, between Cambodia and the United States which provided for the ILO to be given a role as a factory-labour monitor of the trade agreement.²⁰ After his death, the ILO referred to Chea Vichea as being “a key player in tripartite social dialogue” and being a “vibrant supporter of ILO values of social justice”.²¹

In the two years before his death, while primarily focusing on trade union and workers rights, Chea Vichea also continued to support the Sam Rainsy Party in its campaigning for both the 2002 communal elections and the 2003 national elections.

Death threats

Chea Vichea reportedly received numerous death threats throughout his working life. One week before the national elections in July 2003, Chea Vichea received a death threat via SMS (text) message on his mobile phone. The SRP lodged a complaint with the National Election Committee demanding an investigation and additional protection.²² In August 2003, Chea Vichea received another threatening text message. He reportedly assumed that the threats were connected with his activities two months earlier supporting the SRP in the lead-up to the national elections. According to union colleagues the police advised him to go into hiding.²³ He did so and remained in hiding until early September after the succession of death threats stopped.²⁴

Undeterred by the threats against him, Chea Vichea resumed his union activities. In November 2003 he accused the authorities of using excessive force to break up a protest at pay and working conditions by several hundred garment factory workers, with riot police armed with electric batons.²⁵

¹⁹ See footnote No. 16.

²⁰ First ILO Report on Cambodian Garment Industry, press release issued on 30 November 2001 (ILO/01/50).

²¹ ILO expresses “shock and sadness” at killing of Cambodian labour leader, ILO press release, 23 January 2004 (ILO/04/02).

²² <http://www.canadasrp.org/on-trail-campaign.html>.

²³ Le syndicaliste Chea Vichea est “en sécurité”, *Cambodge Soir*, 4 August 2003.

²⁴ Cambodia-murder, 22 January 2004, *RFA*, <http://techweb.rfa.org/pipermail/rfanews/2004-January.txt>

²⁵ Cambodia’s garment factory workers clash with police, *VOA*, 19 November 2003.

The investigation into the killing of Chea Vichea

Chea Vichea's murder provoked unprecedented international and domestic condemnation. Stung by this uproar, the authorities initially claimed that the murder was not politically motivated,²⁶ despite his cell phone and motorbike being left untouched.²⁷ The authorities immediately vowed to speedily find those responsible and bring them to justice.²⁸ King Norodom Sihanouk, in a public letter written on 23 January, described the background to this and other extrajudicial killings as “undeniably political”.²⁹

The ensuing investigation has been characterized by political pressure and interference, with the use of intimidation, threats and torture by the police of suspects, witnesses, and others connected to the case. This significantly added to an existing climate of fear in Phnom Penh following the killing itself. Several other opposition party figures and trade union activists reported receiving death threats in the days following the killing. Another trade union leader – Ros Sovannareth, a steering committee member of the Free Trade Union of Workers and President of the Trinunngal Komara garment factory union – was shot and killed on 7 May 2004. There are concerns that he may have been killed because of his trade union activities, and his death further increased fear among trade union activists.

Suspects arrested

Two men, Born Samnang, aged 23, and Sok Sam Oeun, aged 36, were arrested on 27 and 28 January respectively and accused of the murder of Chea Vichea. Born Samnang's confession reportedly led to Sok Sam Oeun's arrest, together with three other men who were later released. However, both men publicly proclaimed their innocence during a public press conference broadcast on television on 29 January. They complained of police brutality used to force them to confess to the crime, but, when the two men appeared in court on 30 January, Born Samnang retracted his claim of innocence and confessed. UN and human rights workers were not given access to Born Samnang or Sok Sam Oeun at this time.

One of the elements of the police investigation was a sketch released on 26 January purporting to represent the suspects in the case. The sketch bore similarities to Born Samnang and Sok Sam Oeun. However, all the known eyewitnesses to the shooting denied that the sketch resembled the men that they saw and pointed out that they were not interviewed by the police prior to the sketch being released.³⁰

Investigations by local human rights NGOs, concerned by the allegations of torture to obtain confessions, revealed that the accused, both petty criminals, had alibis. In particular,

²⁶ Khieu Kanharith, Cambodian Government spokesperson, in an interview with AFP 22 January 2004.

²⁷ Union Chief Chea Vichea Gunned Down, *The Cambodia Daily*, 19 – 23 January, 2004, Volume 6 Issue 67, pg. 1.

²⁸ President of Free Trade Union of Workers Gunned Down while Reading Newspapers, *Rasmei Kampuchea*, Vol. 12 No. 3277, 23 January 2004 as reported in *The Mirror*, 18 – 24 January 2004.

²⁹ “Les meurtres, assassinats, dont le ‘background’ est indéniablement politique se multiplient hélas!, second ‘texte’, 23 January, 2004: <http://www.norodomsihanouk.info>.

³⁰ Source of Sketch Didn't See Shooter's Face, *The Cambodia Daily*, 8 to 12 March, 2004.

Born Samnang claimed to have spent the week, including the day of the murder, with his ethnic Vietnamese girlfriend and her family in their village in Prey Veng province, outside Phnom Penh. The girlfriend, the girlfriend's mother and villagers supported the alibi. This information was not publicly known until *The Cambodia Daily* newspaper published an article on 9 February citing interviews with Born Samnang's girlfriend, Vieng Thi Hong, and her mother, Nguyen Thi Noeung, and other villagers.³¹ On the same day these articles appeared, police officers visited the village and arrested both mother and daughter and escorted them to Phnom Penh. Amnesty International expressed concern for their safety³² and other high-level interventions were made on their behalf with the authorities. The two women were released the following morning. They were reportedly threatened whilst in detention in an apparent attempt to pressure them to withdraw their alibi for Born Samnang.

Vieng Thi Hong, Nguyen Thi Noeung and several eyewitnesses feared for their own safety and considered fleeing Cambodia, at least on a temporary basis, should their security be further threatened.³³ Chea Vichea's widow, Chea Kimny, seven months pregnant at the time, and their two year old daughter did flee to Thailand and were resettled by the UN High Commissioner for Refugees (UNHCR) as refugees in a third country. The others remained in Cambodia, some of them in hiding, assisted by human rights NGOs and the UN.

The judicial process

Judicial procedures following the arrest of the suspects accused of killing Chea Vichea have been characterized by serious irregularities. The treatment of the judge initially appointed to the case, who openly questioned the continued detention of the two suspects, has raised serious concerns about the independence of the judiciary.

On 19 March, the first investigating judge, Heng Thirith, from the Phnom Penh Municipal Court, ordered that the case be dismissed due to lack of evidence. The prosecutor appealed against this decision and the case was referred to the Appeals Court on 20 March. The accused remained in detention. Judge Heng Thirith reportedly claimed that he had been under pressure from a senior government official to bring the case to trial.³⁴

On 23 March, a member of the Supreme Council of Magistracy³⁵ stated that two judges - Heng Thirith and Oun Bunna from the Phnom Penh Municipal Court - were going to

³¹ Villagers: Suspect in Prey Veng Day of Shooting, *The Cambodia Daily*, 9 February, 2004.

³² Amnesty International Urgent Action: *Cambodia, Vieng Thi Hong and Nguyen Thi Noeung, Fear for safety* (AI Index: ASA 23/001/2004), 9 February 2004.

³³ Cambodia has a long tradition of anti-Vietnamese sentiment. The ethnic Vietnamese community are frequently targets for abuse and discrimination and are particularly vulnerable.

³⁴ Axe hangs over judge who dropped Chea Vichea charges, *Phnom Penh Post*, 26 March – 8 April 2004.

³⁵ The Constitution states that the King is the guarantor of judicial independence, assisted by a body called the Supreme Council of Magistracy. The Council can recommend appointments, transfers, disruptions, suspensions or removals from actual service of any judges or prosecutors. The Council can also act as a disciplinary council for matters involving disciplinary actions to be taken against judges and prosecutors. The Council comprises the King, Minister of Justice, Chief of the Supreme

be reassigned and that an official announcement would be forthcoming. Judge Heng Thirith, interviewed the same day by the *Cambodia Daily* newspaper, said that he had heard about the Supreme Council of Magistracy decision but was yet to be officially notified. He went on to say that he intended to appeal to the King to “investigate” this decision.³⁶

The Cambodia Daily quoted Heng Thirith as saying, in an interview broadcast on *Beehive Radio* the following day, “some people ordered me to pass this case on to trial. The arrests [of suspects Born Samnang and Sok Sam Ouen] were very illegal.” In the same interview, the judge is reported to have feared for his safety saying “I request that the US embassy grant me a visa as soon as possible, in order to protect me against possible future danger...this does not mean that I want to run away from the country, but it would be useful to escape for a while when facing danger. I do not know if they will be angry because of what I have said.”³⁷

Public confirmation of Judge Heng Thirith’s reassignment was given on 26 March by the Supreme Council of Magistracy who issued a press release citing a number of alleged mistakes made by the Judge in applying the criminal law as the grounds for the “forced transfer”. While stating that the criticisms were not related to the Chea Vichea case or two other high profile/politically sensitive cases presided over by the judge,³⁸ his removal immediately after the Chea Vichea case, appeared to cast doubt on these assertions. The UN High Commissioner for Human Rights in Cambodia expressed concern that the actions of the Supreme Council of Magistracy threatened basic principles that ensure fair trial, noting that “it remains a cardinal principle of judicial independence that a judge cannot be suspended from duty or removed because he or she has made a mistake in applying or interpreting the law – that is the function of the appeal process”.³⁹

Criticism from the UN of the Supreme Council of Magistracy is not new. In July 1999, The UN Human Rights Committee expressed concern that “the Supreme Council of the Magistracy is not independent of government influence, and that it has not yet been able to deal with the many allegations of judicial incompetence and unethical behaviour”. The Committee requested that “the State party take urgent measures to strengthen the judiciary and to guarantee its independence, and to ensure that all allegations of corruption or undue pressure on the judiciary are dealt with promptly.”⁴⁰

Court, General Prosecutor to the Supreme Court, Chief of the Appeal Court, General Prosecutor to the Appeal Court and three judges elected by other judges.

³⁶ Source: Chea Vichea Judge is removed, *The Cambodia Daily*, 22 – 26 March 2004.

³⁷ Ibid.

³⁸ Heng Thirith was the investigating judge in the prosecution of Prime Minister Hun Sen’s nephew, Nhim Sophea, for involvement in a shooting in which two people died. He was also a judge involved in the case of the disputed ownership of FM 90 radio station, backed by the FUNCINPEC party, which broadcast pro-democracy programs.

³⁹ Statement from the Office of the UN High Commissioner for Human Rights in Cambodia issued on 26 March 2004.

⁴⁰ UN document CCPR/C/79/add.108, Human Rights Committee Concluding Observations on Cambodia, 27 July 1999.

On 1 July 2004, the Chea Vichea case was heard at the Court of Appeal. Both defendants continued to proclaim their innocence and the prosecution produced no new evidence against them. Judge Thou Mony overturned the 19 March ruling to dismiss the case and returned it to the Phnom Penh Municipal Court for further investigation. During the hearing, Born Samnang repeated allegations that he had been beaten into confessing and stated that police had been providing him with cigarettes and money in prison as a bribe.⁴¹ Sok Sam Oeun continued to plead his innocence. Both suspects were denied bail and returned to prison. A coalition of Cambodian human rights NGOs issued a media statement protesting against the judge's decision.⁴²

At the time of writing this report, the two men remained in prison pending further investigation and trial.

Amnesty International's concerns

Impunity

Universal Declaration of Human Rights

Article 8:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law

Amnesty International urges the authorities to urgently address the issue of impunity for serious human rights violations which prevail in Cambodia. The country has suffered a troubled history from civil war to tragic loss of over one million lives during the period of Khmer Rouge rule between April 1975 and January 1979. Considerable effort and international assistance has been put into helping Cambodia develop and rebuild institutions since the 1991 Paris Peace Accords. Despite this, the lamentable state of the weak judicial system, which lacks fairness and independence and is steeped in corruption, continues to hamper any real progress for improving the human rights situation. Hundreds of political killings of politicians, journalists, women, children, ethnic Vietnamese, political party members and ordinary people, have been reported during the last decade. Human rights violators in Cambodia need to know that they will be held responsible for their actions. The continuing climate of impunity will change only when justice becomes a reality for everyone in Cambodia - both victims and perpetrators.

⁴¹ Appeals Court heat on Chea Vichea pair, *Phnom Penh Post*, July 1 – July 15 2004.

⁴² Cambodian Human Rights Action Committee (CHRAC), Media Statement, 1 July 2004.

Independence of the judiciary

International Covenant on Civil and Political Rights, ratified by Cambodia in 1992

Article 14(1):

“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law...”

Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985:

“2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressure, threats or interferences, direct or indirect, from any quarter or for any reason.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision...”

The investigation into the killing of Chea Vichea exposes the persistent problem in Cambodia of the lack of judicial independence, particularly in high profile cases. Concerns about the lack of independence of Cambodia’s judiciary were expressed in a United Nations General Assembly resolution on Cambodia in December 2002 that noted “continued problems related to the rule of law and the functioning of the judiciary resulting from *inter alia*, corruption and interference by the executive with the independence of the judiciary.”⁴³

Chapter 11 of Cambodia’s Constitution states that the judiciary shall be an independent power, which shall guarantee and uphold impartiality and protect the rights and freedoms of the people. Article 130 states clearly that “judicial power shall not be granted to the legislative or executive branches of government.” Judicial independence is also enshrined in the International Covenant on Civil and Political Rights.

Continuing political interference with the workings of the Supreme Council of Magistracy is of special concern given this body’s role in the appointment and placement of Judges.

⁴³ Resolution adopted by the General Assembly, A/RES/57/225, 18 December 2002.

The blurring of the division between the executive and the justice sector was exemplified by the recent admission to the Cambodian Bar Association, in September 2004, of high-ranking political figures including the Prime Minister, Deputy Prime Minister, Minister at the Council of Ministers, and Secretary of State at the Ministry of Interior. It is unclear if any of these politicians have legal qualifications.⁴⁴

Recommendations:

- **Political interference in the judiciary must be addressed by a clear unambiguous message from the Cambodian government's most senior members that the principle of the independence of the judiciary from the executive, as enshrined in Cambodia's Constitution, is sacrosanct and will be respected at all times. The Cambodian government should publicly state its adherence to this principle and ensure that it is respected in practice.**
- **Steps should be taken to ensure the independence and proper functioning of the Supreme Council of Magistracy. The Law on the Organization and Functioning of the Supreme Council of Magistracy should be reviewed. At a minimum the law should be amended to ensure that the Minister of Justice, a member of the executive branch of government, should not participate in decisions relating to dismissal or reassignment of judges.**

⁴⁴ CPP leaders called to Bar, *Phnom Penh Post*, 10 – 23 September 2004.

Use of torture to extract confessions

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Cambodia in 1992

Article 2:

- 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.**
- 2. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.**
- 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.**

Amnesty International is alarmed by the allegations of torture of Born Samnang and Sok Sam Oeun. Such allegations are of particular concern because courts in Cambodia do not stringently ensure that evidence obtained as a result of torture is not considered.⁴⁵ Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that:

“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”.

Additionally, Amnesty International is concerned that no investigation has been carried out into the allegations of torture, in contravention of Cambodia’s obligations under the CAT. Article 13 of the CAT states:

“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

⁴⁵ Amnesty International report, *Kingdom of Cambodia: A human rights review based on the Convention against Torture* (AI Index: ASA 23/007/2003).

Amnesty International believes that the use of torture, particularly to extract confession, is widespread in Cambodian detention facilities. The organization is concerned that those in police custody are especially at risk.⁴⁶ The attitude of the Cambodian police towards the use of torture was exemplified in June 2004, when the deputy director-general of the National Police, General Sau Phan, asserted publicly that torture during interrogation was sometimes necessary to force suspected criminals to provide information. His comments were widely reported and the UN Special Representative of the Secretary General for Human Rights to Cambodia called for a retraction or his resignation.⁴⁷ General Sau Phan did make a retraction, but concerns remain that the use of torture is a deeply entrenched problem in Cambodia.

Recommendations:

- **Amnesty International calls on the Cambodian government to enact a new criminal procedure code to ensure that the country's domestic laws conform with Cambodia's international obligations under the Convention against Torture.**
- **The new criminal procedure code should contain practical safeguards to prevent torture and ill-treatment in police stations. These safeguards should include on-call rotas for human rights defenders; ensuring access of independent lawyers and doctors to detainees as soon as they are detained; monitoring and recording detentions and any complaints received; ensuring medical examination by independent doctors - in particular the proper recording of injuries sustained during custody.**
- **Amnesty International recommends that administrative and criminal sanctions for police officers who fail to implement these safeguards should also be included in the criminal procedure code. Evidence obtained without the safeguards being in place should not be accepted as valid evidence at trial.**
- **Amnesty International recommends the implementation of a pre-trial procedure for assessing claims that evidence has been secured through the use of torture or ill-treatment so that evidence which has been obtained illegally does not come before the court which makes the final determination of guilt or innocence. Given that the use of torture to obtain confessions is widespread in Cambodia, Amnesty International believes that the burden of proof should be on the prosecution to prove that evidence was not obtained through torture.⁴⁸**

⁴⁶ Ibid.

⁴⁷ Statement of the UN Special Representative of the Secretary General for Human Rights in Cambodia, 30 June 2004.

⁴⁸ This was also a general recommendation by the UN Special Rapporteur, UN Doc A/156/56, dated 3 July 2001, para 39 (j).

- **All complaints and reports of torture should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The methods and findings of such an investigation should be made public. Officials suspected of committing torture should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals. Those responsible must be brought to justice and the victims should be entitled to prompt reparation from the state.**

Freedom of association and assembly in Cambodia

International Covenant on Civil and Political Rights, ratified by Cambodia in 1992

Article 21:

“The right of peaceful assembly shall be recognized...”

Article 22:

“Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests...”

Amnesty International is concerned that, while provisions exist in Cambodian law for the right to form trade unions, the right to strike, and the right to assembly, in reality these rights are under threat and not sufficiently protected by the authorities. These concerns are highlighted by Chea Vichea’s work as a leading trade unionist who struggled for improved conditions and respect for basic rights for workers.

The right to assembly is guaranteed under Cambodia’s Constitution. Article 41 states:

“Khmer citizens shall have freedom of expression, press, publication and assembly...”

Workers’ rights, including the right to form trade unions, are laid out in Cambodia’s Labour Law. Article 266 states:

“Workers and employers have, without distinction whatsoever and prior authorization, the right to form professional organizations of their own choice for the exclusive purpose of studying, promoting the interests, and protecting the

*rights, as well as the moral and material interests, both collectively and individually, of the persons covered by the organization's statutes....*⁴⁹

Amnesty International considers that the overall problem for labour rights and human rights in general in Cambodia is one of a lack of political will to implement and enforce the laws which guarantee these rights.

There is an economic imperative to respect labour rights. Many of Cambodia's competitors have lower production costs than Cambodia, which must therefore seek other ways to attract investment. Better working conditions and improved workers rights will attract long-term investment from companies who are concerned about the human rights of their employees and those of their sub-contractors. In a global market place, consumers are beginning to ask questions about the working practices and conditions in the countries and factories where products are manufactured.

Recommendations:

- **The authorities should review policy towards demonstrations as enacted since the anti-Thai riots in January 2003 to ensure conformity with international standards on freedom of association and assembly, and ensure that the constitutional right to peaceful assembly is guaranteed.**
- **The authorities should ensure that the right to freedom of association, in particular the right to form trade unions and join them, is protected and that employers who deny this right are sanctioned appropriately.**
- **ILO special monitoring and direct involvement should not finish with the end of the preferential trade agreement with the United States.**
- **Cambodia should submit periodic reports on its obligations, as required under the ILO core conventions, in a timely fashion and these reports should be subject to public scrutiny and follow-up.**

⁴⁹ Cambodian Labour Law, Chapter XI, Trade Union Freedom and Worker Representation in the Enterprise, Section 1, The Rights to Form a Trade Union, Article 266, Labor Law in Cambodia, The Cambodian Legal Resources Development Centre.

Conclusions

The killing of prominent trade union leader and government critic Chea Vichea is the most recent in a long line of politically motivated killings, followed by inconclusive investigations and prosecutions plagued by irregularities. His case shines a spotlight on deficiencies in the Cambodian judicial system and labour conditions in the country's vital garment industry.

The overarching concern highlighted by the Chea Vichea case is impunity. The lack of political will to ensure that the law takes its course without fear or favour and that no one is above or beneath the law remains the most serious hindrance to progress on human rights in Cambodia.

At present, the Cambodian people have little faith in the investigative and judicial systems, which are perceived as corrupt and ineffective. The Cambodian government urgently needs to make a demonstrable commitment to end impunity, signifying an unequivocal political will to abide by the rule of law. The investigation into the death of Chea Vichea has been marred by failures in the administration of justice at every level. Bringing to justice those truly responsible for Chea Vichea's death through an investigation and judicial process that meets international standards would be a first step.

Appendix 1

The garment industry in Cambodia

The garment industry now represents a crucial part of the Cambodian economy. Textile factories employ more than 200,000 people, 90% of them women.⁵⁰ Approximately 200 factories make T-shirts, shorts and trousers for global brand names such as Nike, Adidas and Gap. They are estimated to have earned Cambodia 1.3 billion US dollars in 2002 and represent about 36 per cent of the Cambodian economy.⁵¹

In 1999, Cambodia and the United States entered into a three year “Trade Agreement on Textile and Apparel”. This was extended for a further three years in 2001. The agreement fixed an export quota for garments from Cambodia to the United States while seeking to improve working conditions and respect for workers’ rights in Cambodia’s garment sector. The agreement provided for a possible 18% annual increase in Cambodia’s export entitlements to the United States. The agreement specifically refers to Cambodian labour law and internationally recognized core labour standards. As part of this agreement the UN’s International Labour Organization⁵² (ILO) was given a role as a factory-labour monitor of the Cambodian-US trade agreement.⁵³ Cambodia has signed all but one of the core ILO Conventions relating to labour rights,⁵⁴ including Convention No. 87 - Freedom of Association and Protection of the Right to Organise, and Convention No. 98 - Right to Organise and Collective Bargaining, both ratified in August 1999. However, as with other international human rights treaties ratified by Cambodia, reporting and implementation remains weak. Cambodia has failed to submit, to the ILO, nine overdue reports on implementation of ILO Conventions it has ratified, including Conventions numbers 87 and 98.

At the end of December 2004, six years of preferential textile trade quotas with the United States will come to an end. As of January 2005, Cambodia will be competing on an equal footing with other garment producing countries in the region and the rest of the world as global textile quotas reach an end under WTO rules.

⁵⁰ Cambodia: textile workers face a gloomy future, Trade Union World Briefing, ICFTU, January 2004. No 1.

⁵¹ Thousands of Cambodian mourn slain unionist, *Reuters*, 25 January 2004.

⁵² The ILO was established by the UN as a means of promoting the rights and interests of workers as well as the promotion of social justice. It is made up of member states which have certain rights and obligations as members. They must uphold the principles of the ILO, uphold any conventions or treaties they have ratified as well as report back every two years on implementation of the eight core ILO Conventions. They must also answer complaints or enquiries directed at them through the ILO. The ILO is allowed to consult and cooperate with any labour organization it sees as useful to the furthering of its work including non-governmental organizations.

⁵³ First ILO Report on Cambodian Garment Industry, press release issued on 30 November 2001 (ILO/01/50).

⁵⁴ Cambodia has yet to ratify Convention No. 182 – the Elimination of the Worst forms of Child Labour (1999).