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## Cambodia

### The murder of trade unionist Chea Vichea: Still No Justice

August 2006

AI Index: ASA 23/008/2006

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*“Impunity is a central human rights problem in Cambodia. It is not addressed by simply arresting persons for a high profile crime, regardless of the evidence. [...] In the case of Chea Vichea, there are many indications that the accused men have been chosen to take the blame, regardless of what the evidence suggests. Few believe that they are responsible for the crime, further diminishing public confidence in the administration of justice”.*

Mr Peter Leuprecht, the Special Representative of the Secretary General for Human Rights in Cambodia, 8 July 2004

One year ago today, on 1 August 2005, Born Samnang, 25, and Sok Sam Oeun, 38, were sentenced to 20 years’ imprisonment after an unfair trial. The Phnom Penh Court convicted the two men of murdering prominent trade unionist Chea Vichea in January 2004, despite presenting no direct evidence linking them to the murder except a confession by one of them, obtained under duress. Both men had strong alibis.

In the light of the deeply flawed criminal investigation and trial, Amnesty International believes that the true perpetrators responsible for the murder of Chea Vichea have not been held to account.

At this time the organization repeats its calls on the Cambodian authorities to urgently initiate an impartial, independent and effective investigation into the killing so that those responsible are brought to justice. Born Samnang and Sok Sam Oeun should be released without delay and their names cleared, unless there is sufficient evidence to bring charges against them. If so, they should be given a prompt retrial which meets international fair trial standards.



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Chea Vichea, President of Free Trade Union of Workers, was murdered on 22 January 2004 after receiving a series of death threats. He was shot dead at point blank range in a contract-style killing while reading a newspaper at a newsstand near the Lanka Pagoda in central Phnom Penh. Witnessed by several bystanders, the unmasked killer fled the scene on a motorbike driven by an accomplice.

Amnesty International has for many years reported and campaigned on the entrenched climate of impunity in Cambodia, including in connection with the murder of Chea Vichea,<sup>1</sup> which led to unprecedented domestic and international outrage.

### **Workers' rights**

At the time of his death, Chea Vichea, 36 years old, was a well-known and respected trade union leader who championed workers' rights in Cambodia's burgeoning garment industry.



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He was a founding member of the main opposition Khmer Nation Party (KNP) in 1995, renamed the Sam Rainsy Party (SRP) in 1998.

Many garment factory workers took part in a peaceful opposition protest against perceived failings of the judicial system outside the National Assembly in Phnom Penh on 30 March 1997. Four grenades were thrown into the crowd resulting in at least 16 deaths and over 100 wounded, including Chea Vichea, who suffered a head injury. No one has yet been held to account for this attack.

Chea Vichea was elected President of the Free Trade Union of Workers, one of Cambodia's largest trade unions, in 1999, when he resigned from official positions within the SRP. He successfully stood for re-election twice and served as the president for five years. He dedicated his presidency to advocating for workers' rights, such as wage increases, reduced working hours, and protection for workers' representatives.

### **The murder investigation**

"We have found the killers who directly committed the killing of Chea Vichea," Phnom Penh police chief Suon Chheang Ly declared after arresting the two men, on the 27 and 28 of January 2004.<sup>2</sup>

However, when they were paraded by police in front of the media, Born Samnang and Sok Sam Oeun declared their innocence and said they were being made scapegoats. Investigations by human rights groups and journalists showed both suspects had strong alibis for the time around the shooting. Born Samnang claimed that the police initially had extracted a confession out of him under duress – beatings, threats and inducements.

The criminal investigation was marred by irregularities: instead of probing into the murder police officers focused on threatening and rounding up those who provided alibis for the suspects, while witnesses were intimidated. Eyewitnesses to Chea Vichea's murder were not called by police to identify the arrested suspects. When shown photographs of the two suspects by journalists and human rights workers, they said the two men bore no similarities to the men at the scene of the crime. Nor were any eyewitnesses consulted in drawing a police sketch of the alleged gunman. This sketch bore a resemblance to Born Samnang and was issued the day before his arrest.

<sup>1</sup> See e.g. *Kingdom of Cambodia: The killing of trade unionist Chea Vichea*, AI Index: ASA 23/008/2004, 3 December 2004

<sup>2</sup> Two Nabbed in Slaying of Cambodian Leader, Ker Munthit, Associated Press, 29 January 2004

On 19 March 2004, Judge Heng Thirith decided to dismiss the case for lack of evidence against the suspects, admitting that he had been subject to political pressure and that Born Samnang's confession was "irregular".<sup>3</sup> This move was hailed by the Cambodian Human Rights Action Committee (CHRAC), a coalition of human rights organisations, as a step towards an independent judiciary. The Judge's decision was immediately appealed by the prosecutor. Within days, the Supreme Council of Magistracy, mandated to take disciplinary actions against judges and prosecutors, had Heng Thirith removed from the position of Investigation Judge at the Phnom Penh Court.

On 1 July 2004, the case was heard at the Appeals Court. Born Samnang maintained that police had beaten, coerced and bribed him into falsely confessing, while Sok Sam Oeun continued to plead his innocence.<sup>4</sup> Judge Thou Mony, now a Trial Chamber Judge in the Extraordinary Chambers in the Courts of Cambodia<sup>5</sup>, reversed Heng Thirith's ruling and returned the case to the Phnom Penh Municipal Court for further investigation.

CHRAC issued a media statement criticizing the judge's decision, and linking the lack of independence of the Court to the need for judicial reform.<sup>6</sup> The UN Secretary-General's Special Representative for Human Rights in Cambodia expressed concern at the "numerous procedural irregularities" in the investigation and prosecution including arrests without a warrant; lack of evidence against the suspects; a confession allegedly made under duress after beatings and inducements, and indications of entrapment.<sup>7</sup>

Born Samnang and Sok Sam Oeun remained in pre-trial detention until their trial in the Phnom Penh Municipal Court on 1 August 2005, a detention period exceeding by a full year the legal six-month maximum under Cambodian law.

### **Truth on trial**

In the Phnom Penh Court, fundamental principles of international fair trials standards such as the presumption of innocence, the rights to cross examine witnesses and challenge evidence, and the impartiality of the judiciary were completely ignored.

Other serious irregularities were observed. According to international human rights law, Cambodia's Constitution and its criminal law, confessions which are obtained under duress are not admissible as evidence in court. Furthermore, the Cambodian criminal law provides that confessions cannot be used to convict persons unless they are corroborated by other evidence. No such evidence was presented in support of Born Samnang's initial confession, which was not only the central evidence against him, but also against Sok Sam Oeun. The same confession had been snubbed as "irregular" by the first Investigating Judge.

No witness testimony linked the two accused men to Chea Vichea's murder and neither defendant was tied to the scene of the crime by prosecution witnesses. In contrast, multiple defence witnesses, prepared to testify before the panel but denied the opportunity, provided an alibi for Born Samnang, supporting his testimony to the Court that he had been in Neak

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<sup>3</sup> *Continuing Patterns of Impunity in Cambodia*, The Special Representative of the Secretary-General for Human Rights in Cambodia, October 2005, *Ax Hangs Over Judge Who Dropped Chea Vichea Charges*, Phnom Penh Post, Issue 13/07, March 26 - April 8, 2004

<sup>4</sup> *Appeals Court Heat on Chea Vichea Pair*, Phnom Penh Post, 2-15 July 2004

<sup>5</sup> The Extraordinary Chambers is an internationalized court within the Cambodian court system mandated to investigate and prosecute "senior Khmer Rouge leaders" and those who were "most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom and international conventions recognized by Cambodia" during the Khmer Rouge regime 17 April 1975-6 January 1979.

<sup>6</sup> *Media Statement, 1 July 2004*, Cambodian Human Rights Action Committee

<sup>7</sup> Statement by Mr. Peter Leuprecht, the Special Representative of the Secretary General for Human Rights in Cambodia, 8 July 2004

Loeung, some 60 kilometres south of Phnom Penh at the time of the murder. Moreover, no evidence refuted the two men's claims that they had never met before.

There has been no inquiry into the allegations of the police brutality reported by both men, not even in relation to Born Samnang's controversial recanted confession. Instead it was presented as evidence against the alibi, as were written statements from witnesses who claimed he had spent the night before the murder not in Neak Loeung but at a Phnom Penh guesthouse. These statements could in no way be challenged during the criminal process.

Witnesses for the prosecution did not appear, aside from some police officers who denied Born Samnang had been beaten and coerced into confessing. Instead, written testimonies were presented, providing no room for challenge through cross-examination. The right of the accused to have prosecution witnesses examined is guaranteed in Article 14 (3) (e) of the International Covenant on Civil and Political Rights (ICCPR), to which Cambodia is a state party.

The then Special Representative of the Secretary-General for Human Rights in Cambodia concluded that both the criminal investigations and court hearings lacked "any credibility" and "denounced" the outcome<sup>8</sup>, while several non-governmental human rights groups labelled the process a parody of justice.

Born Samnang and Sok Sam Oeun were sentenced to 20 years in prison and ordered to pay 5,000 USD to the victim's family. Chea Mony, the younger brother of Chea Vichea and his successor as the President of the Free Trade Union of Workers, rejected the compensation:

*"I was at the court hearings, and there was no evidence against Born Samnang and Sok Sam Oeun. I would not want to accept any money; they were not the real killers,"* he concluded ahead of the first anniversary of the verdict, reiterating calls for the authorities to find the perpetrators of his brother's murder<sup>9</sup>.

Both men have appealed the verdict. The appeals have yet to be heard.

### **Amnesty International concerns**

The case of the murder of Chea Vichea exposes a persistent lack of judicial independence in Cambodia. Chapter 11 of Cambodia's 1993 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 that "judicial power shall not be granted to the legislative or executive branches of government." Article 14(1) of the ICCPR, to which Cambodia is a state party, provides that:

*"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..."*

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

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<sup>8</sup>. The Special Representative calls for continued investigation into the murder of trade union leader Chea Vichea and for the immediate release of Cheam Channy, Special Representative of the Secretary-General for Human Rights in Cambodia, 16 August 2005

<sup>9</sup>. Interview with Amnesty International (by phone), 19 July 2006

*“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...”*

Moreover, as discussed above, Born Samnang and Sok Sam Oeun did not receive a trial meeting international fair trial standards, including the presumption of innocence (ICCPR, Article 14(2)); the right to be tried without undue delay (ICCPR, Article 14 (3)(c)); the right to cross examination (ICCPR Article 14 (3)(e).

This unsolved murder and the trials of Born Samnang and Sok Sam Oeun underline the lack of rule of law and the prevailing culture of impunity in Cambodia. Those responsible for hundreds of reported political killings – of politicians, journalists, women, children, ethnic Vietnamese, political activists and ordinary people during the past decade have enjoyed impunity from prosecution. The Cambodian judicial system, which lacks fairness and independence and is steeped in corruption, continues to impede any real improvements of the human rights situation. This climate of impunity will change only when justice becomes a reality for everyone in Cambodia – both victims and perpetrators.

**Amnesty International again calls on the Cambodian Authorities to:**

- urgently initiate an impartial, independent and effective investigation into the murder of Chea Vichea so that those responsible are brought to justice;
- release Born Samnang and Sok Sam Oeun without delay and clear their names, unless there is sufficient evidence to bring charges against them. If so, they should be given a prompt retrial which meets international fair trial standards;
- conduct a thorough, independent investigation into the conduct of the case – including allegations of police brutality during their initial interrogation, intimidation of witnesses and political interference with the judicial process;
- immediately, concretely and resolutely address the prevailing climate of impunity and continuing lack of justice for people in Cambodia, including by amending the law on The Supreme Council of Magistracy, established under the Constitution to guarantee the independence and effectiveness of the judiciary, to ensure that it is independent, non-partisan, and safeguarded against interference from the executive branch of government;
- to ensure that the right to freedom of association, in particular the right to form trade unions and join them, is protected including through taking effective action against employers who deny this right.