



**BORN SAMNANG**

Arrested on  
January 28, 2004



## Innocent Prisoners Awaiting Justice



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The assassination of trade unionist Chea Vichea and the convictions of Born Samnang and Sok Sam Oeun represent the most glaring example of impunity and miscarriage of justice in Cambodia today. There is overwhelming evidence that the two convicted men, now serving 20-year prison terms, were deliberately targeted as scapegoats for the murder. Cambodia's justice system has not only failed them, but has actively perpetrated the injustice against them. This case highlights the grave deficiencies of Cambodia's judiciary – particularly its lack of independence and impartiality – and casts undeniable doubt upon the government's stated commitment to rule of law. The release of Born Samnang and Sok Sam Oeun from prison is essential if the justice system is ever to have any credibility.

### Police & Court Investigations

The January 22, 2004 murder of Chea Vichea, Cambodia's best-known union leader, in broad daylight in downtown Phnom Penh attracted widespread condemnation and demands for his killers to be caught. Within a week, the police claimed they had done just that, arresting Born Samnang and Sok Sam Oeun. From the beginning, the police investigation was rife with improprieties. A purported sketch of the gunman who shot Chea Vichea, supposedly based on eyewitness descriptions, was released by police the day before Born Samnang's arrest and bore a striking resemblance to him. Yet prime witnesses to the murder subsequently said they were not consulted about the sketch, and it emerged that the police had obtained a photo of Born Samnang – an ideal basis for the drawing of the sketch – beforehand. Born Samnang and Sok Sam Oeun were arrested unlawfully, without court warrants or credible evidence against them. Within days, investigations by human rights workers and journalists established strong alibis for both men at the time of the killing – including that Born Samnang was not even in Phnom Penh, but at his girlfriend's house 60km away in Neak Loeung. Police responded by arresting and intimidating alibi witnesses.

Born Samnang initially gave a confession to the police, but later recanted it saying it was beaten out of him. Sok Sam Oeun did not confess, though the police tried to force him to do so according to his subsequent court testimony. The day after the arrests, police led Born Samnang and Sok Sam Oeun (with bags over their heads) to a press conference, where the two men shouted that they were innocent and did not even know each other. Born Samnang said that a handgun (the alleged murder weapon, which police claimed came from him) was planted by police. When he was taken to court, however, Born Samnang reverted to his original confession. He later said he confessed at court because police threatened and bribed him to do so, and because he did not trust the court-appointed private lawyer given to him. (Evidence of a police campaign over by weeks to woo Born Samnang into sticking to his confession include detailed notes written by him, smuggled out of prison, documenting the giving of money, food, cigarettes and prostitutes to him in prison).

After he successfully sought a new lawyer, provided by an independent legal NGO, Born Samnang recanted his previous confessions and told of the police violence, threats and bribes

through which they had been obtained. Phnom Penh Municipal Court investigating judge Hing Thirith, after listening to this and to multiple witnesses who placed Born Samnang in Neak Loeung on the day of the murder, was convinced: he dropped the charges against both men, describing Born Samnang's initial confession as "irregular". The judge also spoke of having received pressure from a senior government official to "push the case to trial". Within days of dropping the charges, Hing Thirith was disciplined for unspecified judicial mistakes and transferred to a remote province. The charges against Born Samnang and Sok Sam Oeun were reinstated by a Court of Appeal panel led by judge Thou Mony.

### Municipal Court Trial

After an unlawfully excessive period of 18 months in pre-trial detention, the two men went on trial before municipal court judge Kong Seth on August 1, 2005. The trial flagrantly violated Cambodian law and international fair trial standards. Prosecution witnesses, with the exception of several policemen who testified to deny Born Samnang's testimony that police forced him to confess, did not appear in court. The judge permitted written statements from prosecution witnesses to be entered into evidence, although they were not - in violation of Cambodian criminal law - present at court and able to be cross-examined by the defense. This written testimony included that Born Samnang and Sok Sam Oeun knew each other before their arrests, that they were drug addicts and dealers, that they "always talked about killing", and that one of them was a cannibal. The judge accepted written testimony from witnesses who did not appear in court that Born Samnang was in Phnom Penh on the day of the murder, but he rejected the testimony of multiple defense witnesses - who did appear in court - that Born Samnang was 60km away in Neak Loeung. No prosecution witnesses placed Born Samnang or Sok Sam Oeun at the scene of the crime, or in any other way directly linked them to the murder.

The prosecution case rested heavily on Born Samnang's initial confessions to the police and court after his arrest, which he had recanted. Cambodia's Constitution and criminal law prohibit forced confessions from being used in court. Furthermore, the criminal law states that voluntary confessions cannot be used to convict unless there is corroborating evidence. There was a clear lack of corroborating evidence against Born Samnang, and none whatsoever against Sok Sam Oeun - the only evidence presented against him was Born Samnang's original confession, which named Sok Sam Oeun as an accomplice.

A ballistics report on the handgun, affirming that it was the one used to shoot Chea Vichea, was entered into evidence but the police who wrote it did not testify. Born Samnang's testimony to the court that the police planted the gun was identical to what he told journalists when he declared his innocence at the press conference the day after his arrest.

Judge Kong Seth convicted the two men of murder and sentenced them to 20 years imprisonment. The proceedings were described by the UN Secretary-General's Special Representative for Human Rights in Cambodia as a "grave injustice" which lacked "any credibility" and "disregarded fundamental principles of fair trial, such as the presumption of innocence and the impartiality of the court". Chea Vichea's family also rejected the verdict and proclaimed the innocence of Born Samnang and Sok Sam Oeun.

### Eyewitness Statement

In August 2006, the prime witness to Chea Vichea's murder - Va Sothy, the owner of the newspaper stall where he was shot dead - wrote a statement affirming that Born Samnang and Sok Sam Oeun were not the killers. Va Sothy had not testified at the trial of the two men, for fear for her life. She had previously told journalists that she was not the source of the police sketch, purportedly depicting the gunman and released just before Born Samnang's arrest, but had not

explicitly stated that he and Sok Sam Oeun were not the murderers whom she saw. Her written statement, made after she fled to Thailand and was granted refugee status by UNHCR, described the real killers in detail. She wrote that, as soon as she saw newspaper photos of Born Samnang and Sok Sam Oeun after their arrests, she knew that “the fake murderers had been created”. The then Phnom Penh police chief Heng Peo, who oversaw the murder investigation, instructed her to “stay quiet” and not to deny that they two men were the murderers. Va Sothy also wrote that, about a month after the arrests, the real gunman who shot Chea Vichea returned to her newspaper stall – an act apparently intended to warn her to keep her silence. Va Sothy’s handwritten statement, notarized by a Thai lawyer, was presented to the Office of the UN High Commissioner for Human Rights, which forwarded it to Cambodia’s Court of Appeal.

Coincidentally, days after Va Sothy’s statement was written, Heng Peo acknowledged Born Samnang and Sok Sam Oeun’s innocence. In an interview with a French magazine, given after he was dismissed from his position and fled Cambodia, he admitted that from early on in the investigation he had known that the two men “had nothing to do with the murder”.

### Court of Appeal Hearing

On April 6, 2007, Born Samnang and Sok Sam Oeun’s appeals against their convictions were heard by Court of Appeal judges Saly Theara, Samreth Sophal and Thou Mony (the latter the same judge who had reinstated the murder charges against the accused in 2004)<sup>1</sup>. No prosecution witnesses testified. Defense witnesses for Born Samnang testified he was in Neak Loeung on the day of the murder. Even prosecutor Pann Kim Lean, in his concluding statement at the hearing, did *not* state the two men were guilty; he acknowledged “gaps” in the original police investigation and recommended that the Court of Appeal conduct further investigation to find the truth. In their verdict delivered six days after the hearing, however, the judges ruled the two men were guilty and upheld their convictions – an extraordinary situation whereby the judges (charged with objectively and independently ruling on the evidence, with a presumption of innocence for the accused) rejected the conclusions and recommendation of the prosecutor (the court official charged with proving the guilt of the accused). In a mirror image of what had happened at the municipal court trial, the Court of Appeal judges dismissed the testimony given at the hearing by alibi witnesses for Born Samnang as being unreliable, at the same time as they accepted the written testimony of prosecution witnesses who have never appeared in any court. In their verdict, the judges rejected Born Samnang’s recanting of his initial confession. To support their contention that Born Samnang’s original confession was true, they wrongly said that it was consistent with the written testimony of a prosecution witness. Finally, the judges refused to consider the new evidence provided by Va Sothy in her notarized statement written in Thailand.

The Court of Appeal verdict was denounced by the UN Secretary-General’s Special Representative for Human Rights, who again used the term “grave injustice”. The International Labour Organization also expressed “grave concern” at the “injustices” in the court proceedings, and demanded a “full, independent and impartial inquiry” into the murder of Chea Vichea.

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<sup>1</sup> Thou Mony is also currently a judge on the Khmer Rouge tribunal.



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## Chronology of Events

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- **January 22, 2004** - Chea Vichea assassinated
- **January 28, 2004** - Born Samnang and Sok Sam Oeun arrested. The next day, they are paraded by police at a televised press conference. Both emotionally proclaim their innocence, and Born Samnang alleges that the police beat him into confessing to the murder
- **March 19, 2004** - Phnom Penh Municipal Court Investigating Judge Heng Thirith dismisses case for lack of evidence
- **March 23, 2004** - Judge Heng Thirith is removed from his position at the municipal court for unspecified judicial mistakes, and later transferred to be a judge in remote Stung Treng province
- **June 1, 2004** - Appeal Court Presiding Judge Thou Mony overturns Judge Heng Thirith's decision and orders that the murder charges be reinstated
- **August 1, 2005** - Born Samnang and Sok Sam Oeun are convicted and sentenced to 20 years imprisonment by Judge Kong Seth in the Phnom Penh Municipal Court. The trial draws a storm of criticism for failing to meet international fair trial standards. The two men immediately file appeals against their convictions
- **August 1, 2006** - One year anniversary of Born Samnang and Sok Sam Oeun's conviction. Supporters and family members who gather in front of PJ prison to show their support for the two men are dispersed by riot police
- **August 10, 2006** - Va Sothy, the key eyewitness to the assassination of Chea Vichea who fled Cambodia fearing for her own safety, signs a notarized statement in Thailand stating that Born Samnang and Sok Sam Oeun were not the real killers who she saw
- **October 6, 2006** - Born Samnang and Sok Sam Oeun's Appeal Court hearing is cancelled at the last minute after one of three judges reportedly falls suddenly ill. Observers question why a substitute judge was not assigned, so that the hearing could have continued
- **January 28, 2007** - Three year anniversary of Born Samnang and Sok Sam Oeun's arrest and 1096th day in prison. NGOs & unions begin a continuous public campaign for their release
- **April 12, 2007** - A Court of Appeal panel of three judges presided over by Judge Saly Theara upholds Born Samnang and Sok Sam Oeun's murder convictions and 20-year prison sentences. The judges' verdict is contrary to the conclusions of the Appeal Court prosecutor, who admitted "gaps" in the police investigation and recommended further investigations by the court.