



Joint Statement

International Labour Organization & Office of the High Commissioner
for Human Rights, Cambodia Country Office

ILO and OHCHR welcome the Supreme Court order to reinvestigate the murder of trade union leader Ros Sovannareth and to release Thach Saveth

Phnom Penh, 4 March 2011 - The International Labour Organization (ILO) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) welcome the Supreme Court decision on 2 March 2011 to release on bail Mr. Thach Saveth, also known as Chan Sopheap, and to order the case to the Court of Appeals for reinvestigation.

The ILO and the OHCHR have closely observed the trial proceedings in this case since 2005. Thach Saveth has already spent almost seven years in prison. He was convicted for the murder of Ros Sovannareth – a leader of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) – despite the lack of credible evidence against him and serious procedural irregularities.

The ILO and the OHCHR also welcome the Supreme Court's reference to the International Covenant on Civil and Political Rights (ICCPR) in its decision, and encourage judges to draw inspiration from it in their rulings. The Constitutional Council advised in 2007 that international human rights treaties ratified by Cambodia could be directly applicable by judges in their decisions.

The Supreme Court decision mirrors a similar decision by the same Court in 2008, which resulted in the release on bail of Mr. Born Samnang and Mr. Sok Sam Oeun, two men accused in the case of the murder of trade union leader Chea Vichea. In November 2010 the Supreme Court also ordered the reopening of the investigation by the lower courts in the cases of the murder of Hy Vuthy. These important decisions reaffirm the role and importance of the Supreme Court as an avenue to correct miscarriages of justice and an ultimate recourse for justice in Cambodia.

The onus is now on the Appeal Court and Phnom Penh Municipal Court to properly investigate these cases, to bring the real killers and instigators to justice, whoever they are, and to try them fairly. This would strengthen the rule of law and enhance the credibility of the judiciary. It would curb the impunity for the killing of trade unionists and contribute to restore the sense among workers that they can rely on the law to protect them when engaging in collective action to promote labour rights and decent conditions of work in garment factories.

In his report submitted in September 2010 to the United Nations Human Rights Council, which focused on his assessment of the functioning of the judiciary, the Special Rapporteur on the situation of human rights in Cambodia, Mr. Surya Subedi, recommended a number of steps which he regarded as advisable to improve the independence and integrity of the judiciary, to promote its dignity, and restore public confidence in it.

END

Background Information

Continuing impunity for the killing of trade unionists

Since 2004, three trade union leaders were assassinated for promoting labour rights and improving conditions of work in garment factories in Cambodia. The three men belong to the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), an influential trade union federation representing thousands of garment factory workers. Ninety per cent of these workers are young women from poor rural families. They were murdered in a similar fashion, which has become a standard practice in Cambodia since 1994— they were gunned down by two men riding a motorbike.

Chea Vichea was murdered on 22 January 2004, Ros Sovannareth on 7 May 2004, and Hy Vuthy on 24 February 2007. These crimes have not been properly investigated by the police. The prosecutions of the murders of Chea Vichea and Ros Sovannareth by both the Phnom Penh Municipal Court and the Court of Appeal have been marred with serious irregularities in breach of the most basic fair trial rights, resulting in the doubtful imprisonment of three men for several years. Two of them, Born Samnang and Sok Sam Oeun, accused in the murder of Chea Vichea were released on bail by the Supreme Court in December 2008, after 4 years in prison. The third man, Thach Saveth, accused of the murder of Ros Sovannareth, was ordered to be released on bail on 2 March 2011, after more than six years in prison. In the three cases the Supreme Court has ordered the lower courts to reinvestigate the murders.

These crimes have had a chilling effect on the exercise of the right to freedom of association and expression and the development of the labour movement in Cambodia. The response of the authorities, police and courts, and their reluctance to effectively investigate and prosecute these cases, has spread the sense that these assassinations were politically motivated, that trade union leaders and workers representatives were promoting labour rights at the risk of their lives, and that the law offered no protection to them. The imprisonment of the accused while the real perpetrators and those who instigated these crimes and protected them have remained free has contributed to undermine the credibility of the justice system and entrench the climate of impunity for such crimes.

Case One: Murder of Chea Vichea

The Phnom Penh municipal court convicted two men, Born Samnang and Sok Sam Oeun, of the killing after a shoddy police investigation. There are strong reasons to doubt of the validity of the convictions. The initial investigating judge had dismissed the case for lack of evidence, but he was removed and the case forced to trial. The men were convicted on the basis of a retracted confession, disregarding defence witnesses and evidence suggesting that the men could not have been responsible. Heng Pov, the police chief who conducted the investigation has since been convicted and imprisoned on multiple counts of murder, fraud and intimidation.

In April 2007, the Court of Appeal upheld the convictions and confirmed the sentences of 20 years imprisonment, disregarding the deficiencies at the first trial.

In June 2008, the United Nations High Commissioner for Human Rights, through her country office in Cambodia, submitted to the Supreme Court, as *amicus curiae* or “friend of the court”, a legal analysis

document drawing attention to several fundamental breaches of international human rights law by the lower instance courts.¹

On 31 December 2008, the Supreme Court of Cambodia ordered the release of Born Samnang and Sok Sam Oeun on bail, but they remained under judicial supervision. Their provisional release was welcomed by both the ILO and OHCHR as an important step towards ensuring the safety of trade union leaders and upholding the right of freedom of association in Cambodia. The Court of Appeal was ordered to re-examine the case.

On 17 August 2009, the Court of Appeal conducted a short hearing to formally order the reinvestigation of the case against Born Samnang and Sok Sam Oeun. Bail for the men was extended.

On 14 Feb 2011, Born Sam Nang was summoned by a Phnom Penh court investigating judge for questioning as part of the court's re-investigation of the case.

Case Two: Murder of Ros Sovannareth

Ros Sovannareth, FTU's President at Trinuggal Kormara factory, was shot dead by two men on a motorbike in Phnom Penh on 7 May 2004. His murder came less than four months after the virtually identical murder of Chea Vichea. In February 2005, Thach Saveth was found guilty of the murder. The investigation by the police was seriously flawed. The conviction by the Phnom Penh Municipal Court was based solely on the written statement of prosecution witnesses collected by the police, who were present in court but were not interrogated by the judge and were not cross-examined. The accused own statement and the testimonies of the defense witnesses who provided an alibi were ignored by the court, on the ground that they came from relatives of the accused. On 18 February 2009, the Appeal Court upheld the first instance court judgment in absentia. The following day, Thach Saveth appealed to the Supreme Court. On 9 Feb 2011, the Supreme Court heard the case and rendered its verdict on 2 March 2011.

Case Three: Murder of Hy Vuthy

Hy Vuthy, FTU's President at the Suntex factory, was shot dead on his way home from work on 24 February 2007. After a year, the police announced that its investigation was inconclusive. On 5 August 2008, the Phnom Penh Municipal Court confirmed this decision and decided to close the investigation, on the ground that it was facing difficulties in collecting information related to the background of the perpetrators. On 16 July 2009, following an appeal filed by the lawyer of Hy Vuthy's wife, the Court of Appeal heard the case and upheld the decision of the Phnom Penh Municipal Court to close the case. The lawyer appealed to the Supreme Court. The latter ordered on 3 Nov 2010 the case to be reopened and investigated, after the first instance court and the appeal courts had closed it for alleged lack of evidence.

¹ In July 2007, the Constitutional Council ruled that the international human rights treaties, since they are guaranteed by article 31 of the Constitution, form part of Cambodian law. The Supreme Court, like all Cambodian Courts, is therefore bound to ensure that the fair trial provisions in the treaties are followed and breaches committed by lower courts are remedied.

Response of United Nations bodies

The killings and threats have been addressed by the ILO supervisory bodies. The ILO conducted a direct contacts mission to the country in April 2008. The mission concluded that the Cambodian judiciary was plagued by serious problems of capacity and a lack of independence, that the conviction of Born Samnang and Sok Sam Oeun had been upheld in a trial marked by procedural irregularities, including a refusal to entertain evidence of their innocence and that no concrete steps had been taken by the Government to ensure a meaningful and independent review of the cases. It also noted that no progress had been made in the investigation respecting Hy Vuthy. These conclusions accorded with similar conclusions of two successive Special Representatives of the Secretary-General for human rights in Cambodia, Mr. Peter Leuprecht and Professor Yash Ghai in numerous reports to the Human Rights Council and the former Commission on Human Rights.²

The ILO Committee on Freedom of Association, in its 351st report, reiterated the contact mission's finding that the Government had taken no concrete steps to ensure a meaningful and independent review of the cases and deplored its failure to implement the Committee's numerous recommendations (paragraph 252).

On 31 December 2008, the Cambodia Office of the United Nations High Commissioner for Human Rights publicly welcomed the decision by the Supreme Court to release the two men accused of the murder of Chea Vichea – Born Samnang and Sok Sam Oeun – and to order the Court of Appeal to reinvestigate the case.

In May 2009, the United Nations Committee on Economic, Social and Cultural Rights, in its observations on Cambodia's initial report on implementation of the International Covenant on Economic, Social and Cultural Rights, associated itself with the ILO findings and recommendations and urged the Government to ensure that trade union members were able to exercise their rights free from fear and intimidation.

On 18 August 2009, the ILO and the OHCHR publicly welcomed the Court of Appeal decision to reinvestigate the murder of trade union leader Chea Vichea.

Most recently in June 2010, the International Labour Conference reviewed Cambodia's application of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and regretted the lack of information relating to the long-awaited independent investigations into the murders of Chea Vichea, Ros Sovannareth and Hy Vuthy. The Conference recalled that freedom of association rights of workers and employers can only be exercised in a climate free from violence, pressure and threats. It urged the government to bring an end to impunity by taking the necessary steps, as a matter of urgency, to ensure full and impartial investigations into the murders of these trade union leaders and to bring, not only the perpetrators, but also the instigators of these heinous crimes to justice.

²See for example E/CN.4/2005/116, para. 22 et seq; E/CN.4/2006/110; A/HRC/4/36, para.44; A/HRC/7/42, para. 56.

See also the SRSG's report on "Continuing patterns of impunity" available on the OHCHR Cambodia website: <http://cambodia.ohchr.org>.