



## FEATURE ARTICLE:

### Khmer Rouge Tribunal, After Over a Quarter Century

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3 July 2006 saw the swearing-in ceremony of all selected Cambodian and most international judges and prosecutors for the Extraordinary Chambers. The ceremony was attended by representatives from the World Bank and the UN Secretary-General's office. The trials of senior Khmer Rouge leaders are expected to begin around mid-2007, over a quarter century after the genocide that killed more than 1.5 million and on average at least one member from every family. Only a handful of senior Khmer Rouge leaders are still alive, though most are elderly and sickly. The Khmer Rouge's 'Brother Number One', Pol Pot, died in 1998. Only two, **Ta Mok** (82) and **Kang Kek Iev** (aka Duch) (64) have been detained in military prison since 1999. **Ta Mok** was hospitalized in July 2006 and may be too ill to stand trial. The three most senior leaders, **Ieng Sary** (77), **Khieu Samphan** (75) and **Nuon Chea** (79), 'Brother Number Two,' have lived freely with little fear of facing prosecution, till today. **Ieng Sary** received a royal pardon when he defected to the government in the mid-1990s. Even still, he had a "medical emergency" at the end of June and disappeared to Bangkok along with his wife, who also held a senior position in the Pol Pot regime. The tribunal's establishment has been stalled for nearly a decade, and many critics have questioned whether the government and the international community are committed to a truly independent tribunal which meets international standards.

Of particular concern is whether – in a country which has no history of an independent judiciary – the Extraordinary Chambers will be truly independent of the Cambodian government. There are fears that the government will, through the Cambodian judges and prosecutors, seek to influence who is and is not prosecuted. This concern has been amplified by criticism of the quality of the Cambodian judicial officers who will serve on the tribunal.

On 8 May 2006, the Cambodian Supreme Council of Magistracy selected 17 judges and prosecutors to serve in the tribunal. But sadly, many of those appointed have poor track records in terms of judicial independence and legal competence, and some lack the necessary qualifications or experience to effectively carry out their duties. In May, FORUM-ASIA sent an appeal to the UN High Commissioner for Human Rights, highlighting the involvement of three of the judges

(**Thong Ol**, **Ney Thol**, and **Thou Mony**) in controversial and politicized prosecutions and the educational deficiencies of some of the 17 judges and prosecutors. Information obtained by LICADHO shows that seven of the appointees, and in particular including all three Cambodian judges appointed to the main trial chambers (**Yar Sokhan**, **Thou Mony**, and **Nil Non**) are clearly unsuited to the task. Four additional appointees to the chambers, **Pen Pich Saly**, **Kong Srim**, **Huot Vuthy** and **Sin Narith**, have never served as judges before<sup>46</sup>.

**Ney Thol**, currently the President of the Cambodian Military Court, is a member of the CPP's Central Committee. In 1998 he presided over the military trial of FUNCINPEC leaders Prince Norodom Ranariddh and Nhek Bun Chhay, and sentenced them in absentia to 30 and 20 years, respectively, for conspiring to overthrow the government. In 2005, he presided over the military trial of opposition parliamentarian Cheam Channy, sentencing him to seven years on charges of raising an illegal armed force – despite a lack of any evidence. Thol holds no law degree, but a degree in politics.

**Yar Sokhan**, currently a judge at Banteay Meanchey provincial court, presided over a 1995 trial that convicted FUNCINPEC parliamentarian Prince Norodom Sirivudh on highly dubious evidence of plotting to kill Prime Minister Hun Sen. In 2003, he placed journalists Mam Sonando and In Chan Sivutha in pre-trial detention for supposedly inciting the "anti-Thai riots" in Phnom Penh, despite the lack of evidence

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<sup>46</sup> Kong Srim was appointed as the President of Supreme Chambers, Pen Pich Saly and Huot Vuthy were appointed to the Pre-Trial Chambers and Sin Narith to the Supreme Chambers.

and in 2004, presided over a hearing for three alleged members of the Jemaah Islamiyah movement who had been in pre-trial detention over the legal limit of six months and with insubstantial evidence presented.

**Thou Mony**, an Appeals Court judge, is one of the most politicized judges in Cambodia. In 2003, he refused bail to a Sam Rainsy Party activist held on misdemeanour charges of defaming the government. In 2004, he voided the presidential elections of the Cambodian Bar Association in an unlawful closed hearing. That same year - reinstated charges against Born Samnang and Sok Sam Oeun, two men framed for the murder of trade union leader Chea Vichea. In 2004, in an unannounced, *in camera* hearing, Thou Mony overturned the manslaughter conviction of Hun Sen's nephew Nhim Sophea, who was then set free despite strong evidence that he was actually guilty of murdering witnesses to a traffic accident in which he had been involved.

**Kong Srim** is Deputy Prosecutor-General of the Appeals Court, and was the prosecutor in the secret hearing that overturned the Bar Association election and in the secret hearing that acquitted Nhim Sophea. Despite the evidence against Nhim, Kong unaccountably failed to appeal this decision to the Supreme Court.

**Thong Ol** is a judge at Kampong Cham provincial court. In 2000, he acquitted Khmer Rouge commander Chhouk Rin on multiple murder charges, and this year he placed independent radio journalist Mam Sonando in pre-trial detention for broadcasting an interview that allegedly defamed Prime Minister Hun Sen.

**Nil Non**, the President of Battambang provincial court, admitted taking bribes in a 2002 interview with the US TV channel PBS. In 2005 he acted as investigating judge into the fatal eviction at Kbal Spean, Poipet, where five villagers were shot dead by security forces reportedly acting on behalf of a high-ranking official with an interest in the land. Despite multiple eyewitness accounts, Nil dropped charges against three policemen accused in the case and released all suspects from detention. No trial was ever held.

**Pen Pich Saly** is Director of the International Affairs department of the Ministry of Justice, but has never served as a judge.

After the destruction under the Khmer Rouge, there is no doubt that it is difficult to find legal personnel with not only sufficient qualifications and experience, but also track records of judicial independence and adherence to the rule of law. However, the Supreme Council of Magistracy could and should have found more suitable appointees than these seven individuals. While many former Khmer Rouge members defected to the government, it is of particular concern that some of those appointed to key positions in the Tribunal are notorious for acting on political allegiance, rather than the pursuit of justice. Justice for the victims would least likely be served under this disappointing reality.

## Appendix 1



### List of Government Position Expulsions, Replacements and Resignations (as of 14 July, 2006)

\* Date Individual Left Office \*\* Date of Newspaper report \*\*\* Indicates resignation

	Replaced Individual (Affiliated Party)	Position Held	Replacement Individual (Affiliated party)	Previous Position	Remarks on the Process
1	Nhiek Bun Chhay (FUNCINPEC) (March 2)*	Co-Minister of Defense (March 3)**	Tea Banh (CPP)	Co-Minister becomes sole minister	Voted in on March 21 by the National Assembly
2	Prince Norodom Sirivudh (FUNCINPEC) (March 3)*	Co-Minister of Interior (March 3)**	Sar Kheng (CPP)	Co-Minister becomes sole minister	Voted in on March 21
3	Prince Norodom Ranariddh *** (FUNCINPEC) (March 5)*	President of National Assembly (March 6)**	Heng Samrin (CPP)	Acting President of National Assembly	Voted in on March 21 ***
4	Prince Norodom Ranariddh (FUNCINPEC) (March 5)*	Co-Chair of Council for Development of Cambodia (March 7)**	No mention of replacement		No mention of subsequent procedure. Other Co-Chair is Prime Minister Hun Sen.
5	Heng Samrin is promoted to President of National Assembly	1 <sup>st</sup> Deputy President of National Assembly (March 22)**	Nguon Nhel (CPP)	CPP Lawmaker	Voted in on March 21
6	Prince Norodom Sirivudh (FUNCINPEC) (March 21)*	Deputy Prime Minister (March 22)**	This position was eliminated.		Prince Norodom Sirivudh was voted out by the National assembly, on March 21, receiving only 17 votes of 111 votes by lawmakers. He was also absent for the vote.  FUNCINPEC Secretary-General, Nhiek Bun Chhay, however, retained his Deputy Prime Minister's position.
7	Nguon Nhel is promoted to 1 <sup>st</sup> Deputy President	2 <sup>nd</sup> Deputy President of National Assembly (March 22)**	You Hockry (FUNCINPEC)	FUNCINPEC Lawmaker	Voted in on March 21

	<b>Replaced Individual (Affiliated Party)</b> * Date Individual Left office *** Indicates resignation	<b>Position Held</b> ** Date Reported	<b>Replacement Individual (Affiliated party)</b>	<b>Previous Position</b>	<b>Remarks on the Process</b>
8	Kim San (FUNCINPEC) (March 22)*	National Assembly Secretary General (March 23)**	Leng Penglong (CPP)	Secretary of State at Ministry of National Assembly and Senate Relations and Inspection	Replacement announced by Heng Samrin, President of National Assembly
9	Mam Nun Neang (FUNCINPEC) (March 23)*	Phnom Penh Vice Governor (March 24)**	No mention of replacement		No mention of subsequent procedure
10	Heng Chantha (FUNCINPEC) (March 23)*	Banteay Meanchey Governor (March 24)**	An Sum (CPP)	Banteay Meanchey deputy governor	Replacement reported by Ministry of Information, Minister Kieu Kanharith
11	Lao Sunpa (FUNCINPEC) (March 23)*	Kandal Province Governor (March 24)**	Khim Bo (CPP)	Kandal Province deputy governor	Replacement reported by Ministry of Information, Minister Kieu Kanharith
12	Sim Son (FUNCINPEC) (March 23)*	Siem Reap Governor (March 24)**	Sou Phirin (CPP)	Takeo Governor	Replacement reported by Ministry of Information, Minister Kieu Kanharith
13	Don Sammoun (FUNCINPEC)*** (March 24)*	Secretary of State at Rural Development Ministry (March 25)**	No mention of replacement		In his letter of resignation, Don Sammoun cites internal disputes and inaction of the Ministry of Rural Development as well as the "nepotism and incompetence" of Minister Lu Laysreng as reasons for his resignation.
14	Kuch Moly (FUNCINPEC) (March 27)*	Oddar Meanchey Provincial Governor (March 28)**	Pich Sokhin (CPP)	3 <sup>rd</sup> Deputy Governor of Siem Riep province	Prime Minister Hun Sen announced the change and cites that Kuch Moly is trained as a customs officer and is not qualified to be a governor.
15	Monh Saphan (FUNCINPEC) (April 7)*	Chair, National Assembly's Commission on Home Affairs, National Defense, Investigation, and Anti- Corruption (April 5)**	Yim Sovann (SRP)	SRP Lawmaker	The National Assembly was said to vote on Friday, April 7 <sup>th</sup> for the removal, however there has been no confirmation of the actual vote.
16	Princess Norodom Vacheara (FUNCINPEC) (April 7)*	Chair, National Assembly's Commission on Foreign Affairs, International Cooperation, Information and Media (April 5)**	Son Chhay (SRP)	SRP lawmaker	The National Assembly was said to vote on Friday, April 7 <sup>th</sup> for the removal, however there has been no confirmation of the actual vote.

	<b>Replaced Individual (Affiliated Party)</b> * Date Individual Left Office	<b>Position Held</b> ** Date Reported	<b>Replacement Individual (Affiliated party)</b>	<b>Previous Position</b>	<b>Remarks on the Process</b>
17	Cham Sam An (FUNCINPEC) (April 3)*	Kep Municipality Governor (April 5)**	Has Sareth (CPP)		Removed by Royal Decree as announced by Information Minister, Khieu Kanharith
18	Kung Hun Thearith (FUNCINPEC) (April 7)*	Interior Ministry Secretary of State (April 5)**	Tep Nonnary (FUNCINPEC)	Government advisor at the Council of Ministers	The National Assembly was said to vote on Friday, April 7 <sup>th</sup> for the removal, however there has been no confirmation of the actual vote.
19	<b>43 FUNCINPEC Deputy provincial governors removed</b> These individuals are to be removed from their positions and sent to the Royal School of Administration for a period of 6 months (April 10)**				Information Minister Khieu Kanharith announced that only 13 of the 43 positions would be filled by FUNCINPEC members.
	<b>1<sup>st</sup> Three:</b> Mao Yourann Prince Sisowath Pheanuroth Ouch Thongseng (April 18)* (April 19)**	All 3 were Phnom Penh Deputy Municipal Governors			
	<b>40 Removed Including:</b> 1) Sisowath Vireakcheat  2) Ung Chhay  (Week of April 24)*	Koh Kong Deputy Governor  Kompong Thom Deputy Provincial Governor (May 3)**			
	<b>About 7 More Removed</b> <b>Total Removed = About 50</b>	(June 16-29, 2006)** Reported by <i>The Phnom Penh Post</i>			
20	Khlaing Huot (FUNCINPEC) (April 10)*	Defects to CPP as Governor of Keo District in Phnom Penh	No mention of replacement		Reportedly defected, there was no confirmation

	<b>Replaced Individual (Affiliated Party)</b> * Date Individual Left Office	<b>Position Held</b> ** Date Reported	<b>Replacement Individual (Affiliated party)</b>	<b>Previous Position</b>	<b>Remarks on the Process</b>
21	National Election Committee	Before change: CPP President, FUNCINPEC Deputy President and 3 members from local NGOS	New structure: 5 CPP members, 2 FUNCINPEC and 2 SRP (All 9 will be chosen by the "CPP controlled Interior Ministry". They will be then be approved by the National Assembly)		The new structure is approved by the National Assembly on May 26
			8 members were named. (13 July)**		<ol style="list-style-type: none"> <li>1. NEC President – Im Sousey (CPP)</li> <li>2. NEC Deputy President – Sin Chum Bo (FUNCINPEC)</li> <li>3. Klok Buddhi (FUNCINPEC)</li> <li>4. Koy Vet (CPP)</li> <li>5. Meat Sati (CPP)</li> <li>6. Havan Sivilay (CPP)</li> <li>7. Som Chandina (SRP)</li> <li>8. Mao Sophearith (SRP)</li> </ol>
22	Ok Socheat (FUNCINPEC) (April 24)*	Ambassador to the Philippines (April 25)**	In Moy (CPP)	Foreign Ministry Affairs Official	Officially announced by government spokesman Khieu Kanharith
23	Nhek Bunchin (FUNCINPEC) (May 11)*	Minister of Labor (May 21)**	Vong Soth (CPP)	Secretary of State	Voted in on May 24. Nhep Bunchin was reportedly being investigated for corruption. Nhep Bunchin, on the other hand said, "I have not committed any corruption, I didn't know my mistake."

Note = Government position expulsions and replacements in this list as reported by *The Cambodia Daily* and the *Phnom Penh Post*

FUNCINPEC = National United Front for an Independent Neutral, Peaceful and Cooperative Cambodia

SRP = Sam Rainsy Party

CPP = Cambodian People's Party

## Appendix 2 List – Government’s Move Towards the World Bank Scandal

[ ] – Source

28 May	Rural Development Minister Ly Laysreng (FUNCINPEC) said, “I admit that there is some irregularity inside the ministry’s spending...” and blamed an unnamed World Bank consultant for the problems that have embroiled his ministry. [“Funds Frozen As World Bank Alleges Misuse,” <i>The Cambodia Daily</i> , 29 May 2006]
29 May	Cheam Yeap, CPP lawmaker and chairman of the National Assembly’s Banking and Finance Commission, said that government officials found guilty of wrongdoing would be prosecuted and that World Bank consultants must also be held accountable. “If the auditing authority finds embezzlement of misuse of funds, they must be punished under the penal code by imprisonment,” he said. [“Gov’t Says It Will Probe Use Of Bank Funds”, <i>The Cambodia Daily</i> , 30 May 2006]
31 May	On 31 May, Cheam Yeap, CPP lawmaker and chairman of the National Assembly’s Banking and Finance Commission, said numerous officials had been questioned by his committee. “I have call in many officials for questioning like...some customs officials from Poipet and Sihnoukville,” he said. “We can not punish them, we just write the report and forward to Samdech Prime Minister [Hun Sen] and it is up to him. It is the right of prime minister to forward the results to the prosecutor.” [“Minister Says Land Project Was Audited,” <i>The Cambodia Daily</i> , 31 May 2006]
3 June	the Finance Ministry reversed its decision on 22 May to freeze the funding for the three ongoing projects, and Lu Laysreng counter-argued to the Bank saying “Nothing is irregular.” [“Ministry Lifts Freeze on Bank Project Funds,” <i>The Cambodia Daily</i> , 5 June 2006]
6 June,	Two weeks after its initial announcement on discovery of corruption, the Bank presented the Cambodian government the results and evidence of its investigation, saying that the information on officials found guilty can only come from the government or from judicial proceedings. [“World Bank to Gov’t: Return \$7.6 million,” <i>The Cambodia Daily</i> , 7 June 2006]
9 June	Finance Minister Keat Chhon told the National Assembly’s Finance and Banking Commission Thursday that the government will repay \$7.6 million to the Bank. [“Minister: Gov’t Will Return Funds To Bank,” <i>The Cambodia Daily</i> , 9 June 2006]
11 June	The Ministry of National Assembly-Senate Relations and Inspection received a copy of the WB’s investigation, the official said Monday. “Gov’t Begins World Bank Probe, Minister Says,” 13 June 2006. On 13 June, the Finance Ministry reversed its decision and said that the ministry must only repay about \$1.7 million to the Bank. Even after the Bank submitted its evidence to the government, the ministry stated, “To this day, besides an indication of trouble spots, The World Bank has not provided the reasons and evidence of what is irregular.” [“Finance Ministry: \$1.7 Million To Be Repaid,” <i>The Cambodia Daily</i> , 14 June 2006]
15 June	Prime Minister Hun Sen urged the Bank to provide adequate evidence to support its allegations, adding that foreign consultants would also be held accountable by the government for squandering the Bank’s money. He said, “Please present us detailed evidence, then we will take actions regardless of who they are, including WB consultants.’ “They say it will be coming, from one week to another, until four weeks. Today it is not here. Now the report is there, but they dare not reveal it,” Hun Sen said. [“Consultants Should Return Funds, Too: PM,” <i>The Cambodia Daily</i> , 16 June 2006]
16 June	Douk Narin, the Project Manager in charge of the troubled projects at the Public Works Ministry said that Minister Sun Chanthol met with Ian Porter and Nisha Agrawal of World Bank on 14 June, and Douk said “He got nothing.” [“Government Questions World Bank’s Motives,” <i>The Cambodia Daily</i> , 17-18 June 2006]
	Letter from Finance Minister to Prime Minister: Prime Minister Hun Sen wrote on the letter, “Must conduct a routine meeting with institution leaders in order to reach a joint stance for resisting.” [“Behind Debate, Bank Gave Gov’t Some Details,” <i>The Cambodia Daily</i> , 24-25 June 2006]
21 June	Prime Minister Hun Sen urged the Bank to name sources who have implicated government officials in the World Bank scandal saying that the national police and military police would do their best to protect them. “We do not know how to pay back....if evidence and witnesses are not going to be used it will be a difficult issue,” he said. “Don’t hide witness” he said. “The national police and military police will try to protect the witnesses,” he added. Hun Sen also accused donors of having double standards and of condescending to Cambodia because it is poor. [“Hun Sen Wants World Bank To Name Sources,” <i>The Cambodia Daily</i> , 22 June 2006]