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Cambodia: Three years and still no effective investigation into Dr. Kem Ley's killing

(Bangkok, Thailand) --- Today, on the third anniversary of the killing of prominent political commentator and human rights defender Kem Ley, the 24 undersigned organizations renew calls on the Cambodian government to establish an independent and impartial Commission of Inquiry to conduct a thorough and effective investigation into his killing.

On 10 July 2016, Kem Ley was shot and killed while having a morning coffee at a gas station located on Monivong Boulevard in central Phnom Penh. This killing occurred amidst a backdrop of attacks on human rights defenders and members of the political opposition, and a documented history of killings of human rights defenders with impunity in Cambodia.

On 23 March 2017, after a half-day trial hearing, the Phnom Penh Municipal Court found Oeuth Ang – the suspect arrested by authorities who identified himself as “Choub Samlab” or ‘Meet to Kill’ – guilty of Kem Ley’s murder and sentenced him to life imprisonment. On 24 May 2019, Cambodia’s Supreme Court rejected Oeuth Ang’s appeal for reduction of sentence and upheld his life imprisonment term.

On 23 March 2017, the ICJ, Human Rights Watch and Amnesty International highlighted eight specific issues which had been inadequately investigated during the trial of Oeuth Ang, and called for an investigation in line with international standards set out in the International Covenant on Civil and Political Rights (ICCPR) and the revised Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016).

“It has been three years since significant gaps were highlighted in the investigation and trial of Kem Ley’s case, which need to be remedied through an independent, impartial and effective investigation,” said Frederick Rawski, ICJ’s Director for Asia and the Pacific. “The lack of progress reflects a clear lack of political will by the Cambodian government towards meeting its obligations under international law to fully and impartially investigate a potentially unlawful death and protect the rights to life and to effective remedy.”

On 7 July 2017, 164 organizations signed a joint letter to the Deputy Prime Minister of Cambodia, Sar Kheng, calling for the creation of an independent Commission of Inquiry into Kem Ley’s case, in light of the “flawed investigation into the killing of Kem Ley and lack of progress in subsequent investigations into suspected accomplices to the killing.”

“The farcical trial of Oeuth Ang fell far short of international fair trial standards and raised more questions than answers about who was really behind the killing of a respected political analyst who dared to harshly criticize Prime Minister Hun Sen,” said Phil Robertson, Deputy Asia Director at Human Rights Watch. “What’s known is Kem Ley’s family had to flee Cambodia out of fear and anyone who now alleges government involvement in the murder faces immediate harassment and retaliation.”

“The trial of Kem Ley’s killer still points to a cover-up. The Cambodian authorities’ ongoing failure to identify and prosecute the masterminds behind Kem Ley’s murder shows that an independent investigation is urgently needed to deliver justice to his family and to make progress towards ending impunity for the killing of human rights defenders in Cambodia,” said FIDH Secretary-General Debbie Stothard.

The Cambodian government's failure to conduct a thorough, impartial investigation into the killing of Kem Ley obstructs the rights of Kem Ley's family members and the public to ascertain the truth. It also signifies that Cambodia has failed to respect Oeuth Ang's right to a fair trial by a competent, independent and impartial tribunal, in violation of the ICCPR, to which Cambodia is a State party.

On 13 July 2016, soon after the killing, the ICJ made five recommendations to the Cambodian authorities aimed at meeting its obligations under international law to promptly carry out an independent, impartial and effective investigation into the killing. These recommendations included ensuring that:

- Investigating judges and investigators are independent;
- The investigation process is transparent and open to public scrutiny;
- The rights of victim family members are protected, particularly against intimidation or retaliation as a result of their participation in the investigation;
- The rights of any other person providing information to the investigation are protected; and
- Offers of assistance from States and international organizations with respect to forensic analysis or data collection are actively sought out and accepted.

To date, Cambodian authorities have not implemented any of these recommendations.

"The apathy of the Cambodian authorities could be seen to protect the masterminds of this killing," said Nicholas Bequelin, Amnesty International's Regional Director for East and Southeast Asia. "Fearless activists like Kem Ley only want to make their country better. They deserve justice from their government – not brazen indifference."

The upholding of Oeuth Ang's sentence by Cambodia's highest court in May 2019 – despite the failure of lower courts to sufficiently address shortcomings in his trial – also raises serious concern as to the lack of independence of the judiciary in Cambodia. The lower courts that considered the case were the Phnom Penh Municipal Court and then the Court of Appeal, which rejected Oeuth Ang's first appeal, before he then appealed to the Supreme Court, where his appeal against his sentence was also dismissed. These courts did not address the clear shortcomings that had marred the investigation and the original trial before the municipal court.

In October 2017, an ICJ report found that the lack of independent judges and prosecutors was the "single largest problem facing the Cambodian justice system" – where "the rule of law is virtually absent" and political interference and corruption in cases endemic.

Given the lack of trust and confidence in the impartiality, independence and competence of persons within the Cambodian judicial system to sit on a Commission of Inquiry into Kem Ley's case, the undersigned organizations urge the Cambodian authorities to request that an appropriate body with independent experts be established under the auspices of the United Nations.

"Kem Ley's murder was a tragedy and marked a regrettable return to the killings of human rights defenders in Cambodia. An independent body must be established to conduct a fair and impartial investigation to ensure Kem Ley's family finds out the truth about his killing," said Naly Pilorge, Director of the Cambodian League for the Promotion and Defense of Human Rights (LICADHO).

Kem Ley's killing remains an alarming reminder of Cambodia's culture of impunity in cases of apparent enforced disappearances, killings and other forms of physical and legal harassment of human rights defenders, labour leaders, monks, journalists, members of the political opposition and other individuals critical of the ruling regime since the 1991 Paris Peace Accords. Kem Ley's

death also occurred in the midst of a crackdown on dissent, and rising restrictions on independent and critical media.

“Kem Ley was a true man of the people. He was unshaking in his commitment to the truth, and always continued to speak out against the corruption and injustice that was continuing to impact the lives of ordinary Cambodians. Three years after his death, his legacy continues to live in the hearts of Cambodian people.” said Chak Sopheap, Executive Director of the Cambodian Center for Human Rights. “On the third anniversary of his death, we renew our call for an independent and transparent investigation into the entire circumstances surrounding Kem Ley’s death, so that truth and justice can finally be delivered to his bereaved family, and the general public.”

Kem Ley’s family and friends, in partnership with Cambodian, regional and international human rights and development organizations, will continue to call for an independent, impartial and thorough investigation into his killing until those accountable for his death are brought to justice.

Relevant international legal standards

Pursuant to international law binding on Cambodia, including the ICCPR, to which Cambodia is a State Party, Cambodia has a duty to promptly, independently, impartially, and effectively investigate all deaths suspected of being unlawful. Investigations must seek to identify not only direct perpetrators but also all others who may have been responsible for criminal conduct in connection with the death.

Article 14 of the ICCPR establishes the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Principle 11 of the UN Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions calls for the establishment of a Commission of Inquiry when ‘the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies.’

The revised Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) clarifies that the duty to investigate potentially unlawful deaths is derived from the obligation to protect the right to life, which includes a positive obligation to prevent the arbitrary deprivation of life. This obligation also includes ensuring accountability and remedy for violations, including through equal and effective access to justice and provision of prompt and effective reparation.

Signed:

1. Amnesty International
2. Article 19
3. ASEAN Parliamentarians for Human Rights
4. Asian Forum for Human Rights and Development (Forum-Asia)
5. Asian Network for Free Elections (ANFREL)
6. Cambodian Alliance of Trade Unions (CATU)
7. Cambodian Center for Human Rights (CCHR)
8. Cambodian Food and Service Workers Federation (CFSWF)
9. Cambodian Human Rights and Development Association (ADHOC)
10. Cambodian League for the Promotion and Defense of Human Rights (LICADHO)

11. Cambodian Youth Network (CYN)
12. Center for Alliance of Labor and Human Rights (CENTRAL)
13. Civil Rights Defenders
14. Coalition of Cambodian Farmer Community (CCFC)
15. Equitable Cambodia
16. Human Rights Watch
17. Independent Democracy of Informal Economy Association (IDEA)
18. International Commission of Jurists
19. International Federation for Human Rights (FIDH)
20. International Freedom of Expression Exchange (IFEX)
21. Labor Rights supported union of Khmer Employees of NagaWorld
22. Lawyers' Rights Watch Canada
23. Not One More (N1M)
24. Southeast Asian Press Alliance