This letter was translated from the Khmer original

Samdech Kralahom Sar Kheng,
Deputy Prime Minister and Minister of the Interior, Royal Government of Cambodia,
275 Preah Norodom Boulevard,
Phnom Penh,
Cambodia,
12301

Phnom Penh, 07 July 2017

RE: Request to Create a Commission of Inquiry into the killing of Kem Ley

Dear Samdech Kralahom Sar Kheng,

Ahead of the one-year anniversary of the killing of Kem Ley, we, the undersigned, reiterate our concerns regarding the apparent lack of progress in investigating this case, as well as the inadequate investigation and trial of Oeuth Ang, the only person yet convicted or charged in relation to Kem Ley's death.[1] In light of the inadequacy of the investigation, we urge the Royal Government of Cambodia ("RGC") to establish an independent and impartial Commission of Inquiry, in line with international standards, to continue the investigation.

On 23 March 2017, immediately following the conviction of Oeuth Ang for the killing of Kem Ley, Oeuth Ang's lawyer announced that an investigation was ongoing into two persons allegedly linked to the killing – a fact confirmed by the prosecutor Ly Sophana, who reportedly said that the case was split so that Oeuth Ang could be tried while the investigation into the other suspects continued.[2] Oeuth Ang's lawyer reportedly suggested these persons are 'Pou Lis', who, according to Oeuth Ang's testimony, introduced Oeuth Ang to Kem Ley, and a second man named 'Chork', who Oeuth Ang claimed had sold a handgun to him.[3] Moreover, broader questions about the motive for the killing remain unanswered. Despite this, neither the investigating judge nor the RGC have since publicly reported any progress regarding the supposed investigation or its subjects.[4]

The right to life is enshrined in the Cambodian Constitution and binding international human rights law, particularly the International Covenant on Civil and Political Rights, to which Cambodia is a

[1] See: Ouch Sony, 'Kem Ley Shooter Gets Life in Prison; Two Others Under Investigation', *The Cambodia Daily*, 23 March 2017. <http://bit.ly/2tXsXnz>
[2] Niem Chheng and Shaun Turton, "Choub Samlab' gets life in prison', *The Phnom Penh Post*, 24 March 2017. <http://bit.ly/2urLLZ6>
[3] Amnesty International, Human Rights Watch, and International Commission of Jurists, 'Cambodia: Significant Questions Remain After Guilty Verdict in Kem Ley Trial', ASA 23/5944/2017, 23 March 2017. <http://bit.ly/2rRx4Nn>
[4] Following Oeuth Ang's appeal hearing in April 2017, investigating judge Seng Leang reportedly "refused to say whether they had uncovered any leads". Niem Chheng, 'Ley murderer appeals for reduced sentence', *The Phnom Penh Post*, 21 April 2017. <http://bit.ly/2ugcpDx>

State Party. The duty of states to protect that right to life includes a positive obligation on the RGC to ensure an impartial and thorough investigation into the killing of Kem Ley.[5] The United Nations Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions ("UN Principles") clarify how this obligation is to be discharged and explicitly emphasize that states must launch a 'thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions.'[6] Furthermore, the UN's Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) ("the Minnesota Protocol") sets out the requirement of 'government verification of the facts and public disclosure of the truth' where there has been a violation to the right to life, as well as providing that 'investigative processes and outcomes must be transparent, including through openness to the scrutiny of the general public and of victims' families.'[7] The failure of the authorities to publicize information related to the allegedly ongoing investigation in Kem Ley's case is non-compliant with these standards and gives the strong impression that little progress has been made in the investigation, if such an investigation is occurring at all.

We, the undersigned, also reiterate our concerns regarding the flawed trial of Oeuth Ang. The trial of Oeuth Ang was met with substantial criticism from international observers, who stated that the trial revealed the investigation to be seemingly deficient in several important respects.[8] The alleged motive for the murder, an unpaid debt of $3,000, was rejected by both the widow of Kem Ley, Bou Rachana, and the wife of Oeuth Ang, Hoeum Hout.[9] The credibility of this motive went unchallenged by the prosecution at trial and was not referenced in the trial judgement, while the possibility of further accomplices was not adequately addressed. The role of other actors identifiable in video evidence submitted to the court was apparently not subjected to scrutiny at either investigation or trial.[10] Moreover, following the charging of Oeuth Ang, reports emerged stating that senior district and military officials had a meeting with Oeuth Ang only a week before the killing of Kem Ley.[11] Representatives of the RGC have themselves cast doubt upon both Oeuth Ang's motive[12] and

[5] Article 32 of the Constitution of the Kingdom of Cambodia recognizes the right to life of all citizens. Furthermore, Article 31 formally recognizes international human rights law. Specifically, Article 6 and Article 2(3) of the International Covenant on Civil and Political Rights ("ICCPR"), to which the Kingdom of Cambodia ("Cambodia") is a State Party, not only requires states to respect the right to life but also places a positive obligation on states to actively and adequately investigate all cases of murder. United Nations General Assembly, 'International Covenant on Civil and Political Rights, 999 UNTS 171, 16 December 1966. <http://bit.ly/1bNeudO>

[6] United Nations Economic and Social Council, 'Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions', ECOSOC, resolution 1989/65 of 24 May 1989 1. <http://bit.ly/2fYtuvF>

[7] United Nations Human Rights Council, 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths: The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions', A/HRC/32/39/Add.4, June 2016.), Articles 10, 32, respectively. <http://bit.ly/2r6UXRH>

[8] Amnesty International, Human Rights Watch, and International Commission of Jurists, 'Cambodia: Significant Questions Remain After Guilty Verdict in Kem Ley Trial'.

[9] Mech Dara, Niem Chheng, Shaun Turton and Thik Kaliyann, 'For those closest to Kem Ley's alleged shooter, the facts don't add up', *The Phnom Penh Post*, 20 July 2016. <http://bit.ly/2arzD2G>

[10] For more details, please refer to 'Eight issues that were not adequately addressed at trial', in: Amnesty International, Human Rights Watch, and International Commission of Jurists, 'Cambodia: Significant Questions Remain After Guilty Verdict in Kem Ley Trial'.

[11] 'Cambodia's Deadly Politics - 101 East', *Al Jazeera*, 12 January 2017. <http://bit.ly/2mECWH1>

[12] Ananth Baliga and Touch Sokha, ''Case closed' on Kem Ley', *The Phnom Penh Post*, 29 December 2016. <http://bit.ly/2id0pNj>

testimony claiming he was acting alone.[13] These statements and reports, combined with the failure of the prosecution to pursue these lines of questioning at trial, suggests that the investigation and trial may have failed to meet the standards relating to the right to fair trial under domestic and international human rights law.

The RGC must now establish a Commission of Inquiry in order to conduct an independent, impartial, effective and transparent investigation into the killing. Principle 11 of the UN Principles 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.'[14] The rejection of alleged motives by relatives of both Kem Ley and Oeuth Ang are likely to satisfy the requirement of 'complaints from the family of the victim' under the UN Principles.[15] For a Commission of Inquiry to be credible and to satisfy the requirements outlined under the UN Principles, '[m]embers of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry'.[16]

Given the fact that the killing occurred against a backdrop of escalating attacks on human rights defenders and the political opposition, and in the context of a well-documented history of killings of human rights defenders with impunity in Cambodia, it is imperative that the Commission of Inquiry be staffed by individuals, including legal experts and United Nations human rights officials, with no ties to the RGC.

Following the killing of Kem Ley, five UN human rights experts made similar calls for investigation, stating, "We call for a prompt, thorough and impartial investigation into the crime […] conducted by an independent body with no ties to the government."[17] The deeply flawed nature of the investigation into the death of Kem Ley has not met international standards or Cambodia's obligations under binding domestic and international law, and now necessitates the establishment of an independent Commission of Inquiry in order to facilitate justice for the family of the victim.

We, the undersigned, reiterate our concerns regarding the flawed investigation into the killing of Kem Ley and lack of progress in the subsequent investigations into the suspected accomplices to the killing, as well as our demand that the investigation now be taken over by an independent and impartial Commission of Inquiry.

---

[13] Khuon Marim and Zsombor Peter, 'One Month Later, No Word on Kem Ley Murder Probe', *The Cambodia Daily*, 10 August 2016. <http://bit.ly/2k5HrwI>

[14] United Nations Economic and Social Council, 'Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions'.

[15] 'Cambodia's Deadly Politics - 101 East', *Al Jazeera.*

[16] Principle 11, United Nations Economic and Social Council, 'Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions'.

[17] United Nations Office of the High Commissioner of Human Rights, 'UN rights experts condemn killing of Cambodian political analyst and activist Kem Ley', 13 July 2016. <http://bit.ly/29R6kbG>

Yours sincerely,

[…]

CC: Samdech Hun Sen, Prime Minister of the Kingdom of Cambodia
H.E. You Bunleng, President of the Court of Appeal
H.E. Ouk Savuth, General Prosecutor attached to the Court of Appeal
H.E. General Neth Savoeun, General Commissioner of National Police
Mr. Taing Sunlay, President of Phnom Penh Court
Mr. Yeth Chakriya, Prosecutor attached to the Phnom Penh Court
H.E. Ang Vong Vathana, Minister of Justice
H.E. Chin Malin, Undersecretary of State, Ministry of Justice

This letter is endorsed by:

1. 7amleh – Arab Center for Social Media Advancement
2. ActiveWatch - Media Monitoring Agency
3. Ad IDEM/Canadian Media Lawyers Association
4. Adil Soz - International Foundation for Protection of Freedom of Speech
5. Affiliated Network for Social Accountability Cambodia
6. Afghanistan Journalists Center
7. Africa Freedom of Information Centre
8. Albanian Media Institute
9. Aliansi Jurnalis Independen (Alliance of Independent Journalists)
10. Americans for Democracy and Human Rights in Bahrain
11. Amnesty International
12. Arabic Network for Human Rights Information
13. ARTICLE 19
14. ASEAN Parliamentarians for Human Rights (APHR)
15. Asociación Nacional de la Prensa (National Press Association)
16. Asociación por los Derechos Civiles (Association for Civil Rights)
17. Associação Brasileira de Jornalismo Investigativo (Brazilian Association for Investigative Journalism)
18. Association for Freedom of Thought and Expression
19. Association for Media Development in South Sudan
20. Association of Caribbean Media Workers
21. Association of Independent Electronic Media
22. Bahrain Center for Human Rights
23. Belarusian Association of Journalists
24. Boeung Chhouk Community
25. Boeung Kak Community
26. Boeung Tunle Mrech Natural Recourse Protection Area Community, Rovieng District, Preah Vihear Province

27. Building Community Voice
28. Bytes for All
29. Cairo Institute for Human Rights Studies
30. Cambodia Development People Life Association
31. Cambodia Indigenous Youth Association (CIYA)
32. Cambodian Center for Human Rights (CCHR)
33. Cambodian Center for Independent Media
34. Cambodian Human Right and Development Association (ADHOC)
35. Cambodian Independent Teachers' Association (CITA)
36. Cambodian League for the Promotion and Defense of Human Rights (LICADHO)
37. Canadian Journalists for Free Expression
38. Cartoonists Rights Network International
39. Center for Independent Journalism - Hungary
40. Center for Independent Journalism - Romania
41. Center for Media Freedom and Responsibility
42. Center for Media Studies & Peace Building
43. Centre for Independent Journalism, Malaysia
44. Centro de Archivos y Acceso a la Información Pública
45. Centro de Reportes Informativos sobre Guatemala
46. Centro Nacional de Comunicación Social (National Center for Social Communication)
47. Child Rights International Network
48. Civil Rights Defenders
49. Coalition for Integrity and Social Accountability (CISA)
50. Comité por la Libre Expresión (Committee for Free Expression)
51. Committee For Free And Fair Elections In Cambodia (COMFREL)
52. Committee to Protect Journalists
53. Community Legal Education Center (CLEC)
54. Community Network of Pursat Province
55. Derechos Digitales
56. Digital Rights Foundation
57. Egyptian Organization for Human Rights
58. Electronic Frontier Foundation
59. Equitable Cambodia (EC)
60. Espacio Público
61. Federation of Nepali Journalists
62. Foro de Periodismo Argentino (Argentine Journalism Forum)
63. Free Media Movement
64. Freedom Forum
65. Freedom House
66. Freedom of Expression Institute
67. Fundación Andina para la Observación y el Estudio de Medios (Andean Foundation for Media Observation & Study)
68. Fundación Karisma (Karisma Foundation)
69. Fundación para la Libertad de Prensa (Foundation for Press Freedom)

70. Global Voices Advox
71. Global Witness
72. Globe International Center
73. Gulf Center for Human Rights
74. Hong Kong Journalists Association
75. Housing Rights Task Force (HRTF)
76. Human Rights Network for Journalists
77. Human Rights Watch (HRW)
78. Hungarian Civil Liberties Union
79. IFEX
80. I'lam Media Center for Arab Palestinians in Israel
81. Independent Journalism Center, Moldova
82. Index on Censorship
83. Indigenous Youth at Prome Community, Preah Vihear Province
84. Indradevi Association (IDA)
85. Initiative for Freedom of Expression - Turkey
86. Institute for Media and Society
87. Institute for Reporters' Freedom and Safety
88. Institute for the Studies on Free Flow of Information
89. Institute of Mass Information
90. Instituto de Prensa y Libertad de Expresión (Institute of Press and Freedom of Expression)
91. Instituto Prensa y Sociedad (Institute for Press and Society)
92. Instituto Prensa y Sociedad de Venezuela (Press and Society Institute of Venezuela)
93. Inter American Press Association (Sociedad Interamericana de Prensa)
94. International Commission of Jurists (ICJ)
95. International Federation of Journalists
96. International Federation of Library Associations and Institutions - Free Access to Information and Freedom of Expression Committee
97. International Press Centre
98. International Press Institute
99. International Publishers Association
100. IPS Communication Foundation - bianet
101. Journaliste en danger (Journalist in Danger)
102. Journalists' Trade Union
103. Khmer Kampuchea Krom for Human Rights and Development Association
104. Khmer Student Intelligent League Association (KSILA)
105. Land Community, I Village, Sangkat III, Preah Sihanouk province
106. Land Conflict Community, Krous Village, Battambang province
107. Land Conflict Community, Skun Village, Siem Reap province
108. Lor Peang Community, Kampong Chhnang Province
109. Maharat Foundation (Skills Foundation)
110. MARCH Lebanon
111. Media Foundation for West Africa
112. Media Institute of Southern Africa

113. Media Policy Institute
114. Media Rights Agenda
115. Media Watch
116. Media, Entertainment and Arts Alliance
117. Mediacentar Sarajevo
118. Metamorphosis, Foundation for Internet and Society
119. Mizzima News
120. Mother Nature
121. National Union of Somali Journalists
122. Neutral & Impartial Committee for Free & Fair Elections in Cambodia
123. Norwegian PEN
124. OBSERVACOM
125. Observatorio Latinoamericano para la Libertad de Expresión (Latin American Observatory for the Freedom of Expression)
126. Open Media
127. P24 the Platform for Independent Journalism
128. Pacific Freedom Forum
129. Pacific Islands News Association
130. Pakistan Press Foundation
131. Palestinian Center for Development and Media Freedoms (MADA)
132. PEN American Center
133. PEN Canada
134. PEN International
135. People Improvement Organization
136. Phnom Bath Community
137. Ponlok Khmer (PKH)
138. Privacy International
139. Public Association "Journalists"
140. Railway Station, Tuol Sangkae A Community
141. Reporters Without Borders
142. Samakum Teang Tnaut (STT)
143. SILAKA
144. Sindicato de Periodistas del Paraguay (Paraguayan Union of Journalists)
145. Social Media Exchange, Lebanon
146. Software Freedom Law Centre
147. SOS International Airport Community, Phnom Penh
148. South East Europe Media Organisation
149. South East European Network for Professionalization of Media
150. Southeast Asian Press Alliance
151. Syrian Center for Media and Freedom of Expression
152. Thai Journalists Association
153. The Alliance for Conflict Transformation
154. The Cambodian Defender Project
155. Trinidad & Tobago Publishers & Broadcasters Association

156. Vigilance pour la Démocratie et l'État Civique (Vigilance for Democracy and the Civic State)
157. Visualizing Impact
158. West African Journalists Association/Union des Journalistes de l'Afrique de l'Ouest
159. Women's Media Center of Cambodia
160. World Association of Community Radio Broadcasters
161. World Association of Newspapers and News Publishers
162. World Organisation Against Torture (OMCT)
163. Youth Council of Cambodia
164. Youth Resource Development Program