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**Written Statement Submitted by the Asian Forum for Human Rights and
Development (FORUM-ASIA), a non-governmental organization in special
consultative status**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[16 June 2006]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

Continued violations of human rights in Cambodia and the need for long-term UN support¹

The Asian Forum for Human Rights and Development (FORUM-ASIA), together with its member organizations, the Cambodian Human Rights and Development Association (ADHOC) and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), wish to draw the attention of the Human Rights Council to the urgent situation of human rights in Cambodia. We would like to recall that Cambodia is a State Party to 13 international human rights treaties and its Optional Protocols².

Need for Protection of Human Rights Defenders for Upcoming Elections

It is well-recognized that risks for human rights defenders and civil society significantly increase before, during and after elections in Cambodia. Previously, the Special Representative of the Secretary-General (SRSG) on the situation of human rights in Cambodia reported violations of human rights related to the 2002 Commune Election³ and the 2003 National Assembly election⁴. For over a decade, violence and intimidation have been used during elections. Commune and national elections are to be held in April 2007 and July 2008 respectively. Particularly since March this year, there has been a number of unexplained expulsions of FUNCINPEC party members, who have then been replaced in most cases by members from the dominant Cambodian People's Party⁵. This calls into question whether the upcoming elections will guarantee the free and equal participation of all citizens to pave the way for a democratic society in Cambodia.

¹ Cambodia Human Rights and Development Association (ADHOC) and Cambodian League for the Promotion and Defense of Human Rights (LICADHO) also share the views expressed in this statement.

² Cambodia is a State Party to the following: ICESCR, ICCPR, CERD, CEDAW, CAT, CRC, MWC, First Optional Protocol to ICCPR, Optional Protocol to CEDAW, Optional Protocol to CAT, Optional Protocol to CRC on the involvement of children in armed conflict, Optional Protocol to CRC on the sale of children, child prostitution and child pornography, and the Rome Statute of the International Criminal Court.

³ "The 2003 National Assembly Elections", Special Representative of the Secretary-General on the situation of human rights in Cambodia, 8 July 2003, available at <http://cambodia.ohchr.org/Documents/Reports/Thematic%20Reports%20by%20SRSG/English/118.PDF>

For the 2002 election, the SRSG highlighted the need for "lawful investigations and prosecutions of those responsible" for the murders of political party activists, further noting the "involvement of local authorities, police, military and other state actors in the intimidation of party activists and voters; the failure to uphold the neutrality of state institutions; and the need for equitable access to media by political parties."

⁴ Ibid. For the 2003 election, the SRSG expressed, "while progress has been made in improving the environment in which the 2003 elections are being held, there remain significant obstacles to establishing a level playing field for all political parties, a transparent electoral process and a political climate that is free from violence and intimidation."

⁵ The positions of those expelled vary from provincial and district governor, to secretarial and ministerial positions. From 2 March to 5 June 2006, the estimated number of FUNCINPEC party members expelled is 17, out of which 11 were replaced by the Cambodian People's Party members, and 2 by the Sam Rainsy Party members. In addition, 43 FUNCINPEC deputy provincial governors were removed from their posts, claimed to be for further training in school and only 13 of them will be replaced by FUNCINPEC party members 6 months later.

Ongoing Human Rights Issues and Promulgation of Draft Laws

Since 2004, the government has been drafting eight new laws, covering a wide range of topics from penal codes to anti-corruption law⁶. Two draft laws on public assembly and non-governmental organizations, curtailing the right to freedom of expression and freedom of assembly, are of particular concern to civil society.

Draft Law on Public Assembly for a Peaceful Demonstration and the Right to Peaceful Assembly

This draft law restricts places of demonstration, number of participations and the duration of event⁷. Such actions illustrate the government's failure to guarantee the rights of its citizens under domestic and international law⁸. In addition to this proposed law, the government has failed to guarantee the rights to peaceful assembly and movement, as confirmed by the recent event on 1 May 2006. On the International Labour Day, a peaceful demonstration of more than two thousand workers faced hundreds of armed police blocking them from entering the city, and the permission for the event was not given by the Ministry of Interior for an inexplicable reason. Some trade unionists were briefly detained while negotiating with the police to enter the city⁹.

Criminal Law and the Right to Freedom of Expression

The removal of custodial sentence for defamation under Cambodia's criminal law on 26 May 2006 has been an important development. However, there is a high possibility of misuse by political forces—which control the law enforcement agencies, the prosecution and the courts—to fine individuals of up to 2,450 USD, an amount above the average yearly income of a Cambodian citizen that could easily bankrupt most families¹⁰. In addition, imprisonment can be used to coerce a guilty defendant to pay fines¹¹. Moreover, defamation charges against five civil society activists who were arrested without any due process of law in December 2005 and eventually released in January 2006 still remains

⁶ The 8 laws include Penal Code; Code of Penal Procedures; Civil Code; Code of Civil Procedures; Organic Law on the Organization and Functioning of Courts; Law on the Amendment of the Supreme Council of Magistrates; Law on the Status of Judges and Prosecutors and' Law on Anti-Corruption.

⁷ The location of certain kinds of public demonstrations are restricted to government designated parks, while some others require permits, which takes at least two weeks to process, to hold demonstration elsewhere. It also sets limits on the number of participants to 200 persons and the duration of such events to be no more than four hours. Moreover it was proposed by the Prime Minister to locate government-designated parks in all provinces in May. For further information: "Gov't May Confine Protests to 'Freedom Parks'", The Cambodia Daily, 3 April 2006. "Gov't: Permit Unlikely for an Anti-PM Rally", The Cambodia Daily, 7 April 2006. "PM Calls for 'Freedom Parks' in All Provinces" The Cambodia Daily, 5 May 2006.

⁸ Article 41 of Constitution of Cambodia guarantees the rights to freedom of expression, press, publication and assembly. Freedom of assembly and association are also guaranteed under Articles 21 and 22 of ICCPR, Article 8 of ICESCR, and ILO Conventions 87 and 98 on freedom of association and collective bargaining. Cambodia is a State Party to all of these international treaties.

⁹ "Cambodian workers overcome repression to celebrate May Day", Press Release, LICADHO, 1 May 2006.

¹⁰ "Rights groups cautiously welcome Cambodia decision to drop jail terms for defamation", The Associated Press, 27 May, 2006.

¹¹ On the same day that the criminal law was amended, the Minister of Justice stated that "those with money who refuse to pay the fine would be imprisoned". See "Cambodian Lawmakers move to decriminalize defamation", Agence France Presse, 26 May 2006.

until today, despite the Prime Minister's promise to drop their charges¹². The right to freedom of expression therefore continues to be restricted in Cambodia.

Draft Laws on Local Association and NGOs and Anti-Corruption Law: the Need for Protection of Human Rights Defenders

These two draft laws provide no safeguards against misuse by the non-independent judiciary to bankrupt or imprison human rights defenders in order to silence critics. These laws are particularly worrying as the Prime Minister has recently discredited the role of human rights community on 18 May 2006¹³. In line with international standards, specifically the UN Declaration on Human Rights Defenders, the two laws must ensure the protection of human rights defenders.

Forced Evictions

Recent cases of forced evictions have been characterized by arbitrary arrests¹⁴, intimidation, threats, deaths and injuries¹⁵. In Tole Bassac, more than 1,300 families have been forcibly evicted, remaining homeless since 3 May, which culminated in a riot on 31 May, and ten arbitrary arrests and detention from 5 through 7 June¹⁶.

On 6 June, about 700 heavily armed riot and military police¹⁷ stood by the Tonle Bassac commune from 3:30am and began forcibly evicting all villagers to two relocation sites 20 km away from the central city at 600am¹⁸. During this eviction process lasting till night, UN personnel and media were banned from entering, cameras and notebooks were forbidden by the police¹⁹, and the authorities had closed down the two main roads near the eviction site²⁰.

¹² "Cambodian PM Reverses Position on Lawsuits", The Associated Press, 30 January 2006.

¹³ "FORUM-ASIA urges Cambodia to act on the lack of judiciary independence", Public Statement, 19 May 2006. "Hun Sen Government must recognize its shortcomings and strengthen judiciary: FORUM-ASIA", Press Release, 19 May 2006.

¹⁴ In addition, as of the end of March 2006, our member organizations found around 40 arrest cases without due process, derived from land dispute in 13 provinces. For more information: "More Land Dispute Detainees are Freed", The Cambodia Daily, 27 March 2006.

¹⁵ In March, 2005, the Kbal Spean community eviction led to the death of five individuals and the injury of 40 more. For more information: "On the Resolution made by Bantaey Meanchey Provincial Authority Over the Land Disputes in Kbal Spean Village," Media Statement, CHRAC, 25 May 2006.

¹⁶ Information obtained says that on 5 June, Mr. Kim Ly Hour faced police custody without being charged, breaching the 72 hours maximum limit as specified in the law. On 6 June, eight community members were arrested. For the first 48 hours, the authorities refused to provide any information on the name of arrested people and the location of their detention, refusing access to legal attorneys and family members. After 48 hours, six of them were released and the two others (Mr. Chan Ra, 48 and Mr. Chhen Sovann, 48) remain in prison. On 7 June, Mr. Hem Chun, 47, claimed to be a journalist, was arrested at the new relocation site. Mr. Ra, Mr. Sovann and Mr. Chun met public prosecutors, Mr. Sok Koylan, who submitted the preliminary charges on the three of "wrongful damage to property" of Article 52 of the UNTAC Law. The three were sent to prison in accordance with Article 14 of the UNTAC Law (pre-trial detention).

¹⁷ Police were heavily armed with rifles, electric batons, tear gas and riot gear.

¹⁸ Information obtained says that by 5:00am, the police were actively cleaning the area from medias, NGOs and UN personnel. Then at 6:00am, the security started physically evicting the village.

¹⁹ "Frenzied development in Cambodia pushes its people out of the capital to squalid conditions," Press Statement, LICADHO, 14 June 2006.

²⁰ Information obtained says that before and during the forced eviction, the authorities blocked two main roads, Sothearos and Sihanouk Roads.

The victims of the forced eviction are the socially and economically vulnerable, including women²¹ and children. On 30 May, the Special Rapporteur (SR) on adequate housing and the SRSG on Human Rights Defenders issued a public statement urging the government to hold appropriate consultation with the affected community, allow NGOs to provide assistance and protection to the families affected and prevent the use of force²².

However, to date, the government has failed to implement these recommendations and the villagers continue to suffer without adequate compensation and access to basic facilities such as electricity, water and lavatory at the relocation site. Their situation continues to deteriorate day by day, as recently pointed out by the SR on adequate housing²³. Another eviction is now proposed to begin 5 July at the site near Preah Monivong Hospital in Phnom Penh²⁴.

We remind the government once again that it has the legal obligation to implement the rights guaranteed in the Constitution²⁵, the Land Law²⁶, ICESCR, in particular Article 11 and the accompanying General Comment No.7 on forced evictions.

Judicial System: Lack of Transparency, Independence and Competence

For the past eleven years, the international community has been calling for the need for concrete reform of the judicial system in Cambodia and the training of judges²⁷. The lack of political independence and transparency has been highlighted most recently by the improper investigation into the assassination of Chea Vichea in January 2004²⁸, reiterated recently by the ILO Geneva²⁹, and the arbitrary detention of Cheam Channy for over a year,

²¹ Observation on the ground tells that specifically in the Tonle Bassac case, there were a number of pregnant women.

²² “UN experts appeal for respect of human rights of Bassac residents in Phnom Penh, Cambodia,” Public Statement, the Special Representative of the Secretary-General for Human Rights Defenders, Hina Jilani, and the Special Rapporteur on Adequate Housing as a Component of the Right to Adequate Standard of Living, Miloon Kothari, 30 May 2006.

²³ The UN SR on Adequate Housing said, “The situation at Tonle Bassac...is unacceptable according to international human rights standards in that the eviction have resulted in homelessness. I do not think we should not look to a situation where Phnom Penh becomes a type of apartheid city where there are clear divisions between the wealthy people live and where the poorer people live. I think the kind of displacements that are taking place are pointing in that direction.” For more information: “UN Official Raises Alarm Over Tonle Bassac”, The Cambodia Daily, 3-4 June 2006.

²⁴ “Residents Near Hospital Given Eviction Notice,” The Cambodia Daily, 14 June 2006.

²⁵ Right to ownership is guaranteed under Article 44 of the Cambodian Constitution.

²⁶ “Rights of ownership and other rights related to immovable property” are guaranteed by the law.

²⁷ For over 11 years, all three former UN Special Representative of the Secretary-General on the situation of human rights in Cambodia have continuously reported that rampant impunity, the lack of independent judiciary and rule of law are some of root causes for human rights violations in the country. “Continuing Patterns of Impunity in Cambodia,” the UN Special Representative of the Secretary-General on the situation of human rights in Cambodia, October 2005.

²⁸ The role of the police in the killing of Chea Vichea remains debated and there was no convincing evidence to suggest that either of the accused, Born Samnang or Sok Sam Oeun, had anything to do with the murder. For more information: “Human Rights in Cambodia: Façade of Stability,” Report, LICADHO, May 2006.

²⁹ “ILO Repeats Its Call To Reopen Probe of Chea Vichea’s Killing,” The Cambodia Daily, 14 June 2006. The ILO’s Committee on Free Association has for the second time called on the Cambodian government to reopen its investigation into the killing, in the statement issued in Geneva on 12 June 2006. Advisor to the Prime Minister accused Chea Mony, brother of Chea Vichea, for “using too much of his freedom,” when Mony expressed his belief that the government was behind the killing.

year, in addition to the arbitrary detention of the five activists mentioned earlier³⁰. The incompetence of the judicial system is also evident in the composition of Cambodian judges and prosecutors of the Extraordinary Chamber of the Court of Cambodia (ECCC), many of whom lack the necessary qualifications and experience³¹.

As a result of the corrupt judiciary, arbitrary detention is commonplace in the country. Under law, accused persons may be detained for up to four months before trial, and it may be extended to six months without clear reasons set by the judge. During 2005, LICADHO found 308 cases of excessive pre-trial detention, which violates the right to trial without undue delay³².

Prisoners who have completed their sentences are invariably kept in prison until prosecution appeals are heard. Although this is in breach of the Constitution and the ICCPR, the Ministry of Justice defended such infringement in 2003³³. More than 400 inmates at the Correctional Centre I alone had completed their sentences, yet remained in detention pending prosecution appeal hearings³⁴. Rampant, blatant miscarriage of justice by the judiciary clearly warrants examination by impartial experts such as the WGAD and the SR on the independence of judges and lawyers.

During her official country visit from 15 - 19 May 2006, the UN High Commissioner for Human Rights also found “capital importance for the consolidation of democracy under the rule of law, namely the strengthening of the judicial branch of governance. An independent, professional judiciary with recognized integrity would not only be essential in protecting fundamental rights and freedoms but also facilitate the resolution of a number of the difficulties evident in Cambodia including impunity, conflicts over land and corruption.”³⁵

Recommendations

We call upon the Human Rights Council to fulfill its mandate to promote and protect human rights, as well as to prevent human rights violations in Cambodia by taking the following actions:

³⁰ “Arbitrary Detention in Cambodia,” Open Letter to the UN WGAD, President of LICADHO, 5 May 2006. On 25 November, 2005, the UN Working Group on Arbitrary Detention communicated its opinion to the Royal Government of Cambodia that this detention of Cheam Channy, Member of Parliament, was arbitrary under Category III of the categories applicable to the consideration of cases submitted to the Working Group. Arbitrary detention of the five prominent civil society figures is applicable to the Category II specified by the WGAD.

³¹ Out of 17 selected, 11 persons speaks none or little or fair level of languages required, and 5 persons received no law or attended trainings. In addition, 3 including Thong Old, Ney Thol and Thou Mony were prosecutors in well-known controversial and politicized trials. , For more information: “Open Letter to Louise Arbour”, Open Letter, FORU-ASIA, 16 May 2006.

³² As guaranteed under Article 9 of ICCPR.

³³ Decision of the National Judicial Conference for 2002, Ministry of Justice circular no. 01/2003. The Ministry said, “the accused person can not be released if the prosecutor or civil plaintiff appeals the case until the decision of the higher court becomes final.” Arbitrary Detention in Cambodia,” Open Letter to the UN WGAD, President of LICADHO, 5 May 2006.

³⁴ Ibid.

³⁵ Louise Arbour, “High Commissioner for Human Rights Says Independent Judiciary Essential for Democracy in Cambodia.” Press Release, 19 May 2006.

- To extend all of the Special Procedures' mandates, including the SRSG on the situation of human rights in Cambodia, to ensure continued monitoring of the critical human rights issues raised above;
- To ensure that these mandate holders are provided with adequate administrative and financial support and to ensure that they will be able to undertake more country visits to Cambodia each year;
- To undertake a review of the human rights situation in Cambodia, taking into account the issues raised above and information provided by NGOs. The "universal periodic review" (UPR) mechanism must involve consultations with all stakeholders at the national level.
- To strengthen the OHCHR office in Cambodia through adequate financial and human resources for strengthened protection of human rights on the ground.

We also call upon the inaugural members of the Council to urge the Government:

- To submit its thirteen overdue reports to the treaty bodies;³⁶
- To implement the High Commissioner's recommendations by providing adequate training for judges and prosecutors;
- To cooperate with the ECCC to ensure that the tribunal is carried out with professionalism and that justice prevails in these cases of war crimes and crimes against humanity;
- To implement the recommendations by the Special Procedures' mandate-holders, in particular the recent ones by the SRSG on the situation of human rights in Cambodia, SRSG on human rights defenders and the SR on adequate housing and;
- To invite the SR on the independence of judges and lawyers and facilitate his visit fully.

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³⁶ The 13 overdue reports are: second periodic report to the Human Rights Committee; initial report and second period report to the Committee on Economic Social and Cultural Rights, eighth to eleventh periodic reports to Committee on the Elimination of Racial Discrimination; second and third periodic reports to Committee against Torture; second and third period reports to the Committee on the Rights of Child; and two initial reports on the Optional Protocols to the Committee on the Rights of Child.