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SPECIFIC GROUPS AND INDIVIDUALS

**Written statement* submitted by the Transnational Radical Party (TRP),
a non-governmental organization in general consultative status**

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

[11 February 2005]

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

2004 was characterized by a series of incidents of forced repatriation of Montagnard asylum seekers carried out by the Cambodian Government in cooperation with the Vietnamese Government. The Montagnards were fleeing persecutions from the Central Highlands of Vietnam.

In March 2004, the Ministry of Foreign Affairs and Ministry of Interior of Cambodia sent a letter to the Office of UNHCR in Cambodia accusing the office of “smuggling and trafficking Vietnamese Montagnards”. A month later, during the Easter celebrations, dozens of thousands of Montagnards organized peaceful demonstrations to reclaim the respect of their fundamental freedoms, starting with religious and land rights. A crackdown that followed prompted the fleeing of hundreds of Montagnards to Cambodia through the and malaria infested bordering jungle.

On May 13, 2004 the Hon. Son Chhay, Member of the National Assembly of Cambodia, in a letter to H.E. Mr. Sar Kheng Deputy Minister of Interior, denounced that “news reported in local newspapers such as Koh Santepheap and Reaksmei Kampuchea on 11 May 2004, have alleged that police officers have raped and robbed a group of 80-Montagnard refugees last week from the district of Koh Nhek in Monduliri before deported them back to Vietnam [... and] that from a reliable source, the deportation of the Montagnard refugees in such large scale have been occurred at least three times since last April, and these crimes have caused shame and the loss of face to the Hun Sen's government which have been condemned by the International Community, the donor countries and the group of international human rights organizations. These acts against the Montagnards, have clearly violated the UN convention on refugees and have also shown the cruel behavior of the government in committing crime against humanity.”

Despite its obligations under the 1951 Convention relating to the Status of Refugees Cambodia has largely refused to accept the Montagnards as true refugees, who have been characterized as persons coming to Cambodia to seek better economic conditions and have been forcibly returned by the authorities for that reason. A UNHCR camp in the Monduliri province was closed and destroyed in April 2002.

On 28 May 2004, the Special Representative of the United Nations' Secretary General for Human Rights in Cambodia strongly denounced the behavior of the Government of Cambodia with the following statement, which the TRP believes raises a series of serious issues:

The Special Representative of the Secretary-General for human rights in Cambodia, Peter Leuprecht, is concerned about recent reports that law enforcement and security forces have been involved in serious breaches of Cambodia's international obligations, including the forcible deportation of ethnic minority asylum seekers from Vietnam's central highlands (collectively known as Montagnards). Local communities, national non-governmental organizations and some members of the international press have all reported restrictions imposed upon their freedom of movement, including the imposition of roadblocks. Villagers who have spoken to human rights organizations in recent weeks have been subject to harassment by local authorities.

In this context, it is worrying that the Foreign Minister recently stated that the Government would deport Montagnards, whom he has labeled “illegal immigrants”, without providing for an asylum

process within Cambodia or allowing the United Nations High Commissioner for Refugees the opportunity to assess the claims”, Mr. Leuprechth said. “It is of particular concern that the Foreign Minister has repeated unsubstantiated claims that the world's refugee agency, UNHCR, is smuggling asylum seekers into Cambodia rather than reaffirming the Government's commitment to its international obligations.

After having been told not to access border areas to assess the claims of asylum seekers over the last two years, UNHCR had to close its Ratanakiri office on 10 April 2004, with its operations now being confined to Phnom Penh. Cambodia is a party to the 1951 Convention on Refugees and its related 1967 Protocol, and the International Covenant on Civil and Political Rights, which guarantees the right to freedom of movement, a right that is also protected by the Cambodian Constitution. Central to the obligation of non-refoulement enshrined in the Refugees Convention is the need for a fair refugee status determination procedure by which to identify those persons in need of protection. Since Cambodia has yet to develop a procedure for asylum determination, UNHCR must be given access to asylum seekers in order for Cambodia to comply with its Convention obligations.

The Special Representative calls upon the Government to resume constructive dialogue with UNHCR and to comply with its international obligations, in particular the core principle of non-refoulement. The forcible deportation of refugees and asylum-seekers to countries where they risk torture and ill-treatment also contravenes Cambodia's obligations under Article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Following some international pressure, UNHCR has been allowed to get in contact with several refugees. Some refugee centers have been established in Phnom Pehn, dozens of other refugees remain in the regions close to the border.

On 25 July, the head of the Cambodian NGO ADHOC's office in Rattanakiri, was arrested together with an unidentified civilian, a local journalist from Radio Free Asia and a foreign journalist from Cambodia Daily without precise charges, and were transferred to a military post in the province of Mondulkiri along with a group of 17 asylum seekers that they were accompanying. The detainees were later released.

On 25 January 2005, the Government of Cambodia, Vietnam and UNHCR signed a Memorandum of Understanding (MOU) concerning the fate of the over 700 Montagnard asylum seekers, who remain in Cambodia under the protection of UNHCR. The MOU presents a series of concerns, as it does not contain any explicit guarantees that the Montagnard refugees who might agree to return to Vietnam will be effectively protected by UNHCR. The Montagnard refugees are particularly vulnerable as the official communication of the parties involved in the process does not include exhaustive the various options also in the indigenous dialects.

The TRP is particularly concerned that the MOU does not meet the main requests formulated, in accordance with international law, by more than 354 refugees, who on 16 November wrote a letter to the UN High Commissioner for Refugees (a letter that as of mid-February 2005 was not answered). In the letter, the refugees clearly stated that a number of refugees were willing to return to the Central Highlands, but only if the Government of Vietnam would allow UNHCR and other independent monitoring entities and agencies, including NGOs, a free access to their villages and the entire Central Highlands.

On the one hand the MoU states that “the Vietnamese side will be responsible for transporting the returnees from the venue of readmission to the localities of their residence before their departure to Cambodia”, and on the other it states that “for the immediate groups, at the request of UNHCR and at an appropriate time, the Vietnamese Government and UNHCR will consult and cooperate on visits to the returnees. UNHCR is committed to endeavour to obtain the necessary funds internationally for infrastructure projects in the returnee localities. The assistance which might be necessary will be appraised by UNHCR during its working visits to such localities.”

The above mentioned terms of the agreement clearly do no guarantee to UNHCR the possibility to protect the refugees neither through the possibility of establishing a monitoring presence in Vietnam nor during the repatriation process.

Furthermore, the MOU states “Those who neither want to resettle in a third country nor to return to Vietnam will have one month following determination of their status to decide either to go to a third country or to come back to Vietnam. If then they do not decide, the Royal Government of Cambodia and the UNHCR will work with the Vietnamese Government to bring them back to Vietnam in an orderly and safe fashion and in conformity with national and international laws.”

Considering that it is widely documented by several human rights organizations and other international institutions, that Montagnard refugees risk imprisonment, torture and mistreatment repatriated to Vietnam, the refolement of refugees under these conditions violates the Convention against Torture and the 1951 Convention on Refugees, to which Cambodia is party.

For all these reasons, the MoU signed on 25 January cannot be considered in accordance with international law, which guarantees fundamental rights of refugees, and all efforts should be made by international institutions and democratic Governments to intervene and stop this process of refolement of Montagnard refugees to Cambodia.

The TRP urges the Commission to address such issue, which, if forgotten, may trigger more instability in the region increasing the brutal repression that has characterized the way in which the Vietnamese Government is dealing with the people living in the Central Highlands.

According to reports coming from several organizations working on gender-related issues, and in particular from the International Lesbian and Gay Association (ILGA) working in the European Union, gay asylum-seekers, who have been beaten up, arrested, jailed, tortured, raped and threatened with death in their own countries, are often being deported back to their countries of origin without due consideration of the threats they may face once home.

The TRP believes that it should be the aim of entities such as the European Union to uphold the rights of those who are discriminated whether they come from the inside of the Union or from the outside.

According to ILGA, which has been observing many of these cases coming from all around the EU, the suicide in England of an Iranian fearing deportation, who recently immolated himself, is only one of many cases that lesbian gay bisexual and trans-gender people have to suffer.

In spite of the democratic nature of several countries, the persecution of minorities remains a reality all over the world. The right to asylum is recognised as a fundamental right at the international level only by the Universal Declaration of Human Rights, which, in article 14, considers it to be universal where there is a risk of persecution in the Country of origin.

The TRP shares the view of ILGA in believing that by guaranteeing the prohibition of the death penalty, torture or other inhuman or degrading treatment or punishment, the international bill of human rights indirectly implies the existence of a right to asylum in order to avoid such treatment or punishment. These texts clearly establish the right not to be expelled or extradited towards a State in which there is a serious risk of being subject to such treatment or punishment (the principle of not turning-back).

On different occasions, citizens of countries like Jamaica, Iran, Algeria, Zimbabwe, Belarus, Saudi Arabia that have homophobic policies and that force individuals to hide their identity, avoid effeminate mannerisms, and either never have sex or have sex with extreme discretion have risked forced repatriation.

While it is understandable that Governments often argue that refugee's fears are exaggerated or untrue, oftentimes a violent welcome awaits people that flee persecution. Refugees may be protected from this argument by organizations that work collecting and elaborating evidence of human rights violations in the refugee's country to persuade the government to let them apply for asylum. If Authorities concerning cases of asylum-seekers are in doubt that the person in question is telling the truth or not, they should reach out to knowledgeable NGO and the media.

The TRP urges the Commission to consider the issues raised by the Special Representative of the Secretary-General in Cambodia, and address as a matter of urgency the serious concerns voiced by groups like ILGA, which consultative status remains suspended for political reasons impeding their contribution to the work of the UN, during the 61st session of the Commission.
