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OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
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.

[31 May 2007]

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

Cambodia - The absence of the rule of law aggravating the human rights situation in the country

Under the international peace agreements concluded in 1991 to end a protracted war in the country as well as under its own constitution, Cambodia has undertaken to ensure the respect for and observance of human rights and fundamental freedoms of its people, including the establishment of an independent judiciary for the protection of those rights and freedoms. The other State signatories to these agreements also have a share in the human rights obligations towards the Cambodian people.

Ever since the conclusion of the agreements, Cambodia has received continued technical, economic and financial assistance worth altogether some US\$500 million a year for the promotion of the respect for and observance of human rights, the establishment of institutions of the rule of law including the judicial system, and social and economic rehabilitation and development.

However, some 16 years after the signing of the peace agreements, the situation of human rights in Cambodia still falls far short of what had been planned and expected.

Compared with the communist days prior to 1991, the situation in the country has changed substantially. Cambodian society is now more open. There is freedom of enterprise and a thriving market economy, but capitalism has gone wild and powerful and rich individuals or private companies are grabbing public and people's land, leading to the forced evictions of thousands of families (further details follow below).

The Cambodian people are enjoying unrestricted freedom of movement inside and outside the country. They have many newspapers, radio stations and TV channels. However, journalists are still facing threats, intimidation and lawsuits for libel and criminal disinformation. The government maintains firm control over the electronic and other media, except one small radio station, and all journalists and reporters need to exercise self-censorship.

Many NGOs have emerged but, over recent years, the public authorities have exercised more control over their activities; NGOs now have to seek permission from them first before being able to carry out activities, such holding seminars or workshops. Freedom of expression and assembly have been virtually banned since 2003. Over recent years some people have been arrested for their opinions concerning controversies such as the border issue, the Khmer Rouge trial, corruption and past killings. Public demonstrations are subject to tough restrictions, and well armed police have been deployed to crack down on any unauthorised peaceful public demonstrations or protests, more often than not with excessive force. Such police brutality is also very common in forced evictions in land-grabbing cases.

Land-grabbing has been one of the most serious issues facing Cambodia, leading to the most widespread violations of economic and social rights since the country abandoned communist collectivization at the end of the 1980s to embrace a market economy based on private property. In recent years, due to accelerated development and town beautification policies coupled with speculative activities for quick profit-making on land, this problem has become worse, as land conflicts have dramatically increased.

An NGO called NGO Forum listed 1,551 cases of land-grabbing between 1991 and 2004, affecting nearly 160,300 families or almost 7 percent of the population. Another NGO called ADHOC alone received 335 cases in 2005 and 450 in 2006 in which it dispensed legal assistance to victims.

Land-grabbing has affected urban dwellers, rural folks and ethnic minorities alike. According ADHOC, more than 4,600 families in the capital Phnom Penh were dispossessed in 2006. In the provinces, the number of dispossessed families was 10 times larger. The families were forcibly evicted from their homes and land without fair and just compensation. Over the years land grabbing victims have protested against such forced evictions, but many have faced the brutal force of the police who have beaten or electrocuted them with rifle butts or electric batons. The police have also demolished, destroyed or set fire to their homes or other properties. Many evictees have been forced to resettle in areas with no access to education and health facilities and that are far away from their places of employment. Others have been rendered destitute.

The Cambodian government has recognised that land grabbing could spark off a "peasant revolution." In 2001, it enacted a land law to address the issue, with the creation of national, provincial and districts cadastral committees to adjudicate disputes over unregistered land, while consigning disputes over registered land to the jurisdictions of the courts of law. These cadastral committees have not been effective, and in 2006 the prime minister created by decree a National Authority for the Resolution of Land Disputes (NARLD). NARLD has not met with any success, and in March of this year Prime Minister Hun Sen set out to wage a "war against land grabbers" whom he has identified as being "CPP officials" and "people in power" - the CPP being the ruling Cambodian People's Party.

This war against the powerful has yet to be won, as some 2000 complaints of land grabbing have yet to be dealt with. For the time being, this war has instead brought terror to the powerless, notably in the seaport town of Sihanoukville on the Gulf of Thailand, where, in April of this year, its governor led a well armed police force to forcibly evict 107 families from their homes and 17 hectares of land for the benefit to a tycoon senator. They demolished and destroyed their homes and other belongings with bulldozers and fire, making those families immediately destitute. A month later, on the outskirts of the same town, an army general led 200 armed men to forcibly evict persons from 120 hectares of land he claims he "legally" owns.

On May 30, 2007, Hun Sen called for a "seminar on land issues," which he admitted to be "happening every day". It is not clear whether this seminar is another battle in his war against land-grabbers or an admission of defeat in that war.

The problem of land-grabbing originates in the rule by decree which is the tenet of governance in Cambodia. This rule has enabled the powerful and the rich, backed by powerful officials, to use their high positions and influence to secure eviction orders and the enforcement of these orders from the state machinery, without going through due process of law and without paying fair and just compensation to evictees. This rule by decree, in the form of the National Authority for the Resolution of Land Disputes, the war against land-grabbers and most recent seminar, are but palliatives and cannot replace the

rule of law as a means to eradicate land-grabbing, let alone protect other human rights of the Cambodian people.

The core element of the rule of law is an independent judiciary. In Cambodia, the judiciary is under executive control as judges are mostly affiliated to the ruling CPP party, a former communist party whose discipline is still enforced by the idea that "you cannot get out of the party alive". In late May, Heng Samrin, the honorary CPP president and president of the National Assembly, was reported as saying that "nobody, including judges, are without party affiliations." He said: "It is hard to find independent [judges]," adding that the "important thing is that [judges] must work impartially, according to the law." It is hard to expect judges to maintain impartiality when they are under the political control of their party. This is especially true when the party's senior members include the powerful and the rich who are involved in land grabbing. It is also hard to expect impartiality when, like other public officials, such judges are corrupt - for some judges corruption begins from the time they take their exams to enter the school of the magistracy). Furthermore, almost all the nine members of the Supreme Council of the Magistracy (SCM), which is responsible for judges' nomination and discipline, belong to the same ruling party and are known to be corrupt. The SCM has recently introduced a code of ethics for judges, but it lacks compliance mechanisms and complaint procedures.

The Cambodian legal profession, through the Bar Association, has not only condoned but has also contributed to this perilous state of the judiciary, as it has not played its part in improving the administration of justice and, further, as its members have bribed judges to "win" cases for their clients.

The judiciary can be made an instrument of repression by the government or the rich and powerful when judges are readily willing to imprison government critics or victims of land-grabbing on frequently fabricated charges, including defamation, disinformation, incitement, causing damage to property, or illegal occupation of property. The public has little confidence in the judiciary, and victims of land-grabbing have refrained from resorting to the courts to protect their rights, preferring instead to seek help from NGOs to directly lobby powerful officials, who, ironically cannot do much themselves against these powerful and rich land-grabbers.

It is imperative that the Cambodian government embrace the rule of law to honour its international human rights obligations in general, and to eradicate land-grabbing in particular. As regards land-grabbing, the government must first enforce property rights as protected under the country's constitution, which stipulates that "legal private ownership shall be protected by law". The same constitution also fixes specific conditions for the confiscation of property for public interests, saying that the "right to confiscate properties from any person may only be exercised in the public interest as provided for under law and shall require fair and just compensation in advance." There must therefore be a law to determine that the land targeted for confiscation will be used for public interests. This law must also provide for an independent and impartial mechanism to award fair and just compensation to owners of affected properties.

Subsequently, the government must enforce the 2001 land law, which prohibits infringements on ownership and imposes penalties for such infringements. It must also ensure the proper functioning of the district, provincial and national commissions to deal

with land disputes. It needs to consult with people who are likely to be affected by any land concession for economic purposes, and ensure that these people are fairly and justly compensated. Furthermore, it needs to work out land concessions for social purposes and make land adequately available to the poor, for their housing and cultivation, before making any land concessions for other purposes.

More importantly, there is no avoiding the need to ensure that courts of law are independent, competent and impartial and are trusted by people. There is a need to sever judges' party affiliation and end the executive control of the judiciary. There is also a need to secure judges' tenures with the enactment of the laws on their status and on the organisation of courts. Such laws have been at the drafting stage for some ten years. Courts must also be endowed with adequate resources and expertise to effectively carry out their functions, which they are now lacking. Furthermore, the Supreme Council of the Magistracy must change its corporatist composition, which includes seven judges out of a total of nine members, and replace the majority of these judges with non-judges, to ensure that the body is more willing to take disciplinary action against judges. The SCM must also be made easily accessible to the public and transparent in its functioning, which is currently not the case. It must further put in place a complaint procedure and complaint mechanisms to enforce the judicial ethics it has just introduced in its code.
