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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE,
IMPUNITY**

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organisation 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.

[26 January 2005]

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

FARCICAL AND ILLEGAL TRIAL WITHOUT WITNESSES IN CAMBODIA

After the United Nations-sponsored elections in 1993, Cambodia adopted a new constitution and accepted rule of law principles as the bases for organisation of a new society. The constitution incorporated all international human rights covenants and conventions, including the International Covenant on Civil and Political Rights (ICCPR), and it expressly recognises the right to fair trial.

Since 1993 there have been many attempts to develop a court system and legal profession that are competent enough to ensure fair trial. However, the practices of trial in Cambodia are as yet very rudimentary: only recently have cases begun to be properly documented, through an initiative by civil society organisations.

The Asian Legal Resource Centre (ALRC) is concerned by the deeply flawed procedures that continue to dominate criminal trials in Cambodia. In this it has relied on research findings and commentary by the Centre for Social Development.

Article 24(1) of the UNTAC Law requires that, "Witnesses mentioned in the police file, including police officers, must be heard in court." Notwithstanding, it is estimated that some 76.3 per cent of cases in Cambodian trial and appeal courts are decided without the presence of witnesses. Instead what happens is that a clerk reads witness statements as the police have earlier recorded them. This practice is a flagrant breach of article 14(1) of the ICCPR, which states that "everyone shall be entitled to a fair and public hearing by a competent independent and impartial tribunal established by law", where 'public' means that witnesses too must be heard in court.

Fair trial is public trial. This principle, evolved over centuries, is essential because it allows the public also to judge the reasonableness of the final decision. The essence of a fair trial is that not only should this decision be based on reasonable grounds but also the presentation of evidence should itself be reasonable. When a statement taken down earlier and in private by the police or prosecutors is read in court it is no substitute for this principle. Obviously, this practice gives enormous power to the persons taking down statements to manipulate proceedings and coerce witnesses to suit their own purposes.

Investigation and trial are two completely different things. In trial, the evidence that investigators are relying upon to prove the guilt of a person is tested. A defence counsel is engaged to cross-examine and probe for falsehoods. The judge is present not as a public face representing the investigators, but as the examiner of their evidence. This function is negated when witnesses do not come before the court to have their testimonies verified and their demeanour assessed. In short, without witnesses, there is no trial. Conviction of suspects under those circumstances, as common in Cambodia, is illegal, invalid and farcical.

Various reasons have been mooted for the absence of witnesses in Cambodian courtrooms. One is historical. Under the earlier judicial system, statements in the absence of witnesses were permitted; hence, although now illegal some practices from that period persist. A second is that witnesses may face threats against their lives, families and property. Cambodia still does not have a witness protection programme. This fear factor is very serious, and must be addressed if more witnesses are to appear in court. Third, many witnesses may be unwilling or unable to lose a day's income by attending the court instead. Fourth, witnesses may also not understand the purpose of giving evidence in court: after long years of exceptional cruelty, most Cambodians have no awareness of fair trial practices, and concomitant weakened civic consciousness.

Some proposals to obtain greater witness participation in the courts are that the Government of Cambodia and concerned international agencies, including those working in conjunction with the Commission, should

- a. Introduce a bailiff's office charged with issuance and delivery of subpoenas or summons.
 - b. Commit funds for a specialised witness protection programme, including long-term protection through relocation in serious cases.
 - c. Reimburse witnesses for the cost of transportation to court.
 - d. Conduct public education programmes on the role of witnesses in the courts, and legal obligations to attend court if summonsed.
9. As fair trial is fundamental to the rule of law and human rights, the Asian Legal Resource Centre urges the Special Representative of the Secretary General of the United Nations for human rights in Cambodia to examine seriously the effect of trials without witnesses, and make specific proposals for reform.
