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HUMAN RIGHTS COUNCIL  
Twelfth session  
Agenda item 10

**TECHNICAL ASSISTANCE AND CAPACITY-BUILDING**

**Written statement\* submitted by Lawyers Rights Watch Canada (LRWC),  
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.

[31 August 2009]

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

## Concerns about the Independence of Lawyers and Judges in Cambodia

### 1. Overview and recommendations:

There is marked increase of concern expressed by UN and other international and local human rights groups about persistent human rights issues that are seriously compounded by lack of independence and corruption of the judiciary, the bar and other public institutions including police. Courts are perceived to be among the most corrupt institutions in Cambodia.<sup>1</sup> The Bar Association of the Kingdom of Cambodia (BAKC) is widely perceived to be under government control, with concern about integrity in bar admission and disciplinary practices.<sup>2</sup> Issues of particular concern in Cambodia include: illegal land concessions, sales and evictions adversely affecting rural and urban people's rights and well-being, including indigenous peoples; violence against women and girls and trafficking of children and women for sexual exploitation; impunity for those threatening or attacking human rights defenders, union officials, journalists or opposition politicians, including corruption, pressure or judicial harassment by powerful persons; and constraint on freedom of expression and assembly through intimidation or judicial harassment of journalists, opposition politicians, human rights defenders and citizen protesters.

Executive control over the judiciary, prosecutors and the legal profession is accomplished through slow-paced and selective law reform, control over appointments and dismissal of judges and prosecutors, control of Bar admission practices, complaints against lawyers to the BAKC Bar Council with threats of disbarment, threatened or actual prosecution of lawyers, and impunity for physical threats to the safety of lawyers and human rights defenders.

LRWC urges the Human Rights Council to encourage the Royal Government of Cambodia to make urgent and serious efforts to implement its Legal and Judicial Reform Strategy, including accountable and rapid progress toward independent and competent courts. LRWC also urges the Council to urge Cambodia to bring all laws, policies and practices into line with Cambodia's Constitution and international human rights obligations, including passage of an anti-corruption law, *Civil Code and Penal Code*. LRWC also asks the Human Rights Council to encourage the Royal Government of Cambodia to invite the Special Rapporteur on Independence of Judges and Lawyers and the Special Rapporteur on the Situation of Human Rights Defenders to visit Cambodia on an urgent basis for detailed meetings with government officials, judiciary, bar association, members of the bar and human rights non-governmental organizations. LRWC also asks the Council to urge donors to Cambodia to insist that the Royal Government of Cambodia make rapid and diligent progress towards the Rule of Law and international human rights standards.

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<sup>1</sup> Household Survey on Perceptions, *Attitudes and Impact of Everyday Forms of Corrupt Practices in Cambodia*. Phnom Penh: Center for Social Development, 2005, <http://www.csdcambodia.org/pdf/Pub/Corruption%20and%20Cambodian%20Households.pdf>.

<sup>2</sup> Transparency International. "Corruption in the Judiciary of Cambodia." In *Global Corruption Report 2007*. Cambridge: Cambridge University Press, 2007, 183-86.

## 2. Cambodia's Legal Framework

**2.1 UN Conventions:** Cambodia has ratified many UN human rights Conventions, but has not ratified individual communications mechanisms.

**2.2 Cambodia's Constitution:** Cambodia's 1993 Constitution is a liberal democratic constitution which states in Article 31 that the Kingdom of Cambodia "shall recognize and respect human rights as stipulated in the United Nations Charter, the *Universal Declaration of Human Rights*, the covenants and conventions related to human rights, women's and children's rights."<sup>3</sup> The Constitutional Council made a ruling in July, 2007 that "decisively affirms the position of the international human rights treaties as part of Cambodian law..."<sup>4</sup>

**2.2 Patchwork domestic legal framework:** Sources of Cambodian law are uncertain in many areas because of regime upheavals and changes since the 1970s. Some legislation has been passed since 1993 including a new *Code of Civil Procedure*, and *Code of Criminal Procedure*. There is a draft anti-corruption law, a draft *Civil Code*, and a draft *Penal Code*. The UN Transitional Authority in Cambodia (UNTAC) *Penal Code*<sup>5</sup> is still used. After international pressure, UNTAC *Penal Code* Article 63 (defamation) was amended to remove custodial sentences, although heavy fines remain in place. UNTAC *Penal Code* Articles 62 (disinformation), 59-60 (incitement) continue to provide for custodial sentences and are now regularly used in addition to defamation charges. There is a 1995 *Law on the Bar*<sup>6</sup> and a *Bar Code of Ethics*.<sup>7</sup>

## 3. Concerns about key legal institutions

**3.1 Courts:** The Constitution stipulates independence of the judiciary.<sup>8</sup> However, the UN Special Representative and others have repeatedly noted that Cambodian courts are neither independent nor effective because of executive interference, corruption and lack of competence, leading to politically motivated prosecution of some and impunity of others. The Supreme Council of the Magistracy has been unable to carry out its Constitutional responsibility for

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<sup>3</sup> Constitution dated September 24, 1993 as amended 8 March, 1999, available at <http://www.cambodia.gov.kh/unisql1/egov/english/organ.constitution.html> or [http://www.bigpond.com.kh/Council\\_of\\_Jurists/Constit/somconsg.htm](http://www.bigpond.com.kh/Council_of_Jurists/Constit/somconsg.htm).

<sup>4</sup> Decision No. 092/003/2007, 10 July 2007. UN Office of the High Commissioner for Human Rights in Cambodia (OHCHR). Public Statement, 25 July 2007. *Decision of the Constitutional Council Regarding the Law on Aggravating Circumstances for Felonies and the Convention on the Rights of the Child*, [http://cambodia.ohchr.org/download.aspx?ep\\_id=331](http://cambodia.ohchr.org/download.aspx?ep_id=331).

<sup>5</sup> Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (UNTAC Penal Code), available at <http://www.cdpcambodia.org/untac.asp>.

<sup>6</sup> English language version of the *Law of the Bar*, available at [http://www.cdpcambodia.org/bar\\_law.asp](http://www.cdpcambodia.org/bar_law.asp).

<sup>7</sup> English language version of *Code of Ethics for Lawyers Licensed with the Bar Association of the Kingdom of Cambodia*, available at [http://www.bigpond.com.kh/Council\\_of\\_Jurists/Judicial/jud002g.htm](http://www.bigpond.com.kh/Council_of_Jurists/Judicial/jud002g.htm) or [http://www.cdpcambodia.org/bar\\_law.asp](http://www.cdpcambodia.org/bar_law.asp)

<sup>8</sup> Article 109-116, Constitution dated September 24, 1993 as amended 8 March, 1999, available at <http://www.cambodia.gov.kh/unisql1/egov/english/organ.constitution.html>. Also see [http://www.bigpond.com.kh/Council\\_of\\_Jurists/Constit/somconsg.htm](http://www.bigpond.com.kh/Council_of_Jurists/Constit/somconsg.htm).

integrity of the courts. The government published a Legal and Judicial Reform Strategy in 2003, but progress is disappointing.<sup>9</sup>

**3.2 National human rights institutions:** A Cambodian Human Rights Committee established by the government in 1998 is chaired Mr. OM Yien Tieng, an advisor to Prime Minister HUN Sen. This Committee is neither active nor independent. Discussions on an independent National Human Rights Institution (NHRI) began in 2006, but to date the mandate or powers of a NHRI have not been developed and there is no confidence that the government intends to establish an independent body in accordance with the Paris Principles.<sup>10</sup>

**3.3 Extraordinary Chambers in the Courts of Cambodia (ECCC):** The ECCC were set up by agreement as a mixed tribunal to try the leaders and those most responsible for the gross human rights violations of the 1975-1979 Pol Pot regime (Khmer Rouge). The ECCC has both international and Cambodian judges and prosecutors. There have been no transparent investigations of persistent allegations of corruption include reports that Cambodian staff have been pressured into kickbacks of their salary to government officials.

**3.4 Prosecutors:** Prosecutors have little independence from the executive branch of government and tend to make decisions based on partisan concerns rather than in the public interest. The 2008 Report of the UN Special Representative notes that “[c]omplaints filed by senior government officials, even when based on weak or unsubstantiated evidence, are prosecuted with vigour, while the vast majority of the populace have little hope or expectation of having their grievances taken up by public prosecutors.”<sup>11</sup> Criminal offences involving violation of land rights of communities by powerful individuals or companies are not prosecuted. However, when people resist evictions or appropriation of their land they or their lawyers may be threatened or charged with criminal offences such as incitement, disinformation or defamation.

**3.5 Lawyers and the Bar Association of the Kingdom of Cambodia (BAKC):** Efforts of the BAKC to foster an independent bar have been disappointing and have been impeded by government pressures and political divisions particularly over the past several years. Corruption and ineffectiveness of lawyers are reportedly widespread. The 1995 Law on the Bar governs lawyers in Cambodia and creates the Bar Association of the Kingdom of Cambodia. The Law on the Bar, which upholds the autonomy of the legal profession, provides a significant role for the Prosecutor General of the Court of Appeal who has considerable authority in decisions on bar admissions and disciplinary decisions of the Bar Council. There are reports of serious and widespread corruption in the bar admission process.

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<sup>9</sup> LICADHO. Legal and Judicial Reform In Cambodia: A LICADHO Briefing Paper. Phnom Penh: LICADHO, February 2006, available at <http://www.licadho.org/reports/files/79LICADHOLegalJudicialReformPaper06.pdf>.

<sup>10</sup> *Principles relating to the status and functioning of national institutions for protection and promotion of human rights* (Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993, available at [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/A.RES.48.134.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.RES.48.134.En?Opendocument)

<sup>11</sup> Ghai. Yash. *Report of the Special Representative of the Secretary-General for human rights in Cambodia*. Human Rights Council A/HRC/7/42, 29 February 2008, paragraph 33, available <http://daccessdds.un.org/doc/UNDOC/GEN/G08/115/04/PDF/G0811504.pdf>

**3.6 International and domestic NGOs including legal aid and human rights NGOs:**

Cambodia has a number of competent and robust legal aid NGOs and human rights NGOs who work in cooperation with the UN Office of the High Commissioner for Human Rights and other international human rights and legal organizations and donors. Local NGOs have a great deal of expertise at documentation and reporting of human rights violations but rely on unstable foreign funding.

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