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Committee on the Elimination of Racial Discrimination

Seventy-sixth session

15 February – 12 March 2010

Consideration of reports submitted by States parties under article 9 of the convention

Draft Concluding observations of the Committee on the Elimination of Racial Discrimination

Cambodia

1. The Committee considered the eighth to thirteenth periodic reports of Cambodia submitted in one document (CERD/C/KHM/8-13), at its 1979th and 1980th meetings (CERD/C/SR.1979 and 1980), held on 18 and 19 February 2010. At its 1998 meeting (CERD/C/SR.1998), held on 4 March 2010, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the periodic reports submitted by Cambodia, and the opportunity thus offered to resume a dialogue with the State party. Noting that the report was more than 10 years overdue when submitted (the eighth report was due in 1998), the Committee requests the State party to be mindful of the deadline set for the submission of its future reports in order to meet its reporting obligation under the treaty.

3. The Committee expresses its appreciation to the State party for the constructive dialogue and the efforts made by the Geneva-based delegation, headed by the Permanent Representative of Cambodia to the United Nations, to respond to the questions raised by the Committee. It notes that the delegation did not include any representatives from relevant ministries or offices in Cambodia, which limited the availability of information or answers to questions raised by the Committee during the meeting. In its next appearance before the Committee, the Committee invites the State Party to send experts from Cambodia in order to allow for a more thorough dialogue.

4. The Committee appreciates the contribution made by numerous Cambodian non-governmental organizations, which enriched the quality of the dialogue with the State party.

B. Factors and difficulties impeding the implementation of the Convention

5. The Committee notes that the State party is now in a continuing phase of reconstruction following a difficult and long period of armed conflict, and notes that periods of fragile peace both inside the country and at its borders have inhibited full implementation of the Convention.

C. Positive aspects

6. The Committee notes the incorporation of international human rights treaties into Cambodian constitutional law and welcomes the 10 July 2007 decision of the Constitutional Council (Decision No 092/003/2007) reaffirming that judges should interpret legislation and make decisions in the light of Cambodia's international human rights obligations.

7. The Committee also welcomes the ratification of the Optional Protocol to the Convention against Torture in April 2007 and the adoption of a law to ratify the Optional protocol to the Convention on the Elimination of Discrimination against Women in August 2009, both very significant steps towards the promotion and protection of human rights.

8. The Committee appreciates the steps taken by the State party to strengthen its legal framework for the protection and promotion of human rights, in particular the adoption of the Penal Procedure Code in August 2007.

9. The Committee notes with satisfaction the adoption of a land law in 2001 as well as a series of sub-decrees aimed at better protecting access to land for minority groups, including indigenous peoples.

10. The Committee notes with satisfaction the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC) in cooperation with the United Nations and the international community. It encourages the State party to continue its efforts to bring the perpetrators of the Khmer Rouge related atrocities to justice.

D. Concerns and recommendations

11. The Committee welcomes the adoption of the recent Penal Code and its provisions on Offences against human dignity and Offences against public security. However it is concerned by the absence of a clear definition of what constitutes racial discrimination under Cambodian law (article 1 and 2).

The Committee recommends that legislation be completed to ensure a clear definition of racial discrimination in conformity with article 1 of the Convention and the right of everyone not to be discriminated against in the enjoyment of all rights set forth in article 5 of the Convention. The Committee further recommends the State party to ensure that all these provisions are fully understood and disseminated to the public and implemented.

12. The Committee welcomes the provision of information by the State party on languages and ethnic composition of the population. The Committee is however concerned that the information provided did not enable a thorough insight into the situation especially with regard to ethnic minorities.

In line with its general recommendation no. 8 (1990) and with paragraphs 10 to 12 of the reporting guidelines for the CERD-specific document adopted at its seventy-first session, CERD/C/2007/1, the Committee requests the State party to include in its next periodic report disaggregated data on the State Party's ethnic minorities, including indigenous minorities, and data on their socio-economic status.

13. Recognizing that the rule of law is the cornerstone for the protection of the rights set forth in the Convention, the Committee is concerned with reports of political interference

and corruption affecting the judicial bodies as well as the functioning of some public services. It acknowledges and welcomes on the other hand the process undertaken to adopt an anti-corruption law but believes that such law needs to be fully implemented and mechanisms be put in place (article 2).

The Committee recommends that the State party continue and increase its efforts to strengthen and guarantee the independence of the judiciary and ensure that it is free from political control and interference through the early adoption of all relevant laws of reform. The Committee further recommends that the State Party take steps to increase its capacity to investigate and take disciplinary action in cases of incompetence and corruption.

14. While welcoming the efforts made by the State party to adopt a wide range of legislation in areas such as asylum, access to land, access to education, the prohibition of racial discrimination, the Committee is concerned with the lack of uniform and faithful implementation and enforcement of these laws. In this regard, the Committee notes with particular concern that as referenced in a United Nations Special Rapporteur's statement of 22 December 2009, the State Party took the decision to deport 20 ethnic Uyghurs from Cambodia before concluding a refugee status determination process, thus preventing an objective determination of whether the deportees would be at risk of persecution or other forms of ill-treatment (articles 2 and 5).

The Committee requests that the State party ensure that adopted legislation, including the law on asylum, are fully and faithfully implemented in order to provide the full protection under the law, a respect for the principle of "non-refoulement", and enjoyment on an equal footing of equal rights and benefits.

15. While noting that the State Party has several human rights mechanisms within various branches of its government, it remains concerned that an independent national human rights institution has yet to be established (article 2).

The Committee encourages the State party to establish an independent human rights institution, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134). In this regard, the Committee recommends that the Government consult with the Office of the High Commissioner in Cambodia and consider receiving technical assistance to re-invigorate the ongoing efforts to draft a law on the establishment of such National Human Rights Institution, in full compliance with the Paris Principles.

16. The Committee recognizes the recent and significant economic growth experienced by the State Party and the benefit such growth brings to the country. The Committee is concerned however that the quest for economic growth and prosperity is pursued, in some cases, to the detriment of particularly vulnerable communities such as indigenous peoples. The Committee is particularly concerned about reports of the rapid granting of concessions on land traditionally occupied by indigenous peoples without full consideration, or exhaustion of procedures provided for, under the land law and relevant sub-decrees (articles 2 and 5).

The Committee recommends that the State party ensure that a proper balance between development and the rights of its citizens is achieved and ensure that its economic development does not come at the expense of the rights of vulnerable persons and groups covered by this Convention. It further recommends that the State Party develop appropriate protective measures, such as a delay in the issuance of a concession on lands inhabited by indigenous communities who have applied to be registered legally in order to obtain land titles until the issue of collective ownership titles and indigenous peoples' rights to possess, develop, control and use their

communal lands, where at issue, has been assessed and determined and after consultation with and the informed consent of the indigenous peoples.

The Committee further encourages corporate business entities when engaging in economic land concessions to take into consideration their corporate social responsibility as it relates to the rights and well-being of local populations.

17. The Committee is concerned by reports of intimidation and acts of violence against indigenous peoples during forced evictions or land disputes affecting them. The Committee is also concerned with reports of a tendency to press charges against and arrest indigenous villagers, when they protest against their forced eviction or contest the granting of a concession on indigenous land (article 6)

The Committee urges the State party to provide full protection to vulnerable groups against physical attacks and intimidation as they seek to exercise their rights as they relates to communal lands. It urges the State party to bring perpetrators of such violations to justice. In its effort to improve the judiciary, the State party should ensure greater efficiency of the judicial system to ensure equal access to justice for all, including minorities and indigenous peoples, in conformity with the Committee's general recommendation no. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

18. While noting that the State party has repeatedly affirmed that Khmer Krom are considered Cambodian citizens, the Committee is concerned that the process for individual Khmer Krom to document their citizenship is more burdensome than for other Cambodian citizens. The Committee is further concerned that an individual Khmer Krom's affirmation of his/her Cambodian citizenship is therefore delayed or denied resulting in his/her not being given full and equal rights and benefits as provided under the State Party's constitution and laws (article 5).

The Committee recommends the State party to ensure that each individual Khmer Krom who seeks to affirm and document his/her citizenship is able to obtain citizenship documents in a timely manner and under identical and equal procedures that exist for all persons deemed to be Cambodian citizens.

19. The Committee has received information that in applying for Cambodian identification/documents, Khmer Krom individuals are either required or feel compelled to change essential information such as name and place of birth in order to secure their document (article 5).

Considering that the name of an individual is a fundamental aspect of the cultural and ethnic identity and that personal histories, including date and place of birth, are also part of this identity, the Committee strongly recommends that the State party take the necessary measures to ensure that Khmer Krom who seek to confirm their citizenship fully enjoy their rights to record their true name and place of birth if they so choose.

20. While noting the State party's efforts to implement its National Education Program "Education for All", the Committee is concerned with the discrepancy on the access to education, especially in remote areas. It is particularly concerned with education for children in areas such as Mondulkiri and Ratanakiri provinces, which are mostly inhabited by indigenous peoples and minorities. The Committee is concerned that the admission and enrolment rates are below the national level and the repetition and drop out rates are higher than the average national level (articles 2 and 5).

The Committee recommends the State party to continue its efforts to achieve its goal of "Education for All", and consider bilingual education programmes, as

appropriate, in remote areas as a means of improving the learning environment for ethnic minorities and indigenous peoples.

21. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).
22. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.
23. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.
24. The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention.
25. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolution 61/148, in which it strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.
26. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.
27. Noting that the State Party submitted its Core Document in 1998, the Committee encourages the State Party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).
28. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 15, 16, 17 and 18 above.
29. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 11, 13 and 20 and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.
30. The Committee recommends that the State party submit its 14th and 15th periodic reports in a single document, due on 28 December 2012, taking into account the guidelines

for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.
