



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Summary record of the 1980th meeting

Held at the Palais Wilson, Geneva, on Friday, 19 February 2010, at 10 a.m.

Chairperson: Mr. Kemal

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The meeting was called to order at 10.15 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 6) *(continued)*

Eighth to thirteenth periodic reports of Cambodia (continued) (CERD/C/KHM/8-13; HRI/CORE/1/Add.94; CERD/C/KHM/Q/8-13; CERD/C/KHM/Q/8-13/Add.1)

1. *At the invitation of the Chairperson, the Cambodian delegation resumed their places at the Committee table.*
2. **Mr. Sun** (Cambodia), recalling that Cambodia had had to rebuild itself completely while trying to deal with the terrible aftermath of its tragic past, said that significant measures had been taken over the past decade to re-establish and lay the foundations for the rule of law in his country. A substantial number of laws had been adopted, including the Civil Code, the Criminal Code and the Code of Criminal Procedure. The Cambodian Government had established the Royal Academy of the Judiciary to train judges and prosecutors, and was pursuing its legal and judicial reform programme, with a particular focus on updating current legislation and setting up systems for the extrajudicial settlement of disputes, especially disputes over lands inhabited by indigenous peoples. The Cambodian Government had taken steps to publicize the new legislation, partly by publishing it in the Official Gazette and also by circulating it to ministries, public authorities and the media.
3. There were two levels of court under the Cambodian judicial system: provincial and municipal trial courts and the military court, on the one hand, and the Court of Appeal and the Supreme Court, on the other. The Cambodian Government had also launched a pilot scheme to create judicial service centres in a number of areas, including in indigenous minority communities. In order to ease the burden on the courts, members of local councils in some rural areas had been trained in extrajudicial dispute resolution techniques and so were authorized to resolve minor disputes such as land disputes, numbers of which had increased sharply since the country's economic upturn.
4. The Extraordinary Chambers in the Courts of Cambodia for the prosecution of crimes committed during the period of Democratic Kampuchea had been established in 2003 pursuant to an agreement concluded between the Cambodian Government and the United Nations. The process of setting up the court had been long and complex and it had become operational only in 2007. The Extraordinary Chambers would not only help in combating impunity and healing the wounds of the past, they would also enhance the effectiveness of domestic courts. According to recent information, judgement had been passed in the first case before them, case 001. The investigation of case 002 had begun in early 2010 and two other cases involving five new suspects had been referred to the investigating judges by the international prosecutor.
5. All Khmer Krom were recognized as Cambodian citizens, without discrimination. According to statistics, there were 82,000 Khmer Krom in Cambodia and 15 legally declared associations or organizations, which conducted their activities unhindered and were allowed to take part in political life. His delegation acknowledged that there were still problems in issuing identity cards to members of the Khmer Krom minority but underlined that that was because those who lived in areas remote from urban centres were often unaware of the formalities required. To obtain a Cambodian identity card, one of the following documents should be produced: proof of domicile in Cambodia, a Khmer birth certificate or family record book, a court order, a royal decree or any other document verifying that at least one parent had Khmer nationality. Foreign residents could obtain Cambodian nationality either through marriage or, if they were not married to a Cambodian citizen, under a Constitutional provision whereby foreign residents who had made a special contribution to the economic, political or cultural life of the country could obtain honorary

naturalization. The leaders of certain foreign non-governmental organizations (NGOs) who had been active in the country for some time had received Cambodian nationality in recognition of their commitment.

6. As stated in the report (CERD/C/KHM/8-13, paras. 27 and 28) and the written reply to question 5 of the list of issues (CERD/C/KHM/Q/8-13/Add.1), three institutions had been mandated to receive and investigate complaints about human rights violations: the Human Rights Commission responsible for receiving Senate complaints; the Human Rights Commission responsible for receiving National Assembly complaints; and the Cambodian Human Rights Committee. In 2009, the first Commission had received 24 complaints, 6 of them for failure to comply with court decisions and 16 against local authorities. Seven cases were moving towards amicable settlements. During the first half of 2009, the second Commission had received 126 complaints, 87 of them over land disputes. In 2007, the Human Rights Committee had received 810 complaints, of which 625 were being considered and 171 were under investigation, and it had sent 89 letters, which had led to the settlement of 7 disputes. Lastly, he said that the Council of Ministers had approved a bill on corruption, which had been submitted to Parliament for adoption, and that Cambodia was a signatory to the United Nations Convention against Corruption.

7. **Mr. Ke** (Cambodia) said that a strict procedure was followed before land concessions were granted to extract natural resources. The project, together with a relevant environmental impact assessment, was first submitted to the Government through the Council for Development, which comprised representatives of all ministries concerned, including the Ministry of Rural Development. The potentially negative effects of the project were then closely examined, in consultation with the local authorities and representatives of the indigenous communities. Pursuant to the policy on the development of indigenous communities, adopted on 24 April 2009, indigenous peoples had access to natural resources and could make a living through their sustainable cultivation and use. According to the Constitution, however, all natural resources in Cambodia, including forests, belonged to the State. The State could therefore grant a licence to extract natural resources to third parties and ask indigenous peoples, in the nation's best interests, to leave the lands endowed with natural resources. In such cases, the State must provide alternative lands for resettlement, pay them compensation and, most importantly, obtain their consent, otherwise the communities affected could not be displaced. To that end, consultations were held with local councils, which included representatives of the indigenous minorities concerned. Thus, any decision taken by the public authorities to grant a concession to extract natural resources and displace minorities living in the areas in question was preceded by a transparent review and consultation process.

8. The Subdecree on registration of indigenous communal land, adopted on 24 April 2009, provided a sound legal basis, guaranteeing indigenous minorities the possibility of collective land ownership, protection of indigenous lands and access to natural resources. It stipulated that the Ministry of the Interior, the Ministry of Rural Development, the Ministry of Land Management, Urban Planning and Construction and local authorities should spare no effort to facilitate collective land ownership by indigenous communities.

9. The Constitution was the supreme law of the Kingdom of Cambodia, and all subordinate legislation, including subdecrees, must be consistent with the Constitution. Domestic legislation was based on Roman law and common law.

10. Following the 1993 elections, and having embraced democracy and the market economy, Cambodia had received legal assistance from the international community, which had been anxious to see the rule of law established. Decrees and subdecrees had completed the country's legal framework. They had the twofold advantage of being far more detailed than laws and easier to amend and, unlike laws, which required a parliamentary debate, could simply be adopted on the Prime Minister's endorsement. The Human Rights

Commissions of the Senate and the National Assembly and the Cambodian Human Rights Committee were a guarantee of a balance of power.

11. **Mr. Bieng** (Cambodia) said that the provisions of the Convention, as well as other standards, had inspired the Education Act, adopted in 2007, and the slogan “Education for All, All for Education”. In accordance with article 23 of the Act, civic education, peace education, instruction on sustainable development and respect for other cultures and traditional values were key elements of school curricula. The State placed particular emphasis on guaranteeing equal opportunities for indigenous peoples in education and finance in order to ensure access to secondary and higher education, the construction of boarding schools, the availability of scholarships, teacher training in areas with shortages, bilingual education programmes and the publication of bilingual school textbooks. At the same time, mechanisms to provide informal education had also been put in place, focusing on literacy and the acquisition of skills useful for everyday life or for finding work. Occupational training for women and in the agricultural sector was particularly well-established. Training programmes for trainers had been organized in indigenous communities so as to create an adequate corps of trainers able to speak indigenous languages.

12. **Mr. Long** (Cambodia) said that the Government had made poverty reduction its top priority and had defined its objectives as follows: first, to guarantee sustainable economic growth; second, to share the benefits of such growth equitably; and third, to ensure the sustainable use and management of natural resources. Indigenous peoples were regarded as citizens irrespective of their cultures and traditions. It had to be acknowledged, however, that they had suffered particularly badly under the Pol Pot regime and their dependence on forest products and natural resources, as part of a traditional lifestyle based on shifting cultivation and hunting, made them vulnerable. Their standard of living was therefore lower than that of the Khmer, and consequently two important policies had been adopted to develop areas inhabited by indigenous peoples and protect their rights and identity, namely the policy on the development of indigenous communities and the policy on the registration of indigenous land and land-use rights of indigenous peoples, supported by various subdecrees and circulars. The set of policies and the related legal framework had been established with the participation and contribution of representatives of the indigenous peoples and had been disseminated widely at all levels of the State.

13. Technically, only two types of collectively owned land existed in law, namely monastic land and the communal lands of indigenous communities, provided that those communities were recognized as communities or associations meeting certain criteria. Registration of communities meeting those criteria was under way, with the cooperation of the Danish International Development Agency (DANIDA) and the International Labour Organization (ILO). In total, nine indigenous communities were likely to be officially registered in 2010, including the three communities covered by the pilot land-title scheme funded by the German technical cooperation agency GTZ.

14. In the interim, temporary protection measures had been put in place in the areas inhabited by those indigenous communities that had not yet been registered. They included orders prohibiting the purchase or sale of land in the areas concerned. In the absence of clear criteria, recognition of indigenous communities had thus far been unofficial. NGOs feared that indigenous communities would lose their lands and sources of income. The authorities, on the other hand, were of the opinion that the NGOs had not taken into consideration the fundamental right of the indigenous peoples, who were also Cambodian citizens, to live in a community in a traditional or independent way, and were forgetting that there were opportunists who took advantage of their status as members of an indigenous minority to obtain land for commercial or political purposes in order to slow down the State’s process of development. Such difficulties made it imperative to conduct a

careful and thorough review before awarding any land the status of indigenous communal land. The allegations that land had been expropriated from indigenous peoples without compensation were groundless. It was a requirement for any project, especially a municipal project, that might threaten indigenous peoples' right to own property, either collectively or individually, to undergo impact assessments and for open negotiations to take place with the community affected. The Government had pressed for the reassessment of all concessions already granted under the economic land concession programme but which had not been subject to compulsory social and environmental assessments. In 2007, seven concession contracts had been cancelled indefinitely.

15. Lastly, he said that the Government was doing its utmost to guarantee the rights of the indigenous peoples over their lands while promoting the development of the areas where they lived, in order to ensure that they enjoyed a better standard of living, prevent them from being manipulated by opportunists and enable them to live peacefully and in harmony with society as a whole. Despite those efforts, it was inevitable that violations of their rights might occur due to inadequacies at various levels of government, and to misunderstandings. The Cambodian authorities therefore continued to rely on the cooperation of civil society organizations, which worked in good faith to report any shortcomings that might come to their notice.

16. **Mr. Sun** (Cambodia) reaffirmed his country's determination to establish an independent human rights institution in accordance with the Paris Principles. The Government had agreed in principle more than two years ago but it was still a work in progress in partnership with NGOs.

17. Responding to the questions on subdecrees, he said that the Constitution was the supreme law of Cambodia, superior to other laws adopted by Parliament, to subdecrees, which were adopted more easily and speedily at the ministerial level, and to orders.

18. He did not regard the fact that Buddhism was the State religion as discriminatory. In a tolerant society, but one where 90 per cent of the population were Buddhists, it was simply a reflection of reality and even a sign of harmony and social cohesion, like the national motto "Nation, Religion, and King". Just as several languages could be spoken in a country with one official language, Cambodians could freely practise religions other than the State religion.

19. **Mr. Ke** (Cambodia) added that university posts were open to all, irrespective of religion. Under article 496 of the Criminal Code, incitement to racial hatred was liable to one to three years' imprisonment and a fine of 2 to 6 million Cambodian riels.

20. **Mr. Bieng** (Cambodia) said that everything was being done to increase minority representation among teaching staff in State schools and to recruit teachers in remote rural areas in order to deliver quality educational services to minority and indigenous groups. The Ministry of Education, Youth and Sports had also launched a national education programme entitled "Education for All, All for Education" to ensure free education throughout the country for all children, irrespective of origin.

21. **Mr. Sun** (Cambodia) said that Cambodia organized a national day of indigenous peoples every year in accordance with the United Nations Declaration on the Rights of Indigenous Peoples. The Government had taken steps to make Cambodian society more harmonious, including administrative measures to promote greater understanding between members of Parliament and Cambodian society as a whole. Numerous organizations were working with minority groups in the area of culture and a department within the Ministry of Rural Development had responsibility for increasing understanding of the difficulties encountered by minority groups and worked with such groups when problems arose.

22. The new Criminal Code contained provisions on the prevention of discrimination and land registration procedures. There were several decrees and regulations on the subject and civil society and international organizations were very active in the area. The Government fostered cooperation with international organizations interested in linguistic and cultural minorities and development issues.

23. Subdecree No. 224, which dealt with refugee identification procedures, had been adopted in 2009 at the request of the United Nations Office of the High Commissioner for Refugees (UNHCR) Field Office, with which the Government worked in close collaboration. In addition, Cambodia was a signatory to the 1951 Convention relating to the Status of Refugees and was making every effort to implement a tripartite agreement concluded in 2005 between Cambodia, Viet Nam and UNHCR concerning Vietnamese mountain tribes living in the high plateau regions. Between 2004 and 2009, Cambodia had received 1,830 mountain community members and granted them protection, with UNHCR support. According to Ministry of the Interior data, 902 refugees living in mountain communities had been resettled in other countries and 400 had returned to their countries of origin, the majority voluntarily.

24. **Mr. Amir** said that the measures described in the State party report marked the beginning of a process of incorporating in domestic legislation the principles enshrined in the international human rights conventions Cambodia had ratified. He welcomed the new-found confidence of the Cambodian people after the very difficult historical events they had experienced. Referring to the delegation's statement that it was time to turn the page on those events, he said that he would recommend rather that Cambodia should continue reflecting on the nature of the crimes that had been committed, and on the principle of universal jurisdiction to try cases of genocide and war crimes. A court established in accordance with that principle would have extraterritorial jurisdiction and would disregard the sovereignty of States when dealing with such crimes. It would take no account of bilateral agreements or of concepts of nationality, rank or immunity in respect of the perpetrators of such crimes and would rule out any possibility of amnesty. Extradition could be refused only to countries where the accused might be subject to the death penalty. In addition, such crimes would be imprescriptible. Lastly, any witnesses to acts of genocide who chose to remain silent could be brought before the International Criminal Court.

25. He wondered whether the page could ever be turned in the case of war criminals who had committed genocide against a whole people. The Cambodian people might be generous enough to regard the perpetrators of such crimes with humanity, but that would in no way exempt those responsible for prosecuting imprescriptible crimes committed against an entire people from dispensing justice. The Cambodian Government had gradually been taking appropriate measures, bolstered by a real political will. He wished to know if steps had also been taken to help children affected by the terrible events and whether victims in need of psychological support were receiving treatment.

26. **The Chairperson** noted that the genocides previously brought to the Committee's attention had been committed against minorities. Cambodia was a rare example of genocide by individuals against their own people.

27. **Mr. Thornberry** said that the Khmer Krom had the right to obtain Cambodian citizenship but that, in practice, it was difficult for them to do so because of certain conditions imposed on them. It seemed to him that the problem was not the law but its application.

28. He asked whether the figures on indigenous land registration provided by the State party related to registration as a community or as a legal entity, i.e. whether indigenous peoples must be legally registered as a legal entity to obtain title, as the Land Act seemed to indicate. He wished to know if the fact that the status of legal entity was granted to

indigenous peoples by the Ministry of the Interior was compatible with the principle of self-determination of indigenous peoples enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.

29. Noting that many States decided to preserve their natural resources, including forests, by making them State property, Mr. Thornberry recalled that when there was likely to be an impact on indigenous communities, prior consultation must take place and procedures must be followed to ensure that those populations shared in the benefits of any exploitation of natural resources and were compensated for any damage that might occur.

30. As for concessions granted to multinational companies to extract natural resources and the possible impact on indigenous populations, he asked whether there was any possibility of reassessing concessions already granted to ascertain whether or not they were compatible with international standards or with Cambodian domestic legislation. He recalled that the Special Representative of the Secretary-General for human rights in Cambodia had expressed concern, in his 2007 report, at omissions in the implementation of the subdecrees on concessions, insofar as the preconditions for the granting of concessions had not been met. He asked if it would be possible to review some of the situations that had led to conflict with indigenous groups.

31. **Mr. de Gouttes** said that the work of the Extraordinary Chambers for the prosecution of crimes against humanity committed during the Pol Pot regime, which was a mixed court, was a good example of consensus between the international community and national authorities. Moreover, the establishment of international criminal courts marked a huge step towards combating impunity. He wondered whether the court had the broad support of the Cambodian population and asked for more details of the five cases that the Prosecutor had initiated.

32. He welcomed the steps taken to consolidate the rule of law and the judicial system, combat corruption and implement measures on indigenous lands, in particular the subdecree on communal registration of indigenous land. He noted that, although the Khmer Krom were recognized as Cambodian citizens, they were required to produce a Cambodian birth certificate in order to be legally registered, which appeared to create problems for them. He asked the delegation to provide the Committee with further information on those problems.

33. **Mr. Prosper**, Country Rapporteur, wished to know why the authorities had refused to issue identity papers to 19 Khmer Krom since January 2010. He asked whether the refusals were linked in any way to their permanent resident status, whether decisions on identification, residency and birth registration were taken by the Cambodian Government, and why, in the case in question, a royal decree could not be enacted to settle the issue once and for all.

34. He said that the Cambodian Government should adopt a law on education to establish bilingual education, thus giving indigenous populations in remote areas the same educational rights as the rest of the population.

35. **Mr. Sun** (Cambodia) said that Cambodia had demonstrated its willingness to prosecute the perpetrators of crimes committed under the Khmer Rouge regime by setting up extraordinary chambers for that purpose in the Cambodian courts, in collaboration with the United Nations. He hoped that the darkest chapter in the country's history would thus be closed and that Cambodia would be able to move on. The Royal Government of Cambodia recognized the nature of the crime perpetrated under the Pol Pot regime and was aware of the need to combat impunity and to punish the perpetrators of the atrocities, but it also set great store by maintaining peace in its territory, offering the new generation hope of a better life and a prosperous future and guaranteeing the democratic process. It was not a matter of forgetting but of forgiving. Given the suffering it had endured in the past, the

Cambodian people had never expected to have an opportunity to reflect on the best way to preserve human rights in Cambodia through dialogue with the United Nations treaty bodies.

36. The land title issue was very difficult to settle because all land had been nationalized under the Pol Pot regime and no one wanted to work on the land after the fall of the regime knowing it had been planted with landmines. It was only with the establishment of a market economy and economic growth that such land had begun to attract private investors, and they had built luxury seaside resorts on land that had once been written off. Cambodia was receiving aid from the international community and international financial institutions such as the World Bank to settle the land title issue. Several States were giving aid – Japan and France, for example, to help combat corruption, establish good governance and draft civil and criminal codes, and the United States and Australia in the areas of human trafficking and refugees.

37. Cambodia was making every effort to establish a democratic regime and strengthen capacities in that area and in human rights. It had become aware of the need to respect the environment and had made it a priority to respond to citizen concerns. The United Nations Development Programme (UNDP) was supporting Cambodia in projects to promote rural economic development while preserving the fundamental rights of rural and indigenous populations.

38. **Mr. Ke** (Cambodia) said that companies seeking a land grant must make certain commitments, notably to ensure that their economic project would not harm either the environment or the interests of the indigenous peoples and to create jobs for local people.

39. As to the Khmer Rouge, he said that the people did indeed want justice for past atrocities, but he wished to point out that the Cambodian people and many officials like himself had at the time begged the international community to come to their assistance – to no avail, despite the fact that all the major Powers knew full well what was happening in Cambodia.

40. Many Cambodian citizens who had fled the Pol Pot regime now held a second passport, in many cases issued by France or the United States, a situation that would be addressed in legislation. The Khmer Krom issue was, for historical reasons, much more complex and presented more problems and would therefore have to be addressed in cooperation with the Vietnamese Government.

41. **The Chairperson** said that the Committee was aware that the international community had in most cases done very little about the genocides of the twentieth century. The Committee had therefore deliberately drawn attention to that fact, in order to avoid similar inaction in the future.

42. **Mr. Prosper**, Country Rapporteur, said that he was pleased with the cordial and friendly dialogue that had taken place between the Committee and the Cambodian delegation. It was important for the Cambodian Government to ensure that justice prevailed while striving for peace. The success of that process would now depend on how effectively Cambodia managed to enforce the rule of law and the international standards it had adopted.

43. He said that, in its concluding observations, the Committee would be able to note with satisfaction that, in spite of difficult circumstances, Cambodia had succeeded in establishing the rule of law and democracy and had rebuilt itself within 30 years thanks partly to its willingness to work with the international community, the United Nations and international financial organizations. The Committee would certainly ask the Cambodian Government to guarantee the independence of the justice system, combat corruption and apply the laws on asylum and refugee status uniformly across all population groups. It would also ask it to include a definition of discrimination in its Criminal Code and make

people aware not just only of what behaviours they should avoid, but also of what safeguards they were entitled to. It would also encourage it to improve its data collection system so as to provide a clearer idea of everyone's economic, social and property rights; ensure that the laws on property were better applied and thus that the owners of land were properly protected; consider the issue of granting Cambodian citizenship to the Khmer Krom – a status that would allow them to enjoy the same rights as the rest of the population in areas such as health, education and housing; and lastly, to allocate more resources to the poorest strata of the population. The Committee would express its concern at the failure to apply the law protecting indigenous populations against any form of expropriation of their land. It would also ask the State party to do everything possible to establish the truth about acts committed in its territory under the Khmer Rouge regime.

The meeting rose at 12.55 p.m.