

## **Statement for**

### **The Committee on the Elimination of Racial Discrimination (CERD)**

**28-29 November 2019, Palais de Wilson, Geneva**

Thank you very much Chair,

First of all on behalf of the team, I would like to thank the OHCHR, especially the office in Phnom Penh for all the support given to us. Please allow me to begin by introducing the members of the team. We are from core line ministries that are involved at the heart of the issues that we are going to discuss over these two days. The team is composed of representatives from Ministry of Rural Development, Ministry of Interior, Ministry of Education; Youth and Sports, Ministry of Justice, and Cambodian Human Rights Committee. The team is a combination of policy makers and experts ranging from Secretary of States to Director General, Head of Department.

With your permission, we would like to update you on what Cambodia's submission to the committee earlier regarding the situation of the elimination of all forms of racial discrimination in the Kingdom. As you all are aware, Cambodia endured a long lasting civil war and internal armed conflicts. Real peace and stability have only emerged during the very recent past. Political ideology and racial discrimination are among the causes of the war and social unrest in this country. As presented in the report submitted, Royal Government of Cambodia has been making a great effort to harmonize all ethnics and political groups for the sake of human rights and development of the country.

After the collapse of Pol Pot's regime which is known to be the regime that severely abused human rights and destroyed all social fabrics of the country, Cambodia has tried her best to rebuild her society from scratch. We are grateful for the contribution of the international community, both the individual and collective help that was provided to put this country back on track towards development and respect of human rights. It is worth mentioning that the policy and legal frameworks that we have with the assistance of international community is a major instrument that dictates our current practices. We acknowledge that there are more laws and regulations required in order for Cambodia to

be better. And even more importantly, is the need for improvements in policy and legal frameworks.

Chair,  
Ladies and Gentlemen,

We can now address the main specific concerns raised by the committee on 7 October 2019.

The implementation and impact of the definition of racial discrimination and any anti-racial discrimination legislation in Cambodia; measures taken to bring the definition of racial discrimination in Article 31 of the Constitution and in the Criminal Code into line with Article 1 of the Convention; update on any existing articles in the Criminal Code criminalizing hate speech, incitement to hatred and hate crimes. In connection to this concern and pursuant to Article 31 of the Constitution of the Kingdom of Cambodia and Article 1 of the Convention, the Criminal Code of the Kingdom of Cambodia defined “racial discrimination” as the refusal to supply goods or services or hire employees, termination of employment, or removal from office; and the denial of the rights by public officials based on the grounds that the persons are the member or non-member of any ethnic groups or races and that discriminatory act shall be punishable by Criminal Law as stipulated from Article 265 to Article 270 in the Criminal Code. Rights of each individual to entitle for all rights as enshrined in Article 5 of the Convention are guaranteed by laws without discrimination as stated from Article 31 to Article 50 of the Constitution of the Kingdom of Cambodia.

Concerning the independence of the Judicial Power

According to Article 128 (new) and Article 130 (new) of the Constitution, judicial power is an independent power, that no organ of legislative power or executive power can exercise any judicial power.

To ensure the independence of judicial power, the Constitution requires to establish three fundamental laws namely, (i) the Law on the Organization of the Court, (ii) the Law on the Status of Judges and Prosecutors, and (iii) the Law on the Supreme Council of Magistracy. These three fundamental laws were adopted by the National Assembly and promulgated by the King on July 16, 2014, reflecting Cambodia’s strong commitment to promote the independence and effectiveness of the judicial power. Adjudicative function

is the core function of judicial independence and is exercised through Judges. Independence of judiciary means primarily not to influence the process how a judge arrives at the decision and prohibits contesting a judge's decision other than a formal appeal by the parties. The Constitution, the Law on the Status of Judges and Prosecutors and the Law on Supreme Council of Magistracy safeguard judicial independence and protect judge against political interference.

The three fundamental laws and some other substantive laws establishes the mechanism to guarantee the independence of judiciary by regulating case proceeding, decision making process, resources, performance of key actors, organization and functioning of the court. Under the Law on the Organization of the Court, three major changes in court organization were made in contribution to the independence of judiciary: (i) the introduction of specialized courts with a special jurisdiction on labor and commercial disputes to help improve the quality of judicial service and the efficiency of the court in fulfilling its adjudicative function through a system that defines clearly who does what in the processing of a case from the beginning until the end, (ii) the establishment of regional Courts of Appeal, which will be functioning from April next year to improve access to justice and reduce the backlogs of cases at the current and (iii) the establishment of court administration attached to each court, which shift from previous model, where the judges were the sole court administrators to a professional court management by non-judicial personnel and that provides more opportunity to judges to stay focus on the adjudicative function and re-enforce the quality of judgments.

In the framework of law and judicial reform, the Royal Government has a strong commitment to promote the independence of judicial power and improve justice services to gain support and confidence from citizens. However, the recent legitimate law enforcement actions against some law-breaking individual politicians, political parties, media outlets and NGOs have always been politicized under the banner of human right and democracy which linked them to the issue of independence of judiciary. Without due consideration of legal and factual perspectives, some countries have criticized the above-said measures and pressured the government to interfere into the internal affairs of the court, which is a clear violation of democratic principle of separation of power guaranteed in our Constitution.

Establishment of national human rights institution:

Royal Government of Cambodia strongly supports the establishment of a national human rights institution. In September 2006 with a request from civil society, the Prime Minister of Cambodia allowed civil society to draft a law regarding the establishment of national human rights institution. Progress made by the drafting team was slow and far from satisfactory. Discussion amongst the non-governmental organizations took considerable time before the first draft could be presented to the public for further comments. Foreseeing further delay of the draft, our Prime Minister recently instructed the Cambodian Human Rights Committee to take the lead instead in drafting the law.

Currently, the CHRC is in the process of drafting this law and is committed to having the first draft ready next year for consultation with the stakeholders including civil society before submitting it to the government who will then proceed to have it examined and adopted as legislation.

Discrimination against “Khmer Krom”:

The Royal Government attaches serious consideration to the freedom of all Cambodian citizens, regardless of race, gender, skin color, language, religious beliefs, political views, origin, social status, resources or any other conditions, as stated in the Constitution. In fact, the word “Khmer Krom” or “Kampuchea Krom” is used to identify the geographical location (lower part in the Mekong Delta currently in South Vietnam) and not the origin or citizenship. Therefore, there is no Khmer Krom or “Khmer Leu” (generally referring to Cambodians living in the upper part of the Mekong Delta-referred to Khmer Surin); there is only one Khmer/Cambodian.

Most of the people who came from Khmer Krom area and now residing in Cambodia have received Cambodian identification documents. There are no statistics in the Khmer ID Card database indicating who are Khmer Krom or Khmer Leu among the holders of Khmer ID Cards. The ID nomenclature refers only to one category, which is Khmer. But based on the report of the General Department of Identification (GDID), until mid-June 2018, some 9,900,189 ID Cards were issued to the population of 10,944,101 aged from 15 and above. Some have not provided the necessary information in their request for identification documents and others do not have official documents identifying them as Khmer origins or born of Cambodian parents. Non-verbal claims or the ability to speak Khmer without proper documentation does not signify that a person is a Cambodian citizen. In order to obtain a Cambodian identification card, these persons must satisfy all

the criteria ((i) age 15 and above, (ii) a Cambodian Birth Certificate or court order indicating that the person was born of Cambodian parents or a Royal Decree on granting Cambodian citizenship or official legal documents indicating that the person was born of Cambodian parents, and (iii) a Family Book or Residence Book or a residence registration letter for the purpose of making an identification card).

#### Vietnamese Living in Cambodia:

Vietnamese nationals currently residing in Cambodia not in accordance with the Immigration Law have acknowledged they are Vietnamese and are filling applications to register as immigrants under the Immigration Law. According to the 2015-2017 survey, there are 48,675 families comprising of 180,690 Vietnamese who are residing in Cambodia, out of which 81,580 are women, and 124,969 are over 18 years old.

With regards to children born of Vietnamese parents and living in Cambodia, they are considered Vietnamese. These children are not stateless. Article 9 of the new Law on Nationality promulgated in 2018 provides that: "... 2- shall obtain Khmer nationality, by having been born in the Kingdom of Cambodia: a- any child who is born from a foreign mother and father (parents) who were born and living legally in the Kingdom of Cambodia..."). Plainly speaking, only the child of the person born from a foreign mother and father (parents) who were born and living legally in Cambodia is entitled to Khmer Nationality.

#### Indigenous people:

In reality, the indigenous peoples' land rights in Cambodia is clearly guaranteed in the Constitution, the Land Law 2001 and other existing laws and regulations. Indigenous peoples have full rights to participate in, to leave or to opt out their respective established indigenous communities. They have options to manage their land, whether in the form of private land or communal land, whereas the Khmers, which represent the majority of the population do not have such a privilege.

From the registration database, data of registered communal land indicates that indigenous people occupy and use larger land size than the general Khmer families. From that database (which is not yet exhausted, meaning more and more will register), there are 24 indigenous communities that comprise 2,335 households and occupy an area of 23,425.13 ha. The average size per indigenous household is about 10 ha, while a Khmer

family has about 2.6 ha land parcel on average, out of which 2.12 ha accounts for agricultural and residential land.

In the framework of participatory approach, the Royal Government piloted a project on communal land title registration for indigenous community since 2010 in cooperation with Germany and Canada up until 2014. With Germany, the pilot project under the German-Cambodian Land Rights Program (LRP) registered 3 communities (2 communities in Rattanakiri Province and one community in Mondulakiri), as validated in the human rights assessment, conducted by the German Institute for Human Rights. With Canada, 5 communities in Mondulakiri Province were registered, as confirmed in the Canadian Land Administration Support Project (CLASP) report dated June 2013.

The Ministry set out a target of registering ten communities per year using the state budget. These 10 communities are located in Kratie, Stung Treng, Mondulakiri and Ratanakiri Provinces. Communal land titling registration is done on a voluntary basis, meaning that the respective indigenous community has to submit its application to the relevant state institutions to start the process.

Regarding the inclusion of indigenous people in the process of communal land title registration, actual practices have indicated that indigenous people have full rights to participate at every stage of the communal land title registration.

Until May 2018, the Ministry had achieved the following results: Communal land titles have been delivered to 24 indigenous communities (2,335 households) covering an area of 23,425.13 ha, equivalent to 669 land titles, out of which 12 communities were granted in Rattanakiri Province, 7 communities in Mondulakiri Province, 4 communities in Kratie Province, and 1 community in Stung Treng Province.

For 2019 and subsequent years, with lesser number of voluntary application submissions from indigenous communities, the Ministry plans to register five indigenous communal land per year using the state budget.

The Royal Government deems this achievement as outstanding work in the area of communal land title registration. It is worth noting that, compared to other countries that

have similar indigenous communities, Cambodia's experiences in registering the communal land is an exemplary case that much could be learned from.

Chair,

Ladies and Gentlemen,

As a democratic country upholding human rights and adhering to the rule of law, all Cambodian citizens are treated equally before the law regardless of their political affiliation, profession, social and racial status or their past. Each and every person is legally accountable not because of who they are but because of what offences they have committed.

In this regard, we will continue to work closely with relevant stakeholders in a collaborative manner in accordance with the established law, in order to safeguard the interests of both the majority of our citizens and those from minority and marginal groups. We take note of all the statements and concerns raised and hope that it will abide to the principles and stop politicizing issues of concern. Having said this, we will not accept those politically driven recommendations and statements that are based on biases with complete disregard of facts and of our national situation.

I would also like to underline that true democracy, rights and freedom rest in the process of national rebirth, in the success of peace and national development, and in exercising the Cambodian constitution and laws.

They do not rest on the verbal expression of people or circles of ill will. Cambodian people have nurtured democracy, rights and freedom over the past 40 years. Thus, we know what to do to defend and to further strengthen democracy. All human rights, including the right to development, shall be indivisible and human rights issues must be addressed within the global context through a constructive, non-confrontational, non-politicized and dialogue-based approach. Respect for national sovereignty and territorial integrity, non-interference in the internal affairs of states, impartiality and non-selectivity have been set as the guiding principles in promoting human rights, taking into account the political, historical and social context of each country.

In conclusion, I would like to take this opportunity to reassure you that Cambodia remains committed to strengthening close cooperation and constructive partnership with all the UN human rights mechanisms and relevant stakeholders in order to further

enhance the promotion and protection of human rights in the country. But at the same time, we also wish to suggest that all cooperation and partnership be based on mutual respect. Interfering into matters which are within the domestic jurisdiction of member state should be avoided as clearly stipulated in Article 2(7) of the Charter of the United Nations.

On behalf of the team, I would like to thank you for listening to our update and we look forward to discussions on ways to further improve. We acknowledge that there is room for cooperation and improvement.

I thank you for your attention.