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Discussion on the special theme for the year: “Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples”

Human rights: implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Information received from Governments

Cambodia

Summary

The present document provides information on the progress of registration of land of the indigenous community as collective ownership in Cambodia, as well as responses to a questionnaire from the Secretariat regarding the implementation of recommendations of the Permanent Forum on Indigenous Issues and other relevant information. In addition, the Government of Cambodia submitted the text of the national policy on the development of indigenous communities, approved by the Council of Ministers on 24 April 2009.

* E/C.19/2010/1.

I. Progress of registration of land of the indigenous community as collective ownership in Cambodia

1. The Government of Cambodia is working on poverty alleviation as its main priority through: (a) ensuring highly sustainable economic growth in the long term; (b) a more equitable distribution of economic growth; and (c) the sustainable use and management of natural resources. The indigenous peoples who live in Cambodia are considered to be Cambodian nationals since they are “children of the same womb”, regardless of different cultures and traditions. Moreover, during the genocidal regime of Pol Pot from 1975 to 1979, all indigenous peoples suffered through this tragedy. During this period, the private ownership regime, beliefs, customs and immovable properties inherited from their ancestors were also destroyed.

2. The main livelihood of the indigenous peoples comes from the traditional practice of shifting cultivation, moving from one site to another and clearing the land for farming. They are also heavily dependent on forestry sub-products, hunting and natural resources. As a result, their living conditions are of a low standard, both in terms of materials and knowledge, compared with the Khmer peoples — core nationals. For this reason, the Government of Cambodia has enacted two policies for the development of the areas inhabited by indigenous peoples, and for their rights and the protection of their identity, by preserving their beliefs and traditional values of living and promoting their enjoyment of the benefits based on national law, international covenants or treaties related to human rights and the rights of indigenous peoples. The two policies are: the policy on the development of indigenous communities and the policy on the registration and right to use of land of indigenous communities.

3. The achievements from 2002 to the date of the present report are set out below.

4. The following policies and legal framework have been in place since 24 April 2009:

- (a) Policy on the development of indigenous communities;
- (b) Policy on the registration and right to use of land of indigenous communities;
- (c) Sub-decree on procedures for registration of land of indigenous communities;
- (d) Sub-decree on the procedure for commune land use planning.

5. In addition to these, the following policies, sub-decrees and circulars support the operational work:

- (a) Sub-decree on State land management;
- (b) Sub-decree on economic land concessions;
- (c) Circular on illegal occupation of State land;
- (d) Circular from the Ministry of Rural Development on the procedure and principles of implementation of the policy on establishment of indigenous peoples' identity.

6. The above-mentioned policies and legal framework were prepared with wide participation and the input of relevant stakeholders and representatives of indigenous peoples, including representatives of indigenous peoples with high-ranking positions in Government and indigenous members of local communities.

7. The dissemination of the above-mentioned policies and sub-policies was aimed at the following groups:

(a) Legislative institutions (the nine commissions of the National Assembly, the Senate and representatives of the Constitutional Council, non-governmental organizations and international organizations located in Phnom Penh) with a total number of 68 participants;

(b) Executive institutions, including bodies concerned at the national level, capital and provincial governors, the municipal council, the Khan council, commune chiefs and representatives of indigenous peoples from areas with high concentrations of indigenous peoples, with a total number of 150 participants;

(c) Commune council members and representatives of indigenous peoples from provinces with a majority indigenous population. This training was organized by the Community Legal Education Centre (CLEC) in the province of Ratanakiri;

(d) Information was disseminated through the website of the Ministry of Land Management, Urban Planning and Construction to inform the public;

(e) Members of provincial councils and boards of governors, commune councils, relevant provincial technical departments and representatives of indigenous peoples from provinces holding meetings of indigenous peoples and where widespread information campaigns have been undertaken since the time of the Water Festival (in November 2009).

8. Technical aspects are described below.

Forming as an officially registered community in order to register (their) land collectively

9. According to the Land Law 2001, there are two types of collective ownership of land: collective ownership of the immovable property of monasteries and collective ownership by indigenous communities. Thus, in order to be able to register collective ownership, a community needs to be formed as a community or association that is recognized by the local authorities. For the time being, in the absence of legislation on the establishment of an association or a non-governmental organization, or related to the requirements of indigenous peoples, the Government temporarily requires the registration of such organizations, including the communities of indigenous peoples, at the Ministry of Interior. The community or association must be organized with respect for the rights to decision-making of the indigenous peoples, excluding any coercion that would force them to join a community without their informed consent. In the spirit of helping the indigenous peoples to form recognized indigenous communities over time, a project for the registration of indigenous communities as legal entities financed by the Danish Agency for International Development (DANIDA) and the International Labour Organization (ILO) and implemented by the Ministry of Interior is now in progress. In order to promote the implementation of this project, the National Committee for Sub-national Democratic Development issued a decision on 3 March 2009 on the

listing of environmentally vulnerable areas and areas of indigenous peoples as a basis for the implementation of the “Commune/Sangkat” budget plan. Drawing from this project, the Ministry of Interior, in a letter dated 6 April 2009 from the Ministry of Interior to the Ministry of Economy and Finance, has issued preliminary information related to the establishment of indigenous communities, with the following outcomes:

(a) Some 139 communities in the target villages declared by commune councils in Mondulakiri province;

(b) Some 50 communities in the target villages supported by non-governmental organizations;

(c) Information about provinces where above 60 per cent of the population is made up of indigenous peoples, and information about environmentally vulnerable areas where indigenous peoples live;

(d) Information about areas where from 31 to 63 per cent of the population consists of indigenous peoples.

10. Based on the above principles, in 2009, six more communities were finalizing the process of adopting their community statutes and electing their community committees, known as the “Traditional Authority”. Six new communities are now working to submit their registrations to the Ministry of Interior, and subsequently to register for collective land title as communities to the provincial State land management committee.

The collective land title in three pilot communities

11. The pilot project, with financial support from the German society for technical cooperation (GTZ), is progressing towards the finalization of the plan, expected in early 2010. The working group in charge of the pilot project has reached the phase of land identification and boundary demarcation of land belonging to indigenous communities and land under the authority of the State that is ready for community land use planning. This process is carried out in accordance with the sub-decree on State land management and includes the participation of all the members of the indigenous communities, neighbouring communities and individuals and local authorities. During the rainy season, the project was delayed in the phase of placing boundary marks on the actual site in order to be ready for the official registration of the land.

Provisional protection for the indigenous peoples’ areas where the land is not yet registered

12. Provisional protection is undertaken through the adoption of orders forbidding any sale, purchase, investment or clearing of land in the areas of the indigenous community. Until now, there has been no clear basic criteria to provide official confirmations of the establishment of indigenous communities.

13. Some non-governmental organizations are concerned that indigenous communities could lose their land and their sources of income, however they have not considered (a) the human rights of the members of the indigenous communities, who are also Cambodian citizens, to choose whether they want to live within the community or to live individually in relation to the management and use of the land;

and (b) the opportunists who can take advantage of their status of indigenous minority members in order to obtain control of land for commercial or political objectives in order to slow down the Government development's process, which is very easy to do since these categories of people, after the fall of Pol Pot and his genocidal regime, were all displaced and encouraged to take land, according to their needs, in order to support themselves according to their culture, beliefs, traditions and way of living. For this reason there are a lot of difficulties in clearly determining their areas and identity. Determination of the land they claim requires careful study.

14. For these reasons, the National Committee for Sub-national Democratic Development and the Ministry of Rural Development have issued the circular and decisions mentioned above. However, along with such measures, the two provinces with a majority indigenous population — Ratanakiri and Mondulakiri — have issued *deika* (instructions) curbing the authorities from certifying any paperwork related to the sale, exchange, transfer, lease, or mortgage of land within the respective province, except if there is an agreement with the Government or Provincial Authority in advance.

15. In relation to the land granted under the Economic Land Concession programme, the Government has pushed to re-evaluate concessions that fail to undertake social and environmental impact assessments, especially those that may have a negative impact on the indigenous peoples or fail to have an appropriate land use plan. As of 2007, there were seven concession contracts that had been cancelled.

16. With regard to the information associated with the forced eviction of indigenous peoples from land without compensation, this criticism has no grounds or justification. For any project involving the right to legal possession of land by indigenous peoples, either collectively or individually, which is publicly known and recognized by local authorities, especially by the commune council, there has always been free negotiation and agreement by the community in advance. Most problems involve opportunists using indigenous communities as a tool to claim land. Such claims also cover the ancestral land of indigenous peoples, which have already been denied recognition under the Land Law on all land occupied before 1979, unless indigenous peoples had continued to occupy it since that time. This is because most of the land traditionally used and occupied by indigenous peoples, particularly Chamkar and shifting cultivation areas, is State property. According to the sub-decree on procedures for registration of land of indigenous communities, if a community is officially formed, land could be provided to be registered under a collective title.

17. In conclusion, the Government has invested all its efforts to guarantee the rights of indigenous peoples, especially their right to land, by issuing a number of policies and legal frameworks as well as providing technical support to raise the dignity of peoples of all races and to promote development. This allows them to enjoy a better livelihood, to escape poverty, to have greater social protection from exploitation by opportunists, and to have peace, safety, solidarity and morality in the society as a whole. Despite such efforts, there are inevitable impacts and some encroachments resulting from weakness within the authorities at different levels, including misleading concepts of preserving, either for the purpose of researching or for the purpose of developing, the indigenous community. For the reasons set out above, the Government still needs the cooperation and involvement of those

non-governmental and civil society organizations that, in good faith, reflect on the weak points and ensure that appropriate measures are taken.

II. Answers to the questionnaire of the Secretariat

Question 1: Response to recommendations addressed to Governments under one or more items under the mandate/agenda of the Permanent Forum and the eighth session and to recommendations of previous sessions (if they have not been addressed in previous reports)

18. Cambodia recognizes human rights as stipulated in the Universal Declaration of Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the General Assembly in September 2007. In 2009 Cambodia adopted:

- (a) National policy on the development of indigenous communities;
- (b) National policy on the registration and right to use of land of indigenous communities;
- (c) Sub-decree on procedures for registration of land of indigenous communities.

These policies have been established to meet the United Nations Millennium Development Goals and Cambodia's Millennium Development Goals, in particular the first prioritized goal of reducing poverty and famine. Concrete actions are being taken in line with the possibilities, competence and context of Cambodia, including: conducting the identification assessment of indigenous peoples; the land registration of indigenous communities; and the preparation of land registration for indigenous communities which were prepared by the Ministry of Rural Development, the Ministry of Interior and the Ministry of Land Management, Urban Planning and Construction.

Question 2: Given that the special theme of the ninth session of the Permanent Forum is "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples", please include information on how your Government is dealing with this important issue.

19. The Government has a national policy on the development of indigenous communities, which includes important information in response to articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples, as below:

- (a) Environment: Development plans in zones of indigenous peoples can be carried out after the environmental and social impact assessments are completed and the information is disseminated among the relevant indigenous peoples in advance, making sure that they have the chance to participate in giving their opinions regarding their needs;
- (b) Infrastructure: The study of the impact assessment on the environment, economics, social and cultural issues and natural resources must be completed before infrastructure projects begin and the results of the study must be taken into consideration and the information disseminated widely and locally by using the Khmer language and, if possible, indigenous languages;

- (c) In the fields of industry, mines and energy:
- (i) Sectoral development of small and medium enterprises and craftsmanship focused on processing the natural resources, agro-industry and artisanal and cultural products available within the indigenous peoples' regions;
 - (ii) Provide information and knowledge for the indigenous peoples about the processes of production for small and medium industries and craftsmanship;
 - (iii) The relevant ministries promote and encourage licensed investors in natural resources to build various infrastructure projects including schools, hospitals and vocational training centres for the mining industry, within the indigenous peoples' regions;
 - (iv) Provide maximum job opportunities for indigenous peoples and train inexperienced workers in mineral exploration, equipping them with appropriate competency and skills to participate in the work of licensed investors at all levels of mineral exploration and mineral exploitation;
 - (v) Encourage education, instruction and trainings, disseminate information about the use of all types of electricity and reduce the impact on the environment and on society in the indigenous peoples' regions in order to ensure that development is safe and sustainable;
 - (vi) All relevant ministries support, facilitate and encourage those who want to develop small and medium electricity schemes such as recycled electricity, including solar power, small hydroelectric projects, biodiesel, biomass and biogas;
 - (vii) Encourage the establishment of energy plants through a planned development process for the indigenous peoples' regions;
 - (viii) Encourage fairness in the distribution of electricity and make efforts to keep the prices of electricity from the small and private electricity providers reasonable for regular domestic use for the indigenous peoples' regions.

Question 3: Obstacles to the implementation of the Permanent Forum's recommendations

20. Cambodia does not have serious obstacles to the implementation of these recommendations. The Ministry of Rural Development has coordinated the work for indigenous peoples since 1994.

Question 4: Facilitating factors for the implementation of the Permanent Forum's recommendations

21. The Ministry of Rural Development is the facilitator of all works related to the development of indigenous peoples in Cambodia and there are a number of non-governmental organizations, United Nations agencies and other development partners also carrying out work in this particular field.

Question 5: Does your Government have specific laws, policies or other similar tools to address indigenous peoples' issues in your country? If so, please provide details (unless covered in the responses to the above questions).

22. The Government of Cambodia has promulgated the following measures:

(a) Chapter 2 of the Land Law about the immovable properties of indigenous peoples' communities (articles 23 to 28);

(b) Chapter 9 of the Forest Law on the rights of indigenous peoples to traditional use (articles 40 to 47);

(c) Chapter 6 of the Law on Natural Protection, participation and the rights of use of local communities and indigenous peoples' communities (articles 21 to 26);

(d) Chapter 2 of the Law on Municipal/Provincial/Towns, District/Khan Administration, on the Councils, section 2, regarding roles and responsibilities and powers of the Councils;

(e) Two major policies; the policy on the development of indigenous communities and the policy on the registration and rights to use of land of indigenous communities, which were adopted on 24 April 2009 and have special characteristics for the development of indigenous peoples prescribing their protection, retaining the identity of their traditions, beliefs and customs in their everyday life and livelihood;

(f) Sub-decree on procedures for registration of land of indigenous communities;

(g) Sub-decree No. 118 dated 7 October 2005, on State land management;

(h) Sub-decree No. 72 dated 5 May 2009 on the procedure of the "Commune/Sangkat" land use plan;

(i) The circular of the Ministry of Rural Development on the procedure and the methodology on the implementation of policy for the development and identification of an indigenous community.

The policy and legal framework stated above have been jointly organized, including through comprehensive consultations with all stakeholders, indigenous peoples' representatives, ranging from top management to local people, as well as community members at the national, regional and community levels.

Question 6: Does your Government have a national institution (ministry, department, unit) as a focal point on indigenous issues? If so, please provide the name and contact information of the focal point.

23. The Ministry of Rural Development, which acts as the secretariat of the Government, consists of the Department of Indigenous Peoples Development, which has the duty to fulfil the mission in the spirit of Sub-decree No. 51 for the management and development of indigenous people under the roles and duties as stated below:

(a) Prepare a short-, medium- and long-term plan for the development of indigenous peoples;

(b) Conduct research on indigenous peoples living in mountainous, plateau and lowlands areas, identifying the customs and traditions in each community nationwide;

(c) Prepare the planning and programme implementation regarding indigenous peoples' development for those living in the mountainous, plateau, and lowland areas, based on the priorities identified;

(d) Facilitate all activities of indigenous peoples' development for the people living in such areas nationwide;

(e) Review, evaluate and report on the implementation of programme activities and project developments for indigenous peoples;

(f) Provide training to staff at all levels and organize workshops with all stakeholders implementing programmes and development projects on indigenous peoples, with the aim of involving indigenous peoples living in mountainous, plateau and lowlands areas in the development process;

(g) Establish and manage the National Centre for information on Development for Indigenous Peoples living in mountainous, plateau and lowlands areas, in cooperation with stakeholders, international organizations, non-governmental organizations and neighbouring countries where similar programmes are being implemented;

(h) Establish guidelines and criteria on the establishment of communities of indigenous peoples living in mountainous, plateau and lowlands areas.

Name and contact of focal point:

Director of the Department of Indigenous Peoples Development
Address: Street No. 196, corner Russian Boulevard
Phnom Penh
Cambodia
E-mail: chungminority@online.com.kh
Website: www.mrd.gov.kh or contact: Tel: 097 903 86 86

Question 7: Does your Government have a regular capacity-building programme on indigenous issues for national civil service staff? Alternatively, is there an ad hoc capacity-building programme or a plan for capacity-building activities in this area for relevant civil service staff?

24. Capacity-building activities have not been conducted regularly due to the limited budget available. However, there are programmes and capacity-building plans for officials and indigenous peoples' communities. The Ministry of Rural Development and the Ministry of Land Management, Urban Planning and Construction have disseminated the national policy on the development of indigenous communities to the legislative bodies, including members of the Senate and members of the National Assembly, members of the Constitutional Council, local organizations and international organizations. Such activities are also conducted for the executive body, including the management from all ministries, provincial governors and chairs of provincial boards, members of provincial councils, district governors, commune/Sangkat councils, and the representatives of indigenous peoples' communities in Ratanakiri and Mondulakiri provinces.

Question 8: Please provide information regarding your Government's promotion and/or implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

25. The International Day of the World's Indigenous People is celebrated annually and a plan to have the relevant policy disseminated to local communities has been formulated. In addition, the Government of Cambodia has motivated indigenous peoples to play a role in important institutions such as the Senate and the National Assembly, and in management, including provincial governors and village chiefs, in the areas where they live.
