

ADVANCE UNEDITED VERSIONDistr.: General
9 March 2012

Original: English

Committee on the Elimination of Racial Discrimination**Eightieth session**

13 February – 9 March 2012

Consideration of reports submitted by States parties under article 9 of the convention**Concluding observations of the Committee on the Elimination of Racial Discrimination****Viet Nam**

1. The Committee considered the 10th to 14th periodic reports of Viet Nam (CERD/C/VNM/10-14), submitted in one document, at its 2139th and 2140th meetings (CERD/C/SR.2139 and CERD/C/SR.2140), held on 21 and 22 February 2012. At its 2159th meeting (CERD/C/SR.2159), held on 6th March 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the periodic reports submitted by the State party. Noting that the State party report was considerably overdue, the Committee requests the State party to be mindful of the deadline set for the submission of future reports in order to meet its obligations under the Convention.

3. The Committee also welcomes the supplementary information provided orally by the high-level delegation and welcomes the resumption of constructive dialogue with the State party since the last consideration of the periodic report in 2001.

B. Positive aspects

4. The Committee welcomes the following legislative and other measures taken by the State party:

- (a) the adoption of the Law on Residence (2006);
- (b) the adoption of the Law on Gender Equality (2006);
- (c) the amendment of the Nationality Law (2008);

(d) the establishment of the Ethnic Council under the Law on the Organisation of the National Assembly (2002);

(e) the implementation of the Programme 135 on Socio-Economic Development of Communes with Special Difficulties (1998-2010) and of the National Target Programme on Poverty Reduction (2006-2010); and

(f) the implementation of Decision 82/2010/QD-TTg, Decision 134/2004/QD-TTg and Decision 167/2008/QD-TTg on special measures to the poorest ethnic minorities in the field of housing, education and language learning.

5. The Committee takes note with appreciation of the allocation of VND100 billion from state budget for support of five ethnic groups, namely Si La, Pu Peo, O du, Brau and Ro Man.

6. The Committee welcomes the ratification by the State party of the two Optional Protocols to the Convention on the Rights of the Child, on the involvement of children in armed conflict (OPAC) and on the sale of children, child prostitution and child pornography (OPSC), on 20 December 2001. The Committee also welcomes the State party's consideration to accede the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.

C. Concerns and recommendations

7. The Committee is concerned that the Convention has not been fully incorporated in domestic law, particularly in light of the absence of a definition of racial discrimination. The Committee notes with concern that the State Party has not yet adopted a dedicated and comprehensive anti-discrimination law. (arts.1 and 2).

Recalling its previous recommendation (A/56/18, paras.414 and 415), the Committee recommends that the State party incorporate the Convention into its domestic law by, *inter alia*, adopting a comprehensive anti-discrimination law which includes a definition of racial discrimination in accordance with article 1, paragraph 1, of the Convention and covers all rights protected by the Convention.

8. The Committee notes with appreciation that international treaties to which Viet Nam is a party prevail over domestic law in case of conflict. The Committee nevertheless regrets the absence of cases of application of the Convention before domestic courts. (arts. 2 and 7).

The Committee recommends that the State party strengthen efforts to make the Convention more widely known, in particular through training courses and seminars for the judiciary, so as to foster its application by the courts. Furthermore, the State party should update on cases illustrating the application of the Convention in its next periodic report.

9. The Committee is concerned about the lack of information on complaints about acts of racial discrimination lodged with courts and other relevant authorities in spite of persistent reports of *de facto* discrimination against members of certain minority groups. Furthermore, while taking note of the Committee for Ethnic Minority Affairs, a ministerial-level agency responsible for overall development of strategies and implementation of government policies on ethnic minorities, the Committee regrets the lack of a comprehensive, effective and independent complaints mechanism in the State party. (arts. 2, 4, 5 and 6).

The Committee recommends that the State party:

(a) assess reasons for the low number of complaints relating to racial discrimination, including whether it may be due to victims' lack of awareness of their rights, language barriers, fear of reprisals, limited access to available mechanisms, or the authorities' lack of attention or sensitivity to cases of racial discrimination;

(b) actively assist victims of racial discrimination seeking remedies and inform the public, in particular law enforcement officials and minority groups, about legal remedies in the field of racial discrimination;

(c) establish a comprehensive, effective and independent complaints mechanism; and

(d) provide in the next periodic report updated information on complaints of racial discrimination and on relevant decisions in court proceedings, including statistical data on complaints, prosecutions and sentences for acts prohibited under article 4 of the Convention.

10. The Committee is concerned about the lack of effective implementation of the existing legal, policy and institutional frameworks to combat racial discrimination. It also notes with concern the broad and imprecise wording of certain provisions, *inter alia*, article 87 of the Criminal Code, and the possible misuse of those provisions against some ethnic minorities. (arts. 2 and 4).

Recalling its general recommendation No. 31 (2005), the Committee recommends that the State party take more effective measures to ensure the effective implementation of the existing anti-discrimination provisions and the effective investigation and persecution of racially motivated offences. The Committee also recommends, in accordance with its general recommendation No. 15 (1993), that the State party conduct a comprehensive review of the existing legislation, bring it in full conformity with the provisions of article 4 (a) and (b) of the Convention, and consider revising article 87 of the Criminal Code to clarify that its primary purpose is to protect ethnic minorities and others vulnerable to discrimination.

11. The Committee regrets the overall absence of concrete actions and time frames for the establishment of a national human rights institution in accordance with the Paris Principles (General Assembly resolution 48/134). It also notes with appreciation the oral commitment made by the delegation to actively consider the establishment of such institution in the near future. (arts. 2 and 6).

The Committee encourages the State party to promptly establish a well-financed and adequately staffed independent human rights institution, in compliance with the Paris Principles, with a broad human rights mandate and a specific mandate to address all forms of discrimination.

12. While the State party supported the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee notes the State party's reluctance to commit open and inclusive discussions on the recognition of indigenous peoples. The Committee welcomes the commitment made by the delegation that the State party would consider comments by its members on the need to promote the right to self-identification of such peoples in accordance with international standards. (arts. 2 and 5).

The Committee recommends that the State party respect and protect the existence and cultural identity of all ethnic groups within its territory. In particular, recalling its general recommendations No.21 (1990) on the right to self-identification and No. 23 (1997) on the rights of indigenous peoples, the Committee invites the State party to pay greater attention to the principle of self-identification by individuals concerned, including the Khmer Krom and the Degard Montagnards, and to consider ratifying

ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

13. While noting various measures taken by the State party to reduce poverty, including Programmes 134 and 135, and its outstanding achievement of economic development, the Committee remains concerned that not all communities benefit in practice from the economic growth. The Committee is deeply concerned at the sizeable socio-economic gap between disadvantaged ethnic minorities and the majority Kinh, even when they live in the same mountain area, and at its negative impact on the enjoyment of economic, social and cultural rights by indigenous and minority groups, particularly in the fields of employment, education and healthcare. (art. 5(e)).

The Committee recommends that the State party strengthen its efforts in combating poverty among marginalized groups and discrimination on grounds of ethnicity with regard to the enjoyment of economic, social and cultural rights. The State party should take measures to promote equal opportunities for all persons and stimulate economic growth and development for the ethnic minorities groups and the indigenous communities, especially with regard to employment, education and healthcare. Furthermore, the Committee recommends that the State party ensure the active involvement of targeted beneficiaries through adequate consultation and participation in the decisions relating to their rights and interests.

14. The Committee is concerned at disparities in access to and quality of education as well as education outcomes between majority Kinh students and ethnic minority students. The Committee also regrets the high illiteracy and school drop-out rates among members of ethnic minorities, in particular minority women and girls. Furthermore, the Committee is concerned at the limited access to mother tongue based education for ethnic minorities. (art. 5 (e)).

The Committee recommends that the State party take vigorous measures to ensure equal enjoyment of the right to education by, *inter alia*, increasing the financial assistance provided to students from economically disadvantaged families in all communities, and improving the quality of teaching and the curriculum. Furthermore, the State party should increase the provision of bilingual education programmes for ethnic minority children and of training in local languages for Kinh teachers in ethnic minority areas, recruit more ethnic minority teachers, allow ethnic minority languages to be taught and used as a medium of instruction in schools, and support education programmes on the culture of ethnic minority groups.

15. The Committee notes with concern the displacement of minorities and the confiscation of ancestral lands without prior consent and appropriate compensation for confiscated lands. (art. 5).

The Committee calls on the State party to adopt measures to safeguard indigenous rights over ancestral lands and pursue efforts, together with communities affected, towards adequate resolution of land disputes including the provision of appropriate compensation, giving due consideration in this respect to general recommendation No. 23 (1997).

16. The Committee takes note of the State party's assurance that the right to freedom of belief and religion of ethnic minorities is well protected under article 70 of the Constitution and other relevant laws and policies. The Committee is nevertheless concerned at: (arts. 2, 4 and 5(a),(b),(d)).

(a) numerous and consistent reports about discrimination and restriction on religious practices faced by some Christian and Buddhist denominations among the Khmer

Krom, the Degar Montagnard and Hmong, through legislation, registration requirements, surveillance and imprisonment;

(b) provisions which appear to be discriminatory on both ethnic and religious grounds, including articles 8 and 15 of the Ordinance Regarding Religious Beliefs and Religious Activities (2004), which forbid religious activities deemed to “violate national security” and “negatively affect the unity of the people or the nation’s fine cultural traditions”;

(c) the household registration system (hộ khẩu), which results in discrimination against ethnic minorities belonging to “unrecognised” religious groups, in the fields of employment, social security, health services, education, and the right to freedom of movement; and

(d) incidents of violent attacks and threats against religious groups and activities, as shown in the reported attacks against the Bat Nha monastery, referred to by the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (A/HRC/15/53, para.10).

Taking into account the intersectionality between ethnicity and religion, as explained in general recommendation No. 32 (2009), the Committee recommends that the State party take measures to address the phenomenon of double discrimination faced by ethnic minorities belonging to unrecognised religious groups and ensure the rights of all persons to freely profess and practice their religion in public or in private regardless of registration status by, *inter alia*:

(a) **considering the amendment of the household registration system;**

(b) **reviewing the Ordinance Regarding Religious Beliefs and Religious Activities, in particular article 8, paragraph 2 and article 15, and the Decree 22 on Religion, which impose strict controls on religions, in order to ensure full conformity with article 5 (d) of the Convention; and**

(c) **immediately and thoroughly investigating reports of threats and attacks against ethnic and religious minorities, and updating in the next periodic report the outcome of the investigations, any punishments or sanctions imposed on those responsible, as well as remedies provided for victims.**

17. The Committee is concerned at (a) persistent reports of arrests, arbitrary detention and ill-treatment in custody of members of minority groups due to their peaceful practice of religion and freedom of expression, including cases taken up by several Special Rapporteurs (A/HRC/16/52/Add.1, para.249), (b) the lack of effective investigation of those allegations, and (c) the lack of effective remedies provided for victims. In that regard, the Committee notes with concern some legal documents, *inter alia*, Ordinance 44 on Regulating Administrative Justice, which authorizes suspected “national security” offenders to be placed under administrative detention for up to two year without trial, Decree 38/2005/ND-CP on Public Order, which prohibits demonstrations outside State agencies and public buildings, and Circular 09/2005/TT-BCA, which prohibits gatherings of more than five people without State permission. (arts. 2 and 5 (b), (d)).

The Committee recommends that the State party review its regulations and policies relating to the protection of the rights to freedom of expression, peaceful assembly and association in full compliance with the requirements of article 5 (d) of the Convention. Furthermore, in light of the recommendation by the Independent Expert on minority issues (A/HRC/16/45/Add.2, para.97), the Committee calls on the State party to consider releasing those in detention for activities that would, under international standards, constitute the peaceful exercise of the aforementioned rights.

18. The Committee is concerned about the lack of legal provision for protection to refugees or asylum seekers as well as reports about the forced repatriation, in collaboration with the governments of neighbouring countries, of members of indigenous peoples and of ethnic minorities seeking refuge. The Committee notes with regret article 91 of the Criminal Code that criminalises for “fleeing abroad or defecting to stay overseas with a view to opposing the people’s administration”, which is incompatible with article 68 of the Vietnamese Constitution and article 5 of the Convention. (art. 5(d)).

The Committee recommends that the State party review the current refugee policy with a view to better protecting the right of members of indigenous peoples and of ethnic minorities seeking refuge or asylum, and establish national asylum legislation as well as procedures related to protection of refugees and asylum-seekers in line with international human rights standards. Furthermore, the Committee encourages the State party to consider acceding to the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

19. The Committee is deeply concerned about the lack of acknowledgement, by the governmental officials and the general public, of the existence of racial discrimination and inequality between ethnic groups, as well as the persistence of negative societal attitudes and stereotypes against persons of minority ethnic origin. (art.7).

The Committee recommends that the State party take effective steps, including educational campaigns, to eradicate misperceptions and discriminatory stereotypes that stigmatise and marginalise ethnic minorities in order to enhance the capacity of the government officials to better protect the rights and interests of minority groups.

20. 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 the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

21. 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.

22. The Committee recommends that the State party expand 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.

23. Welcoming the information provided by the delegation about the State party’s consideration to make the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints, the Committee encourages the State party to do so without delay.

24. 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 and 63/243, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

25. 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.

26. Noting that the State Party submitted its Core Document in 2001, 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).

27. 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 12, 15 and 17 above.

28. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 13, 14 and 16 and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

29. The Committee recommends that the State party submit its 15th to 17th periodic reports in a single document, due on 9 July 2015, 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. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para.19).
