

CAMBODIA

CAT A/58/44 (2003)

93. The Committee considered the initial report of Cambodia (CAT/C/21/Add.5) at its 548th meeting (CAT/C/SR.548), on 29 April 2003, and adopted the following provisional conclusions and recommendations.ⁱ

A. Introduction

94. The Committee welcomes the initial report of Cambodia and notes that it generally conforms to the Committee's reporting guidelines. It regrets, however, the nine-year delay in its submission and the paucity of information on the practical enjoyment in Cambodia of the rights enshrined in the Convention.

95. The Committee regrets the absence of a delegation from the State party able to enter into a dialogue with it, and notes that the examination of the report took place in accordance with rule 66, paragraph 2 (b), of its rules of procedure. The Committee looks forward to receiving written responses to the questions and comments of its members and urges the State party, in the future, to comply fully with its obligations under article 19 of the Convention.

B. Positive aspects

96. The Committee welcomes the following:

(a) The State party's expression of willingness to continue undertaking legal reforms in order to fulfil its international obligations in the field of human rights;

(b) The State party's cooperation with United Nations agencies and mechanisms in the field of human rights. In this regard, the Committee welcomes the cooperation with the United Nations human rights field presence in the country and the training and educational activities on human rights provided by international organizations to law enforcement personnel, as well as the positive role played by NGOs in this regard.

C. Factors and difficulties impeding the application of the Convention

97. The Committee acknowledges the difficulties encountered by Cambodia during its political and economic transition, including lack of judicial infrastructure and budgetary constraints.

D. Subjects of concern

98. The Committee is concerned about the following:

(a) The numerous, ongoing and consistent allegations of acts of torture and other cruel, inhuman

or degrading treatment or punishment committed by law enforcement personnel in police stations and prisons;

(b) Allegations regarding the expulsion of foreigners that seem to have occurred without taking into consideration the safeguards contained in article 3 of the Convention and, in particular, the situation of large numbers of Montagnard asylum-seekers in the Cambodian-Vietnamese border area;

(c) The absence in the domestic penal law of a clear prohibition of torture, although the Committee notes the State party's indication that it prohibits torture and has adopted the definition of torture contained in the Convention;

(d) Impunity for past and present violations of human rights committed by law enforcement officials and members of the armed forces and, in particular, the failure of the State party to investigate acts of torture and other cruel, inhuman or degrading treatment or punishment and to punish the perpetrators;

(e) The allegations of widespread corruption amongst public officials in the criminal justice system;

(f) The absence of an independent body competent to deal with complaints against the police;

(g) The ineffective functioning of the criminal justice system, in particular the lack of independence of the judiciary as well as its inefficiency;

(h) The importance given to confessions in criminal proceedings and the reliance of the police and the judiciary on confessions to secure convictions;

(i) The unwarranted protraction of the pre-trial detention period during which detainees are more likely to be subjected to torture and other ill-treatment;

(j) The use of incommunicado detention for 48 hours, at least, before a person is brought before a judge, during which the detainee has no access to legal counsel or to his/her relatives. Furthermore, recent legal amendments allow the police to extend this period;

(k) The lack of access by detainees in general to legal counsel and a medical doctor of their choice;

(l) The overcrowding and poor conditions in prisons, as well as alleged cases of ill-treatment of prisoners, and the difficulties faced by international organizations, NGOs and family members in gaining access to prisoners.

D. Recommendations

99. The Committee recommends that the State party:

- (a) Incorporate in its domestic law the definition of torture set out in article 1 of the Convention and characterize acts of torture as a specific crime, punishable by appropriate sanctions;
- (b) Take effective measures to establish and ensure a fully independent and professional judiciary in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary, if necessary by calling for international cooperation;
- (c) Ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities and the prosecution and punishment, as appropriate, of the perpetrators;
- (d) Establish an independent body competent to deal with complaints against the police and other law enforcement personnel;
- (e) Take all the necessary measures to ensure that the requirement of article 3 of the Convention is taken into consideration when deciding on the expulsion, return or extradition of foreigners;
- (f) Take measures to ensure that evidence obtained under torture is not invoked in court;
- (g) Take all the necessary measures to guarantee access to justice for all the people of Cambodia, particularly the poor and the inhabitants of rural and remote areas of the country;
- (h) Undertake all necessary measures to guarantee to any person deprived of his or her liberty the right of defence and, consequently, the right to be assisted by a lawyer, if necessary at the State's expense;
- (i) Take urgent measures to improve conditions of detention in police stations and prisons. It should, moreover, increase its efforts to remedy prison overcrowding and establish a systematic and independent system to monitor the treatment in practice of persons arrested, detained or imprisoned. In this connection, the State party should consider signing and ratifying the Optional Protocol to the Convention;
- (j) Reinforce human rights education and promotion activities in general, and regarding the prohibition of torture in particular, for law enforcement officials and medical personnel, and introduce training in these subjects in official education programmes;
- (k) Take measures to regulate and institutionalize the right of victims of torture to fair and adequate compensation and to establish programmes for their physical and mental rehabilitation;
- (l) Ensure that the reported practice of unlawful trafficking of persons is suppressed;
- (m) Provide data on: (a) the number of persons held in prisons and places of detention, disaggregated by age, gender, ethnicity, geography and type of crime; (b) the number, types and results of cases, both disciplinary and criminal, of police and other law enforcement personnel accused of torture and related offences;

(n) Ensure the wide distribution of these conclusions and recommendations throughout Cambodia, in all the major languages.

100. The Committee requests the State party to provide responses to the questions asked by its members and to the issues raised in the present provisional conclusions and recommendations by 31 August 2003.

i/ The Committee adopted these conclusions and recommendations provisionally in view of the fact that the Cambodian delegation, composed of a representative of the Permanent Mission of Cambodia to the United Nations Office at Geneva, indicated that it was not in a position to respond to the questions and comments made by the Committee. The Committee decided that it could revise the current text at its thirty-first session, in light of the written responses that the Government of Cambodia might provide. Only then would the conclusions and recommendations become final.

[Ed. Note: at its 31st session, held in November 2003, the Committee decided to consider as final the above conclusions and recommendations provisionally adopted at its 30th session. See CAT/C/CR/30/2 and CAT/C/CR/31/7]