

CAMBODIA

CERD A/42/18 (1987)

435. The initial report of Democratic Kampuchea (CERD/C/111/Add.4) was considered by the Committee at its 780th and 802nd meetings on 4 and 19 March 1987 (CERD/C/SR.780 and SR.802).

436. The report was introduced by the representative of Democratic Kampuchea, who referred to the Vietnamese war of occupation that ravaged his country since December 1978 and to the fact that his Government would not be in a position to prepare a proper report until the foreign occupying forces had withdrawn. He drew the Committee's attention to the systematic efforts of the Vietnamese occupying forces to exterminate the Khmer race. He stated that Viet Nam, a party to the Convention, was not fulfilling its obligations under the Convention. Finally he referred to the peace proposal made by the three Democratic Kampuchea coalition leaders and their appeal, on 18 February 1987, to Viet Nam and the USSR.

437. Members of the Committee referred to the tragic situation in Democratic Kampuchea, where thousands of human beings had lost their lives. They said that that situation presented one of the gravest ethnic conflicts before the Committee. Democratic Kampuchea was a country occupied by foreign forces and its government was unable to exercise power in its own territory. It was to be hoped that the foreign occupation would end in the near future and that peaceful solutions could be found, enabling the Kampuchean people to exercise their right to self-determination and freely to elect a government of their own choice, without foreign interference. It was pointed out that Democratic Kampuchea did not exercise sovereignty over Kampuchean territory and could not claim to represent Kampuchea internationally. It was also observed that the allegations against Viet Nam emanated from a Government whose main component was an offshoot of the Pol Pot regime, guilty of the crimes of genocide against its own people.

438. Members of the Committee drew the attention of the representative of Kampuchea to the provisions of article 11 of the Convention which provided for a State party, if it considered that another State party was not giving effect to the provisions of the Convention, to bring the matter before the Committee. However the Committee had to be seized with a written communication to begin the procedure under article 11.

439. Members of the Committee requested information on the ethnic composition of the population, the functioning of the legal system in Democratic Kampuchea and the criteria used for the selection of judges. It was asked whether the Government was already preparing legislation which might be of interest to the Committee.

440. At the 780th meeting, a Committee member introduced a draft decision on the initial report of Kampuchea. At the 802nd meeting, he withdrew the proposed draft decision.

441. As the Committee had already declared, the occupation of the territory of a State party to the Convention constituted a grave breach of Convention, particularly if the organs of that State were prevented from fulfilling their obligations under the Convention and if demographic changes in the population were imposed.

442. Consequently, some members of the Committee expressed the hope that territorial integrity of Kampuchea would be re-established so that it could comply with its international obligations under the Convention.

443. The representative of Democratic Kampuchea expressed his thanks to the members of the Committee who had shown their compassion for the tragic fate of his country and to those who had expressed hope that peace and freedom would be restored in Kampuchea soon.

444. With regard to the national minorities, he said that it was estimated that until 1950 there had been 218,000 Chinese, 230,000 Vietnamese and 100,000 Chams of the Islamic Faith, in addition to other smaller minority groups inhabiting the mountainous regions, the plateaux and the areas bordering on Viet Nam and Laos. In 1957, there had been 600,000 foreigners of various origins in the country.

445. He stressed that his Government had already responded on various occasions to the accusations of genocide of the Kampuchean people: the very survival of Democratic Kampuchea and the formation of its coalition Government constituted an incontrovertible refutation of the claims of the occupiers.

446. With regard to the fundamental law and other laws of the country, the coalition government recognized only the common declaration made at the time the Government was created and the eight-point peace proposal unanimously adopted by three political parties comprising the coalition as the National Charter.

447. Concerning the violations committed by the current Vietnamese authorities against his people, the representative of Democratic Kampuchea reserved the right to transmit a communication in good and due form under article 11 of the Convention after consultation with the authorities of Democratic Kampuchea.

448. Finally, he said that the real issue was that of life or death of an entire people and a sovereign State.

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CERD A/53/18 (1998)

281. The Committee considered the second, third, fourth, fifth, sixth and seventh periodic reports of Cambodia (CERD/C/292/Add.2) at its 1266th and 1267th meetings, on 16 and 17 March 1998, and, at its 1273rd meeting, on 20 March 1998, adopted the following concluding observations.

A. Introduction

282. The Committee welcomes the submission by Cambodia of its report after a long period of time during which the dialogue between the Committee and the State party had been disrupted, as well as the presence of its delegation. The Committee appreciates the opportunity to resume the dialogue with the State party. The Committee notes that the report follows the guidelines established by the Committee for the presentation of reports. The Committee regrets, however, that the report lacks concrete information on the practical implementation of the Convention, and that many questions remained unanswered. The Committee welcomes the statement by the delegation that it will transmit the questions of the Committee members to the State party.

B. Factors and difficulties impeding the implementation of the Convention

283. The Committee notes that Cambodia is facing many difficulties that have an impact on the implementation of the Convention. In this regard, the Committee refers in particular to more than 20 years of armed conflict; the legacy of the genocide and other massive crimes perpetrated by the Khmer Rouge regime; the subsequent invasion of the country by a neighboring State; the international isolation of Cambodia for many years; the insecurity which still exists in certain areas of the country; the chronic political instability, including recent changes in Government; and the very difficult economic and social situation. These circumstances have created obstacles to the bringing to justice of the perpetrators of severe violations of human rights which, in a number of cases, have an ethnic dimension.

C. Positive aspects

284. The establishment within the National Assembly of a Commission on Human Rights and Receipt of Complaints, whose task is to identify human rights violations, receive complaints from victims and transmit them to the competent authorities for appropriate action, is noted with appreciation.

285. The reported cooperation with the Cambodian office of the Office of the United Nations High Commissioner for Human Rights and with non-governmental organizations is also welcomed.

D. Principal subjects of concern

286. Concern is expressed over the lack of independence of the judiciary, the absence of the Constitutional Council called for by the Constitution, as well as the impunity of perpetrators of

human rights violations, violations which in some cases include summary executions and torture. This contributes to the serious undermining of efforts to establish the rule of law in Cambodia without which the full implementation of the Convention is not possible.

287. While taking note of article 61 of the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period, concern is expressed over the lack of legal provisions required in order to implement fully the State party's obligations under article 4 of the Convention, in particular article 4 (b) and (c).

288. Concern is also expressed with regard to the insufficient legal framework to fully implement the Convention, in particular article 2, paragraph 1 (d), and article 6.

289. While taking note of the 1993 Constitution, which contains many provisions relating to the protection of human rights, the fact that those constitutional provisions refer only to the rights of Khmer citizens raises concern with regard to article 5 of the Convention. Such a reference contributes to the ideology of ethnic purity of the Khmer, which may lead to racial discrimination, if not hatred, against minority groups, in particular the ethnic Vietnamese.

290. It is noted with concern that the 1996 Law on Nationality, stating that Khmer nationals are those one of whose parents is a Khmer national, makes it difficult for persons belonging to minority groups, in particular ethnic Vietnamese and indigenous people, to establish their citizenship.

291. The situation of the ethnic Vietnamese is a matter of concern, in particular with regard to article 5 of the Convention relating to equality of rights. Ethnic Vietnamese are subject to racist propaganda, mainly from the Khmer Rouge, which may incite hatred against them. The several massacres of ethnic Vietnamese, most of them attributed to the Khmer Rouge, have not been properly investigated. Alarm is also expressed over reports that the exploitation through prostitution of females of Vietnamese origin, in particular children, is growing. Concern is further expressed about reports of racist attitudes among much of the Khmer population against the Cambodian-born ethnic Vietnamese, who are still perceived as immigrants.

292. Concern is expressed over the limited educational facilities in the villages of ethnic Vietnamese, the lack of legislation authorizing the establishment of schools for them and the obstacles to their children learning the Khmer language.

293. While the existence of the Inter-Ministerial Committee and its draft National Policy on Highland Peoples Development is noted, concern is expressed about the situation of the indigenous peoples (also referred to as Highland Peoples, Khmer Loeu or Hill Tribes Peoples), and to their lack of legal status, as well as the insufficient legal framework to protect their rights, culture and traditional lands. The rights of indigenous peoples have been disregarded in many government decisions, in particular those relating to citizenship, logging concessions and concessions for industrial plantations. The lack of participation of the indigenous people in the management of natural resources and in other activities of concern to them is also a matter of concern.

E. Suggestions and recommendations

294. The Committee recommends that the State party take all appropriate steps, including legal measures, to ensure the independence of the judiciary and to establish the Constitutional Council, with a view to bringing an end to the impunity of perpetrators of racial discrimination. In this respect, the Committee emphasizes the need to investigate, prosecute and punish those found guilty of such crimes, and to establish confidence in the rule of law.

295. The Committee recommends that the laws be amended to more fully reflect the provisions of the Convention. Such a reform would constitute a clear reaffirmation by the Cambodian authorities that racial discrimination is unacceptable. In particular, the Committee is of the view that the Law on Nationality should be revised.

296. The Committee recommends that the Code of Criminal Procedure and the Penal Code be enacted as soon as possible and reflect the provisions of the Convention. The Committee suggests that the State party may wish to avail itself of the technical assistance program of the Office of the United Nations High Commissioner for Human Rights.

297. The Committee reaffirms that the provisions of article 4 of the Convention are mandatory, as stated in its general recommendation VII. The Committee stresses in this regard that the State party should take appropriate steps to fulfil all its obligations under this article and that, in doing so, it take fully into account general recommendation XV (42) of 17 March 1993.

298. The Committee recommends that action be taken at the legislative, administrative and judicial levels to protect the right of everyone, including ethnic Vietnamese, to enjoy their rights under article 5 of the Convention, especially the right to security of person and protection by the State against violence or bodily harm, to public health and medical care and to education and training. It further recommends that comprehensive information on the implementation of the articles be provided in the next report.

299. The Committee recommends that the State party recognize the citizenship of the indigenous peoples, as well as their use of lands, forests and other natural resources, and their distinct and unique identity, culture and way of life. The Committee further recommends that the State party take steps to fully implement its general recommendation XXIII (51) of 18 August 1997, which addresses the rights of indigenous peoples under the Convention. In particular, the State party should ensure that no decisions directly relating to the rights and interests of indigenous peoples are taken without their informed consent.

300. The Committee recommends that the State party ensure protection against any acts of racial discrimination through the competent courts, in accordance with article 6 of the Convention, by, *inter alia*, strengthening the court system, the independence of the judiciary and the confidence of the population therein. It further recommends that the right to seek just and adequate reparation for victims of racial discrimination be guaranteed in law and practice.

301. In connection with the implementation of article 7 of the Convention, the Committee recommends that all necessary measures be taken to provide training and education of law enforcement officers, civil servants, judges and lawyers, as well as teachers and students, at all levels of education, and the public at large, in the field of human rights and prevention of racial

discrimination.

302. The Committee recommends that the State party, in preparing its next report, take account of these conclusions and recommendations.

303. 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.

304. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee request that the possibility of such a declaration be considered.

305. The Committee invites the State party to submit its next report, due on 28 December 1998, in time for the fifty-fourth session of the Committee, and suggests that it be a comprehensive report. It should provide replies to the questions raised during the consideration of the previous report and address all the points raised in the present concluding observations.