

SELF-DETERMINATION

IV. CONCLUDING OBSERVATIONS

CERD

- Sweden, CERD, A/46/18 (1991) 55 at para. 222.

Rather than trying to assimilate the Samis into mainstream society, the Government should endeavour to preserve their specific cultural identity. To that end, the possible establishment of a Sami parliament is encouraged.

- Croatia, CERD, A/48/18 (1993) 90 at para. 505.

The obligation of the State party under article 4 of the Convention is emphasized. Given the sensitive situation prevailing not only in the country but also in the region, condemnation, prohibition and prosecution should also extend to ultra-nationalist and extremist activities on ethnic grounds, such as the circulation of ethnic lists and the display of Nazi emblems or the holding of non-ethnic Croats in secret prisons. At the same time, active and visible measures should be taken by authorities at all levels to promote inter-ethnic tolerance and understanding among the general public. To that end, the Government should encourage multi-ethnic organizations and movements and foster an ongoing dialogue among leaders and representatives of the various communities to ensure respect for the observance of human rights and the rights of the minority communities and their participation in the democratic process. By no means are trends for separation or secession encouraged.

- Yugoslavia (Serbia and Montenegro), CERD, A/48/18 (1993) 95 at para. 542.

It is emphasized that non-discrimination in the enjoyment of fundamental, civil, political, economic, social and cultural rights must be effectively guaranteed in law and actively protected in practice if further ethnic unrest is to be avoided. In no way are unilateral trends towards separatism or secession encouraged. In that connection, it is noted that separatism could best be discouraged by the active promotion and protection of minority rights and inter-ethnic tolerance.

- Colombia, CERD, A/51/18 (1996) 15 at para. 45.

Concern is expressed at the lack of effective implementation of policies aiming at guaranteeing to indigenous and Afro-Colombian communities control of the quality of their environment and the exploitation of their territories.

SELF-DETERMINATION

- Costa Rica, CERD, A/54/18 (1999) 24 at para. 202.

The State party should intensify its efforts to ensure a fair and equitable distribution of land, taking into account the needs of the indigenous population. The importance that the land holds for indigenous peoples and their spiritual and cultural identity, including the fact that they have a different concept of land use and ownership is stressed. In this regard, the approval by the Legislative Assembly of the bill for the autonomous development of indigenous people would be of great importance.

- Sri Lanka, CERD, A/56/18 (2001) 56 at para. 335.

The situation of the country's indigenous people, the Veddas, and the creation of a national park on their ancestral forestland is of concern. In this context, attention is drawn to the Committee's general recommendation XXIII calling upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.

ICCPR

- Yugoslavia, ICCPR, A/47/40 (1992) 103 at para. 465.

With reference to article 1 of the Covenant, the fact that there was no procedure under domestic law for implementation of the right to secede recognized in the federal Constitution, which would have enabled the crisis to be settled peacefully is regretted, as is the fact that, under the state of emergency proclaimed in the province of Kosovo, excessive steps have been taken to limit the rights and freedoms guaranteed by the Covenant.

- Mexico, ICCPR, A/49/40 vol. I (1994) 33 at para. 182.

Consideration should be given to more equitable land distribution within the framework of agrarian reform and the rights and aspirations of indigenous populations should be taken into account. Furthermore, measures for the implementation of article 4 of the Constitution should be considerably strengthened. Indigenous populations should have the opportunity to participate in decision-making on matters that concern them.

- Azerbaijan, ICCPR, A/49/40 vol. I (1994) 50 at para. 296.

SELF-DETERMINATION

The position adopted in the report regarding the principle of self-determination is regretted. In that connection, it is recalled that, under article 1 of the Covenant, that principle applies to all peoples and not merely to colonized peoples.

- United States of America, ICCPR, A/50/40 vol. I (1995) 52 at para. 302.

All steps should be taken to ensure that previously recognized aboriginal Native American rights cannot be extinguished. The Government is urged to ensure that there is a full judicial review in respect of determinations of federal recognition of tribes. The Self-Governance Demonstration Project and similar programmes should be strengthened to continue to fight the high incidence of poverty, sickness and alcoholism among Native Americans.

- Peru, ICCPR, A/52/40 vol. I (1997) 28 at para. 153.

In conformity with international law, article 1 of the Covenant does not authorize the State to adopt a new Constitution that may be incompatible with its other obligations under the Covenant. The Constitution is part of the legal order of the State and as such may not be invoked as grounds for exemption from compliance with an international obligation freely entered into by the State.

- Finland, ICCPR, A/53/40 vol. I (1998) 40 at para. 255.

The Committee notes with satisfaction the recognition in the Constitution of the Sami and Roma people and of their rights, along with other groups, to develop their language and culture. The existence of Advisory Boards for both Sami and Romani Affairs, mandated to advance the interests of these minority populations, are welcomed, as well as the right of Samis since 1992 to communicate with the authorities in their native language and to be consulted through their representatives on matters affecting them closely. That primary and secondary education level students may be taught in their mother tongue of Sami or in Romani is also welcomed.

- Canada, ICCPR, A/54/40 vol. I (1999) 48 at para. 230.

The practice of extinguishing inherent aboriginal rights is incompatible with article 1 and should be abandoned.

- Mexico, ICCPR, A/54/40 vol. I (1999) 61 at para. 331.

SELF-DETERMINATION

All necessary measures should be taken to safeguard for the indigenous communities respect for the rights and freedoms to which they are entitled individually and as a group; to eradicate the abuses to which they are subjected; and to respect their customs and culture and their traditional patterns of living, enabling them to enjoy the usufruct of their lands and natural resources. Appropriate measures should also be taken to increase their participation in the country's institutions and the exercise of the right to self-determination.

- Congo, ICCPR, A/55/40 vol. I (2000) 43 at paras. 291 and 292.

Paragraph 291

The Congolese people have been unable, owing to the postponement of general elections, to exercise their right to self-determination in accordance with article 1 of the Covenant, and Congolese citizens have been deprived of the opportunity to take part in the conduct of public affairs in accordance with article 25 of the Covenant.

Paragraph 292

General elections should be organized as soon as possible in order to enable citizens to exercise their rights under articles 1 and 25 of the Covenant and thus to participate in the process of reconstruction of their country.

- Australia, ICCPR, A/55/40 vol. I (2000) 71 at paras. 506 and 507.

Paragraph 506

With respect to article 1 of the Covenant, the explanation given by the delegation that rather than the term "self-determination", the Government of the State party prefers terms such as "self-management" and "self-empowerment" to express domestically the principle of indigenous peoples' exercising meaningful control over their affairs is noted. That sufficient action has not been taken in that regard is of concern.

Paragraph 507

The State party should take the necessary steps in order to secure for the indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources (art. 1, para. 2).

ICESCR

SELF-DETERMINATION

- Morocco, ICESCR, E/1995/22 (1994) 28 at para. 110.

As regards Western Sahara, it is of concern that the right to self-determination has not been exercised and it is hoped that it will be exercised in full compliance with the provisions of article 1 of the Covenant, in accordance with plans approved by the United Nations Security Council. The negative consequences of the Western Sahara policy of Morocco on the enjoyment of the economic, social and cultural rights of the relevant population, particularly through population transfer, is of concern.

- Israel, ICESCR, E/1999/22 (1998) 43 at paras. 243 and 265.

Paragraph 243

It is regretted that the Government of Israel has maintained "general closures" continuously since 1993, thereby restricting and controlling the movement of people and goods between Israel and the West Bank and the Gaza Strip, between Jerusalem and the West Bank and between the West Bank and the Gaza Strip. It is noted with concern that these restrictions apply only to Palestinians and not to Jewish Israeli citizens. The closures have cut off Palestinians from their own land and resources, resulting in widespread violations of their economic, social and cultural rights.

Paragraph 265

The State party should respect the right to self-determination as recognized in article 1, paragraph 2, of the Covenant, which provides that "in no case may a people be deprived of its own means of subsistence". Closure restricts the movement of people and goods, cutting off access to external markets and to income derived from employment and livelihood. The Government should undertake to ensure safe passage at checkpoints for Palestinian medical staff and people seeking treatment, the unhampered flow of essential foodstuffs and supplies, the safe conduct of students and teachers to and from schools, and the reunification of families separated by closures.

- Canada, ICESCR, E/1999/22 (1998) 63 at para. 418.

Concrete and urgent steps should be taken to restore and respect an aboriginal land and resource base adequate to achieve a sustainable aboriginal economy and culture.

- Yugoslavia (preliminary), ICESCR, E/2001/22 (2000) 80 at para. 503.

The State party is urged to facilitate the exercise of the right to self-determination by all peoples of the Federal Republic of Yugoslavia.

SELF-DETERMINATION

- Morocco, ICESCR, E/2001/22 (2000) 82 at paras. 524 and 546.

Paragraph 524

With regard to the situation in the Western Sahara, it is regretted that there has not been a definite solution to the question of self-determination.

Paragraph 546

A solution should be sought, in cooperation with the United Nations, to the problems impeding the realization of the referendum on the issue of self-determination in Western Sahara.