

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL
E/CN.4/Sub.2/AC.4/1984/4/Add.2
16 July 1984
Original: ENGLISH

WGIP 84/UNI/3

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities

Working Group on Indigenous Populations
Third session

Geneva
30 July-3 August 1984
Items 4 and 5 of the provisional agenda

REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION
AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS OF INDIGENOUS POPULATIONS

CONSIDERATION OF THE EVOLUTION OF STANDARDS CONCERNING
THE RIGHTS OF INDIGENOUS POPULATIONS

Report of the Secretary-General

Addendum

The present document contains information submitted by the following
non-governmental organization: the Anti-Slavery Society.

THE ANTI-SLAVERY SOCIETY FOR THE PROTECTION OF
HUMAN RIGHTS

[Original: English]

[26 June 1984]

The Anti-Slavery Society for the Protection of Human Rights has submitted information on the following countries:

Bangladesh

At last year's session of the Working Group on Indigenous Populations the Anti-Slavery Society drew the attention of the experts to the situation of the tribal minority peoples living in the Chittagong Hill Tracts of Bangladesh. In that submission we stated that numerous human rights violations were being perpetrated by the armed forces against the tribal peoples, including murder, torture and sacrilegious attacks on Buddhist monks and temples. A full report has now been completed and presented to the Centre for Human Rights.

This year the Society wished to address itself to the two matters under discussion during this session: the question of definition and of land. In the working definition proposed by the Special Rapporteur, Mr. Martinez Cobo, indigenous populations are described as "the existing descendants of the people who inhabited the present territory of a country at the time when persons of a different culture or ethnic origin arrived". In various submissions by indigenous peoples organizations, in Convention No. 107: Indigenous and Tribal Populations 1957, of the International Labour Organisation, and implicitly in various United Nations instruments, it has been stated that these people have a right to their own land.

The distinguished representative of Bangladesh stated last year that Bangladesh had no indigenous peoples. He also stated that the Bengali-speaking majority had been settled in the area from prehistoric times. He maintained that the Working Group should be addressing itself to those situations such as Australasia where, and I quote, "a colonising and racially distinct people coming from overseas established settlement and entered into conflict with the autochthon population".

The Chittagong Hill Tracts have been inhabited since time immemorial by hill tribes different in race, religion and culture from the Muslim Bengali majority of Bangladesh. They retained their autonomy during Mughal and British occupation of the region. Until the 1950s more than 90 per cent of the population was tribal. Bengalis from the plains have only begun to settle in the hill tracts in the last two decades.

When Bengalis came in small numbers they were always welcomed by the tribespeople but in recent years they have come in thousands; they arrive poor and unfamiliar with their new environment and completely unaware of the culture and traditions of the inhabitants of the region. They have no knowledge of the communal land base of the tribal communities, they have no skills in living in the forests and hills as shifting cultivators and they regard with suspicion and derision the clothing, way of life and customs of the tribespeople.

In the last decade the clashes between these two distinct cultures have led to at least two serious massacres of tribespeople: in 1980 at Kaokhali and in 1981 at Matiranga. The inhabitants of the hill tracts fear for their lives. Tribal villagers hide themselves when soldiers of the Bangladeshi army are reported in the vicinity such is the terror now prevalent in the tracts.

The Anti-Slavery Society is quite willing to take the situation in Australia as the paradigm for the work of these sessions, as the distinguished representative of Bangladesh urges. We know as well as any what happened to the Aboriginal population of Australia in the first century of occupation. A population of 300,000 was reduced by four fifths and the Aborigines were excluded from all but the most inhospitable areas of the country. The European settlers there did not acknowledge land held communally, just as in the hill tracts today land that is untitled is claimed as government land and disposed of accordingly. In the last two decades the indigenous peoples of the region have faced persistent land alienation.

More than 100,000 tribespeople were displaced in the 1960s as the result of a hydro-electric power project on the Karnaphuli River. The reservoir inundated 250 square miles and 40 per cent of the cultivable land of the Chittagong Hill Tracts. At no time was there consultation with the hill-people. Indeed, a study undertaken in 1979 discovered that 93 per cent of those affected believe that their economic condition has deteriorated as a consequence of that development.

Since the independence of Bangladesh in 1972 there has been a rapid growth of new settlements by non-tribal Bengalis from the plains. By 1981 it is estimated that nearly 200,000 had been settled. In July 1982 a new settlement programme was authorized by the Bangladeshi Government by which a further quarter of a million Bengalis would be transferred to the district. This massive programme of settlement will make the indigenous peoples of the Chittagong Hill Tracts a minority in their own land.

The people of the hill tracts are not seeking independence, nor the creation of a separate state apart from Bangladesh, but the recognition that they have the right to their traditional way of life, their own land and some measure of control over their own development. The present situation of terror and violence cannot be allowed to continue. A new policy from the Bangladeshi Government aimed at providing some tribal autonomy and guaranteeing rights is a necessity. The Anti-Slavery Society recommends most earnestly that the Government of Bangladesh:

- (1) Enter into discussion with all sectors of tribal society in the Chittagong Hill Tracts with a view to reaching a political settlement which would respect the land rights, future and identity of indigenous peoples;
- (2) Bring an immediate halt to the influx of settlers into the tracts;
- (3) Investigate human rights violations against tribal peoples in the hill tracts.

Finally, the Anti-Slavery Society urges the Government of Bangladesh to allow free access to the troubled region to international observers and journalists. This measure alone would do much to reduce the level of fear and suspicion felt by the tribespeople of the hill tracts.

Guatemala

Over the past year the United Nations Special Rapporteur on Guatemala, Viscount Colville of Culross, has submitted two reports to the United Nations on the situation of human rights in Guatemala. The first of these submitted to the United Nations General Assembly at its thirty-eighth session in November 1983, was described as an interim report. The second of these, submitted to the United Nations Commission on Human Rights at its fortieth session in February 1984, contains his substantive conclusions and recommendations for seeking remedies to the situation in Guatemala today. The Anti-Slavery Society has, with great reluctance, to express disappointment with various aspects of this second report.

The major themes of Lord Colville's argument can be summarized briefly as follows:

- (1) The army has resorted to brutal tactics in response to wide-spread guerrilla offensives;
- (2) Widespread human rights violations, including the massacre of civilians, have been perpetrated by the armed forces but their extent has been exaggerated;
- (3) There are clear signs of improvement since the army has adopted a new strategy aimed at gaining the support of the civilian population in rural areas;
- (4) While the problems of Guatemala result from inequitable land distribution, army initiatives to reform should be supported;
- (5) The choice in Guatemala today is between a leftist guerrilla victory and gradual reform through the armed forces;
- (6) Critics should refrain from too much denunciation of past military atrocities and be more sympathetic to the positive measures undertaken by the army today.

In an interview given to the Wall Street Journal in April 1984 Lord Colville summed up his approach "my condemnations are interspersed with discussions of the significant progress the Government has made. There are genuine reformers in the Government - especially in the area of agricultural reform - and they are enormously boosted when we publicly recognize their achievements. This I have done in my report".

Lord Colville's two reports present a picture of Guatemala remarkably different from that which has been depicted by non-governmental organizations concerned with the protection of human rights. Many non-governmental organizations, after painstaking on-the-spot research conducted over lengthy periods and often by several different persons, have described a situation of state terrorism and of widespread human rights violations, including massacres of non-combatant civilians. A recent report by Americas Watch (January 1984) tells of rising violence and political assassination in urban areas, of secret and arbitrary imprisonment, of prolonged detention, of torture and of disappearances. A member of the Anti-Slavery Society visited Guatemala two months after the latest coup that brought the incumbent President Mejia Victores to power, and shortly before Lord Colville's second visit. He could record no signs of progress.

While large massacres appeared no longer to occur in rural areas, selective killings of groups of 20 to 30 people were widely reported. There was a noticeable increase in political killings in the city, responsibility for which was attributed by the relatives of victims to the security forces. Restrictions on freedom of movement were tighter than ever and political arrests were widespread.

After studying Lord Colville's report to the Commission on Human Rights the Anti-Slavery Society has been concerned by (a) an apparent tendency to refrain from denunciation of specific and gross human rights violations even when the facts of these violations were evidently accepted by him (b) a tendency towards subjective judgement, which seems to ignore the antecedents of today's conflict, to misrepresent the causes of conflict, and thus lead to conclusions and recommendations which are manifestly unrealistic.

It is the view of the Anti-Slavery Society that violence begets violence, that unjust social structures are conducive to violence and that the military Government of Guatemala continues to resort to widespread violence primarily in order to safeguard the existing unjust social structure. Even if social reforms were being enacted this would not justify the accompanying repression against indigenous people and other vulnerable sectors of the Guatemalan population.

The test of Lord Colville's report will be seen in the way that his 11 specific recommendations are received and implemented by the Government. The most important of these recommendations, No. 11, states that "disappearances, killings and kidnappings must be cleared up". They have not been stopped. Another recommendation No. 10, is that "trade unions and other associations should not be restricted in their activities or their contribution to political manifestos or campaigns". In March 1984, one month after the fortieth session of the Commission on Human Rights, there was a new wave of kidnappings and killings of trade unionists in Guatemala City. If progress is made in these areas, it should of course be recognized. However, the Anti-Slavery Society fears - and it shares these fears with many other human rights organizations - that the most recent military coup will bring about further periods of repressive government, further polarization and a new chapter in the saga of Guatemalan violence. The Colville report to its discredit and to the discredit of the United Nations itself may well be seen as offering comfort to a brutal, military dictatorship.

Philippines

In 1983 the Anti-Slavery Society presented to the Working Group on Indigenous Populations a long report about the 6.5 million people who belong to indigenous minority groups in the Philippines. We stated then that these indigenous people continued to retain a marked degree of cultural, economic and political independence but that they now faced unprecedented destruction as a consequence of policies being pursued by the Government of the Philippines. This year we wish to address ourselves to the question of land and the attitudes of these national minorities to it.

Indigenous Law in the Philippines was well developed at the time of the arrival of the Spanish colonizers in the sixteenth century. Yet the law subsequently imposed on the islands by the Spanish ignored all indigenous concepts of law and land title.

The islands were claimed in the name of the king of Spain as if there were no valid pre-existing arrangements for land distribution and utilization. Between 1898 and 1946 the United States of America took over the colonial administration of the Philippines and continued to recognize Spanish title, maintaining that land occupied by indigenous minorities was unclaimed and therefore within the public domain.

Today, despite independence, Philippines law is still a mixture of Spanish and North American legal traditions recorded and conducted in the English language. It remains as true today as it was under the colonial administrations of Spain and the United States of America that tribal land is deemed to be unoccupied and, therefore, available for exploitation by state enterprises or private companies. The alienation of tribal land in the Philippines, like the dispossession that occurred in Spanish America, is part of a long process which began in 1521 and still continues to this day.

Nominally there are provisions in the constitution and the laws of the Philippines for the protection of the land rights of the national minorities. But in practice where conflicts occur between indigenous communities and state or business interests, settlement is invariably made in favour of the latter, usually on the grounds of overriding national interest.

This is a long established pattern. The 1935 Philippines Constitution, for example, contained the provision that no foreign individual or company could own more than 1,026 hectares of national territory. However, at the time this law was enacted the Del Monte Fruit Company was in possession of 10,000 hectares of tribal land. The land was not restored to its original owners. In order to by-pass the law the Government created the National Development Corporation which took over the official ownership and rented the land to Del Monte and other foreign enterprises for minimal rents.

In recent years the conflicts between the indigenous population, desperate to maintain its rights over what little land remains to it, and the ill-defined and dubious national interest, have become bitter and more violent. The national interest has become increasingly identified with the small elite centred around President Marcos and his family and the transnational corporations prepared to work in partnership with the dictator.

Since 1972 the presidential power of law by decree has frequently been used to rob the national minorities of what little constitutional or legal protection that exists. The Anti-Slavery Society in other interventions and in a full report to the Commission on Human Rights has given substantial information concerning the hydro-electric power programme which if it goes ahead in its entirety will deprive upwards of 2 million tribal Filipinos of their land and livelihood. Through two Presidential Decrees (1939 and 2041) passed in 1960 more than 40,000 hectares of land were acquired by the National Development Corporation. The land was occupied by tribal peoples, mainly Manobos, who were neither consulted nor compensated. Eventually many of them were forcibly moved from their homes and denied access to land they had farmed for generations. The land acquired by these supra-legal means has since been planted with oil palm to the benefit of the transnational corporation, Guthrie International and, in the view of the indigenous population affected, it has resulted in a serious deterioration in their living conditions.

Finally, the Anti-Slavery Society will provide one further example which demonstrates the vulnerability of tribal land when faced with the power of the present Government. Just recently 81 families of the Ibaloy people were forcibly removed from their land in Taloy SUR in the province of Benguet. They had no choice about the matter and their farms were destroyed. At the stroke of a pen families lost their livelihood and their homes. And what was the national interest that had to be advanced with such rapidity and ruthlessness? Nothing less than an 18-hole top quality golf course and a 50 foot high Mount Rushmore style bust of President Marcos carved out of the mountain side.

It is the view of this Society that the law in the Philippines does provide some protection of the land rights of indigenous peoples but that in the implementation of that law much is sacrificed in the interests of the ruling elite and those business interests supporting it.

West Papua

Last year the Anti-Slavery Society drew the attention of the experts of the Working Group to the serious situation faced by the one million Melanesian peoples of West Papua. We stated at that time that if the present policies of the occupying Indonesian forces continued then the racially and culturally distinct indigenous peoples of West Papua would almost certainly face destruction.

In the intervening twelve months the situation within West Papua has deteriorated to a critical level. Investigations carried out by the Anti-Slavery Society confirm that massive numbers of house to house searches in the capital city, Jayapura, are now routine practice. There has been widespread maltreatment of Papuans; and extrajudicial killings in all sectors of society by Kopassandha, the Indonesian commando forces, have been carried out on a large scale since February of this year. On 26 April 1984 a distinguished anthropologist, Arnold Ap, the curator of the Anthropology Museum in Jayapura was murdered while in the custody of the Indonesian Army.

Many Papuan people fearing for their lives have fled from their homes and villages and sought refuge in neighbouring Papua New Guinea. In the last six months in excess of 6,000 men, women and children have crossed the border seeking safety. The government of Papua New Guinea under pressure from Indonesia has been asked to return them; the Indonesian Government for its part refuses to acknowledge that they are refugees. The United Nations High Commission for Refugees has not been permitted to monitor the repatriation ("refoulement") nor has it received assurances from the Indonesian Government that the refugees will be properly treated. The refugees themselves fear that their lives would be in danger if they returned. As a consequence of the refugee issue a situation of extreme tension has now arisen between Papua New Guinea, a Commonwealth country, and Indonesia. Various reports allege that Indonesian air force planes have attacked refugee camps in Papua New Guinea and that Indonesian troops have crossed the border in pursuit of refugees. There is a fear among many in Papua New Guinea of an outright invasion by Indonesia.

In the development of this whole situation much blame must fall on the United Nations itself. When the Netherlands withdrew from their colonies in the region the fate of West Papua became a matter of negotiation among Dutch, Indonesian and United States governments. No West Papuans participated in the discussions to determine the future of their homeland. In 1962 an agreement (the New York Agreement) was reached making Indonesia administrators of the

territory subject to a plebiscite being carried out to test Papuan opinion. In 1969 an Act of Free Choice took place by which West Papua became a province of Indonesia and formally lost its independence. The plebiscite was not carried out on the basis of one man one vote as recommended by the United Nations (Article XVIII) and only 2025 specially selected Papuans held voting rights. Both the 1962 New York Agreement and the 1969 Act of Free Choice which together utterly flout Article 1 of the Covenant of Civil and Political Rights - the right to self-determination - were ratified by the United Nations General Assembly.

In the view of the Anti-Slavery Society and many others concerned about the plight of the West Papuans, the United Nations has a duty - if it is not to stand accused of hypocrisy - to attempt to put right that very grave wrong committed against the West Papuan people in 1969. Today the West Papuan people are fighting a war of liberation to achieve their independence from a colonial power. Their demands are in accordance with all internationally accepted standards related to the rights of peoples to self-determination.

The Anti-Slavery Society urges the Working Group to communicate to the sub-Commission that the legitimate aspirations of the people of West Papua to self-determination are being met with brutal repression. The United Nations has an obligation to intervene and seek a peaceful and just solution in West Papua.