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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities

Working Group on Indigenous Populations
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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

STANDARD-SETTING ACTIVITIES

Material received from non-governmental organizations in
consultative status with the Economic and Social Council

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ANDEAN COMMISSION OF JURISTS

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From 31 March to 3 April 1987, the International Commission of Jurists and the Andean Commission of Jurists sponsored a meeting in Lima, Peru, which brought together peasant and indigenous leaders, lawyers and professionals in the field of social sciences from Bolivia, Colombia, Chile, Ecuador and Peru to analyse the human rights situation and legal services in the rural areas of the Andean countries.

The seminar drew from the valuable contributions of other seminars sponsored by the ICJ in Bogota (1979), Tambacounda (1984), Limuru (1986) and Jakarta (1987), as well as the papers presented by the participants on the topics of human rights, the administration of justice, the legal services for low-income classes, and the situation of peasant and indigenous communities vis-à-vis the legal system currently in force.

In the course of the sessions it was decided to adopt the following conclusions and recommendations in order to disseminate the results of this seminar.

CONCERNING HUMAN RIGHTS

Conclusions

1. Structural and historical causes have created objective situations of human rights violations of the majority of the Andean population.
2. In addition, official policy has aggravated the situation to the point of making of these human rights violations a constant and repeated practice.
3. At present, the situation has become noticeably worse in some areas of the Andean region, which manifests itself in a deterioration of the quality of life and of the freedom of the rural Andean population, as well as an increase in the number of detentions, disappearances and deaths, especially of activists and of grass roots, union and political leaders.
4. In some areas a situation of internal armed conflict exists, which leaves the peasants caught between two fires and under juridical states of emergency denying or disregarding the social, political, economic and cultural rights of the population, especially of the peasants and indigenous people.
5. The existing domestic and international legal norms in the different countries are not applied in favour of these populations.

Recommendations

1. It is necessary that the structural and historical reasons preventing the full observation of human rights be overcome by actions of the people themselves and the organized peasant and indigenous communities, together with other grass roots organizations.

2. It is indispensable to give a new dimension to the meaning of human rights in the Andean region; that they be understood not merely as individual civil-political and economic-social rights but rather as the rights of communities, peoples and nations.

3. It is necessary to demand that human rights which are formally incorporated in legal systems are complied with in practice, especially in the rural areas of the Andes which are currently under states of emergency.

CONCERNING THE ADMINISTRATION OF JUSTICE

Conclusions

1. In the rural areas of the Andes there is neither a tradition nor an enforcement of justice in favour of the peasant and indigenous communities. State law has often contributed to the undue prolongation and intensification of conflicts between the peasants and between them and third parties.

2. In the course of the agrarian reform programmes in the countries of the Andean region different administrative and judicial procedures have developed which frequently constitute serious obstacles to the application of the principles and objectives of these agrarian reforms.

3. In some of the countries there have been attempts to overcome this situation through the adoption of special substantive and procedural norms for the resolution of conflicts among the rural Andean population. Among these attempts the creation of special courts and the recognition of the sphere of autonomy among the peasant and indigenous organizations deserve special mention.

Recommendations

1. To recognize the sphere of autonomy of the peasant and indigenous organizations in resolving internal conflicts.

2. To establish special substantive and procedural norms to resolve conflicts between peasants and indigenous people and vis-à-vis third parties and the State, which respect the principle of diversity among the above and the corresponding necessary legal protection.

3. Those in charge of administering justice who know of these conflicts must be chosen and controlled by the population among which they fulfil their function. They must identify with the interests of the peasants and indigenous people, know their languages, their traditions and customs, live close by and exercise tutelary functions protecting the rights of the population.

4. That the existing legal systems in our societies be adaptable to the methods of administering justice used by the peasants and indigenous people in accordance with their traditions and customs.

CONCERNING CUSTOMARY LAW

Conclusions

1. At present, different legal systems exist within the peasant and indigenous people's organizations of the Andean region to resolve conflicts among their members.
2. These systems, which can be considered as customary law, uses and customs, and peasant laws, are repeated practices which govern significant aspects of the lives of the peasant and indigenous populations in the Andean region.
3. These laws differ depending on the geographical location, relations with the market, cultural groups, historical processes and other elements which determine their enforcement and their possibilities for reinterpretation.
4. The existence of these laws is due to different causes, including the cultural identity of the peasant and indigenous groups which not only has persisted over centuries but has experienced a dynamic evolution to be able to confront the problems of today.
5. The role of state law in the rural Andean areas has contributed, with varying intensity, to the existence of the legal systems of the peasants. On the one hand, the application of state law has generated active resistance, while on the other hand vacua have developed, which federal law has not penetrated due to a lack of interest or necessity on part of the dominant legal system.
6. Despite the inherent differences in their internal logic and in their substantive and procedural norms, there are no insurmountable boundaries between customary and state law. On the contrary, along historical processes, mechanisms of mutual reception and resistance have developed between both.
7. In the last few decades peasant and indigenous organizations have become dynamic and increased their demands to obtain from the State the recognition of their land rights, the rights to their language, culture, internal autonomy and forms of self-government.

Recommendations

1. Recognition of and respect for the customary legal systems currently in existence in the Andean region.
2. Support of the efforts of the peasant and indigenous people's organizations in their struggles for the recognition of their rights.
3. Recognition, within the principle of the universality and equality under state law, of the diversity which exists among the legal systems in the Andean countries.
4. Support of the efforts to provide favourable conditions for encounters between the peasant and indigenous populations of the Andean countries.

5. To the State Authorities the adoption of legislation providing for the respect for peasant and indigenous rights strengthening the legal ground gained within state law, and the full appliance of and compliance with this legislation.
6. To propose the modification of those legal provisions which disregard the Andean legal systems.
7. To encourage the active participation of the peasants and indigenous people of the Andean region in all spheres of economic, social, political, cultural and juridical life.
8. The incorporation of concrete activities into the different regionalization and development programmes in the rural areas recognizing the rights of the peoples and communities as a guarantee of local or regional autonomy.

Lima, 3 April 1987