STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST INDIGENOUS POPULATIONS

by José R. Martínez Cobo
Special Rapporteur of the Sub-Commission
on Prevention of Discrimination
and Protection of Minorities

VOLUME III

UNITED NATIONS

INTRODUCTORY NOTE

The documents containing Parts I and II of the Study of the Problem of Discrimination against Indigenous Populations prepared by Mr. José R. Martínez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, are hereby re-issued in accordance with decision 1985/137 of the Economic and Social Council.

A revised version of Part III of the same study, containing the conclusions, proposals and recommendations, will be published separately under the symbol E/CN.4/Sub.2/1986/7/Add.4

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STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST INDIGENOUS POPULATIONS

Final Report (First Part) submitted by the Special Rapporteur,
Mr. José R. Martínez Cobo

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XII. HOUSING

A. Introductory remarks

1. The International Bill of Human Rights refers by implication to housing in proclaiming the right to an adequate standard of living within a just and egalitarian order. Reference should be made in this respect to article 25 (1) (in connection with articles 2, 7, 22, 26 (2), 28, 29 and 30) of the Universal Declaration of Human Rights and to article 11 (1) (in connection with articles 2, 4, 5 and 9) of the International Covenant on Economic, Social and Cultural Rights. Furthermore, article 12 (1) (in connection with articles 2, 5 and 26) of the International Covenant on Civil and Political Rights guarantees for all persons equally the right to choose their residence within a State. These provisions are fully applicable to indigenous populations as part of the total population of the country in which they live, although, obviously, these groups of people give rise to special problems which, on the one hand, are similar to those of other minority groups and, on the other, present their own special peculiarities.

2. It should be noted at the outset that the great majority of indigenous peoples throughout the world live in rural regions, 1/ and therefore, generally speaking, they share the problems which affect rural populations.

3. In many countries and regions of the world, but generally more so in those where the process of industrial and economic development has not firmly taken hold, the attention given to urban and rural areas shows an imbalance because Governments tend to give priority in their investment and development programmes to the more populated centres. Thus insufficient attention is given to population groups in rural areas, and this situation is further accentuated among isolated groups or groups in remote places (refuge areas) where certain indigenous groups have resettled. Furthermore, frequently no attention whatsoever is given to groups living in forest or mountain areas who are isolated from the rest of the country's population.

4. It is not easy to determine whether this lack of concern denotes a deliberate process of discrimination against these groups. In certain cases the circumstances and the regions in which they live place them beyond the reach of normal government administration. It must be the purpose of this study to indicate where an imbalance exists which cannot be justified, and perhaps, if the available information allows, to give some indication of a possible solution to some of the problems most commonly encountered in this area and what changes in certain branches of government administration might accordingly be required.

5. With regard to housing, the indigenous populations of the various countries are faced with much the same problems as those affecting the rural populations in general, with the exceptions noted below.

1/ The information available records only one exception in this regard, New Zealand.

6. Although the indigenous populations have some special housing problems which are attributable to their way of life, their traditions and their customary economic occupations, other problems they face can squarely be attributed to neglect, lack of the necessary action or discrimination.

7. Indigenous rural housing is generally inferior to the rural housing of the poorest sector of the dominant group. Some of the problems which affect rural indigenous housing stem from tradition and custom. However, the great majority arise from the economic impotence of indigenous peoples, within the market economy that surrounds them, their socially and culturally oppressed position, and their lack of political and social power to bring about desired changes in their housing conditions. There is a need here for a serious study of the housing problem, especially as it affects the indigenous population, but the information available is not adequate for this purpose. Available data show, however, certain basic aspects of the problem, which will be discussed in this chapter.

8. In some countries, there are certain indigenous population groups whose housing conditions present unusual aspects which must somehow be taken into account in any solution of their housing problem.

B. Special housing of certain indigenous groups

9. Among the population groups that live in more or less isolated areas which are not particularly attractive to non-indigenous settlement and which can generally be characterized as refuge areas of the indigenous population, there are extreme cases of unusual types of housing, which often are of a strictly temporary nature and of flimsy construction - for example, the housing of the jungle dweller, the eskimo and the desert nomad.

10. Housing of the jungle dweller. While caves, rocky overhangs or hollow trees are merely used as shelters by the most primitive groups, other groups build houses for the community or the family or both. The jungle dweller who builds houses makes use of the materials most easily obtainable from the jungle itself (trunks and stakes for the framework; palm leaves, straw, leaves and grasses for the roof). The construction varies from simple types of refuge or shelter from the wind, the rays of the sun and the direct effect of rain (huts or screens), through more complex forms finally reaching more formal buildings of extremely variable dimensions which serve to shelter the family or clan or are used for important meetings. Special circumstances give rise to different types of dwellings such as tree dwellings and pile dwellings.

11. Eskimo housing. These dwellings are also constructed by using directly obtainable materials, i.e. blocks of ice covered with snow which are generally fitted together to form a cup-like structure (igloo). 2/

12. Desert nomad housing. In some desert or semi-desert regions, nomadic populations do not build shelters or houses of any kind but sleep directly on the ground beside a bush or close to small fires. Other groups in other regions build huts which they abandon after using them for a short time. Another alternative is the collapsible or portable dwelling used by some semi-nomadic groups.

2/ Another cup-like structure existing in a quite different environment, but also built of directly obtainable materials, is the "hogan" housing that is characteristic of the Navajo Indians.

13. When efforts have been made to settle these nomadic or semi-nomadic groups, problems have arisen because of the reduction of the area to which they lay claim (as will be seen in the discussion of land problems). The type of housing to be constructed by or for such groups when they are "settled" more or less permanently also has presented problems.

C. General housing problems

14. In addition to these problems of providing or helping to construct housing and its adaptation to the physical and cultural needs of the beneficiary, problems also arise in connection with sanitation services and running water, although these are closer to the general problems facing non-indigenous rural populations. These same difficulties, together with quasi-urban housing problems, also arise when the indigenous worker, in an attempt to supplement his traditional source of livelihood, obtains seasonal work as a tenant farmer on land belonging to an agricultural enterprise. As the problems of seasonal housing are related to the provision of housing services under suitable contractual conditions, it is accordingly appropriate to consider the conditions under which housing is provided for these groups in order to determine whether or not unjustified inequalities and unsatisfactory arrangements exist in relation to what is generally considered adequate for other sectors of the non-indigenous population.

15. Housing problems likewise arise among urban populations when there are both indigenous and non-indigenous sectors in a given locality. Apart from the differences which may exist in the spacing of houses, based on tradition and custom of the persons or families occupying a dwelling, the indigenous leaders and competent authorities are faced with problems regarding basic decisions on the location, whether intermingled close together or more scattered, of indigenous and non-indigenous neighbourhoods. Furthermore, consideration must be given to whether or not housing and related services are available under the same conditions of equality to indigenous and non-indigenous sectors of the population alike. The opportunities that are available in the "free market" of the private-enterprise housing sector are also important. Even more important is the action by the State to provide adequate housing for indigenous groups in urban centres, as well as the conditions under which this is done, which is always to be free from unnecessary impositions.

16. Housing problems that are largely attributable to the scarcity or inadequacy of housing arise in all parts of the world. These deficiencies in quantity or quality are clearly accentuated and exacerbated in areas of high population growth. When, due to underemployment or growing unemployment in rural areas, there is a mass exodus from those areas to the urban centres, existing shortages in the urban centres become extreme, and, at the same time, housing within the reach of the new arrivals falls even further below the minimum safety and health requirements.

17. The "poverty belts", "slums" and "ghettos" of modern cities are well known. It is in these areas, already plagued with problems and deficiencies, that the new arrivals find a place - or make a place - for themselves. The basic services there, such as drinking water, running water, sewerage, drains and rubbish collection, are either extremely defective or insufficient, with the resulting consequences.

18. Because of their limited or non-existent purchasing power, these groups of the population cannot leave such districts and are caught in a net of circumstances which is frequently worse than the situation that they left behind in their place of origin in the country, even though there is the vague possibility that things may improve in the distant future.

19. This situation becomes still more serious when the new arrivals are illiterate, have a poor command of the language spoken in the city and have traditions and habits which are ill adapted to the peculiarities of modern urban centres. These persons constitute a large proportion of the indigenous groups who settle in the poverty belts, slums and ghettos. It is thus apparent that while they suffer acutely from the whole gamut of problems facing other new arrivals in similar circumstances, their problems are made more numerous and serious by their own special difficulties. The acute housing shortage is made even worse for these groups, which find themselves in a particularly unfavourable situation from the very outset.

20. Furthermore, those who do manage to escape from such circumstances are faced with the whole range of problems which, in this kind of urban environment, affect the indigenous populations just as they affect members of other racial, ethnic or cultural minorities who have been able to surmount the initial economic and social barriers of the dominant group.

D. Discrimination and the elimination thereof

1. General remarks

21. Discrimination with regard to urban housing may stem from the law, contractual arrangements or practice. In any of these cases, it may be direct or indirect in nature, and it may either be deliberate or the consequence of actions which were not explicitly intended to be discriminatory. Such discrimination generally comes about through the use of certain "selective" legal procedures or the simple "selective" procedures of persons and groups.

22. The most direct and obvious forms of discrimination with regard to housing arise from local ordinances on selective zoning or from so-called restrictive covenants.

23. It is well known that under certain local ordinances, for example:
(1) specific areas may be assigned to the members of a particular group;
(2) persons belonging to a specified group may be prevented from residing or acquiring property in areas where persons belonging to other groups already occupy the majority of dwellings; (3) residents of certain areas must give their consent if persons belonging to another group wish to acquire or occupy a property in those areas.

24. It is also generally known that certain contractual arrangements compel the owners of premises situated in certain areas to sell or rent only to members of a specific group, or not to sell or rent to members of a particular group. There are also less obvious and direct contractual procedures which indirectly result in the exclusion of certain groups by imposing such requirements as: (1) the consent of certain persons or groups of persons; (2) a specified minimum income; (3) entry into clubs or associations which, in fact, only admit persons of specific groups; (4) a limited maximum number of occupants of a house; (5) a carefully chosen level of education.

25. One example of the more cunning legal methods that are used is to reserve entire areas of an urban centre or a rural area for public or private industrial use, which, in effect, stops the building of housing as a way of preventing these areas from being occupied by a group whose presence there might be considered "undesirable" or "inconvenient". A further example is that of pushing through plans for expanding a city or town to areas, which, by reason of their cost or other special circumstances, are inaccessible to certain groups.

26. Other more indirect procedures involve not so much the legal or contractual requirements or conditions imposed but rather the fact that they are applied much more strictly for persons from certain groups than for those from others.

27. In addition to these procedures - generally based on the concept of "zoning" - to prevent the access of certain groups to specific areas, other procedures are used to evict certain groups from the areas they occupy which are wanted by the dominant groups, when the former are not willing to accommodate the latter by selling out and vacating the area they occupy.

28. A procedure which comes within this last category is that of harmful or dangerous installations being set up in areas occupied by certain groups thus making it impossible, difficult or inconvenient for them to remain there. Sometimes the discomfort, harm or danger caused is not deliberately sought, but it should be noted that whether the effect is intentional or not, great care should be taken to ascertain whether the compensation or reparation which should be made is adequate and acceptable. In the case of ancestral lands, for example, the reparation or compensation procedure can actually be used to carry out an "expropriation" which would not normally have occurred. These lands or premises have been placed "out of bounds" as a result of legal texts on the basis of the evident will on the part of the indigenous groups to keep them undisturbed and devoted to the purposes mandated by tradition.

29. A final point to be noted in this preliminary analysis of discrimination with regard to housing is that it is a particularly serious matter to prevent the free flow of certain groups to given areas and, consequently, to force those groups indirectly to remain or settle in or to constitute the "belts", "slums" or "ghettos" in housing districts which are rejected by the dominant groups as unsuitable. Frequently the district in which a person is forced to live affects his access to schools and to public and private places and services, which, moreover, are generally less satisfactory than those available in other sections, districts or areas.

30. In such a district, the buildings are generally in a state of dilapidation or poor repair, and, as already stated, there is a lack of basic sanitary installations and of adequate communal recreation areas. In addition, street lighting, public and private transport services, and municipal services such as running water, drinking water, sewerage, drainage and rubbish collection either do not exist or are inefficient or inadequate.

31. Although the information on housing problems in the various countries for which data are available is scarce, it is sufficient for a discussion of certain aspects of the matter.

2. Data on specific countries

32. Several Governments have made statements of a general character asserting that there was no discrimination of any kind against any person or citizen in the matter of housing. Others have made reference to legislation preventing, prohibiting or punishing discriminatory acts, including acts related to housing, still others have mentioned the fact that while the same legal provisions apply to all, there are differences between indigenous and non-indigenous housing. These differences are attributed to something other than discrimination, the weak economic position indigenous persons and groups occupy in society at large, the traditional occupations to which they adhere or the traditional land tenure institutions and practices which may act as obstacles to obtaining loans and grants for housing purposes, or a combination of these factors. Finally, some of these Governments admit, either explictly or implicitly that discrimination does play a role in creating or prolonging these differences.

33. Focusing first on general statements 3/ it may be noted that the Government of Bangladesh has communicated simply that "there is no discriminatory treatment against any citizen of Bangladesh in respect of housing." Containing an implied reference to citizens, a Danish official publication has stated that in Greenland today "Danes and Greenlanders live side by side in the same blocks. Discrimination in the traditional sense is non-existent." 4/

34. Other statements contain assertions on the inexistence of discrimination de jure - or even de facto - coupled with references to legal provisions designed to prevent, punish or eliminate any possible discrimination in housing.

35. Thus according to information provided by the Government of Finland no direct or indirect limitations, restrictions or obstacles whether de jure or de facto are imposed on the access of Lapps to ownership, rental or occupation of housing. The provisions of Article 6b of the Penal Code, would be applicable to persons guilty of imposing such limitations, restrictions or obstacles. 5/ The Government later makes reference to certain de facto differences between Sami and non-Sami housing. 6/

36. The Government of Australia first simply stated that the authorities "have generally considered that positive programmes to meet aboriginal housing needs will be more effective than legislative or administrative provisions to combat discrimination in this field." Nevertheless, the Government has also communicated that

> "Clause 12 of the Racial Discrimination Bill, 1975, makes it unlawful for a person, whether as principal or agent, to discriminate against a person by reason of the race, colour or national or ethnic origin or by reason that he is an immigrant, in the provision of land, housing and other accommodation".

3/ The Government of Costa Rica has stated simply that "these aspects", that is to say, all those concerning special measures related to indigenous housing, have been covered by the Executive Decrees for the setting up of Indigenous Reserves and that those Decrees, in turn, have been "duly incorporated in the Indigenous Law No. 6172 of 20 December 1977 for due application". However, the Special Rapporteur has found no explicit references to housing in the texts either of the Decrees or of the Law and is not in a position, therefore, to provide any relevant details.

4/ Greenland Arctic Denmark. (published by the Ministry of Foreign Affairs of Denmark), 1977, p. 27.

5/ Article 6b of the Penal Code of Finland deals with acts or the refusal to serve a person or to admit a person to a public meeting because of his race, colour, racial or ethnic origin, or religion and provides for sanctions of imprisonment or fines for such offences of "discrimination". See para. 73 in chapter VIII of the present study (E/CN.4/Sub.2/476/Add.3)

6/ See para. 44, below.

37. The Government of New Zealand reports as follows:

"The Race Relations Act 1971 already contains provisions aimed at preventing discrimination against Maoris or other ethnic groups in relation to housing. There have in the past been occasional cases of what seemed to be discrimination when Maoris endeavoured to rent houses or apartments, but a remedy is now provided by the Act. The Government's Maori housing programme has operated in the urban areas on the basis of spreading Maori homes throughout the rest of the population, rather than concentrating them in particular areas. This has caused very little difficulty and has shown that Maori and non-Maori families are usually friendly neighbours. Opposition to having Maori families in a neighbourhood is not common.

"During the year ended 31 March 1973, the Race Relations Conciliator appointed under the Race Relations Act 1971 dealt with 14 complaints alleging discrimination against Maoris in relation to housing. Upon investigation, the Conciliator found that six cases were not justified, one was justified, one was rectified and the others were withdrawn or discontinued.

"...

"No cases have been reported to the Race Relations Conciliator, or to the Maori and Island Affairs Department, of Maoris being intimidated or subjected to pressure to induce them to sell, vacate or abandon housing which they are already occupying."

38. Other general statements like those of the Mexican Government denying all discrimination - "No such discrimination exists" - or of the Government of Norway denying any de jure discrimination "Legislation on housing contains no special provisions giving the Lapps less secure legal status than other Norwegians" are later followed by observations on the reasons for existing differences or the lesser capacity of the indigenous people to protect their rights and interests in matters of housing, which are discussed below.

39. It is emphasized in the information on a number of countries that the poor housing situation of indigenous peoples, particularly of peoples living away from their ancestral homelands, owes more to social or economic causes than to racial or ethnic discrimination.

40. Thus, the Anti-Slavery Society, referring to indigenous groups living outside their ancestral areas in Paraguay, says: "No racist limitations are imposed on the indigenous access to housing. The bad housing situation of those indigenous groups no more in their traditional environment is rather a social than a racial problem". The Society adds, about the Guarani living outside their traditional environment, that "the most effective measure to improve upon the housing conditions among the Guarani seems to us to be the increased better distribution of their salaries".

41. The Government of Mexico, referring also to the economic status of indigenous groups in this regard, went on to say 1/ after its general statement, that "In fact, the limits, restrictions and obstacles which may be suffered by indigenous persons and communities stem from their economic situation and not from their being subjected

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1/ See para. 38 above.

to discrimination. It is highly important to bear in mind that this situation is in no way exclusive to indigenous nuclei but is similar to that endured by a considerable number of Mexicans who live in similar economic conditions, in desert, semi-desert and mountainous regions of the country and is due to complex geographic, economic and social problems faced by our nation".

42. Similar ideas seem to be present in the following statement by the Government of the United States, after asserting that "anti-housing discrimination ordinances apply to indigenous persons.. should they be needed". 8/

> "Housing patterns of indigenous population living in urban areas largely result from their economic situation. Those in low paying jobs may live together in indigenous communities. Others are scattered throughout the urban population."

43. The Norwegian Government after its general statement quoted above, 9/ pointed out, however, that "for various reasons the Lapps may in reality have less opportunity than others to safeguard their rights and interests in the sphere of housing. In this connection attention is particularly drawn to the generally weak economic situation of the Lapps and to the fact that their dispersed pattern of settlement and sometimes limited knowledge of Norwegian may make it difficult for them to make contact with the public and private bodies competent to offer assistance and advice on housing questions".

44. In other cases, reference is made to the differences existing in the housing problems encountered in certain regions of the country and/or between those faced by the indigenous populations and by the non-indigenous populations. Thus, the Finnish Government has made reference to the traditional occupation of reindeer breeding and/or to the temporary character of arrangements made, in addition to pointing out the differences existing between the northern and the southern parts of the country in connection with housing:

> "A housing shortage exists mainly in the southern part of the country, in big cities and industrial centres. It is not a typical problem of the Lapp populations. However, certain exceptional measures were needed for the granting of land and houses to the so-called Skolt-Lapps who had moved over to Finland as refugees from the Petsamo province surrendered to the Union of Soviet Socialist Republics in accordance with the Truce of 1944. After some temporary arrangements, the final settling was made possible by Act No. 273 of 20 May 1955 which was supplemented by Act No. 593 of 19 September 1969.

As a general observation, the Government mentioned, nevertheless, that the

> "dwellings of the Lapp populations, on the average, are smaller and less equipped than those of other populations. This is at least partly due to the traditional way of life of the Lapps and, in the case of the Skolt-Lapps, to the difficulties encountered in their resettling."

8/ See para. 50, below

9/ See para. 38, above.

45. With regard to some countries, express reference has been made to common tenure of land, particularly, in traditional indigenous areas, in contrast to other forms of land tenure outside those areas. It is stated that in no such cases is there any de jure discrimination; but mention is sometimes made of certain problems which arise for indigenous groups holding land in common when it comes to obtaining loans or negotiating other forms of housing finance. 10/

46. The Mexican Government states that a distinction must be made between communal and private property, which are governed by different legal rules. Indigenous groups have the right to possess all communal property jointly and to use it, therefore, to satisfy their housing needs; furthermore, this property is unalienable imprescriptible and unattachable. With regard to private property, indigenous persons are entitled to it without restrictions other than those imposed by the law of the land on all Mexicans.

47. Likewise, the Chilean Government reported in 1975 that, except for the form of land tenure and the use, enjoyment and disposal of indigenous lands of the communities in the south of the country, indigenous groups are in all other respects subject to the ordinary law. They may buy and rent property and obtain loans in order to acquire it, without restrictions of any sort. Thus, for example, an indigenous person living in the communities of the south is completely free to buy a flat in Santiago.

48. The Canadian Government has stated that: "the native people of Canada are not restricted as to ownership, rental or occupation of housing on the basis of race. In raising loans for house-building, however, Indians have been impeded by the reserve system which will not permit Indian lands to be mortgaged".

49. In some countries, including some that were mentioned above, it has been recognized, however, that at least part of these differences in the condition of housing and in the access to it, stem from phenomena of discrimination against indigenous populations. Thus, for example, it has been stated that in Canada although no comprehensive survey of off-reserve housing has been undertaken, most reports indicate that a significant proportion of Indians off reserves have been confined to sub-standard housing, not only as a result of their lower incomes but also due to discrimination in the housing market. A recent study for the Canadian Council on Social Development asserts that prejudice against native renters (including Indians) is greatest in cities, where natives are treated more poorly than immigrants from other countries.

50. The Government of the United States of America has stated that: "Anti-housing discrimination ordinances apply to indigenous persons as well as to other minorities should they be needed". Indigenous persons not on reservations are subject to the same housing programmes that are available to all citizens.

51. In the information received from the Government of the United States of America there is, however, one sentence stating that "in urban centers, such as Los Angeles or Chicago there is very little discrimination against indigenous persons living anywhere they have the means to live".

10/ These problems will be examined a little more closely later. See paras. 109 to 111 and 171 to 176 below.

52. Non-governmental sources are more outspoken. An author writes that:

"In any event, most urban Indians live in marginal or sub-marginal housing. At least in some areas this is due to discrimination; in addition, of course, it is strongly related to the lower income level of the Indian worker. However, a recent study conducted by this writer strongly indicates that in some cities Indians are not acceptable as tenants in middle class housing even when they are able to afford it." 11/

53. A publication contains information to the effect that:

"The urban American Indians for reasons of employment or lack of housing on the reservations compete with other minorities and the general public for housing. In most cases, they find themselves in poor, inadequate, and unsafe houses and/or apartments." 12/

54. The same source states that discrimination against the American Indians is prevalent in three categories where American Indians may seek shelter: (a) home ownership, (b) rental, (c) temporary occupancy.

"(a) Home ownership - Although there is a law which prevents the American Indian from experiencing discrimination to potential homeowners, sellers of such units in urban and rural areas still exist who avoid selling their property to American Indians; for example, an Indian family had purchased a home in a western state through a real estate broker. The seller became outraged when told that his home was sold to an American Indian. Within a few days of the sale, the seller proceeded to rip out most light, curtain, and bathroom fixtures that would normally go with the sale of a home. The landscaping was also dug up and shrubs, trees, etc. were removed.

"(b) Rental in urban and rural areas near American Indian reservations - Discrimination occurs in cities or towns near Indian reservations and/or for American Indians attending colleges or universities. They face the problem of obtaining adequate, safe and sanitary homes and/or apartments.

"(c) Also, the migrant farm labor seeking temporary shelter faces the same problem. Numerous examples can be given, but lets look at two: a) Temporary housing for university students - Students find it very difficult to obtain rentals. Many are forced to accept rental which is generally in poor physical condition but pay market rental rates. The market was tested in a western college community by the rental listing provided by the university. An Indian student answering a home listed would be told that the unit had just been rented; an anglo would go to the same address and find that the unit was still available. b) Each year hundreds of Indian migrant farm laborers are recruited to farms in various states to assist in the harvest of farm produce. When being recruited they are told housing would be provided to them; in most cases, the housing conditions are worse than on the reservation. The discrimination laws do not seem to apply here.

11/ Joann Westerman, "The Urban Indian", in Current History, December 1974, p.27.

12/ American Indian Law Newsletter, vol. 7, No. 11, Special Issue containing the American Indian response to the response of the United States of America, p. 28.

"With these two obvious situations, it takes substantial documentation before any court of law will enforce the act. In many cases, the charges would be dropped because of lack of evidence to prove discrimination." 13/

55. The information on Sweden refers to certain restrictive legal measures which were intended to apply to Sami people dedicated to traditional activities of reindeer breeding, limiting them to "dwellings of Lapp type (i.e. tents with an open hearth and an open smoke hole) 14/ but which could not be fully applied and ultimately fell into disuse, making way for positive steps both to provide and to improve housing. These are considered below in connection with special measures which have been adopted with regard to housing.

56. As regards the question of measures to protect indigenous persons, families or groups from intimidation or pressure intended to induce them to sell, vacate or abandon housing they are already occupying, it should be borne in mind that this is sometimes tied in to the possession of the land on which this housing exists. The loss of the land means in most cases the loss of housing or housing rights. Some cases will, therefore, be found in the chapter dealing with land, quod vide.

57. A few Governments have, however, transmitted very general information as regards this matter, stating either that no pressures exist on ethnic grounds; that no special measures are needed or that all nationals are protected from intimidation or pressure by the same general laws.

58. Thus, for instance, the Mexican Government transmitted a categorical statement saying that "No such pressures exist on ethnic grounds."

59. The Finnish Government states that no measures are needed to protect Lapp persons, families or groups from intimidation or pressure intended to induce them to sell, vacate or abandon housing they are occupying.

60. The Canadian Government has stated in this regard that

"Protection against coercion in the matter of housing is afforded to all Canadians by law."

61. According to the Australian Government "There are no special measures to protect Aboriginal Australians from pressures or intimidation intended to induce them to sell, vacate or abandon housing they occupy, as they are entitled to normal protection under Australian law."

62. With regard to the prevention of dangerous or harmful construction in areas now occupied by dwellings of indigenous persons, families or groups or around such areas, the Governments which have transmitted information in this regard have simply stated that: in this matter the same policies are applied and the same measures adopted for indigenous and non-indigenous groups (Mexico); that "building laws and regulations

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13/ American Indian Law Newsletter, vol. 7, No. 11, loc. cit., pp. 27-28.

14/ See para. 145, below.

in all provinces protect the population as a whole against nearby construction which could cause damage to their dwellings" and that "no special legal provision is made to protect native rights in regard to housing off-the-reserve, but property on-the-reserve may not be alienated from Band use" (Canada) or that"Aboriginals enjoy the general protection of the law in relation to dangerous or harmful construction adjacent to places where they live." (Australia).

63. The New Zealand Government has furnished more detailed information, stating that

> "The control of dangerous or harmful construction near residential areas of any kind is exercised by the local authorities under the Town and Country Planning Act and under the bylaws of the local authorities relating to the erection of buildings. The Town and Country Planning Act requires local authorities to produce plans of the whole of the area which they administer under which all land is zoned as residential, commercial, industrial, etc. No building of any sort may be erected without a permit from the local authority and no permit will be granted for a building that does not comply with the building bylaws. Nor will a permit be issued, for example, for an industrial building to be erected in an area which is zoned residential. All this system of law is of general application."

64. The Finnish Government has furnished information on the prevention of future harmful activities in Sami areas and on the evaluation and compensation of damage caused by such activities in the past. The Government states that in order to avoid harmful and dangerous construction in the future, a Government sponsored environment plan comprising the whole Lapp County has been started. The work for the evaluation of damage inflicted by touring activities upon the local populations in the Lapp County has also been started. Certain administrative measures have been taken and grants given to compensate for the damage to the Lapp environment resulting from certain industrial undertakings (like hydroelectric stations, logging and lumbering activities, as well as growing tourism).

65. The chapter on health and other matters and the one on land go into these questions of harmful or dangerous activities carried out in areas occupied by indigenous persons, groups or communities, or in the neighbourhood of such areas.

E. Contemporary housing situation

1. Introductory remarks

66. The present study does not claim to deal with the world housing situation, or even with the indigenous housing situation in the countries it covers. It is concerned merely with the differences which exist in those countries between indigenous and non-indigenous housing and the role which discrimination may play in those differences. It has to analyse, to the extent the available information permits, the measures taken in those countries to overcome that situation with a view to eliminating discrimination, if any, and adopting suitable policies aimed at affirming and upholding the effectiveness of the indigenous person's right to clean, healthy and satisfactory surroundings, with housing of types and standards

suitable to family needs in the communities chosen by them and possessing the services essential for present-day living. It is essential that, in all this, no undue inroads should be made into indigenous traditions in essential aspects as determined by themselves. It is important, therefore, to establish whether there are procedures for consultation of the indigenous communities concerned and their participation in the processes of planning, siting, designing and building housing.

67. However, before proceeding to examine the differences to be found, the discrimination that exists, the policies adopted and the measures needed in indigenous housing in order to overcome the unfavourable situation prevailing nowadays, certain aspects of the over-all housing situation during recent decades should be noted. This is necessary if only to place the discussion of the relevant aspects within the requisite context, by reference to certain general housing phenomena which have a bearing on the subject of this study. 15/

68. In the developing countries particularly, a clear disparity exists between the rural and urban areas, in standard of living and in economic and social opportunities. The high rate of emigration from the former areas to the latter, stemming in part from this disparity, together with the high rate of population growth, has created in urban centres, during recent decades, a housing demand much higher than those countries can cope with. The attraction of larger towns for the inhabitants of rural areas has resulted in a huge demand for housing, entailing massive investment in urban installations. The lack of suitable policies, allied to the staggering rise in urban land prices, has made it even harder to carry out housing projects.

15/ The summary review that follows is based on one or more of the following United Nations publications: World housing conditions and estimated housing requirements, Sales No. 65.IV.8; Review of the housing situation in the ECAFE region (E/CN.11/1 and NR/SUB.4(9)/L.6); Improvement of slums and uncontrolled settlements, Sales No. S.71.IV.6; 1970 Report on the world social situation, Sales No. 5.71.IV.13; The realization of economic, social and cultural rights: problems, policies, progress. Study by Manouchehr Ganji, Special Rapporteur of the Commission on Human Rights, Sales No. 9.75.XIV.2. In addition, two United States official publications have been consulted: United States Senate, Ninety-first Congress, Second Session, Select Committee on Nutrition and Human Needs, Nutrition and Human Needs, 1970, part 4, Housing and Sanitation, Washington, D.C., United States Government Printing Office, 1970; and Department of Health, Education and Welfare, Public Service, Issue study on housing, urban rural problems and sanitation, CPEHS-OPD, Program Analysis Series, August 1969, mentioned in the previous publication, particularly pages 1787 and 1797.

69. The shortage of funds and the lack of trained labour and technical personnel from which the developing countries suffer have further complicated matters. As a result, the proposed housing targets have not been reached in those countries. Moreover, the building that is done is usually concentrated in urban areas, which receive priority. Relatively few resources are earmarked for building or improving housing in rural areas, where the bulk of the population actually live.

70. In general, serious deficiencies are to be found in essential housing services and there is serious overcrowding in existing units, which are clearly inadequate.

71. With regard to quality of services, housing conditions in the majority of developing countries are far from satisfactory. In Latin America, the countries in which more than 70 per cent of dwellings had piped water formed roughly one third of the total, and the countries in which more than 70 per cent of dwellings had electricity numbered only 10. In Paraguay, only 23 per cent of dwellings had piped water, 33 per cent had drinking water and 47 per cent had electricity. No proper account of the situation in Asia can be given with the data available. What information there is on current conditions shows that the housing situation is critical, although it may have improved somewhat.

72. Overcrowding, that is to say, the occupation of housing units by an excessive number of persons, is a widespread problem felt particularly in urban slums and in rural areas. In general, the figures are disturbing.

73. In Asia, an average density of over 2.5 persons existed in many countries; 59 per cent of dwellings in Pakistan and 51 per cent of those in Malaysia had a density of three or more persons per room.

74. In Latin America several countries had an average density of over two persons per room. In Mexico and Paraguay the average density was 2.6 persons per room. The data also showed that 53 per cent of dwellings in Paraguay, 47 per cent of those in Mexico, 42 per cent in Nicaragua, 40 per cent in Ecuador, 38 per cent in Panama and 34 per cent in Peru had a density of three or more persons per room.

75. It has been calculated that in urban centres the over-all population density of the low-income districts is 650 or more persons per square kilometre in the large cities, compared to an average density of 30-50 persons per square kilometre in high-income districts. The high population densities for the low-income districts reflect the large number of persons per room occupied, the low ratio which exists between the street surface area and the built-up area and the small area of green space per inhabitant.

76. In the urban sector, income disparities are revealed clearly in the different living conditions in different urban districts, particularly in large towns and their environs.

77. The normal picture is one of a marked contrast, between residential districts and suburbs, consisting of luxurious buildings provided with all up-to-date services and ample green space, and huge slum areas, overcrowded with families living in the worst conditions in squalid mud houses and shanties without water, electricity, garbage removal and other necessary facilities.

78. In several countries in Latin America there are large numbers of people living in slums and uncontrolled settlements. As examples, it may be mentioned that, in the 1960s and 1970s, slum dwellers made up 30 per cent of the population in Buenaventura, 50 per cent in Recife and Maracaibo, 49 per cent in Guayaquil and 46 per cent in Mexico City. In Lima, their numbers increased from 360,000 in 1961 to 1 million in 1969, and in Mexico City from 330,000 in 1952 to 1.5 million in 1966.

79. It has been calculated that at present slums and uncontrolled settlements in the countries of Asia and the Far East represent between 15 and 47 per cent of the total housing stock.

80. Many countries have adopted low-cost housing policies to remedy the situation. Mortgage banks and special housing funds have been set up or expanded to deal with the problem of uncontrolled settlements. A great deal could no doubt be done if Governments gave sufficient priority to housing development. With present-day theoretical and practical knowledge, the chief need is to give these regions adequate funds together with committed official support. The majority of Governments have adopted measures to alleviate the housing shortage; but unless they earmark a sufficient percentage of investment for a rigorous campaign to establish a balanced socio-economic structure housing conditions will get worse.

81. The majority of Governments in Asia have allocated proportions well below what is needed and, logically, housing conditions have deteriorated. According to available statistics, in some of these countries only 0.5 to 3.0 dwellings per 1,000 inhabitants had been completed in 1967, and in 1960 the building of 8 to 10 dwellings per year for every 1,000 inhabitants of the developing regions of the world had been set as a target, on the assumption that available dwellings, which were reasonably sufficient in number, would be renewed within 30 years in urban areas and 20 years in rural areas.

82. A reduction of these figures will depend on the strategy adopted at the national level for investment in housing, land use, construction materials and training of technical manpower and, above all, on a more equitable distribution of employment opportunities, income, health services and other public services and on better housing in rural areas. Without a well planned and executed strategy, it can certainly be foreseen that the existing numbers of slum dwellers and uncontrolled settlers will increase rapidly and give rise to further social crises.

83. Only a few countries of Latin America and Asia had managed to build enough housing with the minimum requirements to accommodate a rapidly growing population.

84. Moreover, housebuilding tends to be concentrated in urban areas, which are given priority. Relatively few funds are allocated for housing or improvements to existing dwellings in rural areas, where the bulk of the population actually lives.

85. The market-economy developed countries are not free from the problems of housing shortage and inadequate housing, or from the problems of overcrowding. In such countries, these phenomena chiefly affect the deprived classes and those with limited incomes, despite the abundant goods produced by them, in contrast with the standard of living which prevails among other sectors of the population in these countries. Large sectors of ethnic or national minority groups have unfavourable housing conditions.

86. For example, in the United States of America, in 1968, further subsidies were approved, in addition to those already available, both for renting and for purchasing accommodation. Attention was also given to building houses for low-income persons in suburban areas, as a means of increasing the mobility of ethnic or national minorities, although the achievement of this objective in practice has encountered many difficulties.

87. In 1969 a study by the United States Government was published which includes the following statement:

> "There are an estimated 6.7 million (9.9 per cent of the total) occupied substandard dwellings. Four million of these lack one or more essential indoor plumbing facilities (water supply, toilet facilities or bathing facility) and 2.7 million are in such a dilapidated condition that they cannot be rehabilitated without major repairs". 16/

88. In 1970 the following table was published in the United States, summarizing the distribution of inadequate housing in that country; the data are arranged according to race, income and location (metropolitan or non-metropolitan) of residence. Unfortunately, indigenous groups are not shown separately but are included in the category relating to "non-whites", and chiefly among those with lowest incomes and in non-metropolitan areas: 17/

16/ Department of Health, Education and Welfare, Public Health Service. "Issue study on housing, urban-rural problems and sanitation". CPEHS-OPD, Program Analysis Series, August 1969, p. 1797.

17/ United States of America, United States Senate, Ninety-first Congress, Second Session, Select Committee on Nutrition and Human Needs, Nutrition and Human Needs - 1970, part 7, Rural Housing, Washington, D.C., U.S. Government Printing Office, 1971 p. 2012, table 3.Testimony of George W. Rucker, Research Director, Rural Housing Alliance, to the Committee.

United States of America: Substandard housing (i.e. dilapidated or lacking in essential plumbing facilities: hot and cold running water, a bath or shower, and inside toilet), by race, income level and place of residence

(in percentages)

	1950	1960	1968
Percentage of all occupied units rated as substandard:			
All United States households	35.9	16.0	7.7
Metropolitan households	21.0	9.5	4.0
Non-metropolitan households	54.9	27.7	14.4
All white households		13.0	5.8
All non-white households		44.0	23.7
White metropolitan households		7.3	3.1
White non-metropolitan households		22.9	10.5
Non-white metropolitan households		28.2	10.8
Non-white non-metropolitan households		77.3	55.3
Households by income levels:			
Incomes under $4 000	45.5	31.8	
Incomes of $4 000-$7 999	14.1	8.3	
Incomes of $8 000 and over	6.6	2.5	
Metropolitan households:			
Incomes under $4 000	28.8	20.9	
Incomes of $4 000-$7 999	9.4	6.1	
Incomes of $8 000 and over	3.3	1.7	
Non-metropolitan households:			
Incomes under $4 000	62.6	44.0	
Incomes of $4 000-$7 999	25.2	14.2	
Incomes of $8 000 and over	15.8	5.2	

89. In Canada, the Federal Government had announced in 1968 its intention of devoting a greater proportion of funds than in previous years to housing for low-income families, the elderly and the disabled, and in 1970 it made available a sum of $200 million for experimental housing programmes for families with low and modest incomes.

90. In general, a widespread housing shortage existed in Europe and Japan. In the latter country, although rents in most public apartment buildings are low, applicants for tenancy must have a minimum income to qualify for admission. In 1968 a housing survey showed that one family in eight lived in housing below Japanese minimum standards of space, privacy and suitability. One fifth of the families in Tokyo and Osaka were obliged to crowd or double up in small houses and apartments. Low income families criticize government housing policy, which tends to favour middle-income groups. 18/

18/ George L. Harris, and others; Area Handbook for Japan, Foreign Area Studies Division, The American University, Washington D.C. 1964, p. 32.

91. From Europe, data are available for two countries where the situation is relatively good - Denmark and Sweden. In Denmark, the Rent Subsidies Act of 8 March 1967 had placed low-income groups in a better position to maintain or achieve a reasonable housing standard. In Sweden, a country whose situation is regarded as relatively better than that of others in Europe, a study on the low-income class, made at the outset of the 1970s, found that 11 per cent of working-class households - which include many "non-poor" along with the poor - lacked three or more of the following services in their houses: hot water, drainage, lavatory, central heating, shower or tub, modern cooking stove, refrigerator, compared with 4 per cent and 1 per cent respectively for the middle and upper classes, according to their occupation.

92. Overcrowding was an even more serious problem. In over 26 per cent of working class families, there was more than one person to a room (not counting living-room and kitchen), as against 15 per cent and 3 per cent respectively in the middle and upper classes. 19/ Overcrowding was even more common among families with children under 16 years of age. Forty-six per cent of working-class families were living in conditions of overcrowding, compared to 22 per cent and 4 per cent respectively in the two higher classes. 20/

93. As is well known, the dangers of overcrowding include, among other things, infectious diseases, skin diseases, accidents in the home, emotional disturbances, invasion of privacy and the resultant tendency to spend more time away from home, with the usual consequences for family ties (relaxation of parental vigilance and control over children) and, in the absence of recreation, heightened predisposition to neurotic behaviour and undue friction. 21/

94. In general, the quality of rural housing is still very poor everywhere. In the majority of developing countries, a very low percentage of houses in rural areas had inside running water, electricity and lavatories; in addition, a high degree of overcrowding occurred. Migration and uncontrolled settlement of marginal groups in the slums or outskirts of large towns is due in part to the desire to escape those disadvantages, but such groups then find themselves in similar or worse circumstances in those localities.

19/ Sweden, Arbetsgruppen för Låginkomstfrågor (Working Group on Low-income Questions), Kompendium om Låginkomstutredningen (Compendium of studies on low incomes), Stockholm, 1971, p. 130.

20/ Ibid., p. 132

21/ See M. Ganji, op.cit., p. 241.

95. It should be remembered that it is in rural areas and in slums that the majority of indigenous persons and families seeking housing adequate for their requirements are to be found; needless to say, they do not find it.

96. A brief outline is given below of the current situation relating to indigenous housing in the few countries having the data to make such a review possible. It is stressed that the examples given are not intended to single out the countries mentioned in particular. Much the same situation prevails from one developing country to another and from one industrially developed country to another. As will be seen below, in general there are also notable similarities outside indigenous areas in all countries, in the sense that, in all of them, indigenous housing constitutes the lowest level of housing and is in the worst state, with, a high degree of overcrowding. Housing in indigenous areas is found as a general rule to be equal in condition, with no discrimination, although its quality leaves much to be desired. All this applies today, after improvement and building programmes undertaken in this field in many countries. Inadequate housing, generally in poor condition, and overcrowding in existing units means that the indigenous housing presents a dual problem, both quantitative and qualitative, in all countries. There are, of course, features which are either accentuated or of lesser importance from country to country or even among different regions of the same country.

97. In reviewing here the available data relating to the current indigenous housing situation, a distinction should be made at the outset between housing in urban centres, large and small, and on the land of agricultural undertakings, which is open to the entire range of discriminatory attitudes and practices prevalent in those environments, on the one hand and, on the other, housing located in the rural communities of various types, either within or outside the areas occupied by indigenous communities, which suffer from other problems stemming chiefly from the socio-economic factors relating to the situation of such population groups.

98. Two examples are given of Latin American countries to illustrate situations that exist in all of them in different degrees of intensity or acuteness. Paraguay and Ecuador reflect typical manifestations of the problems encountered in matters of housing by indigenous people on or near non-indigenous settlements.

99. Of the Asian countries Indonesia serves as an example of the general situation and attitudes in that part of the world.

100. Of the industrially developed countries, Canada and the United States of America are mentioned here, again, only as exemplifying typical situations, in that group of countries, of the housing problems affecting indigenous people outside of the reserves or reservations.

2. Indigenous housing outside the traditional or reserved areas

101. As to the housing of indigenous labourers at the edge of non-indigenous settlements, outside of their traditional environment in Paraguay, Mr. F.K. Schmitz-Winnenthal, who visited the indigenous population in the Mennonite Zones in 1970 on behalf of the German Federal Ministry for Economic Co-operation, wrote about the housing situation there in an official report on this matter, that:

> "Each settlement has its Indian workers' quarter, which is not easily shown to official observers, as the housing situation there is catastrophic. E.G., at the edge of Loma Plata, an Indian quarter was built at a place where there is no water. The Indian women must carry the water on their heads over a distance of until three kilometres. They must wash in a mud hole, where children bathe and cattle drink, too. The houses have but one room, of about two by three metres, much too small for the large families, so that part of the family has to live outside under animal skins or covers." 22/

102. A similar image is described by Mr. Renshaw for the approximately 1,500 Indians of Fuerto Casado:

> "Housing not so bad, inside the mission, but those living outside live in conditions of complete squalor, shacks or corrugated iron, sacking and old pieces of wood - when it rains everything is a sea of mud. All water is taken from one tap at the edge of the mission, often the supply is cut off". 23/

103. It has been remarked that the housing situation among the Western Guaraní in the Central Chaco is identical to the preceding one. 24/

104. In order to illustrate the situation prevailing in many developing countries in the 1940s, particularly in the Latin American region, the following information may be mentioned. In Ecuador, according to an investigation into the living conditions of the peasantry in various parts of the province of Pichincha carried out by Plutarco Naranjo Vargas for the National Welfare Institute, the Indians' and estate workers' houses consist generally of four mud walls enclosing a room roofed with tiles or straw. In most cases, the Indians share their houses with their animals. Suffice it to say that on estates where there is pedigree stock, the cattle are better housed than the workers. Leonidas Rodríguez Sandoval, presbyter of the Archdiocese of Quito, states that the Ecuadorean Indian's hut has no walls. The framework is made of untrimmed wood; this is stuck into the ground and thinly woven with reeds. There is only one narrow, low entrance with no door. There are no windows. The Indians sleep on the ground on a heap of straw beside the hearth. They have no tables and eat off and sit on tree stumps. Aníbal Buitrón and Bárbara Salisbury Buitrón, in a report submitted to the same Institute, after describing two thirds of the houses in the rural districts of the same province in terms similar to those above, make the following observation: "The hacienda owners care little or nothing for the condition of the houses intended for their tenant-labourers (huasipungueros)." 25/

22/ Information furnished by the Anti-Slavery Society on 3 September 1976, in connection with the present study.

23/ Ibid.

24/ Ibid.

25/ International Labour Office: Indigenous peoples: Living and Working conditions of aboriginal populations in independent countries. Studies and Reports, New Series, No. 35, Geneva, 1953, p. 110.

105. As an illustration of the situation of indigenous housing in several Asian countries, and of the attitute towards it found in many sectors of opinion, as well as of the policy being followed or proposed for adoption, the observations made on the subject in one of those countries may be mentioned here.

106. Referring to de facto differences existing in Indonesia between non indigenous and indigenous housing, the latter has been described in an official statement in the following terms: "their dwellings are not houses in the usual meaning of the word but still resemble huts ... Said huts do not meet the specifications of health, societal life or quality". 26/

107. The Anti-Slavery Society states that starting out with such an appraisal of housing in isolated communities, the Government has programmes aimed at resettling groups into model villages composed of individual family houses three meters square. This has occurred throughout Indonesia from the Mentawai Islands off Eastern Sumatra, especially the island of Siberut, to Ceram in South Maluku and in Sulawesi. The use of non-local building materials has meant that the standard reached is not as high as that achieved by using traditional methods and in consequence the completed houses are only used by the community to store food and during periodic official visits. Such programmes are framed in such a way as to be incompatible with traditional life, both in material used and in design, and the overriding principle of minimum disruptiveness has been sacrificed with the result that failure is inevitable.

> "It is in the area of housing that government plans exhibit most explicitly the intention to change as soon as possible the traditional ways of life. In many areas of Indonesia, and especially in Kalimantan, this is a continuation of Dutch colonial practice where there was a systematic campaign against long houses which were burnt down. This has occurred in specific areas, not as official government policy, but rather enthusiasm on the part of local functionaries sometimes fuelled by a religious fanaticism." 27/

108. What is said of Canada and of the United States of America about the housing situation of indigenous people living outside of the reserves or reservations is also valid mutatis mutandis for Aborigines living off the reserves in Australia and for indigenous people living outside of their traditional areas on or near non-indigenous settlements in other countries.

109. In 1976 the general indigenous housing situation in Canada was summarized as follows: 28/

> "General living and sanitary conditions are far below accepted standards. Over a period of 30 years, the Government's various housing programs have resulted in 31,164 houses for Indians. Of this number, only 14,145 are, by any modest standard, habitable at the present time. The balance require major rehabilitation (9,442) or are beyond repair (7,547). In addition there is a backlog of 4,351 houses required by existing families who have

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26/ Department of Social Affairs, Written Statement dated 24 October 1975, pp. 10-11, transmitted by the Anti-Slavery Society.

27/ Information furnished on 3 September 1976, in connection with the present study.

28/ National Indian Brotherhood, Economic and Social Conditions of Canadian Indians, op. cit., pp.2-3.

no shelter whatsoever. It is expected that the housing need by 1981 will be for an additional 20,000 new houses. A further 9,000 existing houses will need major reconstruction. In other words, the Federal Government will have to find a way to deliver in five years, a number of houses close to the total which it had such difficulty providing over the past 30 years.

"In 1968-69, 10 per cent of the homes were one room, with an average of 5.5 people per household. The average area of new Canadian homes is just over 1,000 square feet, but 90 per cent of average Indian houses have less than half this area. 70 per cent of the Indian population have no water in their homes. Approximately 25 per cent use water hauled from sources known to be contaminated and another 40 per cent rely on surface water as a source. As many as 90 per cent use pit privies for sewage disposal and 10 per cent have no means of disposal. Any organized means of garbage disposal is absent in about 40 per cent of Indian communities."

110. Further on the indigenous housing situation in Canada, on the reasons for the failure of existing policies and on the need for a new housing policy to solve existing problems in that area it has been written: 29/

"The housing needs of Indians are acute and worsening. The Federal Government has a responsibility to meet these needs within a larger context of related community needs which also need attention.

"In discharging its responsibility, the Federal Government has to be prepared to consider a significant shift in its policy orientation to the problem. This has to include major adaptations in terms of organization, financing arrangements and delivery systems.

"The kinds of policy and program adaptations which are necessary will need to take into account the legal, economic and social circumstances which distinguish Indian communities from other communities.

"A housing program, or indeed, any other program will not be accepted by Indians as a trade-off in whole, or in part, for their special status, the status of their lands, or for possible future claims against the Crown.

"The housing policy proposed by DIAND/CMHC does not recognize the nature of the Indian housing problem, the legal, economic and social conditions which govern Indian existence, nor the essential incompatibility between provisions of the National Housing Act and these conditions.

"Application of the proposed housing policy would represent for Indians a retreat by the Federal Government to the values and assumptions which produced the first housing policy in 1946. In the present circumstances, however, no significant number of houses would be produced and it would be difficult to hold any one accountable, because of the number of actors involved.

"A lapse of more years while the backlog of need and misery accumulates will mean more moral and physical destruction of Indian people. This condition Indians will no longer tolerate.

29/ National Indian Brotherhood. Memorandum to Cabinet: Indian Housing, 1975, pp. 8-9.

"SPECIFICATIONS FOR AN INDIAN HOUSING POLICY:

"The policy and the programs which are proposed in this submission are those which the National Indian Brotherhood supports. An Indian housing policy needs to recognize a number of important policy factors. These can be summarized as follows:

"(i) Indians have a right to a clean, healthy, and satisfying environment and to adequate housing of a standard which will meet the needs of families in the communities of their choice.

"(ii) The Federal Government has a primary obligation and responsibility to provide sufficient funds and technical support to bring Indian housing and community standards at least to the level enjoyed by the majority of lower-income groups in Canada. In this context, Indians can be represented as a "no-income" group and their need for housing and related programs constitutes an emergency situation.

"(iii) A primary federal obligation and responsibility with respect to all capital improvements on "lands reserved for Indians" can only be discharged adequately if the Federal Government assumes the full costs of such improvements in the first instance. Any funds that might become available from other sources must be seen as a form of supplementary assistance which would not have the effect of offsetting, to any significant degree, federal monies specifically appropriated for Indians.

"(iv) The Indian claim to housing and other needed capital improvements is based on three main considerations:

"(a) The Federal Government carries, both historically and legally, a special responsibility to maintain the well-being of Indian people. This responsibility, for the most part, remains to be honoured.

"(b) All capital improvements on "lands reserved for Indians" including housing, are encumbered by the status of lands to which they are attached. Thus:

The Indian interest in capital improvements on Indian lands is one of "occupation and possession", as opposed to free-hold title. This interest, can only be liquidated within a highly circumscribed set of conditions which have the effect of placing any capital improvements completely outside the normal market.

It follows that, neither Indian lands, nor the capital improvements attached to them, can be regarded as equities in which individual Indians can develop a financial interest. Even if Indians had the financial resources to assume the burden of large mortgages and to amortize them, it is highly discriminatory for the Federal Government to attempt to twist the rules of property acquisition to fit a situation where such rules simply do not apply.

Within a much narrower context, Indians can be expected to pay a "use" fee, according to their means, for the right of occupation and possession, and to cover certain kinds of maintenance and service costs. They can also "sell" their

right of occupation and possession to the Band council or to any individual member of the Band. Such transactions, however, would involve relatively small amounts of money, more in scale with the present Indian economy, and would recoup to the seller only such investments as personal labour, the cost of materials, or the supplies personally purchased to improve the house.

"(c) The degree of poverty in which most Indian people live, and which they did not create, exceeds that of the majority of other Canadians who are also poor. This level of poverty has the effect of putting Indians outside the scope and reach of housing programs as now delivered by CMHC and the provinces, aside from the considerations which have been outlined with respect to the status of Indian lands and the capital improvements on such lands."

111. The information quoted in paragraphs 42 and 52 above and 174 to 176 below, in connection with the United States, shows that housing patterns of indigenous people living in urban areas largely result from or are closely related to their economic situation, although some are due to discrimination. Those in lower paying jobs live together, while others are scattered throughout the urban population, without real access to the better sections thereof. Eighty to ninety-five per cent of indigenous housing is dilapidated, makeshift, unsanitary and crowded, compared to eight per cent of the homes of the general population. Most indigenous persons do not have running water in their premises and what little there is, is contaminated. Often they have to haul water from far away places. Many do not have any of the modern conveniences that are taken for granted by other sectors of the population.

3. Indigenous housing on traditional or reserved areas

112. The situation of housing located on indigenous traditional or reserved areas does not seem to be altogether good either, although in certain countries it seems to be clearly better.

113. In fact, as far as Paraguay is concerned, the Anti-Slavery Society reproduced the description given by other observers about the very unfavourable housing situation of the indigenous workers in or near non-indigenous settlements, outside of their traditional environment and concludes that:

"The situation is much better for those Indians who still live in houses, huts or shelters of a traditional kind, where sufficient space is provided for the families.".

114. As regards Canada and the United States of America, despite housing construction and repair programmes, as well as loan and grant schemes, the situation was still far from satisfactory in the reserves or reservations.

115. In Canada the housing stock on Indian reserves has increased by 64 per cent since 1958, but in 1977, more than 1,250 Indian families were living in houses which were recorded as needing replacement. Conditions of crowding have become aggravated, and in 1977 one in three Indian families lived in crowded conditions. 30/

30/ Indian and Northern Affairs Canada. Indian Conditions. A Survey. Published under the authority of the Minister of Indian Affairs and Northern Development, Ottawa, 1980, pp. 30-31.

116. The following table is included to illustrate the phenomenon of crowding in on-reserve dwelling units (1977): 31/

	% with one family	% with two families	% with three or more families
Urban	83.2	13.4	3.4
Rural	79.6	15.7	4.7
Remote	80.6	15.5	3.9
Total	81.2	14.8	4.0

The need for new housing on reserves has risen to approximately 11,000 units. This backlog has resulted from the following factors: (a) recent increase in family formations following the Indian "baby boom" of the late 1950s and early 1960s; (b) need to reduce crowding (18.8 per cent of on-reserve homes have two or more families, affecting 40 per cent of families); (c) need for replacement housing (Indian housing has an average life of 15 years compared to 35 years among the national population). To eliminate this backlog and to meet the normal new housing demand of 2,000 units annually, the current rate of construction (2,200 units per year) would have to be doubled for five years. In addition to an increase in the backlog for new and replacement housing, the number of on-reserve units needing major repairs has increased tenfold since 1960, representing an increase from less than 10 per cent to approximately 24 per cent. 32/

117. Regarding certain essential basic services in houses the same publication states: the proportion of on-reserve houses with electricity (though often with modest capacity) is approaching national levels. Those with water and sewage facilities, despite considerable improvements in the last 15 years, still lag far behind. The lack of services is more pronounced on rural and remote reserves, where in 1977 fewer than 40 per cent of houses had running water, sewage disposal and indoor plumbing facilities compared to more than 60 per cent of all Canadian rural houses. Variations of service levels on a regional basis may be attributed to differing capital investment priorities during the past 10 to 20 years, the accessibility of bands and differing life styles. 33/

118. The following charts show the situation in 1977 of sewage disposal and water supply in Indian on-reserve housing in Canada: 34/

31/ Ibid, p. 30. Department of Indian Affairs and Northern Development (DIAND) "Statistical Report Listing of Information Related to the Housing Needs Analysis, 1977".

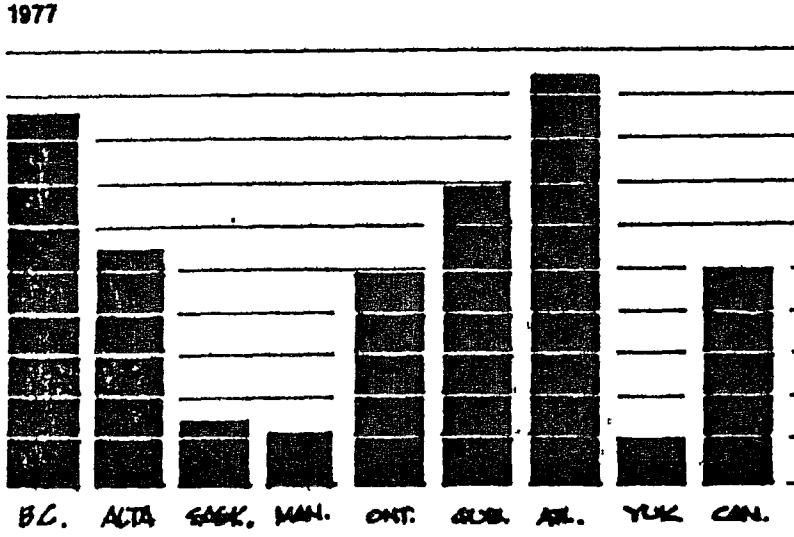
32/ Ibid, pp. 30-31.

33/ Ibid, pp. 31-32.

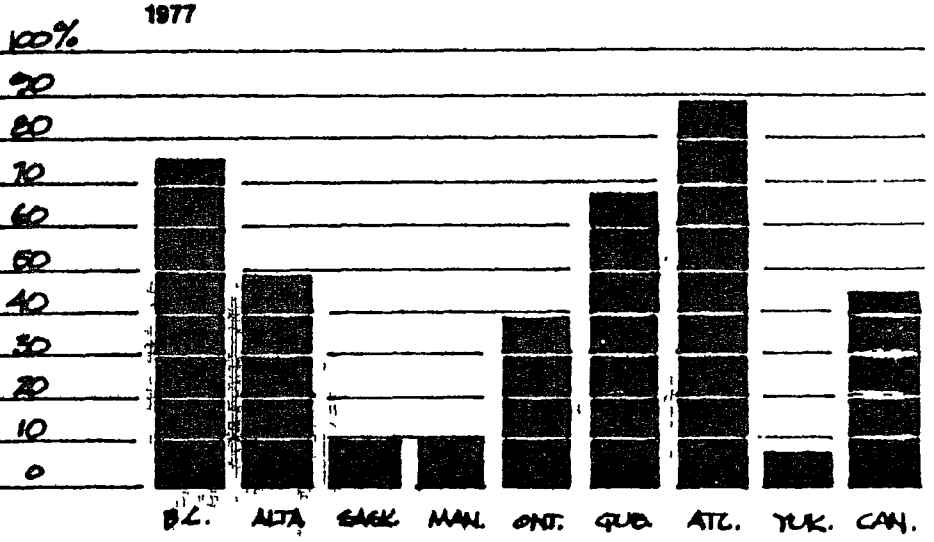
34/ DIAND, "Statistical Report Listing of Information Related to the Housing Needs Analysis - 1977", cited in ibid, p. 32.

SOCIAL CONDITIONS
living conditions

RUNNING WATER
On-Reserve Houses
1977



SEWAGE DISPOSAL
On-Reserve Houses with Pipe Sewers or Septic Tanks
1977



source
Statistical Report Listing of Information Related to the Housing Needs Analysis – 1977, DIAND

Variations of service levels on a regional basis may be attributed to differing capital investment priorities during the past 10 to 20 years, the accessibility of bands and differing life styles.

27

119. The Government writes in 1973 that: "As indicated earlier, the Federal Government is engaged in a program through Federal subsidy of eliminating within a decade substandard indigenous housing on Federal reservation areas.".

120. In this connection it has also been written: 35/

> "Though public housing legislation was passed in 1937, American Indians living on reservations, representing the lowest income and most poorly housed minority in this nation, were not able to participate in this program until 1961, nearly 25 years after other poor people in urban and rural areas; thus nearly three decades behind in providing for housing needs to the American Indian.
>
> "The impoverished American Indian has always appeared on the bottom rung of the priorities ladder for Federal aid - and housing aid has been no exception. Although the Bureau of Indian Affairs estimates that nearly two-thirds of all reservation homes are substandard at the close of the government's fiscal year 1973, development of new low income housing on most reservations is either pitifully inadequate or nonexistent.
>
> "The program which was identified to be applied to alleviate the housing conditions of the reservation Indian was originally an urban program and was to become known as the mutual help program. Since 1969 when the program was adopted, the guidelines used to implement mutual help have been urban guidelines. To a great extent, this has led to the inadequacies of the program."

121. In October 1973 the Civil Rights Commission found in the largest reservation in the North American continent in which some 128,000 Navajos live,

> "... a bleak situation of poverty and despair, joblessness and alcoholism, and most important, neglect and betrayal of the American Government, on which the Navajos, by treaty, were made dependent for survival.
>
> "... Half of the Navajo population lives in rented houses of one or two rooms. Each home averages five occupants. 60 per cent have no electricity, 80 per cent no water. To meet ordinary United States standards, 19,281 new homes would have to be built.
>
> "... ." 36/

122. Reservation housing has been regarded as one of the greatest hotbeds of corruption. It is pointed out that previous to the Kennedy Administration, Indians did not qualify for public housing. Many lived in substandard, makeshift accommodations. In 1972, when public housing was available to them, it was revealed by the BIA that of 88,450 Indian housing units, 33,453 were substandard. The BIA estimated that 48,300 new homes would be required to replace substandard homes and to provide homes for families living with other families. The same source points out that on reservation after reservation, rumours and charges of corruption in housing have become rampant. In addition, it is noted, allocation to public housing is also rife with corruption, in some cases usually at a tribal level. 37/

35/ American Indian Law Newsletter, Vol. 7, No. 11, loc. cit., p. 28.

36/ "Civil Rights Commission looks at Navajo Nation", in Akwesasne Notes, vol. 6, No. 1, 1974, p. 27.

37/ Burnette and Koster, The Road to Wounded Knee, Bantam Books, New York, 1974, pp. 97-98.

123. With reference to living conditions of reservation Indians it has been stated:

"As for living conditions, from 80 to 95 per cent of Indian housing is dilapidated, makeshift, unsanitary and crowded, compared to 8 per cent of the homes of the general population. Most homes consist of one or two rooms, constructed as a tar shack, dirt hut, an adobe mud hogan, or a grass wickiup. This housing offers little protection from weather fluctuations. Indians rely on fireplaces or wood-burning stoves for warmth and cooking. 'Nothing kills the incentive more than to live day-in and day-out in cramping quarters [of one room] surrounded by a dirt floor, a dirt roof, and sometimes, dirt walls', one observer said. One can appreciate the reasons for an Indian infant mortality rate four times higher than that of the general population, a Public Health Service official remarked, when one visits 'the types of housing in which [Indians] live'. These are the 'skid rows of the plains'.

"As for running water, most Indians have none on their premises, and what little there is, is often contaminated. A Public Health Service survey of 42,506 Indians in 11 western states disclosed that 81.6 per cent had to haul their water for 'distances of a mile or more'. This water is drawn from ponds, ditches, creeks and wells, and 77.8 per cent of the water tested was found to be contaminated. Sometimes drinking water was used by livestock or was adjacent to outhouses.

"More than half of all reservation Indians have no indoor bathrooms and 45 per cent of their outdoor facilities have been judged inadequate by sanitation officials. The Oglala Sioux, for example, who had to haul all their drinking water (all of which was contaminated), had no satisfactory outhouses. Reservation refuse disposal and food sanitation practices are poor. The Public Health Service survey said: 'The unsafe water supply is a very common cause of many diseases.'. And the head of the service's Division of Indian Health said: 'It is almost unbelievable that the vast majority of these people do not have any of the modern conveniences that we just take for granted.'.

"... ." 38/

38/ Gerald S. Nagel, "Economies of the Reservation", in Current History, December 1974, pp. 248-249.

F. Housing programmes

1. Preliminary remarks

124. Since the housing situation is unsatisfactory everywhere, programmes and schemes have been drawn up and applied in each of the countries covered by this study to resolve that situation or at least alleviate it significantly. Nowhere have those efforts been fully successful; they have always been frustrated to a greater or lesser degree.

125. In the developing countries, as already noted, 39/ the demand for housing has been excessively acute, owing in large measure to population growth and migration from the countryside to urban centres, on a scale beyond what they can normally cope with. In addition, fewer funds than necessary have been allocated for efforts to solve housing problems. As a result, the housing situation has got worse.

126. In the industrially and economically developed countries, efforts have been made to solve the housing problems that exist, but they have not been vigorous enough and due account has not been taken of the particular situation and growing needs of the indigenous populations. As a result, the amount of housing available has become still more inadequate, and the overcrowding in existing dwellings has worsened. 40/

127. There are basically two major approaches to this question: either measures on indigenous housing are included without distinction in the plans and programmes for housing in general, as part of the over-all plans and programmes or as part of those designed particularly for rural areas, but without being given special features; or special programmes and plans are drawn up and applied for the housing of indigenous groups, taking into account their differing requirements and particular traditions, and the fundamental difficulty they have in financing in the usual way that part of the building costs which they are to cover under the arrangements made.

128. In this chapter, which reviews the information available on the countries which have adopted this basic approach, reference will be made to what they have done in order to take due account of those special circumstances.

129. The review will begin with the efforts deployed in this sphere by countries which do not specifically differentiate and will then pass on to what has been done by countries devoting separate attention to the problems of indigenous housing.

2. General housing schemes. The same for all.

130. While the information available on certain countries does not indicate the existence of housing measures especially oriented towards indigenous populations, in others it is explicitly stated that no special schemes exist, the same general measures applying to indigenous and non-indigenous populations alike.

131. Some of the information merely refers to general legal provisions for obtaining loans, mortgages or credits for purposes of construction or purchase of housing, without any reference even by implication to indigenous populations and the applicability of these provisions to the special circumstances of those populations.

39/ See paras. 68 to 86 above.

40/ See paras. 87 to 92 above.

132. Thus, the Government of Bangladesh has simply stated that "all the grants, loans, credits or assistance in any form, from the House Bldg. Finance Corporation or any other government or non-government bodies treat all citizens on equal footing."

133. Similarly, the Government of Guyana states:

"Regulations have been enacted to guarantee mortgages up to 90 per cent of the value of properties for construction or purchase by persons of the lower income group. Housing Development (Mortgage Guarantee) Regulations, 1973, No. 4/1973."

"Order No. 44 of 1973 - Public Corporations (Guyana Co-operative Mortgage Finance Bank) Order No. 44/1973. This legislation will mobilize long-term loan funds and establish rates and conditions for approved mortgages."

"All applications for erection of buildings are approved by the Town and Country Planning Division of this Ministry and consideration would be given to ensure that population is adequately protected from harmful or dangerous constructions."

"(1) Persons are required to sign an agreement of sale under the terms and conditions laid down.

"(2) Individuals can join a group and undertake to build a home on a co-operative basis, under terms and conditions laid down by their Co-operative Society.

"Any individual can apply for a mortgage from any of the following agencies:-

(1) Guyana Housing and Development Co. Ltd.
(2) New Building Society
(3) Guyana National Co-op Bank Trust Co. Ltd.
(4) Guyana Co-operative Mortgage Finance Bank

PRIVATE SOURCES INCLUDE -

(a) Insurance Companies
(b) Commercial Banks
(c) Credit Unions
(d) New Widows and Orphans Fund

"(3) Building of houses on a

(a) Self-help Group basis
(b) Purchase of a hire-purchase house by securing a mortgage and making a 10 per cent down payment to the Ministry of Housing."

134. Other information refers to rural housing, albeit with no further details - as is the case, for example, in the report from the Guatemalan Government, which states that:

> "The National Housing Institute deals with all matters relating to rural housing improvement: building, land acquisition, loans, domestic hygiene, law of property, etc. In addition, there is the National Housing Bank (BANVI), which provides suitable loans on favourable terms, for those who wish to build housing in rural or urban areas."

135. In other cases, the information refers explicitly to the fact that the measures adopted apply equally to indigenous and non-indigenous peoples. Thus, for example, the Chilean Government reports that:

> "Whatever kind of public or private measures may be adopted to alleviate the problems of inadequate housing which affect indigenous persons living in rural and urban areas, they are the same as those adopted for the country's population as a whole, since the indigenous peoples are subject to the same legislation, protective measures and development plans as the rest of the country's inhabitants."

136. The same seems to happen in Greenland according to general statements transmitted by the Danish Government which seem to apply to all persons having permanent residence in Greenland. The Government states in this regard that building costs in Greenland are approximately double the costs in Denmark proper, and because the pay level is lower, the Government has had to subsidize house building to a considerable extent. There are various public-aid schemes for the erection and operation of housing facilities for letting purposes, and for building single-family houses (freehold apartments) and for payment of the half-yearly charges. The subsidies total about 87 per cent when the present interest level is used as a basis for the calculations.

137. The apartments built in Greenland since the beginning of the 1960s, primarily in the west coast towns where the major part of the population is living, is of a standard reasonably equalling the standard of the apartment houses built by the Danish building societies, i.e. they are equipped with bath, w.c., and up-to-date laundry facilities.

138. Greenlanders and people of Danish origin are now living side by side in the same apartment buildings, and pay the same rent, see paragraph 142 below in regard to contributions towards housing to be paid by Government personnel sent out from Denmark.

139. The councils of the Greenland municipalities administer the letting of apartments, etc., on behalf of the Government. Discrimination in the traditional sense is non-existent.

140. Also in regard to government loans for building private single-family houses, the local municipal councils are co-operating in that they establish a classification by need of the persons they consider should have a loan.

141. The private owner approaches the municipal council when he intends to submit an application for a loan. The application is reforwarded by the municipal council, with a recommendation, to a special committee, the Housing-Aid Committee, which is domiciled at Godthab. This Committee, in addition to Government representatives, includes also representatives of the Greenland Landsting. Loans are granted, bearing interest at the rate of 4 per cent per annum to the extent of the initial cost, and no initial owner-contribution is required. In addition aid is granted to the extent of 40 per cent of the annual expenditure, and 7.5 per cent for each child younger than 16, up to a maximum of six children however. The same aid-principles are applied in regard to calculation of the rent charges in the Government-owned apartment buildings.

142. Only persons with permanent residence in Greenland have the possibility of obtaining the subsidized loans, and of becoming tenants in the Government-owned apartment buildings. Government personnel sent out cannot obtain loans for freehold housing facilities, nor for a long-term tenancy, but housing facilities are made available to them against payment of a specific housing contribution, fixed through negotiation with the trade organizations, in the Government's apartment buildings. The same apartments are let alternatively to the population as well as to personnel, depending on the size of the family.

143. As a special feature in connection with town planning in Greenland it must be pointed out that land is not subject to private ownership but belongs to the State which assigns it free of charge to the user. In practice the rule has hitherto been followed that a person desiring to erect a building must have the permission of the local authority... . The Prime Minister's Department is the supreme authority in matters relating to building activities. The State controls the location of private buildings.

144. In 1981 the Government of Denmark stated that

> "The Ministry for Greenland is the formal owner of the Government's apartment houses, and The Greenland Technical Organization functions as consultants to the Ministry and is entrusted with the administration of the construction works. Questions relating to the location of the buildings, their appearance and layout, are discussed in detail with the municipal councils - prior to the start of the building activities.
>
> "The Government's expenditures for building of residential houses constitutes the largest item of the construction programme of the Ministry for Greenland. The expenditure in 1979 totalled DKr. 160 million. Approximately 300 housing units are built annually, primarily flats in multi-storey houses, linked houses, and row-houses; in the small towns and in the hunting districts many single-family houses are still being built however.
>
> "There are approximately 13,000 housing units in Greenland, about one-half of them are owned by the State and let to the population, while the other half is privately owned single-family houses or municipal housing facilities for letting. The housing facilities in Greenland are relatively new, and only 2,500 housing units, approximately, originate from before 1953.
>
> "Although many dwellings have been built over the last 25 years, there is still a great demand for housing in most of the towns, this is because large numbers of young people are now annually appearing, looking for housing, at the same time as, due to the economic developments, the annual construction of housing is reduced, as compared to the 1960s and the beginning of the 1970s."

145. Reference has been made above 41/ to the case of Sweden where certain restrictive provisions were replaced by positive measures. The relevant information is as follows:

"According to the reindeer pasturage law, the herding Lapps were not to live in anything but dwellings of 'Lapp type' - tents with an open hearth, áran, and open smoke-hole, raeppen. The restriction could not be enforced. The first dwellings of comparatively modern type were built illegally at the big viste at Rensjön. For a long time the building of modern housing was prevented by the pasturage law and the officials of the Lapp administration."

"Nowadays certain local authorities have broken with tradition and had fairly modern dwellings built for the nomads. The municipality of Karesuando has led the way. But slum-like housing still exists, particularly in the villages north of Torneträsk, which lies within the municipal area of Kiruna. An improved housing standard is on the way, however, especially since the National Union of Swedish Lapps, as well as the press, radio and television, have shown up the bad conditions.

"Of recent years, too, herdsmen's huts have been built in fairly large numbers. Building and equipment costs, at prices for the year 1961, amounted to nearly $2.7 million. Since 1961 further amounts have been invested, particularly in the villages north of Torneträsk, where the Labour Market Board has invested $1.1 million for technical development within the area".

146. The Mexican Government reports that, in order to deal with the difficult housing situation there are bodies which undertake people's housing programmes - some for workers, others for the rural population - such as the National Institute for Community Development, which has built dwellings with the use of available credits in some indigenous communities. The Government further reports that, in addition, the National Institute for Indigenous Affairs, acting through the legal departments established in the Indigenous Co-ordinating Centres in each inter-ethnic region, and the Department for Extramural Studies in the Indigenous Environment, acting through the Indigenous Agencies located in the areas provide advisory and management services in this connection

147. It goes on to say that the same policy is applied and the same measures adopted for indigenous and non-indigenous groups with regard to access to housing, in accordance with development plans, whether public or private.

"Through rural development programmes, the Public Investment Programme for Rural Development (PIDER) has granted recoverable credits for the procurement of house building material. As part of the normal programme of the Indigenous Co-ordinating Centres, under the section Assistance to Communities, credits have been granted for building material procurement with recoveries from 50 to 100 per cent.

"As already mentioned, the National Institute for Community Development (INDECO), through house building programmes, has carried out house building work in inter-ethnic zones, in accordance with requests from state governments.

"Housing improvements and repairs are carried out by the Indigenous Co-ordinating Centres, in their normal housing improvement programmes and special programmes of the state governments and federal agencies.

"Grants and loans are dealt with under the integrated programmes of the Public Investment Programme for Rural Development, through the National Institute for Indigenous Affairs, for housing repairs and improvements.

"There are no special subsidies for these purposes."

41/ See para. 55 above.

3. Special housing schemes for indigenous populations

148. On public measures taken to alleviate the problem of inadequate housing, the Finnish Government has stated that:

> "In order to improve upon the economic conditions and the housing of those, including the Lapps, who carry on reindeer breeding, certain arrangements were made possible by the Reindeer Farming Act of 19 September 1969, No. 590. According to this Act, grants and loans can be conferred to facilitate the acquisition of land and construction of housing."

149. On grants and loans which have been received by persons or groups engaged in reindeer breeding and as regards the absence of information on the percentage of such grants and loans that have gone to Lappish applicants or beneficiaries, the Government stated in 1974 that in accordance with the Reindeer Farming Act of 19 September 1969, loans for housing have been granted as follows: The total amount of loans have been Fmk 45,000; in 1970, Fmk 85,700, in 1971, Fmk 65,000, in 1972, Fmk 56,400, in 1973. In addition, loans were granted for paying a redemption price to brothers and sisters Fmk 18,500 in 1972 and Fmk 37,500 in 1973, for providing electricity Fmk 7,500 in 1973, for buying movable property Fmk 34,000, in 1973 and for building Fmk 25,000, - in 1973. There are no statistics indicating what percentage of those who have benefited by these measures belong to the Lapp populations since no distinction is made on ethnic grounds.

150. Concerning arrangements for the provision of housing to non-reindeer breeding groups of the Lapp population, the Government of Finland referred to its statement quoted in paragraph 44, above.

151. In order to help the Lapps to obtain satisfactory living accommodation, the Government of Norway has introduced special measures in the main Lapp districts of Inner Finmark. These measures include advice to home builders, loans and grants. For example, special local government officials have been appointed under the County Governor of Finnmark for the purpose of giving advice to those building homes in these areas. Moreover, according to their needs, home-builders may obtain interest-free and instalment-free loans on certain conditions, and these loans usually cover a substantial share of the construction costs. The loans remain free of interest and repayment by instalments as long as either the person to whom the loan has been extended or his/her spouse owns the house and uses it as a dwelling. Furthermore, special funds are made available every year in the Lapp districts in Nordland, Troms and Finnmark in the form of grants for housing improvement. In the Report to the Storting No. 99 for 1969-70, of Recommendation to the Storting No. 40 for 1970-71, the Housing schemes are described in detail. From autumn 1970 when these housing schemes were introduced, up to the end of 1973 the Ministry of Local Government and Labour has granted a total of 10.2 million Nkr in the form of interest-free and instalment-free loans for in all 254 dwelling-houses.

152. In India a number of States have passed legislation or issued orders with a view to conferring on the members of Scheduled Castes and Tribes the ownership of the land they occupy. But such measures are still inadequate and in any case are not fully enforced. Allocations have been made for the allotment of building land to Scheduled Castes under central and state plans; only West Bengal has such a programme for the Scheduled Tribes. "...".

153. Reasons given for the poor results achieved are "First of all, in the planning stages in his report for the year 1965-66 the Commissioner for Scheduled Castes and Scheduled Tribes noted that the Government's recommendation to carry out a socio-economic survey prior to the opening of any tribal development block had been only partly followed by the state authorities concerned, and that in a number of instances the programmes had failed to take adequate account of the real requirements of the population. This led to the expenditure of funds on projects of little utility; houses were built but people would not live in them; roads were built only to be washed away in the rainy season; basketry centres were started where there were no bamboos, and so on." 42/

154. As regards housing loans available in India, one source indicated that:

> "For the construction of houses more than 50 per cent of the loan is given by the moneylender. About 25 per cent is given by the government, about 8 per cent by the co-operative societies and the remaining 10 per cent or so by the other agriculturists." 43/

155. Concerning the construction of housing for indigenous populations in Brazil an official publication 44/ states that in 1972 FUNAI commenced construction of 1,537 houses for the Indians living in Indian posts in the 3tates of Parana, Sao Paulo, Santa Catarina and Rio Grande do Sul. During the "week of the Indian" (April 1972) the first 119 houses were handed over to tenants.

156. In Malaysia the work programme of the Department of Orang Asli Affairs includes the planning and constructing of model settlement schemes thereby ensuring proper housing facilities for selected Orang Asli groups. The Department carries out, among other functions, the construction of model housing schemes and clinics, schools, school hostels, offices, stores and community halls. The number of Departmental construction teams, which are mainly composed of Orang Asli carpenters, brick layers and skilled workers, is being increased from 5 to 10 in order to cope with the increasing workload.

157. Progress reported under the Second Malaysian Plan (1971-1975) up to June 1973, listed "347 units" under "Houses for Orang Asli". Three hundred and thirty-five new units were included as planned for the second half of the Second Malaysia Plan, that is, from June 1973 to 1975.

158. In this connection, the "Pasokan Pembena" or Orang Asli Work Brigades, which have been very active in the construction of all kinds of buildings on Pattern Settlements for Orang Asli, are of special interest here. These Pasokan Pembena or building brigades are made up of Orang Asli workers, which include carpenters, masons and other skilled workers who travel from one indigenous settlement to another in the jungle, building dwellings, schools, clinics, inns, shops and offices. During his official visit to Malaysia in June 1973, the Special Rapporteur had the opportunity of inspecting the housing projects in various communities. He was able to see that the houses and buildings in the jungle posts he visited were adequate for their purposes; they offered a clear example of the efforts being made to provide the Orang Asli population with adequate housing.

42/ J.P. Arles, "The Economic and Social Promotion of the Scheduled Castes and Tribes in India", in International Labour Review, volume 103, No. 1 January 1971, p. 41.

43/ M.G. Kulkarni. Problems of Tribal Development, A case Study, Harsul Blok, Nasik District (Maharashtra). Cokhale Institute of Politics and Economics, Bombay, India, 1968, p. 138.

44/ Assessoria de Relaçoes Publicas de Fundaçao Nacional do Indio (Public Relations Office, National Indian Foundation). Funai em números. Brasilia, D. F., July 1972, p. 6.

159. For most of the present century New Zealand has had a very widely used State Advances Corporation (a Government corporation) to which citizens, whether Maori or non-Maori, can apply for loan finance for housing purposes at reasonable rates of interest, such loans being secured by a first mortgage of the property. By the 1930s it was apparent, however, that the general standard of Maori housing was considerably below that of the rest of the community. At that time, the great majority of the Maori people were living on tribal land in rural areas. Because of the multiplicity of owners in the tribal or family lands, it was rarely possible for a Maori to obtain a housing loan and it was obvious that special measures had to be taken. This led to the passing of the Maori Housing Act 1935.

160. The Government has communicated that:

"Under this Act a sum of money was set aside annually to be administered by the Department of Maori Affairs to enable Maoris to obtain loan finance for housing on the security of Maori lands. With some amendments which do not affect its thrust, that Act is still in force. The programme administered by the Department provides special services not available through the State Advances Corporation. For example, the Department operates a convenient system of housing deposits under which a Maori intending to build a house may make weekly deposits from his wages into an account held by the Department until he has accumulated sufficient funds for the initial deposit on a building allotment. The Department also provides architectural services and plans at a much cheaper cost than would be obtainable elsewhere.

"An interesting development resulting from the massive migration to the cities since the Maori Housing Act was first passed, is that relatively few houses are now built on Maori land and it is necessary for building lots to be obtained in the cities. To meet the demand the Department buys building lots as they become available and from these Maori families are able to choose the one they prefer. They may also purchase a building lot privately if they so wish. The houses built under the Maori housing programme are fully up to the standard prevailing in the community at large.

"Whether in town or country, the policy of the Department has been to spread Maori houses throughout the community and as a general rule no more than three houses are built adjacent to one another. The annual programme is for between 500-600 houses per year. A new programme commenced a few years ago provides for the special case of elderly Maoris who have been living or decide to reside in their traditional tribal areas. Government funds are available for the Department to build small apartment blocks adjacent to the marae (tribal centre), which are rented to elderly people at a low rental."

161. The New Zealand Government has stated that:

"The amount of finance allocated this year [1973] for the Maori housing programme is $7,663,000.

"Except in the case of apartments for elderly people, no special provision is made for rental houses for Maoris. There is, however, a large scale programme of State-owned moderately-priced rental housing which is available to all citizens within appropriate income limits. These houses are located in urban areas throughout New Zealand. Between 700 and 800 Maori families per year are allocated rental houses.

"In addition to houses made available under the Maori housing programme and the State rental housing programme, many Maoris nowadays obtain loan finance for housing through the State Advances Corporation and other lending institutions. The known figure of Maori families moving into new houses has been about 1,500 families per year in recent times. This figure applies only to housing obtained from Government sources; an increasing number of Maoris obtain housing from other sources. The actual general total of new houses would therefore be somewhat higher.

"Loans are granted under the Maori housing programme for the improvement and repair of buildings already occupied.

"The standard of Maori housing and household amenities can be gauged by census statistics. Unfortunately the 1971 census figures are not yet available for housing, but the 1966 figures show the state of affairs seven years ago and there is no doubt whatever that the position has improved since then. The following are the 1966 figures:

"Proportion of Maoris who owned their own homes (with or without mortgages) (Note: the balance of homes were mostly rented)	50%
"Proportion of Maori homes with electric or gas facilities	72%
"Proportion of Maori homes with piped water supply installed	78%
"Proportion with hot water service installed	92%
"Proportion of homes with flush toilet	77%
"Proportion of homes with refrigerator	79%
"Proportion of homes with electric washing machine	72.9%
"Proportion of homes with telephone	55.8%
"Proportion with bath or shower installed	90.7%
"Proportion of homes with radio	79%"

162. During the Special Rapporteur's official visit to New Zealand (June 1973) all persons who mentioned housing problems agreed that the Government "pepper potting" or "house-spreading" policy had helped in preventing segregation, and the widespread surgence of ghetto-type sections in towns. Many persons, however, conveyed to the Special Rapporteur their regret that this policy was preventing the Maori population from keeping their communal ties and from having easy access to the local Maraes. 45/ In fact, some of these persons believed this policy to be a deliberate "Pakeha" (European) attempt to lessen these ties and provoke the absorption of Maoris into the general European community.

45/ Similarly, the Citizens Association for Racial Equality, a New Zealand Non-Governmental Organization has indicated that "the 'pepper potting' system has come under much criticism from Maoris who would prefer to maintain communal ties by retaining a higher Maori density of housing".

163. Subsequently, the Government has transmitted information to the effect that the so called "pepper potting" policy of distributing Maori houses throughout the urban communities rather than in a solid block has been very much affected by circumstances prevailing in new housing subdivisions. In such subdivisions, the Maori and Island Affairs Department tried wherever possible to acquire building sites in groups of two, or three throughout the subdivision. It is frequently the case that other building sites in the same subdivision are used for state rental housing and for sale to private purchasers. A fairly high proportion of families moving into State rental houses happen to be Maoris or other Polynesians and some of the private purchasers are also Maoris or other Polynesians. The result is that in such areas the density of Polynesian people generally is very much higher than would be expected from the "pepper-potting" policy. It is interesting to note that enquiries amongst Maori families tend to show that their opinion is divided as to whether they would prefer to live in a group or separated from other Maori families. It is clear that housing in solid communities is looked upon with disfavour by a large proportion of Maori families moving into the cities. So far as access to a marae is concerned, the Government is giving substantial financial aid to urban Maoris for the establishment of marae in their areas. If, as some people seem to have told the Special Rapporteur, the "pepper-potting" policy were "a deliberate attempt to lessen these ties and provoke the absorption of Maoris into the general European community", it is surely contradictory for the Government to be encouraging and assisting the formation of maraes in the very areas where homes for Maoris have been built."

164. The reported construction of apartment blocks for the aged should be noted in this connection.

165. In connection with an assertion that little had been done to provide new suburbs with adequate community services, and especially urban maraes, the Government has stated that since 1971 it has had a programme of financial assistance towards the erection of Maori centres or marae in the thickly populated urban areas. The amount voted for this purpose in the 1974 financial year was $150,000. Subsidies are paid at the rate of $1 for $2 raised by the community. A number of marae projects were in the course of construction and some had been completed.

166. In Australia there are housing programmes for the aged, the provision of hostels in certain areas and general housing programmes.

(a) The general housing programmes include the provision of funds by the Federal and State Governments for public housing projects and subsidies given to Aborigina Housing Societies on reserves or in remote communities. It has been reported that although there is a very substantial backlog, much work is being done in this respect throughout the country. The Commonwealth Government also provides funds for Aboriginal housing in the Northern territory.

(b) Under the Housing for the Aged schemes there is an Aged Persons Homes Act under which the Federal Government contributes two thirds of the necessary funds to provide housing for the aged, and the other third is to be raised by public subscription. An Aboriginal Aged Persons Homes Trust had been established, to raise the non-governmental third of the funds for housing for aged aboriginals, and a Board of Seven Aboriginals recommends on how the trust funds should be spent. It has "been wound up because experience showed that it duplicated effort in other programmes and, for various reasons, could not carry out its function effectively. The Trust's remaining cash assets have been transferred to Aboriginal Hostels Ltd. to be used for the acquisition and construction of hostels for aged Aboriginals. Direct grants from the Aboriginal Advancement Trust Account will continue to be made to housing associations for housing aged persons".

(c) The Government has reported that the programme for the provision of hostels has been helping aboriginals in the solution of their housing needs in some areas:

> "Many Aboriginals live in remote areas or small country towns where there is often a lack of satisfactory employment, and little or no opportunity to undertake secondary or tertiary studies or special training courses. The Commonwealth Government is attempting to stimulate the development of such areas but, at the same time, by providing funds for the establishment of hostels at major developing centres, the Government is enabling those Aboriginals who so wish to move to such centres for further education, vocational training or employment. The Government makes direct grants from the Aboriginal Advancement Trust Account to voluntary organizations, including Aboriginal organizations, which establish and operate employment, vocational or educational hostels. In 1972/73 an amount of $650,000 was set aside for this purpose. Funds are also provided for the same purposes through the annual grants to the States."

167. During his official visit to Australia in June 1973, the Special Rapporteur visited two housing developments in a big urban centre. One comprised many modern and well built homes which had been constructed on a large tract of land. These homes had all modern facilities and were in a prime area. The other project was located in a downtown area. With funds provided by the Federal Government, an aboriginal association had acquired title to a whole block of houses, divided by a passage in the middle. The association, which was in the process of incorporation, was slowly reconstructing the buildings, many of which were in ruinous conditions. The association's efforts were, however, hindered by the opposition of the local authorities who were not co-operating in the necessary measure for needed work in connection with water and sewer services. Trash collection services had not been made available for cleaning of the passage-way.

168. In 1975, the Government stated that:

> "The Redfern Aboriginal Housing Association project has been proceeding satisfactorily, with the co-operation of the local authorities, which some time ago resumed garbage collection service".

169. During that official visit the Special Rapporteur also visited two housing projects located in other areas. One of them was in Maningrida, a rural community where the members of the communal council communicated to him that several homes which had been built several years before, were lacking essential services and had, therefore, never been fully in use. The Council members stated that in order to solve some of their housing problems, new homes with all the necessary services should be made available, and the lacking services installed in the old homes so that they could be put fully in use. The other project was located in Darwin and provided houses for aboriginal families established there, as well as temporary shelter in hostel-like manner for aboriginals who came to town for short visits. Both types of buildings and services (homes and hostels) seemed adequate for their respective purpose.

170. In connection with these two projects, the Government stated in 1975 that:

> "The Aboriginal housing association at Maningrida is directing the provision of houses and the supply of electricity and water services to them. The association employs expert architectural advice and skilled building supervisors and is carrying out a development programme designed to provide substantial numbers of new houses with all services provided.
>
> "The cyclone which struck Darwin in December 1974 severely damaged accommodation at Bagot but the new houses built by the housing association stood up well and are being repaired. The housing programme there will be resumed as soon as practicable".

171. The Canadian Government states:

"No special legal provision is made to protect native rights in regard to housing off the reserve, but property on the reserve may not be alienated from Band use.

"A five-year plan to provide additional housing for Indians on reserves was begun in 1966, and fairly extensive construction of new houses has taken place. Indian Bands are encouraged to take a greater part in the administration of continuing housing programs, under a Departmental grant system or by using Band funds along with CMHC loans.

"A rental housing scheme for the north, where construction and heating costs are abnormally high, was begun in 1966. It provides a 3-bedroom house with heat, light, sewer and water services to Indians and Eskimos at a rental geared to their income, the rental beginning at $5 a month. There is a parallel program for Métis and low-income whites. In the Northwest Territories, about 2,500 houses were built under these two programmes by the end of 1972, with an average annual over-all cost of $1,800 per unit, and an average return in rent of $250. In the Yukon Territory a rental-purchase program has been set up, to provide houses for Indians and low-income whites, with a forecast capital cost of $8 million.

"Some provinces also enter into housing schemes for native groups. Newfoundland has a house construction program, as has Arctic Quebec. The Alberta Government has initiated a housing program for the Métis population, the work being done by the community.

"Water and sanitation systems on Indian reserves are being constructed by the Department, with an outlay of $9,102,000 for this purpose in 1973-74. Extending electric power to Indian reserves cost the Department $1,598,000 in the same year, and brought the percentage of reserve homes with electric power services to 83 per cent."

172. According to a source: 46/

"Subsidy housing was introduced in 1962. It was designed to provide all Indian families capable of a personal contribution with houses of a minimum standard. Houses were constructed according to designs prepared by the Departmental Engineering and Construction Division. The personal contribution from the Indian was a small cash contribution and his labour for construction. The house size ranged from a minimum of 287 square feet to 600 square feet, according to the size of the family. Privacy was again limited and funds to build even these small, low-cost units were hard to obtain.

"... The average cost per unit under this program, considering funds from the Government, Band funds, and personal contribution, totalled $3,667.

"In the fiscal year 1971-72, the Department of Indian Affairs Housing program called for the construction of 1,933 new units and 500 renovations. In the fiscal year 1972-73, the Department of Indian Affairs Housing program called for the construction of 2,400 new houses and 1,000 renovations.

46/ Declaration on Indian Housing. Policy paper by National Indian Brotherhood. Ottawa, Ontario, 1974, pp. 5 - 9 and 11.

"Under the loan agreement between the Central Mortgage and Housing Corporation and the Department of Indian Affairs, loans to Bands produced the following:

YEAR	LOAN	UNITS CONSTRUCTED
1970	$1,673,000	133
1971	$1,916,000	122
1972	$1,282,000	164

"Under the loan agreement between the Central Mortgage and Housing Corporation and the Department of Indian Affairs, loans to individuals produced the following:

1970	$ 415,000	54
1971	$ 483,000	72
1972	$ 426,000	43

To date, the backlog of needed houses is approximately 10,000 units. Within the next five years, due to new family formations, this figure will increase to approximately 15,000."

"The recent 1973 Department of Indian Affairs housing survey reveals that approximately 10,000 Indian families need homes and approximately 5,000 houses need major repairs.

"Program:

"At present there are four Department of Indian Affairs housing programs

(i) Subsidy Housing Program,
(ii) Band Administered Housing Program,
(iii) Indian On-Reserve Housing Program,
(iv) Indian Off-Reserve Housing Program.

"All are narrow in scope and fail to accurately consider the local situations.

(i) The Subsidy Housing Program at present provides for a maximum subsidy of $10,000 for the construction of single dwelling units. This figure of $10,000 is arbitrarily chosen. It is based on no known housing standard. In order to be effective, the costing and funding of house construction must be based on factual information.

(ii) The Band Administered Housing Program is to permit Bank Councils to undertake their own housing programs within the standards and criteria established for the Subsidy Housing Program administered by the Department. No alternative is developed by this program, other than the Band having token control on the administration of funding and no input in the budgeting process.

(iii) The Indian On-Reserve Housing Program involves loans from Central Mortgage and Housing Corporation for construction of houses on reserves ...

(iv) The Indian Off-Reserve Housing Program provides assistance to an Indian who is regularly employed away from his reserve, by securing a Central Mortgage and Housing Corporation first mortgage loan, as well as a forgiveable second mortgage loan from the Department of Indian Affairs. Because this program involves Central Mortgage and Housing Corporation, Department of Indian Affairs, Veterans Land Act, and frequently a lawyer and/or a real estate agency, unnecessary administration delays and problems hamper its effectiveness."

173. In this regard, some sources believe that: 47/

"The programs of the past have clearly failed to provide either durable or adequate housing for Indian people. Millions of dollars went into housing which was constructed to such a low standard that, in the marketing parlance of today it would be known as "disposable" housing. The concept behind this notion presumably was that the housing was intended for "disposable" people. Given the rate of inflation over the years (a $2,357 house in 1945 and a $10,000 "subsidy" in 1975) the current program appears to preserve the original concept in a slightly different form. The assumption that Indians have the financial resources to supplement a $10,000 subsidy in communities where credit is rarely available and urban market dynamics do not operate, is to offer Indians, in effect, a $10,000 house. To propose any new policy (as DIAND and CMHC are doing) which assumes that Indians have the financial resources to operate within the provisions of the National Housing Act, even to a limited degree, is to deprive them even of $10,000 houses.

"To introduce a new program in 1975 which is certain to be declared a failure in 1981 will only add to the growing backlog of housing need and to the misery of Indian families. It is a failure which neither the Federal Government nor Indian people can afford. Indeed, the costs which would be exacted by such a failure is one that Indian people are no longer prepared to pay. These are costs which, unfortunately, can only be expressed in abstracted statistics and not in the innumerable and real traumas suffered by Indian families. Inadequate, overcrowded and essentially primitive housing conditions which prevail in Indian communities have a direct impact on family stability, educational achievement, health and motivation."

174. According to information furnished by the Government of the United States:

"Under an agreement with the Housing Assistance Administration (HAA) of the Department of Housing and Urban Development, tribal governments and tribal housing authorities are helped in developing and managing public housing programs until they have the experience and staff to operate on their own.

"Through the more than 100 local Indian housing authorities the Department of Housing and Urban Development (HUD) has been producing housing under the 1937 Housing Act, as amended. 48/ Under a joint agreement among HUD, Bureau of Indian Affairs and the Indian Health Service, a level of effort of 6,000 units a year was established for five years. The main housing produced under this agreement has been mutual-help housing, homeownership programs such as Turnkey III and the conventional low-rent programs. In each of these programs, the local Indian housing authority and HUD enter into a contract through which HUD gives financial assistance for housing to be rented at rates based on the low-income occupants' ability to pay.

47/ Memorandum to Cabinet: Indian Housing National Indian Brotherhood, 1975, pp. 5-6.

48/ In connection with the 1937 Housing Act, see the information quoted above according to which American Indians living on reservations were not able to participate in this programme until 1961, when it was amended (para. 120, above).

"Conventional low-rent and Turnkey III programs in Indian communities operate the same as they do in non-Indian communities. The local housing authority (with HUD approval of plans, specifications, and costs) contracts with a private developer and in some cases an Indian housing development enterprise. These contracts are called "annual contribution contracts." In conventional low-rent housing the dwellings are rented to low-income families with HUD's financial assistance payments being made over the 40-year period during which the development cost of the project (financed by the local housing authority's sale of bonds to private investors) is retired. In Turnkey III projects the dwellings are rented for a 25-year period during which the occupants can earn the right to own their dwelling after the 25 years by performing their own maintenance.

"In the mutual-help program HUD provides the Indian housing authorities with the cost of building materials and specialized labor. The participating Indian families donate their own labor as a down payment and perform their own maintenance to permit a reduction in the monthly payment for the dwelling. This program is also a homeownership program and was devised and perfected by the BIA and HUD.

"As of June 30, 1973, some 25,000 new housing units have been completed. Of this total, some 15,000 new units are the result of the joint agreement mentioned above. The remainder of the national commitment under this joint agreement should be started by June 30, 1975. The Bureau of Indian Affairs operates a Housing Improvement Program intended to improve existing housing and to build some new housing for the most needy Indian families who do not qualify for other housing programs. Since it was introduced in fiscal year 1964, through fiscal year 1973, nearly 20,000 existing units have been improved and approximately 2,800 new units have been built. Some 3,300 homes are expected to be improved and approximately 560 new units built during fiscal year 1974.

"About 1,000 units a year are built on Indian lands using conventionally financed housing programs such as Farmers Home Administration, Federal Housing Administration, Veterans Administration and tribal credit programs. Water and sanitation facilities for Indian homes are generally provided by the Indian Health Service of the Department of Health, Education and Welfare."

175. In connection with the information contained in the preceding paragraph the following may also be quoted: 49/

"The General Accounting Office Report "Slow Progress in Eliminating Substandard Indian Housing" emphasizes a Bureau of Indian Affairs 1967 commitment to eliminate substandard housing on Indian reservations during the 1970's. Had the 8,000 unit per year commitment been fulfilled and extended for another five year period, the Bureau of Indian Affairs' pledge may have become a reality; but 8,000 units have not been built or renovated yearly. The commitment expires June 30, 1974, and it is estimated by the Housing and Urban Development alone that its production level will fall far short of the 1969 commitment. In fact, a HUD spokesman recently stated that in FY 74 only 3,100 will go into contract with Indian housing authorities. Moreover, at the beginning of FY 74, HUD was 15,600 units short in terms of construction starts. Falling short of the original commitment and actual construction even further behind, the GAO's 1971 pessimistic conclusion is becoming a reality:

49/ American Indian Law Newsletter, Vol. 7, No. 11, loc. cit., pp. 29-33.

'In 1971 that GAO stated that, "The Bureau's goal to eliminate substandard Indian housing on reservations in the 1970's will not be achieved unless the program is accelerated substantially".'

"Even with the commitment of the agencies, HUD did not provide adequate funds and staffing so the projected goals could be met. This was obviously a misleading commitment made to Indian tribes, tribal councils, and Indian people as to what HUD was to do.

"At the rate the Housing and Urban Development's production and commitment funding levels are made, the housing needs of the American Indian will not be met in a decade.

"The only major and forward commitment [towards] providing decent housing to Indians on reservations was made in 1969, but this commitment was more an outcome of the budget planning process than a serious reflection of housing needs or goals. Public law 86-121, known as the Indian Sanitation Facilities Act, made the Indian Health Service of HEW responsible for the construction of water supplies, waste disposal facilities, and other sanitation facilities for Indian houses and communities.

"During the latter part of the 1960s with increased housing production on Indian reservations an embarrassing situation developed: namely, HUD-funded, low-rent housing units would be completed, but no one could move in because water and sewer hookups were not available. The problem was a lack of coordination and planning between the responsible agencies. Additionally, the Bureau of Indian Affairs, which is responsible for the provisions of access roads, often had not completed the roads when a housing project was ready for occupancy.

"An attempt to clarify agency functions and to establish procedures for coordinating their services were the reasons for a tri-agency "Memorandum of Understanding" signed in 1969 by representatives of the Department of Housing and Urban Development; the Department of Health, Education and Welfare; and the Department of Interior.

"The agreement required that the Bureau of Indian Affairs, and the Housing Assistance Administration of the Department of Housing and Urban Development were to advise the Indian Health Service of the projected housing starts for the coming in advance in order to ask for the matching funds to accommodate HUD goals in housing production.

"The agreement projects the development of 8,000 units of new and renovated housing units yearly for the five-year period extending from FY 70 through FY 74. Of the 8,000 units, HUD was responsible for 6,000 units of new housing, the BIA for 1,000 units of new or improved housing, and the tribal groups would produce another 1,000 units of new housing; this was a national commitment to Indian housing.

"Although the three major agencies have a memorandum of understanding, there are other governmental agencies involved:

'...

[The following agencies are listed in this connection: The Army Corps of Engineers, the National Park Service, the Department of Transportation and the Department of Labor]

"The failure of coordination among the Federal agencies is based on eight different reasons:

'...

[1. Jurisdiction of Agencies; 2. Funding of Agencies; 3. Inter-agency Organization Structures; 4. Insufficient Clout; 5. Level of Coordination; 6. Inadequate Indian Involvement; 7. Insufficient Time; 8. Insufficient Involvement in necessary overall coordination].

"This intergovernmental chaos is the result of there not being 'anybody in charge', but it is also the natural outcome of there not being an Indian housing program. The major housing efforts today for rural Indians are through the low-rent, mutual help, and turnkey III programs of the Department of Housing and Urban Development. It cannot be overly stressed that these programs are designed and administered by an urban-oriented agency whose recognition of, or participation in rural areas has been meager. Though HUD has made some sporadic efforts to consider the varying cultural and aesthetic needs of Indian tribes in the design, location, and materials used for their housing, on the whole, the Agency's record in this area is poor. Again, in New Mexico, the many Pueblos have labored with HUD for months over the use of adobe brick, the traditional and sturdy construction material for Pueblo housing. When HUD seemed convinced that adobe was an acceptable building material and even without steel reinforcements, it then brought into dispute the shape of the bricks.

"Another example of HUD's urban orientation is the myth pervading the agency that housing in rural areas is cheaper. But construction costs are high on Indian reservations, often due to transportation of materials and labor. Still HUD persists in assigning non-reservation prototype costs to Indian housing."

176. Discussing the complexities of the problems facing indigenous populations in obtaining mortgage credit for housing, the following has been written: 50/

"Recently, another serious problem affecting Indian housing on many reservations are families -- precisely how many is not known -- whose incomes exceed the limits set for the public housing program. These families are often living in the same deteriorating and inadequate housing as the poorest members of the tribe, simply because there is no adequate housing available. There are several reasons for this situation. First, and this is a problem endemic to all rural areas, there is very little mortgage credit available to those Indian families who could afford to build their own home without Federal subsidies. Secondly, the shallow subsidy interest credit programs of HUD and Farmers Home Administration, designed to serve those families who need some assistance but who are not at the public housing level, are just not serving the reservations.

"The reaction of many tribal councils and Indian housing authorities to this problem has been to seek HUD permission to raise the income limits for families entering public housing. On its face, this solution would make sense. After all, public housing is often the only new housing being produced in any large quantity on the reservations. However, public housing is currently the only program able to serve the poorest persons and families, and that there are too few public housing units on reservations to serve even a small fraction of the poorest Indians, then the idea of placing more moderate income people in public housing units loses its credibility. There are other solutions available.

50/ American Indian Law Newsletter, Vol. 7, No. 11, loc cit., pp. 33-36.

"It is unlikely that private mortgage capital will soon become available on Indian reservations. There are many reasons why private lending institutions do not find the reservations attractive markets, including very low incomes, fear of credit risks, lack of long term development prospects, and prejudice. There is, however, a public program that can provide financing for those families able to afford their own home, and shallow subsidies to those families in need of them.

"The Farmers Home Administration programs offer direct Federal lending; the program provides market rate financing for moderate income families, or interest subsidies for those families unable to qualify for public housing because of higher incomes. Single family home loans are available under the Section 502 program and rehabilitation loans are available under the Section 504 program. A multi-family program is also administered by the FHA, but because of inadequacies in the legislation, this program cannot be used on reservations. Clearly, Farmers Home Administration programs would be valuable tools for improving Indian housing conditions.

"Unfortunately, the performance of these programs on Indian reservations has been less than spectacular. In fiscal [year] 1972, only 417 loans were made on Indian reservations under the FmHA Sections 502 and 504 programs, amounting to $5.8 million. This amount was approximately four-tenths of one per cent of the total number of loans made under these programs in that year. In fiscal [year] 1973, there were 485 loans made to Indians, amounting to $6.8 million, but again this was only four-tenths of one per cent of the national loan volume under these programs. If anything can be noted about this pattern is that it is consistently poor.

"An estimate of the use of FmHA programs by Indians had been made and has been compared to the use of Farmers Home loans by the overall rural population. Over the past two fiscal years, Section 502 and 504 loans have been made to Indians at a rate of 2.1 loans for every thousand Indians living on reservations or in rural areas. For the rural population at large, the rate is approximately 4.3 loans for every one thousand population. While these figures are rough, they do give some indication of the current situation. If the actual need for these loans was taken into account, as evidenced by income levels and occupancy of substandard housing, Indians are seen at an even greater disadvantage although these figures do not specify whether the loans were made off or on the reservation.

"Inadequate use of these programs by Indians cannot be entirely attributed to the Farmers Home Administration and its policies. It was only as recently as 1970 that legislation made rural housing loans available on non-farm leasehold lands. In recent years, the FmHA staff has decreased steadily, at the same time its potential workload has increased. Few county supervisors have the opportunity to travel about and explain the benefits of the FmHA programs to rural Indians, and there have been some county supervisors who have been reluctant to loan to Indians. Basically, there is ignorance on both sides. Unfortunately, few BIA housing personnel have made the necessary effort to explain the program to Indians or to explain Indian concerns about the program to Farmers Home Administration.

"Various Indian tribes are reluctant to participate in the rural programs of the FmHA because the leasehold agreement could, in the likelihood of loan default, result in alienation of Indian land. Yet the leasehold agreement is exactly the same as that used for HUD public housing and other programs. Additionally, Indian tribes have said that, unlike local tribal administration of the public housing program, the FmHA programs are administered by non-Indian Federal employees. This may be a concern when a loan goes into default, though there is a potential remedy for this concern."

4. Imposition of non-traditional patterns of housing on indigenous populations

177. As has already been noted 51/ in the opinion of the Anti-Slavery Society, the housing situation is much better in Paraguay "for those Indians who still live in houses, huts or shelters of a traditional kind, where sufficient space is provided for the families." This is not an isolated case, there are many examples of similar situations.

178. The desire on the part of public authorities and private enterprises in many countries to impose non-indigenous housing patterns on indigenous people has often resulted in marked failure, particularly where these changes are not warranted by the circumstances of the specific cases. The following are some examples of such unsuccessful changes imposed on indigenous populations in a few countries.

179. During the Special Rapporteur's visit to Bolivia in June 1974, the existence was noted, in the township of K'ausaya, of sectors which showed two well-defined types of population settlement: one which followed a pattern of concentrated housing, with houses ranged side by side in streets and avenues; and another organized according to the notion of scattered housing, with houses surrounded by a family plot. It was explained to him that, in order that the community could be provided with the basic services of drinking water, drainage and electricty at reasonable cost, the first-mentioned "concentrated" type had been officially promoted. It could be observed, however, that in that section of "concentrated" housing there was much more evidence of accumulation of refuse and waste near the houses than in the sector of "scattered" housing. The Special Rapporteur was informed that scattered housing, still preferred by the local inhabitants since it resembled what was said to have been the traditional pattern in that regard, had been abandoned only because regular electricity, drainage and drinking-water services would be available only in the concentrated sector.

180. According to an official publication 52/ traditional housing arrangements at village stage consisted often of a single large house, rectangular or circular in shape, with open compartments for individual family units. It is asserted that this type of community was found among the Wai-Wai until the early 1950s, a whole community living in a single large conical house, with a second house in which festivities were carried out. It is added, though, that today, however, the Wai-Wai have been persuaded to abandon this type of settlement pattern by the missionaries, who claimed that it was conducive to some kind of "immorality". Now the Wai-Wai live in individual houses, often built on the traditional pattern. 53/

181. During his visit to Mexico in July 1977, the Special Rapporteur noted, in the first Huichol community which he visited in Jalisco, that the housing units built for the indigenous population did not conform to the traditional pattern, either in the way they were laid out or in regard to interior arrangements. Having mentioned

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51/ See para.113, above.

52/ A brief outline of the progress of integration in Guyana, published by the Ministry of Information and Culture of Guyana, January 1979, p.6.

53/ Ibid. It is further reported that "in spite of tribal divisions (based mainly on language and to a lesser extent on culture), the traditional political unit of Amerindian Society is the village, rather than the tribe. Villages can be of any size, and can vary in population from less than a hundred to several thousands. Often, in the old days, a village consisted of a single large house."

this aspect to the authorities accompanying him on his visit, and having confirmed that the local inhabitants wished to return to that pattern, the Special Rapporteur was told that efforts were being made to correct such irregularities. The Special Rapporteur would be grateful to receive information on the matter.

182. The Government provided (1980) the following information concerning the fact that, in accordance with standards now in force, housing units built for indigenous groups were to conform to the traditional housing pattern of the settlements where such programmes are being developed.

> "In the Agreements established by the Co-ordination of National Planning for Depressed Zones and Disadvantaged Groups, with the Secretariat for Human Settlements and Public Works, in which they undertake to co-ordinate their activities in establishing and operating the 'SAHOP-COPLAMAR Programme' for the improvement of rural housing, clause 5 established the characteristics of rural housing, in which 'the undersigned parties undertake to respect the characteristics, customs and ways of life, with regard to housing, of the inhabitants in the settlements where the programme is being carried out.'"

183. The comments on government programmes to resettle the indigenous peoples into model villages, 54/ to the effect that they are framed in such a way as to be incompatible with traditional life, both in the materals used and in design, and that they fail to observe the overriding principle of minimum disruptiveness, together with the conclusion that this makes them inevitable failures, should be borne in mind in this connection. It is considered useful to reproduce here some additional comments on the subject:

> "It is in the area of housing that government plans exhibit most explicitly the intention to change as soon as possible the traditional ways of life. In many areas of Indonesia, and especially in Kalimantan, this is a continuation of Dutch colonial practice where there was a systematic campaign against long houses which were burnt down. This has occurred in specific areas, not as official government policy, but rather enthusiasm on the part of local functionaries sometimes fuelled by a religious fanaticism." 55/

G. Need for consultation with, and participation of, indigenous populations in housing schemes

184. It is obvious that more indigenous input is needed if indigenous housing is going to improve. Consultation with and contributions by indigenous populations are then clearly needed in order to ascertain the situation and the needs as they themselves see them, as well as to give the control of indigenous housing, or significant participation in it, to indigenous populations so that its implementation conforms to their own traditions and plans. There is also the need to increase the involvement of indigenous personnel in, and to provide them with training for, the necessary operations.

54/ See para.107, above.

55/ Ibid.

185. In some countries there seems to exist some degree of indigenous consultation and participation in certain aspects of housing projects.

186. It was stated above that in Australia the Commonwealth Government provides funds for the establishment of Aboriginal Housing Societies on reserves and in remote communities. The Aboriginal groups are involved in design and material decisions as well as in actual construction using as much local material as possible. To date 15 societies have been established and others are being formed. In 1972/73 the Government set aside an amount of $400,000 for grants to housing Societies. A panel of the Royal Australian Institute of Architects has been established, following a seminar to help co-ordinate research and development programmes. The Government has communicated that over 100 Aboriginal housing associations have been established in the country and that in 1973/74 some $8 million was granted to housing associations and over $13 million was provided in 1974/75 for this purpose.

187. According to an article published in 1975, there seems to have been some degree of consultation regarding a proposed text of housing rules in the United States:

> "The Department of Housing and Urban Development (HUD) published proposed regulations on Indian housing in the September 19, 1975 Federal Register. The proposed regulations are the result of HUD's review of Indian housing programs in consultation with Indian people. These regulations were drafted by an interdepartmental working group from the Bureau of Indian Affairs (BIA), Indian Health Services (IHS) and HUD. Before they were published a tentative draft was sent to all Indian Housing Authority (IHA) offices for review." 56/

188. The First Inuit Circumpolar Conference adopted a resolution demanding control by Inuit people of some of the activities and the provision of adequate means of transport so that they could themselves act efficiently in those endeavours. Resolution 77-10 reads:

> "WHEREAS, housing in many parts of the Inuit world is deplorable; and
>
> "WHEREAS, water, sanitation, electricity and communication are generally inadequate; and
>
> "WHEREAS, management and maintenance of utilities and communications is often not in the hands of Inuit users; and
>
> "WHEREAS, transportation and fuel supplies are much in demand, are generally not at hand and are serious problems;
>
> "NOW, THEREFORE, BE IT RESOLVED THAT:
>
> 1. monies for housing be distributed to the Inuit themselves for housing design, materials and labor;

56/ Curtis Berkey and Loretta Lehman, "HUD publishes proposed Indian Housing Rules", in American Indian Journal, vol.1, No. 2, 1975, p.20.

2. control and planning of utilities and communications be given to Inuit users;

3. Inuit have control of monies for the management and maintenance of utilities to determine priorities in their villages;

4. all necessary resources be made available to Inuit to solve high fuel cost and transportation problems; and

5. transportation to and from Inuit villages be made adequate to serve the needs of the Inuit." 57/

57/ This resolution is of a general character (see chapter IV, paras. 22 and 24 (i)).

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Item 11 of the provisional agenda

STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST INDIGENOUS POPULATIONS

Final report (last part) submitted by the Special Rapporteur,
Mr. José R. Martinez Cobo

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CHAPTER XIII

EDUCATION

A. International provisions

1. The International Bill of Human Rights includes, under a number of headings, provisions relating to education. The Universal Declaration of Human Rights contains specific references to education in the following provisions:

> "Article 26 (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
>
> "(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
>
> "(3) Parents have a prior right to choose the kind of education that shall be given to their children."

2. The International Covenant of Economic, Social and Cultural Rights also deals with certain aspects of the right to education in the following terms:

> "Article 13 (1) The States Parties to the present Covenant recognizes the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
>
> "(2) The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
>
> (a) Primary education shall be compulsory and available free to all;
>
> (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
>
> (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
>
> (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools, at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

"(3) The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

"(4) No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

3. Article 27 of the International Covenant on Civil and Political Rights, the text of which is reproduced below, contains implicit references to cultural, religious and linguistic aspects of the right to education of members of the ethnic, religious, and linguistic minorities with which the article deals in the following terms:

"Art. 27. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

4. Other international declarations, agreements and conventions contain provisions referring to education and to discrimination in education. The United Nations Declaration on the Elimination of all Forms of Racial Discrimination states that:

"Article 3 (1) Particular efforts shall be made to prevent discrimination based on race, colour or ethnic origin, especially in the fields of civil rights, access to citizenship, education, religion, employment, occupation and housing.

"(2) Everyone shall have equal access to any place or facility intended for use by the general public, without distinction as to race, colour or ethnic origin.

"Article 4 All States shall take effective measures to revise governmental and other public policies and to rescind laws and regulations which have the effect of creating and perpetuating racial discrimination wherever it still exists. They should pass legislation for prohibiting such discrimination and should take all appropriate measures to combat those prejudices which lead to racial discrimination."

5. Similarly, the International Covention on the Elimination of All Forms of Racial Discrimination provides that:

"Article 7 States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes

and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention."

6. The Indigenous and Tribal Populations Convention, 1957, adopted by the General Conference of the International Labour Organisation on 26 June 1957, provides that: 1/

"Article 21 Measures shall be taken to ensure that members of the populations concerned have the opportunity to acquire education at all levels on an equal footing with the rest of the national community.

"Article 22 (1) Education programmes for the populations concerned shall be adapted, as regards methods and techniques, to the stage these populations have reached in the process of social, economic and cultural integration into the national community.

"(2) The formulation of such programmes shall normally be preceded by ethnological surveys.

"Article 23 (1) Children belonging to the populations concerned shall be taught to read and write in their mother tongue or, where this is not practicable, in the language most commonly used by the group to which they belong.

"(2) Provision shall be made for a progressive transition from the mother tongue or the vernacular language to the national language or to one of the official languages of the country.

"(3) Appropriate measures shall, as far as possible, be taken to preserve the mother tongue or the vernacular language.

"Article 24 The imparting of general knowledge and skills that will help children to become integrated into the national community shall be an aim of primary education for the populations concerned.

"Article 25 Educational measures shall be taken among other sections of the national community and particularly among those that are in most direct contact with the populations concerned with the object of eliminating prejudices that they may harbour in respect of these populations."

7. The Convention against Discrimination in Education contains a number of provisions which may be quoted here: 2/

"Article 1 (1) For the purpose of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

1/ ILO, Conventions and Recommendations adopted by the International Labour Conference, 1919-1966, Geneva, 1966, pp. 901-908.

2/ Adopted on 14 December 1960 by the General Conference of the United Nations Educational, Scientific and Cultural Organization in Paris. This Convention entered into force on 22 May 1962 (article 14).

(a) Of depriving any person or group of persons of access to education of any type or at any level;

(b) Of limiting any person or group of persons to education of an inferior standard;

(c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or

(d) Of inflicting on any person or group of persons conditions, which are incompatible with the dignity of man.

"(2) For the purposes of this Convention, the term 'education' refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

"Article 2 When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of article 1 of this Convention:

(b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions, offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;

(c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

"Article 3 In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:

(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;

(b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;

(c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;

(d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;

(e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.

"Article 4 The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

(a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;

(b) To ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent;

(c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;

(d) To provide training for the teaching profession without discrimination.

"Article 5 (1) The States Parties to this Convention agree that:

(a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace;

(b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction;

(c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

(i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and

language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;

(ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and

(iii) That attendance at such schools is optional.

"(2) The States Parties to this Convention undertake to take all necessary measures to ensure the application of the principles enunciated in paragraph 1 of this article."

B. Equal access to all types and levels of education, and to training, employment and remuneration as teachers

8. With regard to non-discrimination in the access to all types and levels of education, the information available shows that the general principles which have been set forth above appear to have been adopted as such in all the countries covered by this report.

9. All the Governments which have provided information on this subject have stated that there are no limitations or restrictions on the access of indigenous persons, groups or communities to all types and levels of education, or on the training, employment and remuneration of indigenous teachers. 3/

10. In all the countries covered by the report, all persons have free access to State schools on a basis of equality, and education, particularly primary education, is free and compulsory.

11. In some countries, the constitution and other fundamental laws contain provisions designed to exclude discrimination against indigenous and other groups in the matter of access to education. 4/

12. In Burma, for example, and with reference to certain "minorities", section 22 of the Constitution provides that "no minority, religious, racial or linguistic, shall be discriminated against in regard to admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on it". In Panama, article 80 of the Constitution provides that: "No educational institution may refuse to admit students by reason of ... social or racial ... differences. Violation of this rule by private educational institutions will lead to loss of the official subsidy in the case of institutions which receive a subsidy, loss of the right to have degrees and certificates recognized by the State in the case of institutions which enjoy this right, and, in cases of contumacy, loss of the right to continue providing education".

13. In other countries penalties are provided for those who deny certain persons access to education by reason of the ethnic group to which they belong. Thus in Brazil, Act No. 1395 of 1951 5/ regarding Race, Colour and Prejudice, provides in article 5 that: "The penalty for refusing instruction to a pupil in a teaching establishment of any type or level for reasons of racial or colour prejudice shall be imprisonment for three months to one year or a fine of CR$500.000 (five thousand Cruzeiros). In the case of an official teaching establishment,

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3/ Australia, Finland, Guatemala, Guyana, Malaysia, Mexico, New Zealand, Norway, Panama and Sweden.

4/ Argentina, Bangladesh, Bolivia, Brazil, Burma, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, India, Malaysia, Mexico, Nicaragua, Pakistan, Panama, Paraguay, Peru.

5/ See United Nations document E/CN.4/Sub.2/L.92/Add.23, pp. 6-7, the summary of information relating to Brazil prepared in connection with the Study of Discrimination in Education (United Nations publication, Sales No.: 57.XIV.3, and Conference Room Paper No. 2, the summary of information relating to Brazil prepared in connection with the Study on Racial Discrimination (United Nations publication, Sales No.: E.76.XIV.2).

the penalty shall be loss of the agent's position once his responsibility is ascertained by means of a regular inquiry. 6/

14. In Malaysia, the Aboriginal Peoples Ordinance (1954, amended 1967) stipulates:

15. "17. (1) No Aboriginal child shall be precluded from attending any school by reason of his being an Aborigine.

"...

" "(3) Any person who acts in contravention of this section shall be liable to a fine of five hundred dollars."

16. Some countries 7/ have provided information to the effect that there are no limitations or restrictions on the access of indigenous students to private schools where these exist.

17. The Constitution of India mentions minorities in this connection when it provides:

"30. Right of minorities to establish and administer educational institutions.-

"(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice".

"(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institutions on the ground that it is under the management of a minority whether based on religion or language".

18. The Constitution includes among its Directive Principles of State Policy, the following provisions:

"45. Provision for free and compulsory education for children.- The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

"46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.- The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

6/ See para. 67 below.

7/ Australia, Norway.

19. In Pakistan, article 22 of the Constitution provides:

"(3) Subject to law,

(a) no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and

(b) no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.

"(4) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens." 8/

20. In other legal systems, the constitutional provisions which prohibit discrimination and those which establish the right to education complement each other so as to guarantee equal access to education for all.

In Guatemala, the Constitution provides as follows:

"Article 98. Every person has the right to an education. Technical training and professional education are open to all on equal terms.

The State shall maintain and increase centres for basic education and diversified studies, as well as institutions designed to raise the cultural level of the nation; it shall grant scholarships for the training or specialization of students and professionals who, because of their vocation and capacity, are deserving of such assistance; it shall promote physical education and support all kinds of sports".

21. These constitutional provisions are supplemented by those of several articles of the National Education Act, among which the following may be cited:

"Article 6. Education is a right to which all Guatemalans are entitled and which is guaranteed by the State. Primary education shall be extended to the whole of the national territory so as to benefit all persons regardless of age, especially in rural areas. The educational system shall be subject to a permanent process of evaluation and over-all readjustment to keep pace with the needs of national development, and its organization and planning shall be adapted to the needs of the various regions.

...

Article 9. Education shall be imparted and culture shall be disseminated in the official language of the country and the indigenous languages.

8/ Similarly to paragraph 3(b) above, article 201 of the Constitution of El Salvador provides as follows: "No educational establishment may refuse to accept students by reason of the marital status of their parents or guardians, or by reason of social, racial or political differences."

The Ministry of Education shall issue regulations governing the incorporation of these languages into the educational curricula with a view to promoting their study, dissemination and use.

Foreign languages shall be taught in the manner specified in the appropriate regulations.

...

Article 60. The task of attending to the cultural needs of the indigenous inhabitants and their incorporation, without discrimination, into the educational system shall be considered matters of national interest." 9/

22. The Government of Panama states that: "The Constitution lays down the right of all citizens to free education; such education is compulsory until the age of 16. Article 87 of the Constitution is applied to all social strata and there is no discrimination regarding the admission of members of indigenous groups to schools, whether private or governmental.

23. The Government adds: "Nevertheless in practice, and because of serious limitations which are essentially of an economic character, indigenous groups are prevented from benefiting fully from the educational programmes. It is only among the Cuna group that wider access by school-age children to primary and secondary schools can be observed, because these schools are situated in the geographical area occupied by that group. In these schools, over 90 per cent, and sometimes even 100 per cent, of the pupils come from the indigenous population. The situation is very different with regard to the other groups (Guaymies, Chocoas, Turibe, Bokota) which, as a general rule, have access only to the first few grades of primary school.

All indigenous students have the right to attend any educational institute and, as pointed out in the foregoing paragraphs, they receive the same education as other persons and are subject like them to compulsory education from 6 to 16 years of age.

In order to pursue more advanced studies, an indigenous child will have to move to more densely inhabited areas, which in most cases are many kilometres away from his home and where he has neither a lodging nor any of the basic material requirements and still less the resources necessary to satisfy those requirements."

24. The Danish Government has stated that in Greenland the comments to Landstings Decree No. 6 of 16 October 1979 emphasize:

"that it is of decisive social importance to ensure that all of the pupils, during the period of compulsory education, be offered equal opportunities of education, and

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9/ Ley de Educación Nacional, Publicaciones del Ministerio de Gobernación (Guatemala City, Imprenta Nacional, 1979), p. 6.

that voluntary education, beyond the age limit of compulsory education, be open to everybody, whether such voluntary education can be offered at the place of residence or otherwise".

25. Several States have made general negative declarations in this respect, remarking, as in the case of Costa Rica, that "There are no formal limitations, restrictions or exclusions for the indigenous communities. Any limitation or lack of opportunity there may be is due to such factors as the distance to the educational and economic centres".

26. The Government of Canada states:

"No regulations discriminate against access to education in Canada on a basis of race. Entrance to institutions of all kinds is open to native people, and they are eligible to receive scholarships and grants under general programs. In addition, registered Indians, and Eskimos, are provided with a free education as a federal right including education at the university and other post-secondary levels. This provision includes living costs; books, and transportation.

The chief adverse factor has been isolation, both socially and culturally, and also geographically. Indians on reserves or in remote communities have been under-educated, while Eskimos and Indians in the North have had only limited access to education until recent years.

The degree of parental support for education has varied. Often there was an initial desire on the part of parents in more primitive areas, where living was precarious, to put their children in residential schools because of the material advantage: at the same time there was indifference or skepticism about the value of the educational process which was regarded as alien and imposed. Those parents had in general a very limited education; the present generation on the other hand is almost entirely in school, and the generational rift has been very marked. Too often, however, the young native who went to school merely lost his own culture without gaining another.

It is among this maturing group of younger Indians that present leadership is forming to put forward proposals for alternative educational systems which would provide a greater degree of Indian participation, both in curriculum content and in control and administration. Not all Indians favour this trend, and the desire is expressed to create valid options, for parents who wish a child to begin his education in an Indian-oriented setting, or on the other hand see the value of education in a common school in the larger community. The question of maintaining equal standards is an important consideration in these plans. Some concern is also expressed about the wisdom of segregating indigenous and non-indigenous children".

27. Non-governmental information has been available on certain countries from non-governmental organizations. These data start with general negative statements similar to those quoted in the two preceding paragraphs, and then proceed to examine the situation further.

28. Thus, as regards Indonesia, the Anti-Slavery Society has communicated that

> "There are no de jure restrictions on the access of isolated groups to education. By article 31 of the Constitution, every citizen is entitled to an education. This is of course interpreted as a discretionary power and the provision of education to selected communities has been a component of the government's development plans since 1968.
>
> "Although there are no de jure restrictions, provision of even primary level schooling to isolated communities has been sparse. Where a government or mission school exists in the nearest non-tribal village, any attempts to persuade the community to send its children to such a school have usually resulted in failure. Where such schools exist as part of government development activities there is one school per settlement, the size of which is adapted to the size of the settlement. Although there are government plans to extend the system of education to include adult teaching programmes, they have not become widespread and usually consist of selecting one man who, once trained in 'fields of agriculture, husbandry, health, societal order, etc.', returns to the village to initiate development plans. 10/

29. With regard to the access of indigenous persons to the various types and levels of education in Paraguay, the Anti-Slavery Society reports as follows:

> "No racist limitations are imposed on indigenous access to education. At the primary school level, one indigenous group, the Western Guarani of the Central Chaco, is better off than the non-indigenous all Paraguayan average. This is due to combined military and mission efforts which provide a higher percentage of school assistance and of knowledge of Spanish than in the case of the non-Indians.
>
> "However, at the secondary and higher level, indigenous participation is still very low. We know of no case of any indigenous university student, except some Aché who were educated as non-indigenous children. This deficiency is obviously due not to racist barriers, but to the low quality of much of the primary teaching especially in the mission schools, and also to linguistic and other cultural obstacles on the Indian side.
>
> "Most of the religious missions attending indigenous settlements have schools, often providing lodging, food and clothing for the children. Education is usually provided free of charge. Other schools are installed by the army. It must be noted, though, that the schools are very irregularly distributed. Lack of schools is a problem in some indigenous zones of east Paraguay, and in very remote parts of the Chaco.

10/ John W. Henderson and others, Area Handbook for Indonesia (Foreign Area Studies of the American University, Washington D.C. 1970) pp. 194 and 195.

"Those groups under strict missionary control are often forced to send all children to school. Readiness to accept this is usually great on the indigenous side, with the exception of certain groups, mainly east Paraguayan Guarani, with the Paĩ as the most extreme example of this minoritarian refusal:

'They generally have a negative attitude towards learning Spanish, because they associate this language with colonialist attitudes and with the negation of their whole life system. This attitude, historically correct, implies also the refusal of the necessity of learning to read and write.'"

30. Much importance has been attached to the existence and effectiveness of any form of aid granted to indigenous students for educational purposes, since special problems arise for indigenous populations due to their relative isolation from the market economy surrounding them.

31. With regard to specific forms of aid, such as scholarships and grants, or provisions for lodging, food, transport or clothing, whether or not education is provided free of charge, several countries have reported that indigenous children are eligible on an equal basis with non-indigenous children for the normal schemes that are available in these respects. 11/

32. It is deemed useful to quote here some data received on general schemes in several countries.

33. In Australia, for example, according to the Government, all states and the Commonwealth have schemes for financial assistance to students, mostly at the secondary (where, as tuition at government schools is free, assistance is usually in the form of maintenance allowances) and higher levels. Awards are usually made on the results of a competitive examination, and sometimes a means test is applied. Aboriginal students may seek to qualify for all such scholarships and bursaries. In addition the Commonwealth Government has established special grant schemes for Aboriginal students which are dealt with in some detail below.

34. The Government of Panama states that, "With regard to scholarships, fellowships, lodging allowances or such other educational services as may be required, no distinction is made and indigenous students receive the same benefits as other students, since the Ministry of Education is anxious to integrate them into the national development plans, while maintaining their cultural patterns".

35. The Mexican Government reports that it has established various types of assistance in the form of scholarships, lodging facilities, the provision of food and clothes and free education. The National Indigenous Affairs Institute (INI) grants scholarships to pupils who receive their primary education in the boarding

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11/ Argentina, Australia, Canada, Denmark (Greenland), Guatemala, Mexico, New Zealand, Paraguay, Philippines, Suriname, Sweden and the United States of America.

schools or the schools with boarding facilities that have been established in 82 indigenous regions with the aim of solving the problem of the scattered pattern of small communities. There is also a system for indigenous students of secondary schools, pre-university institutions and polytechnics, as well as for persons being trained at the agricultural schools and centres situated in rural areas. The Directorate of Indigenous Education provides the necessary teaching, administrative and manual staff for the boarding schools, and this staff is assisted by the technical personnel of the National Indigenous Affairs Institute in the fields of health, agricultural engineering, economics and livestock farming and in the development of production programmes connected with the schools (poultry-breeding, beekeeping, pig-breeding, rabbit-breeding, vegetable-growing and fruit-growing). The boarding schools are distributed strategically over the indigenous areas and each of them is attended by 50 to 100 students from three, four or five neighbouring communities; the children are, in addition, housed and fed from Monday to Friday of each week for ten months of the year and return to their communities on Saturdays and Sundays to live with their families, so as to obviate any uprooting effect. There is in addition another type of institution: the Social Integration Centre. These centres have been converted now into secondary schools where young indigenous students receive a secondary education. In these centres, male and female students receive an academic education, are taught a number of handicrafts and get practical training in plant and animal husbandry.

36. According to an official source, in India:

> "Scholarships to deserving scheduled caste and scheduled tribe students for studies in foreign countries have been awarded by the Union Government since 1953. The number of such scholarships every year is 21-11 for scheduled castes, six for scheduled tribes, one for denotified, nomadic and semi-nomadic tribes, and three for other backward classes. Tourist class sea passage is provided to students who receive foreign scholarships from other sources without travel grants.
>
> "Also, 17½ per cent of merit scholarships granted by the Centre to students of the lower income groups for studies in the institutions which are members of the Indian Public Schools Conference are reserved for backward communities. Some of the state governments as also some public schools offer similar scholarships.
>
> "Post-matric scholarships are given to eligible scheduled caste students. During the first three Plans, 5, 17, 511 such scholarships were awarded. The expenditure rose from Rs.1.58 crores */ in the First Plan to Rs.14.88 crores in the Third Plan. During 1966-1969, Rs.15.96 crores were spent on 3.27 lakh */ scholarships. During 1969-1973, Rs.35.38 crores were spent on providing 6.62 lakh scholarships. Since 1971 scheduled caste converts to Buddhism are also eligible for these scholarships.

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*/ Ten million; one hundred lakhs (of rupees, units of measurement, persons, etc.).

"Post-matric scholarships are also awarded to eligible applicants belonging to the scheduled tribes. The number of such scholarships given during the first three Plans was 94,144. The expenditure rose from Rs.42 lakhs during the First Plan to Rs.2.63 crores in the Third Plan. During 1966-1969, Rs.3.11 crores were spent on awarding 65,676 scholarships. During 1969-1973, Rs.7.15 crores were spent on 1,28,000 scholarships.

"At present about 1,90,000 scheduled caste and 35,000 scheduled tribe students are receiving post-matric scholarships every year ...

"Under the scheme, financial assistance is given to state and Union Territory Governments for the construction of new hostels and to expand existing ones at any place where the facilities for girls belonging to these classes are inadequate. A sum of Rs.41.95 lakhs was provided for the scheme during 1972-1973." 12/

37. Some countries have added information concerning special scholarship and grant programmes for indigenous populations, which will be discussed below. 13/

Another special problem which affects more particularly the indigenous populations is the lack of teachers, or the absence of teachers with the necessary qualifications for the education of indigenous schoolchildren. In some cases, there are not enough teachers, while in others there are sufficient teachers but they do not have the training necessary for the proper performance of their job, training which differs - mainly from the linguistic and cultural standpoints - from that required for teaching urban and non-indigenous children. For a long time, it was believed that the best way to achieve equality in education was to give the same education to all, with teachers all trained in exactly the same manner. Today hardly anyone maintains this view. There is now almost universal recognition of the need to train teachers especially for the purpose of teaching pupils with different cultural backgrounds and different mother tongues. In addition, teaching materials and the training of the teachers who will use them must be especially directed towards these pupils for them to be adequate and effective. Accordingly, it is appropriate to state briefly here the contents of the declarations, and the general information, available with regard to the special training of teachers who are to work in schools for indigenous children.

38. With regard to the training, employment and remuneration of teachers, the Anti-Slavery Society states that, in Paraguay:

"There are some indigenous teachers at the primary level, who are paid and generally treated like non-indigenous teachers. But their number is still very limited. A sufficient number is only to be found among the western Guarani of the Central Chaco, and there only up to the primary 4th grade.

12/ India, a reference annual, Government of India, 1974, pp. 49 and 52.

13/ See paragraphs 265-281 below.

39. One author makes the following statement with regard to the need to formulate plans and programmes, and to train special teachers, for the education of indigenous students:

> "It is necessary to adapt the plans and programmes to the various different requirements and to train indigenous teachers better qualified than the present ones, whose level of education is equivalent to no more than the second to sixth primary grades.
>
> Side by side with literacy programmes, a whole series of subjects must be taught to them: improvement of agriculture, hygiene, nutrition, child care, handicrafts, carpentry, etc. etc.
>
> Indigenous pupils are as a general rule extremely receptive and interested in assimilating our culture, especially in its material aspects, as this will help them to increase the earnings from their work and better themselves socially and economically." 14/

40. Evidence is available of some efforts to train indigenous teachers, such as those conducted in the schools of the locality of Yalve Shanga:

> "The training course for the 30 indigenous teachers who work in schools at the locality of Yalve Shanga in El Chaco region has recently ended at the 'Saturio Ríos' Regional Educational Centre at San Lorenzo". 15/

41. The Government of Guatemala states as follows:

> "The Ministry of Education is at present studying with special care the reform of teaching methods in accordance with a broader and more realistic philosophy, particularly as regards extra-mural education. ... The new educational trend envisages the improved training of indigenous teachers and more efficient use of their knowledge, taking into account their ability to communicate with indigenous pupils in their own mother tongue".

14/ Ramón César Bejarano, "Solucionemos el Problema Indígena", article published in the newspaper ABC Color, 24 December 1972 (copyright reserved by the author).

15/ "Capacitación de Maestros Indígenas", article published in the newspaper Tribuna, 3 January 1974.

42. The Government of Mexico states as follows:

"Indigenous students have access to the same educational institutions as non-indigenous students.

Teachers and instructors are trained by means of special courses, the ultimate purpose of which is to qualify them as bilingual educators, to impart a bilingual and bi-cultural education. The trainees in those courses are young persons drawn from the indigenous communities who have received a primary or secondary education.

There is already a substantial percentage of better-educated persons and they have been appointed as instructors, teachers, inspectors or headmasters, depending on their academic qualifications. Their promotion depends on their continuing and improved training, their formal efficiency, their dedication, their willingness to serve and their success as liaison agents with the community.

Such persons receive remuneration and allowances similar to those of non-indigenous teaching staff.

A bilingual instructor or teacher may be dismissed on grounds of repeated shortcomings, subject to review by immediate superiors, the educational committees, and the traditional, municipal and agrarian reform authorities. The final decision, on the basis of the documentation and evidence submitted, rests with the General Directorate.

There are no cases of exclusion: the only limitations which exist are budgetary limitations on the recruitment of trainees. These limitations contribute to restrictions and the obstacles arise when a candidate does not fulfil the requirements for admission, chief among which are regional bilinguism, good conduct and good health".

43. The Government of the United States has reported that

"Indigenous personnel may be trained as teachers ... and may obtain such education on a Federal grant. The choice of profession or training desired is up to the indigenous person himself.

"...

"The salaries for teachers of Indians is the equivalent of that for teachers of non-Indians.".

44. As regards measures of protection against any impediments, limitations, restrictions or obstacles concerning access to the education and training of teachers, the Government states:

"The Congressional Committee concerned with Education makes frequent inquiries into the education of American Indians with testimony at great length from those interested in the problem and those involved in education. Indian teachers are protected by Civil Service regulations. Since Indian people are citizens they have access to the same machinery as non-Indians in correcting conditions - newspapers, radio stations, and their elected representation."

45. In 1969 a Senate Special Subcommittee on Indian Education, chaired first by Senator Robert Kennedy and then by Senator Edward Kennedy, on the basis of many pages of notes and testimony, submitted a report. The report read, in part, as follows:

> "What concerned us most deeply, as we carried out our mandate, was the low quality of virtually every aspect of the schooling available to Indian children. The school buildings themselves; the course material; and books; the attitude of teachers and administrative personnel; the accessibility of school buildings - all these are of shocking quality.
>
> A few of the statistics we developed:
>
> - Forty thousand Navajo Indians, nearly a third of the entire tribe, are functional illiterates in English;
> - The average educational level for all Indians under Federal supervision is 5 school years;
> - More than one out of every five Indian men have less than 5 years of schooling;
> - Dropout rates for Indians are twice the national average;
> - In New Mexico, some Indian high school students walk 2 miles to the bus every day and then ride 50 miles to school;
> - The average age of top-level BIA education administrators is 58 years;
> - In 1953 the BIA began a crash program to improve education for Navajo children. Between then and 1967, supervisory positions in BIA schools increased 144 per cent; administrative and clerical positions in the BIA schools increased 94 per cent. Yet, teaching positions increased only 20 per cent;
> - In one school in Oklahoma the student body is 100 per cent Indian; yet it is controlled by a three-man, non-Indian school board;
> - Only 18 per cent of the students in Federal Indian schools go on to college, the national average is 50 per cent;
> - Only 3 per cent of Indian students who enroll in college graduate; the national average is 32 per cent;
> - The BIA spend only $18 per year per child on textbooks and supplies, compared to a national average of $40;
> - Only one of every 100 Indian college graduates will receive a masters degree; and
> - Despite a Presidential directive 2 years ago, only one of the 226 BIA schools is governed by an elective school board." 16/

16/ Burnette and Koster, The Road to Wounded Knee Bantam Books, New York, 1974, pp. 50-51.

46. As regards training, employment and remuneration of teachers, the Government of Canada states:

> "There is no overt discrimination against natives in teacher selection and training. In fact, however, the educational system has been almost exclusively a white middle-class system.
>
> "In an attempt to avoid the lowering of standards for native schools, academic qualifications have been maintained, but few native people have qualified. A system is now growing to train and hire education assistants who are native people with limited education. This is particularly widespread in the north among the Eskimos, where language and culture barriers are pronounced. Educational assistance programs are available to enable Indian or Inuit teacher-aides, or classroom assistants, to up-grade their qualifications. In addition, certain universities are prepared to admit teacher-aides who lack the academic qualifications as mature matriculants. At the present time, only a small percentage of teacher-aides have taken advantage of these programs of assistance and training."

47. The information relating to certain countries contains references to the bad geographical distribution of schools which is a problem for indigenous education.

48. In Bolivia the reasons for the far higher rural attrition rate are understandable. For most of the country children there are either no schools available that offer higher primary grades or the schools are available but discouragingly distant.

49. In the information available on other countries greater emphasis is placed on the realization of the existence of these problems and on action taken to overcome them. Thus, for example, it has been written that in Bangladesh the government is conscious of the need for suitable dispersal of educational institutions and preferential facilities in some regions. Increasing representation among the teachers from these regions is encouraged.

50. Special measures have been taken in India, where, according to a writer: 17/

> "Almost every village has a primary school although the standards up to which education is imparted may vary from II to VII. The government in order to impart 'useful' education and at minimum cost has established Ashram schools all over the state. In Nasik district there are four such schools of which one is at Chinchawade about two miles from the Harsul-Nasik road. Even the age limit is relaxed in the case of the tribals. They are admitted to the first standard between the ages of 6 and 9, to the second standard up to the age of 10 and to the third standard up to the age of 11. These Ashram schools are organized through voluntary agencies. Each such school is a residential school with a hostel attached to it where the inmates are provided with free boarding and lodging and other amenities. The students are recruited from the nearby villages. Although the students are preferably tribals, non-tribals are also admitted as day-scholars. In addition to the usual instruction in the schools, arrangements for teaching of simple crafts like kitchen gardening

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17/ M.G. Kulkarni. Problems of Tribal Development, A Case Study, Harsul Block, Nasik District (Maharashtra). Gokhale Institute of Politics and Economics, Bombay, India, 1968, pp. 206 and 207.

leading to agriculture, spinning and weaving, poultry farming etc., are made in the initial stages. Agriculture is the main craft taught in the school: for this purpose each such school is to have a farm of about 10 acres with a well, two cows and a pair of bullocks, agricultural implements etc. The government grant-in-aid to the tune of 90 per cent of the recurring expenditure and 90 per cent of the non-recurring expenditure is given to these schools. The recurring cost of each such school is estimated at Rs. 24,950. For the full development of an Ashram school the cost is estimated to be Rs. 71,200. The school is usually expected to grow to a capacity of 60 boys and 60 girls in the course of four to five years. The Ashram school at Chinchawade is run by the Adiwasi Sewa Samiti at Nasik, and opened on 11 October 1954. There were 70 boys and 50 girls enrolled. But this one school is obviously insufficient to meet the needs of all the villages in the area, though not all of them are willing to send their children to school."

51. The Government of Australia states that Government schools are provided throughout Australia on the basis of population. In more isolated areas, this means that children may travel some miles to school or, particularly in the post-primary years, board away from home; or use correspondence schools, in many cases supplemented by lessons conducted on the radio.

52. The Government of Chile stated in 1975:

"Although private schools abound [in Chile], they are deficient and inadequate, manned by teachers most of whom are unequal to their tasks. These schools generally provide tuition in the first, second and third grades of basic education and no more; the school-children then leave school and, in most cases, begin to work for a living and soon forget the little that they have learned.

State organs concerned with the problems of indigenous people are paying particular attention to improving education in this sector. To that end, school building has been considerably expanded with improvement of access roads. In addition, education has been extended up to the eighth basic grade, thereby increasing the school attendance by children of the rural and indigenous population".

53. The Government of Sweden has stated that:

"Schools for the Lapps have been established at seven places in the northern provinces. They are organized according to the principles of the ordinary comprehensive schools, with Swedish as the main language of instruction, while room is given for instruction in other languages, handicrafts and reindeer husbandry."

54. The Finnish Government has stated that basic school facilities are available in every commune, but that schools and, in particular, higher educational establishments are, for natural reasons, more widely scattered in the northern part of the country than in the south. Thus, all those residing in the north have this handicap.

55. In Peru, article 73 of the Constitution provides that there shall be at least one school in every place with a school age population of 30 and article 74 specifies that "schools operating in industrial, agricultural or mining centres shall be supported by the owners or owner companies.

56. Similarly, the Constitution of Guatemala provides for the establishment of schools by certain types of enterprises in the rural areas of the country, as follows:

> "Article 97. Industrial and agricultural enterprises located outside urban centres, and the owners of rural property, are required to establish and finance, in accordance with the law, schools for their school-age population that will provide a minimum education according to special programmes".

57. The National Education Act repeats the terms of this constitutional provision, but refers to "official programmes" instead of "special programmes" and supplements it with the statement: "This education shall be free. Those failing to observe this provision shall incur the penalty to be laid down by the Ministry of Education, in accordance with the law" (Article 61, in fine, of the said Act). The Act provides in addition as follows:

> "Article 62. Industrial and agricultural enterprises located outside urban centres and the owners of rural property who engage temporary workers have a duty to provide this migrant population with educational opportunities and literacy programmes in accordance with the rules laid down by the Ministry of Education".

58. The Mexican Government states that the relevant constitutional principle of the country specifies that "education ... shall contribute to the improvement of human relations ... through the care taken to foster ideals of the brotherhood and equality of all men and to avoid privileging any race, sect, group, sex or individual. 18/ The factors which hinder the fulfilment of this principle are more of a physical and social character: the remoteness and scattered pattern of many of the communities make it difficult to supply a service and the need, resulting from families' material requirements, to get children to work at an early age keeps them out of school. The rules and requirements for admission to schools of all kinds are the same for indigenous and non-indigenous children. Besides, there exist institutions devoted specially to the teaching of Spanish to monolingual children; naturally, children who already speak Spanish do not need access to these institutions. In terms of geographical distribution, the schools cover 82 indigenous regions and over 4,000 communities; they are of various types: full primary schools, agricultural technical schools and study centres, and boarding schools of the two types already mentioned.

59. The New Zealand Government has communicated that: "In the case of primary schools the State will provide a school wherever there are nine children or more. This means that there are very few children in the country who do not have reasonable access to primary schools. As already mentioned, those children are catered for by the Government Correspondence School. At the secondary level where no school is within easy reach, the Government correspondence courses are provided and, as mentioned above, there are special scholarships and grants to enable such children whose parents desire them to attend boarding schools. Technical institutes are either established, or are being established at present, in all of the main cities and there are universities at Auckland, Hamilton, Palmerson North, Wellington, Christchurch and Dunedin."

18/ Federal Constitution of Mexico, art. 3, subpara. I(c).

60. Obviously, these provisions cannot in themselves ensure full and equal access to education. This is recognized by a number of the governments which have submitted other information.

61. It should be made clear from the outset that formal systems of education are alien to indigenous cultures and considerable efforts are therefore required to bring such systems to the indigenous populations and make them acceptable by the latter.

62. This has been recognized in Malaysia where, according to one writer: 19/

> "The Department is entrusted with ensuring that the Orang Asli population may gain the full benefits of the Education facilities of the country. All the Orang Asli children at schools all over the country are given free education at all levels. In places where the Ministry of Education cannot provide the normal school facilities, the Department constructs, administers and maintains its own schools. Currently the Department is directly responsible for the administration and staffing of 81 schools and 51 hostels in deep jungle areas.
>
> "This policy has been maintained because it is realized that a formal form of education as a social institution is an alien feature in the Orang Asli society and culture. To gain their acceptance and thus to ensure success, the service must therefore be brought to them - physically, vigorously and at no cost to them."

63. Obviously there have been certain differences in all countries in the education available to indigenous groups and communities. Some of these difficulties affect entire rural populations or all the groups living in particular regions of the countries concerned. It will suffice to quote as an example the following comments by the Norwegian Government:

> "Due to the great variations found between the areas of settlement and living conditions, caused by Norway's geographical position and topography, the compulsory school system in Norway is partly based on different conditions in the urban and rural districts.
>
> "In the rural districts a large proportion of the population is scattered over a wide area, so that some of the pupils have long and difficult journeys to and from school. In an attempt to remedy this situation, in some places the authorities have erected boarding establishments in conjunction with the schools where the pupils have free board and lodging. Some of these boarding establishments are run and financed by the State, while others are run by the local authority with financial aid from the State. In recent years the need for boarding establishments of this type has shown a steady decline. For this there are three main reasons:
>
> "1. Compulsory elementary education has been decentralized, so that children and teenagers may be educated near to their homes.
>
> "2. Communications have improved considerably in the course of the last few decades, so that it is now easier for pupils to get to school.

19/ Idris, Jimin Bin, A Brief Note on the Orang Asli of West Malaysia and their Administration. A publication of the Department of Orang Asli Affairs, Kuala Lumpur, March 1972, pp. 9-10.

"3. The municipalities receive substantial Government grants to help cover the cost of school transport."

64. Other difficulties arise, of course, from the language and culture of these groups, which are different from those on which the educational system of the country concerned is normally based. This too has been recognized by the Government of Norway, which states that:

"As already mentioned, Norwegian law contains no restrictions specifically applicable to Lapps as compared with those of Norwegian stock where access to education and employment is concerned, nor any which would mean different terms of remuneration for the same work. The obstacles Lapps may encounter can be difficulties connected with geography, socio-economic causes and/or language. To assist anyone having problems of this nature, there are study grants under local Government schemes (often by a means test), as well as grants from the Government Loan Fund for Education.

"The obstacles and problems which the Lapps encounter appear to be mainly connected with language and culture. As early as the primary school stage, Lapp children must use two different languages. This can delay their general progress at school in comparison with other children who use only one language, and affect their further school career. The Ministry of Church and Education is endeavouring to combat this tendency by allowing fewer pupils per teacher in schools with Lapps, and in addition by giving Lapps priority of admission to a number of schools of further education with restricted entry."

65. As an example of other difficulties which have occurred in all countries to a greater or lesser extent, we reproduce below some comments on these difficulties in Australia. An organization states that: 20/

"As Aboriginal and part-Aboriginal people settled on Mission Stations, Government Settlements or became fringe dwellers, the responsibility of providing some education for them was undertaken by either the missions concerned or by Government authorities. However, facilities provided have been completely inadequate and coupled with environmental problems, including unsatisfactory housing, lack of incentive, language difficulties and failure to provide pre-school education, hostels, and sufficient scholarships, have resulted in only a very few of these children proceeding to secondary schools and only a handful ever having completed a university course. In addition there has been only a very limited attempt to provide them with any specialized trade training.

"In effect, between the neglect of the States and the constitutional prohibition of the Commonwealth, the Aboriginal and part-Aboriginal children of Australia suffered educational discrimination. This led, in consequence, to other forms of discrimination and hence to the denial of fundamental rights".

20/ World Confederation of Organizations of the Teaching Profession, Education Panorama, vol. X, No. 4, 1968, p.4.

66. The Australian Government states that:

"Although there is no legal or administrative discrimination against Aboriginal children in the education system, there is considerable evidence that many Aboriginal children begin school at a disadvantage because of their socio-economic and cultural background. This is compounded in many parts of Australia by the problems of living in remote areas. Their consequent retardation becomes increasingly marked in the later years of schooling. Until recently few Aboriginals had progressed through secondary school or entered tertiary education. Only a handful have qualified for open-scholarships or bursaries.

"Special measures are being taken in an attempt to remove the handicaps preventing Aboriginal children from taking full advantage of the Australian educational system."

67. The actual situation in Brazil, despite the provisions of article 5 of Act No. 1395 (1951), which have been quoted earlier, can be taken as an example of the situation which arises in all countries in similar circumstances. The following comment has been made: 21/

"Yet, it is a generally recognized fact that the white population starts with the advantage of a better education. The statistics on school enrolment are not classified according to the racial characteristics of the students, but the ratio of Negro, Mestizo and Indian pupils in the primary grades is probably smaller than the ratio of these groups within the total population. This, it is pointed out is chiefly due to economic conditions and to the cultural level of the parents rather than to any discrimination on grounds of race, colour, or national or ethnic origin. Although by law primary education is universal and compulsory, there are not enough public schools in most areas to meet the needs of the entire school-age population. On the other hand, the attendance of children at school entails a certain economic hardship for the parents, as the children, even when young, frequently help their parents in the less strenuous farm work or in domestic tasks. Although all classes of the population want their children to be educated at school, the desire is stronger among the better-educated classes, who are also better able to dispense with the economic assistance of their children of school age. This means that the number of children attending school from the poorer and economically under-privileged classes of the population is proportionately smaller. Accordingly, in the population of twenty years of age and over, literacy is much higher among the whites than among the peoples of mixed blood and the Negroes."

68. Inequalities of opportunity for education affecting indigenous populations are complex. They stem from a conjunction of human, cultural, social, economic, historic and geographical circumstances.

69. As part of the rural populations - which most indigenous populations are - they suffer all the disadvantages affecting those groups of population. In rural areas schools are fewer per capita, they are not as adequately distributed, the premises

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21/ See United Nations document E/CN.4/Sub.2/L.92/Add.23, the summary of information relating to Brazil prepared in connection with the Study of Discrimination in Education (United Nations publication, Sales No. 57.XIV.3). The above quotation is taken from paragraph 330 of the Study on Racial Discrimination, United Nations publication, Sales No. E.71.XIV.2. See paragraph 13 above.

are not as well suited, the materials are not the best, or not enough, and the teachers are not as well qualified as those available in urban centres. In the latter years, an unusual concentration of services has sprung up in urban centres as an offshoot of the contemporary trend toward industrial development, which requires a certain degree of concentration of facilities and services.

70. Very often these inequalities or disparities are not the product of intentional processes, but the result of a complex set of circumstances favouring urban development as a more urgent consideration. While the authorities may be remiss in the fulfilment of their duties towards rural areas in this respect, it is true that it is not always easy to impute disparities in development to deliberate planning. It is nevertheless imperative that all those concerned devote more attention to the specific problems confronted by rural groups of population, and more particularly to the difficulties of indigenous communities, as these groups are known to be confronting the most acute combination of problems in the field of education.

71. Indeed, in addition to all inequalities that have been found to affect rural populations, indigenous populations have many linguistic problems and cultural difficulties that make their case even more complex. While monolinguism is often present, it is not indispensable to have this extreme case in order to realize that serious handicaps and unusual difficulties lie in the path of persons who do not have a full command of the language of instruction. In addition, cultural differences that go far beyond the extremes of the urban folk continuum affect indigenous people who have a radically different approach to life and a distinct world view. Furthermore, formal education is often completely new to them, as it sharply departs from the traditional communal ways of transmission of knowledge.

72. Socio-economic considerations have to be added to all this. Children are often needed - be it merely on a seasonal basis or on a more continuous manner - to help in family or community endeavours, with consequent absenteeism from school.

73. In this connection it should be mentioned that normadic or semi-normadic populations are affected in an even more acute manner by these problems. These groups live away from towns and are almost constantly on the move, and therefore, there is a basic incompatibility between their mobility and the usually stationary character of established schools. The basic question then arises as to whether the pupils should be made to stay where the school is, and where the teachers live and school materials and facilities exist, or whether the school, the teachers and the educational materials and facilities should travel with them, wherever the community moves.

74. In the latter case, mobile classrooms or schools have to be put together and materials and facilities created, with high mobility in mind. This is not as difficult as solving the human problem of "town teachers" who have been found to have great difficulties adapting to the special conditions of "nomadic life". It has been suggested that training nomads as teachers would probably be a solution but, in the past, it has sometimes happened that the teachers-to-be get attracted and accustomed to urban life and desert the project.

75. Another suggested solution would consist of establishing special boarding schools for the children of nomadic or semi-nomadic groups, and providing regular systematic elementary and subsequent education for them at fixed places lying within the path of their migrations. This proposal has been objected to by the parents and the communities concerned as, in the long run, the children go through their early age - which includes their best years for absorbing traditional ways - away from their parents and their communities. This situation of a lack of contact with

the traditional culture and way of life, and the constant exposure to other cultural trends and ways, would nurture a tendency to move away from nomadism and to get accustomed to settled life. "Temporary schools", "fixed seasonal schools" or "itinerant schools" have been suggested as an intermediary sclution. In this age of electrohic devices that are apt to bring education to places heretofore foresaken, this aspect of the problem can be solved with increasing ease, but funds and technical assistance are needed. The State has many important functions in this connection and can help in many ways to overcome certain aspects which affect the community as a whole, like illiteracy.

76. In several of the countries of relevance to this study, illiteracy is a national problem affecting the level of general education in large sectors of the population. In all these countries the problem is far more acute in the country than in the towns.

77. Illiteracy among indigenous populations has its own particular aspects which are not always given full consideration in assessing the real extent of the problem.

78. Illiteracy has always been measured in relation to the official language or languages which are used for compulsory basic education and as the sole factor in determining in specific cases whether the instruction being given is the minimum required for ensuring that a person can read and write.

79. This entirely disregards the importance of languages other than the one accepted for the purpose in question, which is simply to determine whether the person concerned can read and write in the official language. This illustrates the lack of importance attached to indigenous languages in the past, even to the point where someone who was fluent in two or more indigenous languages and used them in everyday life but did not know the official language was traditionally classified as monolingual. People were also classified as "illiterate" for making spelling mistakes in the official language, even though their standards of reading and writing in the official language were higher than those of non-indigenous persons, and even though they could also read and write in several indigenous languages.

80. In some regions, in the past, indigenous persons have been given severe tests, which were often more exacting for them than for non-indigenous persons from the same regions.

81. Although these phenomena are not always present, State decisions on illiteracy are generally based on two calculations: on the one hand, it is acknowledged that State education is confined to instruction in the official language; and on the other hand, and as a consequence, it is assumed that if a person cannot read or write in the official language, he is even less likely to be able to do so in another language or dialect. Generally, there has been some foundation for this, in the fact that until very recently many indigenous languages and dialects had no written form.

82. In some countries, simple tests were originally selected to determine whether a person could read and write and these were used indiscriminately throughout the country. Later it was felt that requirements should be raised, and the same tests were established for use everywhere without any kind of adjustment - but still only in the official language or languages. Indigenous languages will not be accepted as valid for the purpose of literacy tests until they are recognized as languages of instruction - which is generally the case today, however, only in the initial stages of education - though teaching of the official language must not be neglected either, as we shall point out later on. These matters are related to others which are to be dealt with in the chapter on language, and will be discussed at greater length there.

83. Lastly, it must be stated that there is no precise information on the incidence of illiteracy among indigenous populations, although it is known to be higher than among other population groups. In all countries, the available information is for the whole population, without any distinction between indigenous or non-indigenous groups and is, for the most part, not recent.

84. In short, information on the incidence of illiteracy among indigenous populations is inadequate. The Special Rapporteur, being aware of the importance of this question, sought to obtain reliable and more up-to-date information on this important aspect, in order to include it in the final report on the study, as one of the problems of the education of indigenous persons, and describe its particular impact on indigenous populations. This, however, proved not to be possible.

85. It is known that illiteracy is linked to several factors including: (a) inadequate geographical distribution of schools to the detriment of rural areas and particularly areas where indigenous people live; (b) the language of instruction, which in the past was only the official language that was largely unknown to indigenous populations; (c) educational materials and programmes, which until recently were not adapted to the special needs of indigenous populations, their concepts and values; (d) the socio-cultural shortcomings of these materials and programmes as well as of the organization and management of school institutions and of past educational activities as a whole. These same reasons were largely responsible for the backwardness, repetition of grades and absenteeism from school that affected indigenous pupils in a much larger degree than even other rural school children.

86. Accordingly, the Special Rapporteur sought to illustrate with current examples drawn from the situations prevailing in the countries covered by the study the reasons why indigenous children stay away from, or drop out of, school. No systematic and balanced account of the incidence of these phenomena can be given from the data available.

87. For these reasons, and in order to avoid creating a false impression by concentrating on the few countries for which data is available while saying nothing about the situation in others for which it is not, it has been decided that, while the importance of these phenomena cannot be ignored, they themselves will not be discussed in this report.

88. We shall now consider the major special measures of various kinds which should be taken in the field of education in order to solve the particular problems of indigenous populations in this regard.

C. Special arrangements for indigenous schoolchildren

1. School facilities in the indigenous community itself, or in an area within easy reach for the indigenous school population

89. It is important that educational facilities for indigenous communities should, as far as possible be accessible to pupils without their having to leave their homes, families and communal life, or the environment of the indigenous community. Formal education, to which they are not accustomed, and which involves a major break with the freedom of movement and decision that they have enjoyed before entering school causes sufficient problems in itself. Ideally, the solution would be to establish a school in each indigenous community, to staff it with teachers from the community, and to equip it with material suited to communal needs, so that schooling took place within a single environmental setting and in institutions open to the influence of community leaders and of indigenous cultural elements.

90. This part of the report sets out to study these various aspects, and the first section will deal with problems of geographical distribution, i.e. the physical location of schools. As already stated, schools should ideally be situated either within the community or nearby, or at least in a general area within easy reach; in the case of nomadic or semi-nomadic communities, they should accompany the community as it moves. The difficulties which may arise in this connection have been noted in general terms above. We must now analyse the difficulties that have arisen in specific cases in the countries covered by this report, and the practical solutions that have been found to each of them.

91. According to information furnished by the Government of Malaysia, efforts are being made to provide all Orang Asli groups with schools. To this end, whenever Ministry of Education schools are not available, the Department of Orang Asli Affairs is to build, and has been building, schools for Orang Asli children in many parts of the country and particularly in deep jungle posts. During his official visit to West Malaysia in June 1973 the Special Rapporteur was informed that most deep jungle posts have schools or were getting them under the Second Malaysia Plan. He understood, however, that "post schools" covering the first two grades were available in most Orang Asli deep "jungle posts". In certain of these posts, "area schools" covering the other grades within primary education have been established and hostels have been built there to accommodate children from other communities. Secondary education is available in Malaysian schools established for the general population in urban and rural areas outside the jungle. University education is available in the established universities in the country.

92. The Special Rapporteur found "post schools" covering the first two grades in all communities he toured during his official visit to West Malaysia in June 1973, and an "area school" in one deep jungle post. He visited the schools, and the hostel in the last mentioned post, and found school and hostel installations to be quite adequate for their purposes.

93. The Special Rapporteur was informed that attendance at "post schools" was improving and was near to becoming satisfactory, but that several children dropped out every school-year from "area schools" and their hostels, and returned or asked

to be returned to their own communities. He was also informed that few Orang Asli children were attending secondary school, where drop-out rates were high. Although the situation was improving, it was far from satisfactory. Extremely few Orang Asli had reached university level.

94. In this connection, the Government has stated:

"(1) Attendance at deep jungle schools is improving and it is estimated that during 1974 an additional 500 deep jungle Orang Asli children will receive a primary education compared to the figures for 1973.

"(2) A few children do drop out of deep jungle primary schools for limited periods, i.e. during the fruit season or jungle clearing season, but return later. These should more properly be regarded as absentees rather than drop-outs. It is estimated that 95 per cent of the children attending deep jungle primary schools complete their primary education up to Standard 6.

"(3) The major drop-out rate takes place at the end of the primary stage where only 60 per cent of the children from deep jungle primary schools who are eligible to receive a secondary education do in fact obtain this. The 40 per cent drop-out rate here reflects the continued reluctance of some deep jungle children and their parents to allow them to leave their homes for an urban environment where a lower secondary education is available.

"(4) 252 Orang Asli children are attending lower and upper secondary schools in 1974. In 1973 67.2 per cent of children in lower secondary schools failed to obtain their Lower Certificate of Education (L.C.E.) while 32.8 per cent obtained their L.C.E. and were promoted to form 4 for a 2 years course and to sit for their Malayan Certificate of Education (M.C.E.) in form 5.

"(5) Considering that the education system operated by this Department has only been functioning adequately since 1962 it is not surprising that there are so few Orang Asli at tertiary level. It takes 11 years to complete a pupil's education at primary and secondary levels up to that of M.C.E. It is only now that the efforts of this Department in the field of education are beginning to produce Orang Asli qualified to proceed to the tertiary level. From now on the number of Orang Asli obtaining a tertiary level education should show a steady increase".

95. As has been mentioned before 22/ the Government of New Zealand has stated that primary schools are provided by the State wherever there are 9 school-age children or more. Free transport is provided in Government buses for children living at a distance from school. Children in very isolated communities who are unable to

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22/ See paragraph 59 above.

attend primary school are catered for by the Government correspondence school which is free of charge, in case of primary school. In cases of students who should attend secondary school, bursaries are made available to enable them to board at secondary school.

96. Efforts seem to have been made in Norway to have school facilities for Lapp children at least in the general area within their easy reach. In this connection it has been reported that in Norway some boarding schools are run exclusively for children of approximately 2,000 Lapps who still maintain themselves as herders of reindeer and live as nomads.

97. In Brazil the Indian Statute (Act No. 6001 (1973), article 51) provides that "assistance for educational purposes shall be rendered to minors, as far as possible without alienating them from the family or tribal way of life". From these provisions it may be presumed that the intention is to provide a school in each community "as far as possible". 23/

98. In Venezuela, in accordance with the Organic Law of 14 September 1948 for the Federal Territories, municipal councils are required to give preferential attention to the maintenance of rural schools established in indigenous centres.

99. In Guatemala, article 97 of the Constitution specifies that "Industrial and agricultural enterprises located outside urban centres, and the owners of rural property, are required to establish and finance, in accordance with the law, schools for their school-age population".

100. With regard to the need for school facilities near agricultural enterprises, see articles 61 and 62 of the National Education Act reproduced in paragraph 57 above.

101. With regard to rural schools, one author states:

> "Many of the rural schools in Guatemala are supported entirely by the owners of plantations. This is due to the Guatemalan law which requires that wherever there is a resident population on a finca containing at least ten families, the finquero must establish and maintain at his own expense a rural school for the children of school age belonging to these families. In 1956, there were 711 of these private rural schools with a total enrollment of 18,860 pupils. This means that 26.6 per cent of the rural schools were maintained by private landowners and these schools accounted for 20.7 per cent of the total rural school enrollment of the nation.

23/ The Special Rapporteur requested but did not receive confirmation of this assumption, or correct information in this regard.

"For understandable reasons, the finqueros have not supported these schools with any degree of enthusiasm, but have regarded them as unnecessary expenses which should be borne by the government. Children of school age may help with the work of the finca and one can easily see why it would be to the finquero's interest to permit the children to work on the plantation rather than to send them to school, especially during rush seasons.

"The author has visited schools on lineas containing several thousand inhabitants and almost invariably they consisted of one room, with one teacher and an attendance of from ten to thirty pupils. Obviously, several hundred pupils of school age were living on the finca but were not in attendance. Government inspectors visit the finca schools at examination time and give advice to the teacher but rarely do such visits result in improved classroom performance. Occasionally, one finds a finquero who takes pride in his local school and makes it somewhat better than the average.

"...

"Generally speaking, however, for the country as a whole, the finca schools are poor and it is unlikely that they will ever become efficient educational institutions until they are given official public support. Perhaps it should be mentioned that poor quality has not been confined to the plantation schools. Schools maintained by the government have also been inadequate. In recent years, however, the Government has given more attention to public education but has continued to neglect the plantation schools." 24/

102. In Finland, basic school facilities are available in every commune, but they are more widely scattered in the northern part of the country affecting all those that reside in the north (see paragraph 54 above).

103. As 30 per cent of the Lapp school population live beyond the road network, and 27 per cent more than 40 kilometres away from school, 59 per cent of Lapp children live in boarding-homes during the school week, while the others need motor sleighs or rowing boats for transportation. A relatively small number of Lapps are enrolled in secondary and higher educational institutions; 10-11 per cent of the total of secondary schools are vocational schools; 10 students are at higher education institutions, 3 of which, as well as the Summer University of Lapland, offer possibilities for studies in the Lapp language.

104. The Government of Chile reports as follows on the geographical distribution of schools:

"There is ... an alarming lack of rural schools providing complete basic courses and of consolidated schools, whose pupils can, on leaving, continue their education at the middle-school level.

24/ Nathan L. Whetten, Guatemala, The Land and the People, New Yale University Press, 1961, p. 267.

"Existing consolidated schools are very few in number and, in the vast majority of cases, are in cramped, dilapidated buildings that are frequently without adequate sanitation, heating, etc. The children arrive tired out, and in winter, wet and chilled after walking distances of four or five kilometres. How can order, cleanliness, discipline, concentration and effort be expected from these poor children? To complete the picture, one needs only to think of the dust of the North, the snow and the mud of the South, and the inadequate and generally untarred roads.

"In spite of all these difficulties, the number of indigenous young people from rural areas going on to secondary studies in towns and cities is constantly increasing."

105. As to the special measures taken to ensure that indigenous children have school facilities available in or near their communities, the Government stated in a subsequent communication that: "Among the indigenous communities, schools are being established in the population centres. In 1974, 184 classrooms were built and 104 others were added in the first six months of 1975. Construction is also under way of 'socio-economic development centres'; these consist of schools, health outposts, Carabineros stations, handicraft workshops and other assistance and community service facilities. So far, 54 such development centres have been set up, all of them in indigenous rural sectors".

106. With regard to the setting up of new rural schools in Guatemala, a Government publication states:

"The Primary Education Extension and Improvement Project has been set up to strengthen the national education system within the framework of education policy for the period 1971-1975, by making a significant and permanent impact on the qualitative and quantitative aspects of that system. It represents the culmination of several years of study by leading Guatemalan educationalists and of research carried out by the Office for Over-all Educational Planning (OPIE), the Secretariat of the National Economic Planning Council, the UNESCO technical assistance mission and the International Development Agency (IDA). OPIE carried out detailed studies on the state of primary education and prepared a draft project for the extension and improvement of this type of schooling which served as a basis for the submission in April 1967, through the Ministry of Finance and Public Credit (Ministry of Public Finance), of an application for external financing." 25/

107. Pursuant to this project, the first regional rural school was set up by Government Decree No. 41 of 5 July 1973. The setting up of a further 26 such schools is provided for by Government Decree No. 39 of 28 May 1974. 26/

25/ Report on the work of the Primary Education Extension and Improvement Project, 1 July 1970-30 June 1979. Ministry of Education, Guatemala.

26/ Ibid.

108. In Bolivia, the Agrarian Reform Act makes provision for the setting up of schools for campesino communities:

"Article 140

Campesino communities should found schools, controlling them through school boards (Juntas Escolares) composed of community members.

Article 141

Such communities should maintain schools which ex-landlords heretofore maintained.

Article 142

The community is responsible for cultivating and exploiting the school field to provide produce for student breakfasts and luncheons; such land may be used for no other purpose".

109. The information available on certain countries focuses on the very bad distribution of schools, which tend to be concentrated in certain areas of difficult or impossible access to indigenous populations.

110. For example, according to information given to the Special Rapporteur during his visit to Paraguay, schools in that country "are very unevenly distributed. A problem of shortage of schools exists in some indigenous areas in eastern Paraguay and in the very remote parts of the Chaco region".

111. Similarly, it has been reported that, in Honduras, primary and secondary schools and university departments are concentrated in and around the capital or in certain of the larger towns. The same report describes the geographical distribution of primary schools in rural areas as inadequate. An attempt has been made to lay down an obligation to establish and maintain schools in certain areas. Article 38 of the Constitution provides that "The law shall determine which enterprises and entrepreneurs shall, in view of the number of their workers and the volume of their capital, be obliged to provide for their workers ... schools".

112. The following should be noted with specific reference to the Jicaque indigenous groups:

"No attempt has ever been made to open a school for these indigenous people. In 1959, the nearest functioning school was that in the locality of Rio Arriba some 12 kilometres away from the Jicaque village. Previous to that, the school was even further away, at a place called Hoya del Quebracho". 27/

27/ Jesús Núñez Chinchilla: "Datos generales para la etnografía de los jicaques oturrapanes de la Montaña de la Flor (Honduras)", América Indígena, vol. XXIII No. 2, April 1963, para. 151.

113. Regarding the existence in the Lao People's Democratic Republic of school facilities for children from an indigenous background, one author writes: "The number of schools available to Khmu, Meo, and other hill peoples is today negligible, although those Khmu, for example, who live in proximity to urban centers are not unaware of the value of an education and have in a few cases requested the services of a Lao teacher." 28/

114. Moreover, according to another author: "Greater value was placed on education by dwellers in the few urban areas than by the rural people at large, mainly because formal educational facilities of a modern sort were more readily available and the benefits they offered were more discernible in the towns than in the villages.

"Local communities were required, and very often were willing, to supply materials and labor for school construction and to maintain the established schools, but often they lacked the necessary facilities and expertise to establish an effective educational program. The Government was not in a position to fulfill its own legal obligation by making a school site and other school facilities available for all.

"Many families have consequently had to wait for a school to be built before they could send a child to school, and many pupils, particularly in rural areas, did not start school until they were eight or nine years old." 29/

115. The Government of Costa Rica states that, although the Ministry of Education has in fact organized schools in nearly all the 54 indigenous communities, the structure of the curricula is not suited to the people's needs. The Government adds that the distance from educational and economic centres has meant a de facto limitation or lack of opportunity in that respect.

116. The following information is contained in a publication:

> "As part of the improvement and assistance plans for the indigenous inhabitants of the Talamanca area, the Ministry of Public Works has begun the construction of five new schools for the communities of that mountainous region.
>
> Owing to the difficult conditions of access to that area, helicopters have been used to carry the materials for the construction work. Until now, most of the children of the Bribri indigenous population of Talamanca have been obliged to travel great distances in order to attend classes in one of the nearest schools."

28/ T.D. Roberts and others, Area Handbook for Laos, Washington D.C., American University, 1972, p. 78.

29/ T.D. Roberts and others, op.cit., p. 77.

117. The Government of Bangladesh simply states that it is "conscious of the need for suitable dispersal of educational institutions and preferential facilities."

118. The Canadian Government indicates some of the measures it has taken to cope with this problem and states that in order to "overcome the handicaps of isolation, free bus, train or plane transportation is provided to bring children to integrated schools. Boarding-homes are made available in urban centres for Indian and Eskimo children who leave their home communities to attend secondary schools, and transportation is provided where needed."

119. Other countries, while describing some of the main expenditures on indigenous education, also mention boarding-homes and boarding-schools as one devise used to solve these problems.

120. In Mexico, the National Indigenous Affairs Institute (INI) allocates a large part of its budget to the construction of schools built by the Co-ordinating Centres. The community concerned supplies the site, the unskilled labour and the regional materials: sand, stone, chalk, palm leaves, and mud for the walls and roofs in the warm areas and wood for benches, desks and the teachers' chairs. This procedure continues in use because it ensures that the communities concerned will take an interest in looking after their schools.

The Federal Government possesses an organ set up to act as the executive body at the national level for school construction policy. This body, the Management Committee for the Federal School Construction Programme, has, in recent years, allocated some 60 per cent of its budget to rural areas and has invested over 200 million pesos in the construction of schoolrooms, workshops and annexes, including boarding houses, in indigenous areas. All these buildings are intended to bring full primary school facilities to small and diverse communities. In the next five years, it is planned to invest 1,000 million pesos in the setting up of educational facilities in marginal areas, particularly indigenous areas. The system of boarding schools has been surprisingly successful and constitutes the best means of providing communities, even the most isolated ones, with educational facilities at the primary school level and of ensuring control over the attendance records and the application to their studies of pupils of either sex. As of 1977, there were 628 boarding schools and a total enrolment of 32,500 children. This service began in 1971 with five units and 250 scholarship holders. The Management Committee for the Federal School Construction Programme, the National Indigenous Affairs Institute and the Public Investment Programme for Rural Development have built 177 boarding units; there remain 451 to be built to replace the present temporary premises. The extraordinary demand on the part of communities for this type of service has until now exceeded the public authorities' budgetary possibilities.

121. Australia also mentions that in addition to expenditure on Aboriginal children in the normal state education systems, the Commonwealth Government provides special funds to meet a variety of Aboriginal education needs. A substantial component of the annual grant to the states from the Aboriginal Advancement Trust Account is allotted to education - some $2,887,000 has been provided in the financial year 1972/73.

122. With these funds, and with funds made available to voluntary organizations by direct grant from the Aboriginal Advancement Trust Account, pre-schools and primary and secondary schools are built and equipped in Aboriginal or predominantly Aboriginal areas. Over the past two years a special effort has been made to develop pre-schooling facilities for Aboriginal children, so that they will be better able to cope with entry into the formal education system. (In most states in Australia, pre-schooling is not as yet widely available to the general community.)

123. Special grants are available to schools with substantial Aboriginal enrolments, so that additional educational equipment, library books and so on may be purchased. Normally these items are provided by Parents' and Citizens' Associations but in predominantly Aboriginal areas these associations may be short of funds. Funds are also available for the purchase of special aids for Aboriginal students, such as language laboratories to facilitate their learning of English as a second language.

124. The salaries of Aboriginal teaching assistants and of special consultants or advisers on Aboriginal education are provided. Salaries of teachers in Aboriginal schools conducted by some missions are also subsidized.

125. Residential hostels are established in some urban areas so that Aboriginal children from rural or remote areas may attend secondary or higher education institutions. These hostels are usually operated by non-government voluntary organizations.

126. The Government of the United States of America has stated that:

> "There is, today, emphasis upon day-schools as opposed to boarding schools so far as the Bureau of Indian Affairs is concerned, since this is what Indian people have said they prefer. However, boarding-schools still exist because reservations are often in remote areas where the population is sparse and roads few in number. A popular way of lessening the separation between boarding-school students and parents is frequent visits from parents. In some cases the parents of boarding-school students have formed clubs and make visits en masse to the school from time to time."

127. In connection with the use of boarding-schools in the United States it has been written:

> "It is not true that Indian children are sent to boarding-schools solely for geographic reasons. Often children are sent to boarding-schools because they are determined by a federal official to present problems which make them

unacceptable in a local day-school. The boarding-school to which they are sent, however, is neither staffed nor equipped to handle children with special problems, so the sole accomplishment is to remove the children from their homes. In the celebrated case of the Intermountain school, children were sent off the reservation to attend the school when there were sufficient spaces in local school facilities. The sole apparent reason for sending the children away from their homes was to fill the Intermountain school so that it would not have to be closed.

"None of the many Indian people contacted had ever heard of any 'club' of relatively affluent Indian parents who could afford to visit their children in boarding-schools. Despite the attempt of the United States to make federal Indian boarding-schools sound like a lighthearted middle-class experience, the fact remains that Indian children are being separated from their families to attend federal boarding-schools. A federal policy which allows this device in the context of an assimilationist goal should be immediately suspect under international standards". 30/

128. It has also been written that:

"Forty-nine out of sixty schools run by the Bureau of Indian Affairs on the reservation are boarding-schools. Alcoholism, even in grade schools, is considered a serious and growing problem.

"Last year, about 1,500 Navajo children ran away from elementary boarding-schools." 31/

129. A more categorical criticism and rejection of some of these adverse results is contained in information regarding certain boarding-schools in Venezuela. In this respect it has been written that the boarding-school is indubitably the essential instrument of religious missions. Children

"Children are torn from their families and brought to school at a very tender age. The hunt for these children used to be carried on openly, but now it is done in a more subdued way, by promises, deceptive inducements and

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30/ American Indian Law Newsletter, vol. 7, No. 11, Special Issue containing the American Indian response to the response of the United States of America, pp. 39-40.

31/ "Civil Rights Commission looks at Navajo Nation", Akwesasne Notes, vol. 6, No. 1, 1974, p. 27.

blackmail. The children trained in the mission centres turn into typically uprooted people, who belong neither to Indian nor to the national society.

" ...

"In the [Church] boarding-schools the Indian child receives instruction up to the third grade, which, according to some missionaries, is the limit of an Indians' mental capacity; physically he is not well-treated, and the food is very bad". 32/

130. The alternative of bringing the school to the children rather than the other way around has taken on special characteristics in the case of nomadic populations. In this case it has meant that the school travels following the movements of the community. In this connection it has been written that in Sweden

"During the first half of the 18th century boarding-schools were set up in the principal centres of the lappmarks. The Lapps acquired a governing board for church and school matters in the 'Administration for Lappmark's Ecclesiastical and Educational Affairs'. These Lapp schools in the church villages educated a small number of pupils who, it was hoped, would spread a knowledge of the Scriptures and the ability to read among the other members of their herding units. Their tuition was rewarded and it soon became tuition by catechism. Permanent schools and ambulatory schools were in existence from then until the 1950s.

"After a time warning voices were raised: the permanent schools were taking the children away from the reindeer herding. On the other hand, the scant efficiency of the ambulatory schools was all too plain. Until 1913, when a school reform was carried out, first one and then the other type of school received the most attention. The 1913 reform was intended to make the nomad schools the chief type of school for the Lapps. The argument in favour was to 'furnish an opportunity of the best possible tuition for all the children of nomad Lapps' and also to 'order the tuition in such a way that it does not make the children unused to nomad life.'

"...

"... association with nomad culture, which took the form of a special subject, nomad lore - a kind of Lapp sociology - has been developed in the modern nomad school and combined with Lappish into a subject called 'the Lappish language and culture'.

"...

"Under the energetic leadership of the nomad school inspectors, the nomad school system developed ..." 33/

32/ Esteban E. Mosonyi. "The Situation of the Indian in Venezuela. Perspectives and Solutions". The Situation of the Indian in South America, World Council of Churches, Geneva, 1972, p. 52.

33/ Ruong Israel, op.cit., pp. 77-78 and 80.

2. Teachers with a fluent command of the children's mother tongue, or of the vernacular which prevails in the area

131. One foreseeable way of solving the linguistic and cultural problems of indigenous pupils is to train teachers from the community itself, selected from among persons who wish to be so trained in order to remain in or return to their indigenous communities as teachers. In the general section, mention has been made of some of the problems encountered by some countries in training indigenous teachers for nomadic or semi-nomadic peoples. Such teachers drawn from the communities would be extremely useful since the human problems encountered by teachers from outside, who are accustomed to the ways of a non-nomadic population, would be avoided. The advantages, from every point of view, of having teachers from the communities concerned are obvious. For this reason, in many countries efforts have been redoubled to train such teachers. The limited information available on this subject will now be examined below.

132. The Government of Bangladesh has communicated that it is encouraging an increasing representation of teachers from the regions concerned among those assigned to the different tribal areas. It adds that all over the country and in a uniform manner, Bengale is the only recognized medium of instruction in all the educational institutions.

133. In the Orang Asli jungle posts visited by the Special Rapporteur in Malaysia during his official visit to that country he found that children received instruction from teachers coming from outside their communities who, as a rule, did not command the aboriginal languages and therefore communicated with their students in Malay. 34/

134. The Government of Chile reports that "tuition is given by teachers of indigenous or non-indigenous origin, but using only the Spanish language". Similarly, in the report furnished by the Government of Costa Rica, it is stated that the educational programmes are the same for the whole country, so that no distinction is made with respect to language and other cultural factors of the indigenous inhabitants.

135. In Australia, until recently almost all instruction in government schools in Aboriginal areas has been in English, although the Commonwealth Government has provided funds towards the production of teaching materials in the local Aboriginal languages and towards the construction of schools and teachers' salaries on some missions where teaching is in the local Aboriginal language. Training colleges for teachers at all levels are open to Aboriginals throughout Australia. Some Aboriginals have graduated as fully qualified teachers. Many able and intelligent young Aboriginals however, because of their cultural and socio-economic background or the remote communities in which they live, are unable to meet the academic requirements of teacher training colleges. To enable Aboriginals to be employed in schools with substantial Aboriginal enrolments, most states and the Commonwealth have developed special training courses for Aboriginal teaching aides and assistants.

136. With regard to the use of indigenous languages in the education of indigenous schoolchildren, the Anti-Slavery Society has stated that, in Paraguay:

> "A language problem also exists in non-indigenous rural primary schools, as many non-indigenous children only understand Paraguayan Guaraní and not Spanish. The official school system provides teaching in Spanish from the very first day on, which is a frequently irreversible handicap for those

34/ See paragraph 59 below.

children who do not understand Spanish. Their learning is often limited to repeating by heart whole Spanish sentences without understanding their sense. As Spanish is not considered a foreign language (although, in fact, it is exactly that to many children), no Spanish lessons are ever given to the children. As a consequence, they never learn Spanish except for some mechanically repeated sentences which they do not understand, and they never learn to understand the subject matters taught. As a solution, reformers propose teaching in Paraguayan Guaraní in the first grades, accompanied by the teaching of Spanish as a foreign language, and gradual change to Spanish in the later years of the primary level. This system is now tentatively introduced in some schools on the private initiative of teachers who thus disobey the official regulations. A textbook for the first grade has been edited in Paraguayan Guaraní. For indigenous children, the problem is the same in so far as they belong to groups which speak Paraguayan Guaraní (perhaps 15 per cent of the Paraguayan Indians). It is more complicated for those who are Guaraní speaking, not Paraguayan Guaraní, but 'pure' indigenous Guaraní (perhaps some 25 per cent of the indigenous total). As Paraguayan Guaraní is intelligible to them, it facilitates their understanding of the subject taught and means that they do not have to repeat by heart sentences they do not understand; but precisely because Paraguayan Guaraní is so similar to their own language, it also could easily supplant it through school influence and thus deprive the Indians of an essential part of their culture. In the case of children belonging to non-Guaraní indigenous groups (perhaps some 60 per cent of the indigenous total), neither Spanish nor Paraguayan Guaraní solve the problem in the first years of school. The Indians of this majority group, if given the choice, mostly prefer their children to be taught in Spanish, as Guaraní does not prepare them for access to the secondary and higher school level and to higher culture in general.

"Theoretically, all schools with indigenous children (except in the Mennonite zones) follow the official curriculum prescribing the use of Spanish from the first day on. But in practice the absurdity of teaching in a language the children do not understand leads many teachers to compromises. Thus, the Guaraní Indian teachers at Santa Teresita, Chaco, only speak Spanish in the first and second grade classes 'when the Director comes in', and Paraguayan Guaraní the rest of the time. This facilitates learning for the Guaraní Indian children, but not for non-Guaraní Indian children. As a consequence, in 1968-1972 23.5 per cent of the Guaraní, but only 3.5 per cent of the Nivaklé Indian children passed beyond third grade. Generally, readiness to use Paraguayan Guaraní is greater for indigenous than for non-indigenous children. Paraguayan Guaraní is often taught to non-Guaraní Indian children. But all this depends much on each teacher's individual decision. Teaching in indigenous languages (except in Paraguayan Guaraní which is not really indigenous) is rare and depends mostly on the initiative of the few non-Guaraní indigenous teachers.

"In short, official regulations favour school teaching which is of little use either to Paraguayan or to Indian children. Individual teachers have developed initiatives that could serve as a basis for more generalized use of Paraguayan Guaraní and more systematic learning of Spanish. But this solution is adapted only to the case of the Indians speaking Paraguayan Guaraní, and therefore implies the risk of creating first and second class Indians.

"The North American missionaries of the 'To the New Tribes' and SIL groups, on the contrary, follow a policy of teaching in the languages of each Indian group. For instance, in Ayoreo at their Ayoreo mission, whereas the Roman Catholic missionaries at another Ayoreo mission teach in Spanish.

"A special exception are the schools in the Mennonite zone, where perhaps 15 per cent of the indigenous total live. The schools for indigenous and non-Mennonite Paraguayan children have a 2-year curriculum, at the end of which a second grade certificate is furnished (in other words they go no further than the second grade of primary school). In 1970, 48 per cent of the indigenous pupils did not obtain the final certificate. Indigenous children are usually taught in their own languages, by indigenous teachers, at the beginning, then gradually change to Spanish, which is used exclusively in the second year. Only a minority of indigenous children are admitted to the Mennonite schools for Mennonites, where it is possible to pass beyond second grade primary. High admission fees are required (fees are required also for the schools for indigenous children). In the Mennonite schools 80 per cent of the teaching is in German (a language not spoken by anyone in the area in daily life, as even the Mennonites usually speak not High German but a Low German dialect). The happy statement of a German newspaper that the Indians in these schools 'sing German folksongs even more passionately than the children of the Mennonites' documents the absurdity of a policy which has so far prevented the access of any Indian child to the secondary level of these schools.

"Aché: Although the reservation Colonia Nacional Guayakí is controlled by 'To the New Tribes' missionaries, teaching here is not in Aché (none of the missionaries speaks the language). A school has been operating since the beginning of 1974, in Paraguayan Guaraní. This language is understood by most of the Aché children there, and might, in the long run, threaten the indigenous Aché language."

137. The Anti-Slavery Society states that, in Indonesia, because the entire educational programme is restricted by the lack of trained personnel, especially personnel who speak the local language, any commitment to dual language teaching is nearly always impractical.

138. The Government of New Zealand has stated that: "By far the greatest proportion of Maori children use English in the home. In some fairly isolated areas there are children who are bilingual in English and Maori, but there would be very few children indeed who go to school without some knowledge of English. In all teachers' colleges a course in Maori studies is a compulsory requirement and optional courses for three years are available for teacher trainees wishing to take Maori studies in depth or the Maori language. All teachers graduating from teachers' colleges in the future should have some knowledge of Maori.

139. The Citizens' Association for Racial Equality states that "very few teachers are fluent in Maori", and that "instruction at all levels in the educational system is in English".

140. In the Lao People's Democratic Republic, children from certain autochthonous ethnic groups receive their basic education in their mother tongue from teachers with the same ethnic backgrounds. Furthermore, according to the Government, ethnic groups are to receive their basic education in their mother tongue parallel to their education in the national language, Lao being used as a medium of instruction in the majority of elementary schools.

141. In Brazil, FUNAI is said to be involved in a project to train indigenous persons to teach in their communities. Some of these bilingual "promoters" will be prepared to become active in the field of education; others will be trained in areas of health and agriculture. In Norway, at the Teacher's College in Alta, a separate department has been established for the training of Lapp teachers and the development of teaching materials in Lappish.

142. The Finnish Government states that in primary schools, oral instruction is given in Lappish, if possible to all those whose mother tongue it is. Certain difficulties are caused by the fact that Lappish is very little cultivated in written form. Besides, there are several dialects and vernaculars spoken in different regions, and the spelling used by the Lapps in Finland is different from that used in the neighbouring countries. Further difficulties are due to the lack of teachers with a fluent command of Lappish ... Instruction is the same for all pupils. Thus, the elements of the indigenous culture in the instruction are deficient. As mentioned above, there is also a lack of teachers with a fluent command of Lappish. On the other hand, the Lappish pupils receive sufficient instruction in speaking, reading and writing the official language of the country correctly.

143. The Government of Panama states that, pursuant to the new guidelines embodied in the 1972 Constitution, the Ministry has taken particular care to appoint indigenous teachers in the indigenous communities, since those teachers are the ones who are most familiar with the inhabitants' needs, knowledge and usages.

144. Article 27 of the Constitution of Ecuador states that: "In schools established in areas with a predominantly indigenous population, Quechua or the respective indigenous language shall be used, if necessary, in addition to Spanish." It would therefore be reasonable to assume that teaching in these schools is entrusted to teachers who know the languages in question. Nevertheless, it has been reported in this respect that in Otavalo, an area with a large indigenous population, "language constitutes a great barrier to the education of indigenous children; they go to school speaking and understanding only their own language and they receive their literacy training and their education in general in Spanish - a process which creates the problem of backwardness and that of dropping-out of school. All this is the result of the dominant economic-social and political structure of the country". 35/

145. In two countries (Guatemala and Peru), legislation has been enacted providing for the use of indigenous languages in the education given to indigenous school-children; these laws specify the arrangements made to ensure that the indigenous children are educated by teachers fully conversant with their mother tongue and refer in particular to the training of bilingual teachers from among indigenous candidates who wish to teach in their own communities. For Peru, mention may be made of the statement by the Ministry of Education relating to the training of bilingual teachers as an essential prerequisite for ensuring tuition in the vernacular languages in school:

> "One of the first requirements for the education of monolingual indigenous children is to train bilingual teachers who are also indigenous. These teachers are, for cultural and linguistic reasons and because they are accepted by their own group, those who perform their tasks with the best results.

35/ Gladys Villavicencio R.: Relaciones interétnicas en Otavalo-Ecuador Instituto Indigenista Interamericano, 65, Mexico City, 1973, p. 278.

"Applicants for posts as bilingual teachers who come from new groups or areas generally lack the minimum educational standards required; owing, however, to the urgent need to establish schools in those areas, they are admitted to the courses for trainee teachers which are given during the school year at Yarinacocha whenever the need arises. Subsequently, those who have been successful are admitted to the bilingual teacher training course which is given during the vacation period at the same place.

"In the bilingual teacher training course, those students who are admitted without having a full primary education, but who have finished at least the second grade of primary school, complete their primary education after receiving pedagogical training during two vacation periods. Those students who already have a full primary education, or an incomplete secondary education, receive only pedagogical training in two vacation courses.

"All these courses are adapted to the special situation of the indigenous inhabitants concerned and conform with the legislative provisions enacted by the Ministry of Education.

"Students who have completed their training at Yarinacocha are given an opportunity to enter the specialized secondary education vacation courses for teachers. This summer, 185 bilingual teachers attended the first year, benefiting from special provisions enacted by the Government and aimed at facilitating the integration of the indigenous population in the Peruvian nation. In addition, six bilingual teachers completed the fifth year and 20 attended the third-year and fourth-year courses.

"Within a few more years, the serving bilingual teachers who have completed their secondary education vacation courses will be able to take the teacher training and advanced courses and obtain the title of graduate teacher. At the same time, however, young indigenous persons who have attended secondary school regularly and wish to become teachers will be able to obtain admission to any teacher training college or any faculty of education at a university centre.

...

"During its early years, the training course for literate indigenous inhabitants of the Peruvian Amazon region, which was initiated in 1953, supplied indigenous youths with the rudiments of general culture and pedagogical practice for their work as teachers. Later, however, it became a training course for bilingual teachers of the Selva region, with more systematic aims and organization, so as to provide a full primary education as well as the necessary pedagogical training.

"In 1953, 11 indigenous youths qualified and began to teach. In 1969, 256 bilingual teachers of the 300 who qualified were working as teachers. A further 25 youths qualified this summer." 36/

146. Decree Law No. 21156 of 27 May 1975, which recognizes Quechua on the same footing with Spanish as an official language of the Republic (article 1), contains in addition the following provisions: 37/

36/ Ministerio de Educación, La educación bilingüe y la integración socio-económica del aborigen de la Selva, Lima, Peru, 1970, p. 5.

37/ Report submitted by the Government of Peru to the Committee for the Elimination of Racial Discrimination (CERD/C/R.65/Add.7).

"Article 2. From the beginning of the school year of 1976, the teaching of Quechua shall be obligatory at all levels of education in the Republic. The Ministries of the Army, Navy, Air Force, Interior and Education shall be responsible for carrying out the present provisions, the whole of the provisions of Decree No. 19326 remaining in force.

...

"Article 4. The Ministry of Education and other sectors shall be responsible for ensuring the preparation and publication of the dictionaries, texts, manuals and other documents required for the full implementation of this Decree.

"The institutions engaged in research into, teaching of and propagation of the aforementioned language shall also give all necessary support."

147. It will be seen that article 2 of Decree Law No. 21156 refers in its concluding portion to Decree Law No. 19326 - in other words, the General Education Act - which includes the following provisions: 38/

"Article 12 - Education shall take into account in all its activities the existence in the country of several languages constituting means of communication and of expression of culture and shall ensure that they are preserved and developed. The teaching of Spanish to all the population shall be effected with due respect for the cultural identity of the various groups which constitute the national community and using the languages of these groups as a vehicle of instruction.

"Article 98 - Learning of the vernacular languages shall be fostered. The educational centres shall provide facilities for studying these languages and their influence on the national language and culture."

148. The Special Rapporteur has requested - without obtaining it - information on any arrangements made to ensure that indigenous children are educated by teachers with a fluent command of the children's mother tongue, the vernacular language most used in the community or the predominant one in the region. Nor was he able to obtain any information on the current practical effects of the provisions of Decree Law No. 21156.

149. In Guatemala, there are two rural teacher-training schools, one of which - the Rural Teacher-Training School of the Western Plateau at Santa Lucía Utatlán, Sololá - is dedicated to training teachers who speak indigenous languages. For that reason, applicants who do not speak any indigenous language or dialect are eliminated, as are candidates who are unable to show, in a special oral and written examination, their command of their own indigenous language. Another requirement is for the candidate to come from the Western Plateau region and to be bilingual, in the sense of being able to speak Spanish as the national language and the indigenous dialect of his place of origin. 39/

38/ Ministry of Education, Ley General de Educación, Decree Law No. 19326, Lima, March 1972, p. 42.

39/ Texts supplied to the Special Rapporteur by the headmaster of the Regional Teacher-Training School of the Western Plateau during his official visit to Guatemala in 1977. These texts describe the principles and criteria governing the selection process and their application in the School.

150. The rules governing the operation of the Rural Teacher-Training School of the Western Plateau include the following:

"In addition to the study of the Spanish language, which is of particular importance, the School shall have a Department of Indigenous Languages whose activity shall take the form of a permanent seminar, inasmuch as each of the students speaks one or other of the languages of the Western Plateau; this seminar shall, among other aims, pursue the following:

1. To ensure that the students practise and do not abandon their vernacular language;

2. To ensure that they improve their knowledge of their native language from the point of view of its grammatical structure and that they gain an awareness of its value;

3. To promote comparative studies by the students with a view to identifying similarities and differences between languages and determining thereby an improved technique of communication among the various language groups in the country;

4. To ensure that they improve the use of those languages for the purposes of oral and written communication.

It is worth noting that the study of indigenous languages will strengthen the cohesion between the members of the local communities and the national community as a whole, that it will open unsuspected horizons and perspectives to future teachers for research in various fields and that it will in any case improve our knowledge of ourselves as a social entity and as a nation and reinforce the spirit of patriotism." 40/

151. In Colombia, Decree No. 1142 of 19 June 1978 41/ provides as follows:

"Article 11. The selection and training of teaching personnel for the indigenous communities shall be governed by the following rules:

1. Wherever possible, teachers shall be selected by the indigenous communities from among the members of the community concerned;

2. The teacher shall be bilingual or shall be tested, apart from his suitability as a teacher, for basic knowledge of the mother tongue of the community and of Spanish;

3. The Ministry of Education, Directorate General for Training, Curricula and Educational Facilities, shall prepare the curriculum for training teachers in indigenous communities in the light of the provisions of the preceding articles and shall include all elements of non-formal education which may contribute to the development of the communities."

152. According to information furnished by the Canadian Government, the formal teaching of indigenous languages in written or spoken form is rapidly becoming more common. An important consideration is that English (or French) is considered essential to equal opportunity both economically and socially, while the use of any

40/ Ibid.

41/ See CCPR/C/1/Add.50, pp. 112-116.

one native language or dialect is restricted to a very limited social application. There are 10 linguistic groups of Indians in Canada speaking 54 related languages or dialects. There are three distinct Eskimo dialects. However, particularly at the kindergarten and early elementary level, there is considerable use of these languages in play, in singing and in instruction, employing the services of native teaching assistants.

153. Indigenous representations have insisted for years that

> "The need for teachers who are fluent in the local language is dramatically underlined by ... concern for the preservation of Indian identity through language instruction. Realization of this goal can be achieved in several ways:
>
> Have teacher-aides specialize in Indian languages;
>
> Have local language-resource aides to assist professional teachers;
>
> Waive rigid teaching requirements to enable Indian people who are fluent in Indian languages, to become full-fledged teachers." 42/

154. The Government of the United States has stated that

> "There are Indian preference regulations in the hiring of teachers for Bureau of Indian Affairs schools. However, not enough Indian people are qualified for teaching positions to fill the openings. Qualifications for teachers are similar to those for non-Indian schools. As a result, non-Indians often teach Indians but in the primary grades there is often an Indian teacher-aide who is a member of the tribe - or one of the tribes - served by the school and speaks the language of the tribe if a tribal language is still in common use."

3. Use of the mother tongue in teaching a child to read and write

155. This aspect is of vital importance when the indigenous populations do not know the official language or have only an inadequate knowledge of it. It has been systematically demonstrated that, even if this circumstance is not present, the initial process of teaching is much quicker and easier both for the pupil and for the teacher when the mother tongue is used. Some countries which use indigenous languages as the educational medium have adopted them only for the first stages of education. Others use them at more advanced levels, although with decreasing emphasis as the level of education rises.

156. In order to give an approximate idea of the importance of this aspect, it may be useful to quote the following statement by experts on the subject concerning the use of the mother tongue in teaching: 43/

> "It is axiomatic that the best medium for teaching a child is his mother tongue. Psychologically, it is the system of meaningful signs that in his mind works automatically for expression and understanding. Sociologically,

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42/ Indian Control of Indian Education, Policy Paper, National Indian Brotherhood, p. 16.

43/ UNESCO, The Use of Vernacular Languages in Education, Monographs on basic education, No. ED.53.III.8 S, Paris, 1954, p. 11.

> it is a means of identification among the members of the community to which he belongs. Educationally, he learns more quickly through it than through an unfamiliar linguistic medium. But, as was said earlier, it is not always possible to use the mother tongue in school and, even when possible, some factors may impede or condition its use."

157. The Special Rapporteur had hoped to be able to give an account of the various systems that are at present used in different countries, and of the difficulties and problems which have been encountered in different parts of the world in this respect. He had also proposed to make a study of the political, linguistic, educational, socio-cultural, economic, financial and practical factors which have arisen in the actual use of those languages in education in the various countries concerned.

158. In the present report, however, it is possible to include information only on those countries which are covered by the study, and only to the extent that such information is available.

159. In Malaysia students learn to read and write Malay. In the Orang Asli posts visited by the Special Rapporteur during his official visit to West Malaysia in 1973 instruction was imparted in Malay, as confirmed by all teachers he interviewed. A similar situation seems to obtain in Bangladesh where, according to information provided by the Government "all over the country" in a uniform manner "Bengali is the only recognized medium of instruction in all the educational institutions". The Government adds, however, that "In exceptional circumstances, English is used as the medium of instruction in some higher educational institutions."

160. The Panamanian Government communicates that "teaching of the indigenous languages is not contemplated and, with regard to the official language (Spanish), the official curricula have been prepared for the Spanish-speaking population".

161. The Government of Chile similarly reports that "students learn to read and write in Spanish".

162. As we have seen above, in Costa Rica, education is as a general rule given in the official language, i.e. Spanish. Nevertheless, there appears to have been one exception. A publication reports "the very exceptional fact that the natives of Boruca felt the need to recover their own language as a cultural value". As a result, official teaching of the Brunka language began in 1973. 44/

163. The Special Rapporteur points out that all the indigenous groups and individuals consulted during his official visit to Bolivia in June 1974 complained that there was no recognition, and no adequate utilization, of the indigenous languages by the State or by the private or public entities involved in action programmes for the indigenous population. According to these complaints, there was no such recognition or utilization in any sector of activity and this was due to lack of interest or to a deliberate policy of disregard for those languages. According to a statement made by persons interviewed in their community in the Bolivian Plateau region, the Aymará language was not being used for purposes of school education in that community because there were ministerial instructions prohibiting it. The members of the community present at the interview stated that they were, however, very anxious that the Aymará language should be used in schools and that communities should, as far as possible, be assigned Aymará teachers, preferably drawn in each case from among the local inhabitants. In this respect, special reference should

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44/ "Noticiero Indigenista", América Indígena, vol. XXXIII, No. 4, 1973, p. 1222.

be made to the efforts of a number of members of another Aymará community of the Bolivian Plateau who have adopted a phonetic alphabet elaborated by an Aymará linguistic expert and used it to prepare literacy primers in Aymará, as well as a number of pamphlets for the general information of the community and the vocational training of Aymará-speakers.

164. The Anti-Slavery Society states that in Indonesia "At lower grades, local languages are used to supplement the teaching of Bahasa Indonesia which occurs from the third grade upwards" becoming the only language used in school from then on.

165. As regards Sweden, it is merely stated that the Lappish language is at present used in the Lapp Nomad Schools, and that some instruction in Lappish culture is also imparted in those schools.

166. In other countries, the question as to whether an indigenous language will be used when teaching a child to read and write seems to be, in certain districts, a matter for parents or guardians to decide. Thus, for instance, the Government of Norway has stated that in the Lapp districts parents or guardians who so wish may choose primary education in Lappish for their children. In these cases, the children learn to read and write Lappish before learning Norwegian (Grades 1-3, ages 7-9).

167. In New Zealand, courses in the Maori language seem to be available as optional courses. Maori does not seem to be the language of instruction at any school, at the present time. In this connection, the Citizen's Association for Racial Equality states that "instruction at all levels in the educational system is in English not Maori. The Maori language is taught as a compulsory subject in some church secondary schools, and as an optional subject in some (probably less than 10 per cent of the state secondary schools)."

168. According to the Government it is an aspect of Government policy that "the Maori language should be available to all school pupils who desire to study it". The Government adds that "Maori is being taught in primary schools and intermediate schools which contribute pupils to secondary schools where there is already a Maori language course established".

169. This Maori instruction in primary schools is an optional course, freely to be taken by anyone, Maori or non-Maori, who wishes to take such a course; but no instruction is given on school subjects in Maori language to Maori children when they first come to school and who learn to read and write in English in all cases. In this connection, the Government has stated that there are few (if any) Maori children who now commence school without some knowledge of English, and those who would be more at home in Maori than in English would also be a tiny proportion of the total Maori school entrants. The Government has also communicated that:

> "The New Zealand Council for Educational Research is at present carrying out an extensive survey of the language of Maori primary school entrants and the result of this survey is being awaited to see if there are some areas where the use of Maori in instruction would be advisable."

170. There is little more information on the specific use made of indigenous languages for teaching purposes in other countries. Nevertheless, reference may be made to the statements concerning the Lao People's Democratic Republic, quoted above. Further, the Government of the Philippines has stated that the languages of

the National Cultural Communities are used "as auxiliary languages" in kindergartens and elementary schools; are "not recognized" but "are used" in secondary schools and "may be used" in institutions of higher education as "support languages"; and are not recognized but "are normally used as support auxiliary languages" in vocational and other special schools. In Brazil, Act No. 6001 (1973), containing the Indian Statute, merely provides:

> "Article 49. The Indians shall be taught to read and write in the language of the group to which they belong, and in Portuguese, safeguarding the use of the former tongue."

171. It has been written that in Canada:

> "The Indian people are expressing growing concern that the native languages are being lost; that the younger generations can no longer speak or understand their mother tongue. If the Indian identity is to be preserved, steps must be taken to reverse this trend.
>
> "While much can be done by parents in the home and by the community on the reserve to foster facility in speaking and understanding, there is a great need for formal instruction in the language. There are two aspects to this language instruction: (1) teaching in the native language, and (2) teaching the native language.
>
> "Funds and personnel are needed to develop language programs which will identify the structures of the language: i.e. syntax, grammar, morphology, vocabulary. This is essential, not only to preserve the language, but to encourage its use in literary expression. Serious studies are needed to adapt traditional oral languages to written forms for instructional and literary purposes.
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> "In places where it is not feasible to have full instruction in the native language, school authorities should provide that Indian children and others wishing it, will have formal instruction in the local native language as part of the curriculum and with full academic credit.
>
> "While governments are reluctant to invest in any but the two official languages, funds given for studies in native languages and for the development of teaching tools and instructional materials will have both short and long term benefits.
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> "Systems of syllabics for the Cree and Eskimo languages were originally conceived by missionary teachers and are still preferred to a system of orthography devised under the aegis of the Eskimo Linguistics Section of the Education Division, Department of Indian Affairs and Northern Development. The Olivetti Company has devised a standard western Cree syllabic keyboard, and is now working on an eastern Cree syllabic keyboard."

172. According to information furnished by the Government of the United States:

> "The indigenous languages were not written but oral languages prior to the coming of the Europeans. Some Indian languages have been put into a written form by scholars and that written form is used to teach indigenous children the correct form and the written form of their own language."

173. The Government of Guatemala has reported that teaching of reading and writing to children in their own languages began in 1958. The symbols used to write the languages in question have been standardized, taking into account the language's phonetic peculiarities. Literacy campaigns are carried out in the relevant mother tongues, although this cannot be done in all instances because the indigenous languages are very numerous.

174. The Special Rapporteur was able to see an official publication containing the officially recognized alphabets of 13 of the main indigenous languages of Guatemala 45/ as well as a document which deals with "Writing systems of unwritten languages in Guatemala". 46/

175. The Special Rapporteur was also shown a number of publications in the Cakchiquel and Quiché languages, as well as educational material in indigenous languages. Among that material, mention should be made of pamphlets which contain the following: Primers 1 and 2 in Mam; first, second, third, fourth and fifth primers in Pokomchí, a language in which the Special Rapporteur saw also first and second readers; first primer in Cakchiquel; first primer in Quiché of Joyabaj; first primer of San Sebastián Coatán; first primer in Aguacateco; introductory reader in Kanjobal, etc.

176. The Special Rapporteur requested - but did not obtain - information regarding the current use of indigenous languages in primary education, either for literacy classes for the pupils or for tuition purposes i.e. for teaching the indigenous language and teaching in that language the subjects forming part of the school curriculum. He also requested information on the question whether a thorough training in the indigenous language is supplied or whether that language is used as a bridge to pass on to the official language, and on the scope of the use of indigenous languages in the various primary grades and, where appropriate, at the secondary and higher levels.

177. An official Peruvian publication reports, concerning efforts on behalf of the indigenous populations in general that:

> "One of the efforts at present under way, and successfully so, is directed towards facilitating the education of, and the teaching of Spanish to, the school-age and adult population ... in areas where indigenous languages prevail; this effort is conducted under the denomination of 'bilingual education' and is based on the use of the vernacular language to teach reading, writing and basic knowledge, together with the simultaneous and progressive teaching of Spanish."

178. The same official Peruvian publication states that bilingual education in the Selva region, i.e. for indigenous forest dwellers, covers, among other educational programmes, primary education and social integration, which is especially relevant there.

179. The bilingual schools provide primary education, a characteristic feature of which is the fact that in the transitional and primary grades education is bilingual, so as to combine training in the native language with a simultaneous

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45/ Alfabetos oficializados de trece principales idiomas indígenas de Guatemala, Dirección General de Cartografía, Guatemala City, 1962.

46/ E/CONF.69/L.8.

and progressive teaching of Spanish, until the point is reached when Spanish is used alone and the native language, which has been decreasingly used, becomes a reference element; as from the second grade, tuition is basically carried out in Spanish, which thus becomes the pupils' second language (see annex No. 1).

This type of tuition, using methods and materials specially prepared in accordance with the plan and programmes in force and conducted by specially trained bilingual teachers, avoids psychological, social and pedagogical upheavals for the vernacular-speaking children and facilitates their integration into the regular educational system.

In this manner, the bilingual school serves as a bridge to enable the monolingual indigenous child to become integrated in the active life of the country and benefit from the modern cultural elements to improve his living conditions.

180. The social integration programme includes educational activities and activities connected with citizenship and civic life. The educational activities are relevant to the subject-matter of this section. On this point it has been said that:

> "Considering that education constitutes a fundamental factor for the integration of indigenous persons into the nation, the bilingual education in the Selva areas has been established for the following basic purposes:
>
> > The teaching of Spanish, or linguistic integration, which is effected simultaneously with literacy training in the native language, using the oral method and special materials prepared in accordance with appropriate linguistic and cultural criteria;
> >
> > The provision of educational services, by means of programmes adapted to the culture and physical environment of the persons concerned;
> >
> > The training at the elementary level of social leaders and bilingual instructors (teachers, agriculturalists, public health workers, carpenters, mechanics, merchants and female home educators) who come from the communities concerned and thus serve as liaison agents between the indigenous community and 'Western' culture." 47/

181. In Mexico, the Federal Education Act states in its article 15, in fine:

> "The national educational system includes, in addition, the special education - or the education of any other type or kind - provided in accordance with the educational needs of the population and adjusted to the particular characteristics of its constituent groups."

182. Pursuant to the guidelines which governed its policy as regards indigenous peoples, the Mexican Government has organized a system of bilingual and bicultural education. Bilingual education involves the maximum utilization of the indigenous language and of the national language as vehicles of instruction, since the original language is obviously essential for education at the elementary level. The teaching of the Spanish language is gradually expanded as the student gains command of it, until functional bilingualism is achieved.

47/ Ministry of Education, La educación bilingüe, op. cit.

183. This type of education makes for greater efficiency in elementary education, since between five and seven years of age the use of language progresses and speech becomes a tool for learning and for dealing with the problems of life. Moreover, the fact that the student uses his own language as a tool for learning gives him greater confidence and enhances his capacity for communication; moreover, to the extent that he works in the two languages, he will acquire and develop a greater ability to utilize concepts and will be better able to communicate.

184. In Colombia, the above-mentioned Decree No. 1142 of 1978 provides as follows:

> "Article 9. Literacy programmes for the indigenous communities shall be carried out in the mother tongue and shall facilitate gradual acquisition of the national language, without detriment to the mother tongue." 48/

48/ See CCPR/C/1/Add.50.

4. Instruction in the essential elements of the indigenous culture

185. It is essential that formal education, as imparted to indigenous school children, should not alienate them from indigenous culture. Furthermore, it is highly desirable that instruction in the essentials of indigenous culture be included in formal education. This will not only avoid unwanted alienation processes, but will also make formal education acceptable to indigenous persons, groups and communities. The formal education of these children will be all the more useful to them, to their community and to national society as a whole, if they are allowed to remain in contact with their cultural background. While at school, and at the very least at the initial stages, it is inadvisable to disrupt their cultural world and highly desirable, on the contrary, to allow them to remain within the framework of known values and standards. This is one of the foreseeable advantages of including in the school personnel indigenous teachers and administrators since, it is presumed, they will bring with them their cultural heritage and their indigenous basic attitudes and outlook and reflect them in their teachings and actions at school.

186. Information on this aspect is scarce and fragmentary, and whatever data are available are couched in general terms. The following paragraphs discuss all available information on this matter.

187. For several countries no information is available in this regard.

188. In some countries, according to the available information, instruction in the essential elements of indigenous culture is either non-existent or has been reported to be very unsatisfactory.

189. The Government of Malaysia simply states that "teaching aboriginal culture is left to the community".

190. During his visit to Bolivia (in June 1974), the Special Rapporteur was told that, on the whole, the education provided by the State or by the local authorities did not make sufficient use either of indigenous languages or of indigenous cultural patterns. Almost all the teaching staff came from outside the indigenous communities and were insufficiently acquainted with those communities' languages, traditions and culture. Teaching material took inadequate account of the particular needs of indigenous pupils since it was frequently designed for the school population in general without the necessary degree of specialization. Moreover - as in other countries with indigenous populations in other parts of the world - neither in the material nor in the education of the non-indigenous sectors of the population was there sufficient emphasis on the importance of the local indigenous population or on the desirability of acquaintance with, and the essentiality of respect for, indigenous culture and traditions.

191. In some countries there are no legal provisions for the instruction of essential elements of indigenous culture to indigenous children in school. While in most of these countries there do not seem to be de facto arrangements for such instruction, in a few of them there are some efforts to impart this kind of instruction, particularly in non-State schools.

192. For example, the Anti-Slavery Society states with regard to Paraguay that:

> "Normally, instruction is not given in the essential elements of the indigenous culture of the community in which the school is located. On the contrary, the prevalent tendency is to replace, with the help of schools, the indigenous by the non-indigenous Paraguayan culture, or even by a European culture considered more 'civilized' than the Paraguayan mestizo traditions. This tendency derives from the general policy regarding indigenous peoples sought by the competent authorities and religious missions, as explained above. Minority efforts to combine 'civilized' teaching with respect for 'primitive' cultures are hindered by the lack of appropriate textbooks and methods".

193. In his visit to Paraguay (in June 1974), the Special Rapporteur was informed that there was widespread dissatisfaction on this subject because not enough account was taken of indigenous cultural patterns in State action of any type and the non-indigenous elements of society appeared not to recognize the importance to the indigenous elements of certain traditions and customs. It was emphasized that the teachers appointed to indigenous communities should have more knowledge and appreciation of the indigenous culture of the community they served, which it was pointed out, would, inter alia, make their work as teachers easier and more effective. 49/

194. It was reportedly said in a debate held in the Faculty of Education of the University of Costa Rica "that one of the most unsatisfactory aspects of the situation of the indigenous population was that of the education of the children, who were studying texts and pictures at variance with the surroundings in which they were growing up. The illustrations in the text books they used were often unrecognizable to the children". 50/

195. Ecuador, too, lacks satisfactory arrangements for imparting to indigenous pupils instruction associated with the essential elements of their community's culture. Take, for example, the following statement:

> "In rural areas we saw that, owing to the national structure and to the existence of school programmes which did not relate to the reality of the countryside, its needs and requirements, schools were not fulfilling their pre-eminently social and educative function.
>
> Furthermore, there were teachers who were unaware of social and economic realities in the place in which they were working. On the other hand, there were also teachers who, with real dedication and self-sacrifice, had succeeded by personal initiative in identifying the school with the community and achieving work of true social value. Some teachers interviewed in the survey denounced the domination and exploitation to which the Indians in the area are subject. Many of them,

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49/ The Special Rapporteur requested, but did not obtain, information as to whether adequate arrangements were being made in this respect.

50/ "Noticiero Indigena", loc.cit., vol. XXXVI, No. 1, 1976, p. 187.

however, as members of the dominant group, accept the situation and consciously or unconsciously offer Indians a lifeless education which in no way liberates their pupils or stimulates their curiosity; to do otherwise would be for them to run counter to their own interests of those of their group. Thus the Indian remains in his inevitably demoralizing state of subordination and education offers him neither new horizons nor new opportunities.

Illiteracy, the typical problem of the countryside, affects a high proportion of the indigenous population and nothing or almost nothing is done to remedy it, in spite of the existence of pilot schemes, experimental programmes which hardly reach the level of the canton or the parish and never attain that of the community in which the majority of the indigenous population live.

It is significant that all educational programmes are planned without any knowledge of the social realities in the towns and still less in the countryside; this lack of knowledge leads to abstract programming, inappropriate practices, wastage of time and energy and an increase in the problems of the peasant and of the Indian in particular." 51/

196. In other countries efforts are being made or planned with varying degrees of success. According to the Government of Australia, "the present Government is also seeking to ensure that all Australian children will be taught more effectively the history and culture of Aboriginal and Islander Australians".

197. A team of the World Council of Churches which visited Australia in 1981 has reported, however, that:

"Traditional Aboriginal society required co-operation and sharing based on distinct cultural values and a distinct form of social organization. Because of this distinctness of Aboriginal history, the Aboriginal child approaches schooling and education with a radically different outlook. The dominant white culture places the Aboriginal child at a severe disadvantage often with feelings of low self-esteem and embarrassment. Our attention was drawn to the insensitivity and inflexibility of the education system which has resulted in statistics that indicate: [the team sites statistical data]

At a high school in Taree, NSW, one team member sensed a lot of tension amongst the Aboriginal pupils because they have no-one to emulate; they know no black heroes such as Martin Luther King. Children in the Taree schools (as in schools around Australia) do not study Aboriginal culture, nor any other black cultures yet know much about ancient Rome and Greece.

51/ Gladys Villavicencio R., op.cit., p. 278.

Only through a more balanced, less biased, curriculum will white and black Australians come to understand the different but complimentary gifts they have and so be able to contribute to a more harmonious multi-cultural society.

...

A strong feeling expressed to the team was the desire for Aboriginal children to learn their own culture and history." 52/

198. The Canadian Government states that "Native Canadian people still possess a variety of cultures. The formal teaching of native traditions is increasing, and as control of school programmes is increasingly assumed by local groups it is anticipated that better materials will be developed. Programmes especially for the native student in science, math, outdoor education, current events, and arts and handicrafts are also being developed".

199. A policy statement by an important indigenous organization in Canada contains the following:

"Indian children will continue to be strangers in Canadian class rooms until the curriculum recognizes Indian customs and values, Indian languages, and the contributions which the Indian people have made to Canadian history. Steps can be taken to remedy this situation by providing in provincial schools special auxiliary services in cultural development, curriculum development, vocational guidance, counselling, in-service training of teachers, tutoring and recreation. Evidently many of these services can be provided under the regular school programme. However, if services are introduced especially for the Indian children, the school board should have financial support from the Federal Government." 53/

200. The same statement continues as follows: ...

"The time has come for a radical change in Indian education. Our aim is to make education relevant to the philosophy and needs of the Indian people. We want education to give our children a strong sense of identity, with confidence in their personal worth and ability. We believe in education:

as a preparation for total living;

as a means of free choice of where to live and work;

as a means of enabling us to participate fully in our own social, economic, political and educational advancement.

52/ Cited by Elizabeth Adler and others in Justice for Aboriginal Australians, report of the World Council of Churches team visit to the Aborigines, 1981 pp. 43 and 41.

53/ Indian Control of Indian Education, Policy Paper, National Indian Brotherhood, p. 15.

Unless a child learns about the forces which shape him: the history of his people, their values and customs, their language, he will never really know himself or his potential as a human being. Indian culture and values have a unique place in the history of mankind. The Indian child who learns about his heritage will be proud of it. The lessons he learns in school, his whole school experience, should reinforce and contribute to the image he has of himself as an Indian.

The present school system is culturally alien to native students. Where the Indian contribution is not entirely ignored, it is often cast in an unfavourable light. School curricula in federal and provincial schools should recognize Indian culture, values, customs, languages and the Indian contribution to Canadian development. Courses in Indian history and culture should promote pride in the Indian child, and respect in the non-Indian student.

A curriculum is not an archaic, inert vehicle for transmitting knowledge. It is a precise instrument which can and should be shaped to exact specifications for a particular purpose. It can be changed and it can be improved. Using curriculum as a means to achieve their educational goals, Indian parents want to develop a programme which will maintain balance and relevancy between academic/skill subjects and Indian cultural subjects.

To develop an Indian oriented curriculum for schools which enrol native children, there must be full scale co-operation between federal, provincial and Indian education people:

(1) In the federal Indian school system, funds must be made available for Indian people to work with professional curriculum planners. Together they will work out and test ideas for a relevant curriculum, utilizing the best from both cultures.

(...)

Some other measures for improving the quality of instruction for all students, both Indian and non-Indian, are recommended to provincial and private school systems:

(a) appointment of native people to the curriculum staff for the purpose of supervising the production and distribution of Indian oriented curriculum materials for provincial schools, complete with the manpower and other resources to accomplish this task;

(b) removal of textbooks or other teaching materials which are negative, biased or inaccurate in what concerns Indian history and culture;

(c) augmenting Indian content in curriculum to include Indian contributions to Canadian life through supplementary courses in: economics, science, medicine, agriculture, geography, etc., as well as special courses in Indian culture, music, art, dance, handicraft, language;

(d) co-operating with Indian people in developing Indian studies programmes at all levels;

(e) eliminating the use of I.Q. and standardized tests for Indian children. It has been shown that these tests do not truly reflect the intelligence of children belonging to minority, ethnic or other cultural backgrounds.

Textbooks are needed which emphasize the importance of the Indian's role in Canadian history. Material for reading classes must be developed: material which is relevant to the experience of the Indian child living in isolated or northern areas. Federal and provincial governments must be ready to respond to the native people and support their legitimate wishes for improved texts. Indian people should be commissioned to work with historians and educators for the development of proper textbook material." 54/

201. The Government of the United States has communicated that:

"Indian studies courses are offered in many major universities and colleges, particularly those close to Indian reservations. The three Indian junior colleges have a particularly strong emphasis on these. Federal money is available to fund special efforts to introduce Indian culture to elementary and secondary schools with an all or predominant Indian enrolment. This includes paying Indian elders to tell folk-tales in dormitories for Indian children unable to live with their families and attend day schools.

Instruction in the elements of the indigenous culture has varied over time. At present it is offered in many schools in Indian country, especially Federally operated schools. There has always been an emphasis on speaking reading, and writing the official language of the United States - English."

202. In connection with the Government information on bilingual and bicultural education in the United States it has been written that:

"Only a very few preliminary programs exist, and they have been adopted only most reluctantly by the Bureau of Indian Affairs branch of education. Although the statistics are slowly improving, the Indian

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54/ Ibid.

people are the poorest educated in the nation. It is an insult that the Bureau of Indian Affairs can only point with pride to an Indian pen-pal program 55/ and distort its feeble efforts at bilingual and bicultural education rather than facing its many education problems with candor." 56/

203. On action needed to bring Indian culture and language into the educational process in a better way, it has been written:

"Native children, like all children in all cultures, acquire the attitudes, values, and behaviours of the culture in which they grow up.

At the present time, most native children are 'socialized' by European forces: the media, the schools, the churches, the police - even by health officials. Experts who study the way children are brought up by native parents often say that native children have a 'pathological upbringing' when contrasted with the 'normal practices' of whites.

Nothing less than a total reorganization of the schools in native communities is likely to have a dramatic effect on the educational process to bring about positive change for native peoples.

We must re-think all of the traditional requirements for school personnel, and determine what are the necessary requirements for those who will influence our children's lives." 57/

204. Mention should be made here of the Native American Alternative Education Programmes and the Survival Schools discussed in paragraphs 393-399 below.

205. In other countries, although this instruction is not clearly established in law or in fact, efforts seem to be made to bring indigenous culture into the teaching provided at school, with varying degrees of success.

206. The Government of Norway states that many Lapps are of the opinion that arrangements concerning the teaching of the Lappish language and Lapp culture in grades 4 to 6 are still somewhat deficient, and that one of the main obstacles has proved to be the difficulty in obtaining textbooks. In this respect it should be noted that as Lapps are being trained as teachers, for teaching "adapted to local conditions", it is to be assumed that this will bring the essential elements of Lappish culture into the instruction available to Lappish children attending school in Lapp regions of the country.

55/ See paragraph 345 below for the pen-pal programme mentioned here.

56/ American Indian Law Newsletter, loc.cit., p. 40.

57/ "Who will educate our children?", Akwesasne Notes, vol. 5, 1973, p. 33.

207. From information available on certain countries, it may be presumed that indigenous culture is present in teaching in one way or another. In this connection, the information provided by the Government of the Lao People's Democratic Republic seems to indicate that it is possible to acquire, simultaneously, the essentials of the autochthonous ethnic culture and of the dominant culture in the country. On the one hand, it seems that all Laotians are enrolled in the same schools, where the Lao-Loum culture is presumably dominant. On the other hand, teachers from certain ethnic groups probably pass on to their pupils the essentials of their own ethnic culture.

208. A similar situation would appear to prevail in other countries using indigenous teachers (Finland and Sweden, for example).

209. A publication contains the following statements:

> "The Lapps who work with reindeer and the youngsters attending Swedish nomad schools are and will continue to be the principal guardians of Lapp culture. In Sweden they number 3,000. The time spent in the nomad school is of great importance in determining the children's attitude towards the culture they will inherit from their fathers, and also towards the Swedish culture around them. If we wish to maintain Lapp culture, the nomad school must become a really effective institution. The subjects to be taught are Lappish, a knowledge of herding and handicrafts. The years spent in the nomad school cannot give children a thorough insight into Lapp and Swedish culture; at that age children are too young to have a clear view of their own or other people's living conditions.
>
> ...
>
> When the nomad boarding-schools were built, the investment was such that it could not be contemplated without several basic assumptions and guiding principles. For instance, at the University of Uppsala there is a chair for the protection of Lapp culture; this would not have been created had the State no definite aim in view.
>
> If continuity is to be maintained in the system to-day, then nomad children must be educated in the present conditions. But while the nomad inspection system has to be retained, we must be careful that the nomad school does not become too Swedish or isolated.
>
> This last fact is particularly important as many nomad children have to accept work other than reindeer-keeping. The nomad schools are obliged to follow other schools in their development, having, for instance, a co-ordinated syllabus for nine years, with special instruction in reindeer-herding being introduced in the ninth form...". 58/

58/ The Lapps today in Finland, Norway and Sweden, Conferences of Jokkmokk 1953 and Karasjok 1956, edited and compiled by Rowland G.P. Hill on behalf of the Nordic Lapp Council. Mouton and Co. Paris, 1960 pp. 39 and 44-45.

210. In New Zealand, the Government states, "all school children in New Zealand have instruction in the basic elements of Maori culture. There is some instruction in schools on Maori culture and a few of the better schools, primary and secondary, have Maori cultural clubs - but virtually nothing in most schools on contemporary Maori sociology.

211. The Government has added:

> "It is not denied that for many years there was insufficient attention given to Maori culture in New Zealand schools. This lack was recognized some years ago and there has been a constantly expanding programme to correct the situation. The Education authorities are making a whole-hearted effort on several fronts to ensure that Maori culture has its rightful place in the curriculum. As already mentioned, Maori experts in this field have been appointed as full time lecturers in teachers' colleges to enable future teachers to acquire a proper background of Maori studies. The Maori language is being taught in schools at a rapidly increasing rate. Maori experts are also being used to help teachers in the schools. The social studies syllabus has been overhauled to place much greater emphasis on contemporary Maori social and cultural institutions. Native speakers of Maori are being recruited to undergo training in teaching methods with a view to increasing the number of teachers of the Maori language and Maori culture ..."

212. In this connection the statements of the Citizens' Association for Racial Equality, quoted in paragraph 139 above, should be borne in mind.

213. During the Special Rapporteur's official visit to New Zealand (June 1973) he was repeatedly told that one of the main problems was Maori students who left after the first years in secondary education without qualifying examinations, thus neutralizing whatever education they had received. The reasons mentioned most frequently for this school leaving were language difficulties, different cultural background and orientation and, in the words of persons giving information, the realization that school education was alienating them from Maori culture, which they now fervently wished to preserve.

214. The Government has stated in this regard that:

> "... an extensive review of the problems of Maori education has been carried out in the last few years and many different measures have been put into effect and are still being put into effect for the very purpose of getting over the difficulties mentioned in this paragraph. An intensive effort is being made to give real recognition to Maori culture in New Zealand schools to encourage the learning of the Maori language and to overcome the language difficulties of Maori children."

215. On the other hand, the Government of Panama states that, while such instruction is not yet given, there are legal provisions that apply to it:

> "The authorities of the Ministry of Education take an over-all approach to the problem of education. Hence, there are no special measures of any type for the education of the indigenous population and everything is included under a general plan and general policy.
>
> The schools situated in indigenous areas are subject to the same official plans and curricula as all the other schools in the country. Consequently, their programmes are not adapted to the reality of the indigenous environment and contain no provision for special instruction in the elements of culture peculiar to each group.
>
> The teaching of indigenous languages is not envisaged and with regard to the official language (Spanish), the official curricula have been designed for a Spanish-speaking population, so that both the approach and the material used are consistent with the methodological requirements of tuition in a mother tongue and not as would be the case with a Spanish curriculum specially prepared for the indigenous population, in a second language. This is the main reason for the marked lack of mastery of Spanish observable in indigenous students leaving primary and even secondary schools.
>
> The textbooks, reading matter and other teaching materials encourage cultural contact in one direction only: the indigenous groups must familiarize themselves with everything relating to the culture of the dominant group, but not the other way round".

216. The Government reports, however, that appropriate measures are being planned to implement the new constitutional provisions by means of new approaches. It states:

> "There is concern in the Ministry of Education to develop programmes of formal and community education that will lead indigenous groups to participate actively in civic life, while maintaining their own cultural patterns. This is in keeping with article 102 of the Constitution. Furthermore, the Ministry is co-operating with the Indigenous People's Affairs Institute in any activities they desire to promote".

Article 102 of the 1972 Constitution provides that:

> "In order to ensure their active participation in civic life, the State shall develop for indigenous groups having their own cultural patterns programmes of formal and community education".

217. In chapter V of the Constitution, on "Education", the State commits itself to the implementation of specific programmes adapted to the situation of indigenous populations, with the object of promoting such people's participation in civic life.

> "Thus it is that in chapter IV of our Constitution the State guarantees respect for traditional cultures and the promotion, through scientific research, of the study of vernacular languages and cultural patterns in order duly to conserve and disseminate them and to guarantee the integral development of the indigenous populations".

218. In some countries there are relevant legal provisions and the information would indicate that indigenous culture is taught in school to indigenous children or is at least present in one way or another in the teachings at school. The Indian Statute (Act No. 6001, of 1973) in Brazil, contains certain provisions which show preoccupation with this aspect of formal education, although there is no indication as to how far this concern has been carried into further provisions and suitable arrangements for the implementation of these principles. It is deemed useful, nevertheless, to quote here the relevant parts of article 47 which assures "respect for the cultural heritage of the native communities" and article 51, which provides that "assistance for educational purposes shall be rendered to minors, as far as possible without alienating them from the family or tribal way of life". There is, as already stated, no information of a specific character on whatever instruction may be available to indigenous school children in the essential elements of the indigenous culture of the community to which they belong.

219. The information available about Peru indicates the existence of a situation similar to that described in the preceding paragraph. Paragraph 147 above reproduces article 12 of the General Education Act, which provides that, in teaching the population Spanish, care shall be taken to respect the cultural identity of the various groups which make up the national community. The same paragraph also reproduces article 98 of the Decree-law, which provides that resources shall be made available to investigate the influence of the vernacular languages on the national language and culture. The Special Rapporteur requested but did not receive information on how the principles of this law had been developed and how its provisions were implemented in practice.

220. Paragraph 21 above quotes articles 9 and 60 of the National Education Act of Guatemala, which provide that education and the dissemination of culture shall take place in the official language and in the indigenous languages (article 9) and that attention to the cultural requirements of the indigenous population and their integration without discrimination into the educational process are to be regarded as being of national importance (article 60). No information is available about how these provisions are implemented in practice and, in particular, in the light of article 189 of the Constitution, paragraph 23 thereof provides that the functions of the President of the Republic are, inter alia, "to create and maintain a directing and co-ordinating body and the necessary government departments to organize and develop plans and programmes designed to achieve in an effective and practical manner the integration of the indigenous population into the national culture".

221. According to the Government of Mexico, bicultural education in that country means that the indigenous population will, starting from their own values adopt national culture and society.

222. The purpose of the education system for the indigenous peoples is to stimulate a mental change conducive to critical and analytical awareness of national and indigenous society and to the individual's participation therein. In view of the pressing need for educational services in the indigenous areas of Mexico, the sixth plenary assembly of the National Council of Educational Experts (Consejo Nacional Técnico de Educación) was held in Mexico City in November 1963 and the decision was taken to set up a national service of bilingual teachers and educators.

223. This service bases its activities on the successes of the National Indigenous Affairs Institute, on resolutions from specialist conferences and from the Mexican Council for Indigenous Languages and on the views of UNESCO, which asserts that the use of the vernacular language is a bridge towards achieving national unification more rapidly than when attempts are made to teach the national language directly to a monolingual community.

224. To begin with, the action programme of the national service of bilingual teachers and educators consisted in the teaching of spoken Spanish to monolingual indigenous children who were attending classes for the first time. The idea was to prepare them to embark on their primary education. The resulting experience and successes showed the importance of continuing the education of indigenous children at all levels of basic education and giving them skills that would promote change in marginal communities.

225. The service has, therefore, been taken to the community: the teachers and educators come from the region in which they are employed, they speak the same language and share the same culture, thus identifying themselves fully with those living in the communities.

226. The teaching activities of the indigenous staff are based on the current plans and curricula for primary education, adapted to regional conditions. In applying them, use is made of special teaching material and textbooks designed for the region concerned. These activities are subject to special regulations.

227. The educators, men and women over 16 years old, are prepared by a year's course in teaching methods, sociological and development techniques and practical activities. After three years' satisfactory service to the benefit of the communities concerned and in keeping with their training, they are given the rank of bilingual teachers, with pay and benefits similar to those of all the teachers in the country.

228. The regional directorates function as support centres for the service and the curricula are worked out in accordance with the needs of each region and implemented in co-ordination with Federal, State and municipal departments, with decentralized bodies and with the communities and their traditional agrarian, political and administrative authorities.

229. At the end of the latest school year, there were in service 2,000 bilingual educators and 15,000 teachers; 287 bilingual headteachers and 125 supervisors, with a total staff of 14,082, were engaged in teaching groups of pupils and in carrying out development and education projects for the benefit of 1,264,560 inhabitants. In the 1975-1976 school year, the number of pupils totalled 289,380. Twenty per cent of the staff were working in boarding schools, social integration centres, indigenous improvement brigades and local government offices or in health, economic, agricultural development and animal husbandry programmes. One thousand educators are employed under the national plan to promote the teaching of Spanish.

230. The service has surpassed the goals originally set for it. Its first aim was to teach Spanish to groups of monolingual six-year-olds and to adult members of indigenous communities. In extending its functions, it has entered the field of global community education, running educational units covering the first cycles of primary education and adult literacy and vocational classes; undertaking tasks in the spheres of agriculture, improvement in environmental and living conditions, first aid, hobbies and sporting activities and the promotion of thrift. It now provides facilities covering the first to the sixth year of primary education, in the form of a basic system of bilingual education which has succeeded in overcoming the problems of primary rural education in regions with mixed populations.

231. Up to 1970, the service of bilingual educators and teachers covered 12 indigenous regions. Between 1971 and 1977, it was extended to 60 further regions, making a total of 72 regions in 21 of the Mexican States.

232. In Colombia, Decree No. 1142 of 19 June 1978 contains the following provisions:

> "Article 6. The educational programmes for the indigenous communities must be in keeping with the environment, the process of production and the entire social and cultural life of the community. Consequently, the curricula shall ensure respect for, and promotion of, their economic, natural, cultural and social heritage, their artistic values, their means of expression and their religious beliefs. The point of departure of the curricula shall be the culture of each community, the purpose being to develop the various individual and group skills required in the community's social environment.
>
> Article 7. The Ministry of Education shall promote research into various aspects of the indigenous communities in support of educational programmes in such communities and arrange for the training of indigenous researchers and their participation in such research.
>
> Article 8. The educational programmes arranged for the indigenous communities shall include the essential elements of basic education (primary and secondary levels), in keeping with the specific characteristics of each community.
>
> Additional clause. The curricula, despite their diversity, must instruct pupils at educational establishments in the indigenous communities at the basic level of education, so that they may proceed to the higher levels of formal education.
>
> Article 10. The educational programmes for the indigenous communities shall help to develop indigenous technologies, encourage creative innovations and train the indigenous communities to select other cultures to which they have access to the skills and techniques suited to their needs and to genuine development in their environment." 59/

233. The Chilean Government states that indigenous children generally receive instruction on the most characteristic aspects of indigenous culture which does not vary from one community to another. No information is available as to how such instruction is imparted.

59/ See CCPR/C/1/Add.50

5. Familiarization with the elements of the dominant culture without alienation from the indigenous cultural background

234. This topic is directly related to certain aspects of the policy to be followed with regard to indigenous populations, and also to the desire to create or strengthen feelings of national unity. The understandable desire to achieve this end should not in any circumstances result in a deliberate cultural alienation of the indigenous child. This is obvious, when one considers that national unity does not necessarily imply cultural uniformity and the disappearance of different cultures, which can in fact enrich this unity by giving it many different shades and facets and strengthened and deepened contributions since each individual and each group would participate on the basis of his or its own identity and cultural patterns. It is therefore desirable, and even necessary, to respect and strengthen the indigenous culture simultaneously with the efforts to provide a better knowledge of the dominant culture with which the indigenous culture is to be combined. The aim should not be deliberate cultural alienation, even in cases where a diametrically opposite policy is adopted. Even where a policy of complete cultural assimilation has been adopted, where indigenous cultures are totally disregarded, and where it has been considered necessary to sacrifice these cultures on the altar of a "total" unity, it would be absurd to aim deliberately at the cultural alienation of the indigenous pupil. If the school is envisaged as an instrument for effecting cultural change, it should act in clear awareness of what it is trying to do, of the way in which it should try to achieve this objective, and of the risks which it is running and to which the indigenous child is exposed as well. Every effort should be made to mitigate the difficulties which the indigenous pupil will already be experiencing in his attempt to adapt himself to the requirements of the formal education which the school provides, and which differs so much from traditional community education. It is essential to bear in mind the dangers involved in arbitrarily undermining the basic values and beliefs of these pupils even when it is felt that suitable substitutes can be offered immediately and even when the community has expressed its willingness to accept the substitues proposed. Without this willingness in principle on the part of the community, and in the absence of total certainty regarding the suitable nature of the substitutes, no attempt should ever be made to alienate these children from their cultural environment as part of the process of familiarizing them with the dominant culture. It must always be possible to provide the one without excluding the other; otherwise the children may well become cultural pariahs, without ties or roots of any kind. Those dangers should be constantly borne in mind in the education of children with a different culture; and this indeed is what indigenous children are.

235. It has not been our intention here to make any suggestions regarding the content of education in this respect, since this is obviously a matter for each State to determine in the light of its human and cultural realities and in accordance with the policies adopted; but it has been considered necessary to draw attention to the well known dangers involved in these procedures, and also to the possibility of undesirable results. Cultural alienation should be avoided under all circumstances. The pupil's attachment to his culture is a delicate bond between him and the world, and must be treated with the utmost care and consideration.

236. In the light of these preliminary considerations, the limited and not very clear information available on these topics will now be examined.

237. Information available for Malaysia on this aspect merely indicates that Orang Asli students get acquainted with Malay culture. There is no information on any concerted efforts to prevent the alienation of their community from Oran Asli culture. This was conveyed to the Special Rapporteur during his visit to West Malaysia in 1973.

238. The Anti-Slavery Society has stated that in Indonesia:

> "In addition to the teaching of Bahasa Indonesia, the educational programme is ostensibly aimed at 'promoting the national culture' (art. 32 of the Constitution) and therefore at fostering an understanding of Indonesian culture. As teaching is always carried out by personnel recruited from outside these communities, the culmination of all these factors produces an extreme reluctance on the part of these communities to allow their children to go to school if such a school is away from the village, since it necessitates boarding, and is felt to undermine local custom."

239. In Brazil, Act No. 6001 provides:

> "Art. 50. The education of the Indian shall be oriented towards integration in the national community by means of a process of gradual comprehension of the general problems and values of the national society, as well as development of their natural apptitudes.
>
> "Art. 51. Assistance for educational purposes shall be rendered to minors as far as possible without alienating them from the family or tribal way of life."

240. In this connection, Act No. 6001 provides for respect for the cultural heritage of the native communities (art. 49) and for the extension of the current system of education throughout the country to the native population with the necessary adaptations (art. 48). It also provides that the education of the indigenous populations shall be oriented towards integration in the national community by means of a process of gradual comprehension of the general problems and values of national society as well as development of their natural aptitudes (art. 50).

241. In the light of the provisions mentioned in the preceding paragraph the Special Rapporteur requested but did not receive information as to whether indigenous children gained an understanding of the essential elements of the country's dominant culture in such a way that they were not estranged from their own cultural background.

242. The Government of Norway states that "it is difficult to make an objective assessment of the degree to which Lapp children learn to understand the cultural mainstream in Norway without becoming alienated from their own cultural background. While some people believe this to be so, others disagree. However, the authorities feel that the cultural minorities represent cultural values which it is a public duty to protect and promote by suitable means in the same way as the cultural forms of larger groups of the population. The Ministry of Church and Education attaches importance to this view when allocating available resources and in its work of expanding the organizational structure and grant schemes in the field of cultural affairs.".

243. The Australian Government has stated that "the aim in Aboriginal education is to enlarge opportunities and to increase understanding of the majority culture without estranging students from their own cultural background ...".

244. In New Zealand, the Government states that "with the emphasis being placed on biculturalism in the education system, Maori children are being helped to understand the dominant culture and to value their traditional culture".

245. During the Special Rapporteur's official visit to New Zealand (June 1973) many persons mentioned their belief that not enough emphasis was being placed on Maori culture in New Zealand's schools, and their desire that true biculturalism would come to be the guiding criterion in official and unofficial education in the country. Some persons felt that the policy of "assimilation" formerly espoused by the Government was still in operation, although in an admittedly weakened form. According to this last group, notions of the superiority of "Paheka" culture would have to be abandoned before true biculturalism could have a chance to take over.

246. In this connection, attention is drawn to current efforts to give adequate attention to Maori culture in the educational processes in New Zealand.

247. The Government of Sweden states that:

> "Sweden has ratified the UNESCO Convention against Discrimination in Education. The States parties to this Convention agree that it is essential to recognize the right of members of national minorities to carry out their own educational activities ... [and] the use or the teaching of their own language, provided, however:
>
> > 'that this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty ...'"

248. The Government of Costa Rica states that efforts are being made to improve the education given to the indigenous population. The National Commission for Indigenous Affairs (CONAI) has proposed that "the principles for determining guidelines with the Ministry of Public Education" should include the rule "that the teaching of indigenous schoolchildren shall be in keeping with their environment and shall not alienate them from their own cultural background".

249. According to information furnished by the Government of the United States:

> "It is evident that in tribally-operated Indian schools efforts are being made to combine indigenous and dominant culture. Some Indian languages have been put into written form - although they were originally oral - and considerable stress is put on bicultural and bilingual education."

6. Instruction in speaking, reading and writing the official language of the country correctly

250. The problem here is not simply whether indigenous persons, groups or communities are being given instruction in the official language. This problem has two aspects. First, indigenous communities and their members should not be abandoned in a linguistic and cultural isolation in which they would remain as a kind of "tourist curiosity for the benefit of others, and would thus be deprived of opportunities of every kind which should in no circumstances be denied to indigenous populations. Secondly, they should receive suitable instruction which will provide them with a complete and thorough knowledge of the official language and not merely with basic elements which will not, in fact, enable them to use the language correctly and effectively. The instruction should be such as to offer a reasonable expectation that a person of average intelligence will achieve sufficient command of the official language for all the theoretical and practical purposes considered necessary for all population groups in the country concerned.

251. In all the countries for which information is available, instruction in the official language is given in all schools.

252. In Brazil, the Federal Constitution provides that "elementary education shall be given only in the national language" (art. 176 (3,I)). Article 49 of Act No. 6001 of 19 December 1973, however, establishes that "the Indians shall be taught to read and write in the language of the group to which they belong as well as in Portuguese". [Emphasis added.] The Special Rapporteur requested but did not receive information on how these provisions are implemented in actual practice today.

253. The Government of Chile states:

> "Instruction in speaking, reading and writing correctly shall be conducted solely through the medium of Spanish, which is the official language of the Republic".

254. The Canadian Government has stated that "English or French is taught to all native children".

255. According to the Anti-Slavery Society, in Indonesia teaching in all schools is conducted in Bahasa Indonesia (the official language of the country by Act 36 of the Constitution) from the third grade upwards. In such schools the teaching of the official language is the major part of the course.

256. The Australian Government states that: "Emphasis has also been placed on instruction in English as a foreign language for Aboriginal children. Teaching staff, including Aboriginal teachers and assistants, are given training in special techniques of instruction. All children are taught to read and write English".

257. The New Zealand Government has stated that "all Maori children are taught to speak, read and write English, the official language of the country".

258. This, in the past, does not appear to have been a fully successful process, as the Government acknowledges that in many Maori homes a "not very high" standard of English prevails and that this affects Maori children coming from their homes in their first school years.

259. The Government states in this regard:

> "Research into the lower level of achievement of Maori school children has shown that one of the difficulties is the fact that although English is almost universally used in Maori homes, the standard of English is not very high and vocabulary tends to be limited. This creates problems for Maori children in their earlier school years which cannot be overcome without special measures. A great deal of attention is being paid to this facet of Maori education at the present time. Great emphasis is being placed on pre-school education and the number of Maori children attending such institutions is growing fairly rapidly. At present about 35 per cent of Maori children in the three and four year age group attend pre-school institutions, but there is a steady rise in the percentage every year. Secondly, special emphasis is being placed upon the teaching of English to Maori children. Itinerant language instructors have been appointed to help teachers in classes with numbers of Maori children and special instruction is now being given at teachers' colleges to prepare future teachers to recognize and correct the language faults made by Maori pupils."

260. In the Lao People's Democratic Republic, children of autochthonous ethnic groups are taught to speak, read and write correctly the Lao language, which is the official language of the country.

261. In 1972 it was reported that "Lao was used in most elementary schools as the medium of instruction although students also studied French. In secondary schools however, except for the comprehensive high schools, the language of instruction was French. Lao occupied a position similar to that of a first foreign language in Western nations, and English was second". 60/

262. The Government of Norway states that Norwegian is the main language in the schools, as is also the case in the Lapp districts. The clever pupils will therefore acquire a proper command of Norwegian, while those who are not so clever will make mistakes to a greater or lesser degree in their use of the language all through their lives. All children, however, will learn to understand and to make themselves understood in Norwegian.

263. In some countries, like the Philippines, the official language and language of instruction varied for some time, until Tagalog was adopted as the language of instruction. On certain historical aspects of this question it has been written: 61/

> "For many years one of the controversies in education has been the problem of determining the language of instruction ... The Americans ... introduced English as the medium of instruction in the schools. Children were confronted simultaneously with a new language and new subject materials, and the use of English during school hours and the local language at home did nothing to bring school and home closer together. In the 1967-68 academic year, grades one and two were taught in the local language; Filipino and English were introduced in grade three ... In 1940 Tagalog had been required to be taught in secondary and normal schools ..."
>
> "Character education, good manners and proper conduct were stressed, as well as the study of Filipino family customs and traditions ... Language arts included spelling, reading, phonetics and writing in the local languages and Filipino, and from grade three on, English."

264. In accordance with information provided by the Government of the United States:

> "There is considerable emphasis on learning correct English. English is taught as a second language in Bureau of Indian Affairs schools on the Navajo Indian Reservation. In other schools, such as those in Alaska, native speakers are involved in a bilingual education program. In many cases Indians, Eskimos Aleuts learn English from reading folk-tales or legends translated from the native language."

60/ T.D. Roberts and others, op. cit., p. 80.

61/ F.H. Chaffee and others, Area Handbook for the Philippines. Foreign Area Studies, the American University, Washington, D.C., 1969, pp. 124-125.

7. Plans covering the provision of assistance, scholarships, allowances, grants, lodging, transport, clothing, etc., for indigenous persons

265. The information available on this subject contains details which are considered essential by the Governments transmitting the information. It would seem, therefore, that the only way to do justice to these contributions is to reproduce them in extenso. The texts on this subject are therefore set out below.

266. In Finland, according to Government information, Lapp children benefit only from general schemes available to all pupils.

267. In Panama, there has been for a number of years a programme of grants for indigenous students:

> "With the object of obtaining teachers for schools in the San Blas district, the Government has given scholarships to various indigenous students to pursue their studies at the Juan Demóstenes Arosemena Teachers Training College. At least one place is reserved for an indigenous student at the Divisa National Agricultural Institute".

268. A writer states that in India:

> "Educational programmes intended specially for members of backward classes can help a great deal in raising their living standards. Besides the award of scholarships at various levels, assistance given since the first plan has taken the form of grants to students to buy textbooks, payment of boarding fees, and the establishment of special schools in remote areas. About 4,000 schools were established during the first plan period for the children of scheduled tribes, and about 45,000 received grants for books, boarding fees, etc., more than 8,000 scholarships were granted to tribal students, nearly 37,000 to scheduled caste students and about 28,000 to students from other backward classes. The scope of assistance was enlarged during the second plan and continued in the third plan as a supplement to the development programmes for these groups. The educational concessions to members of the backward classes include special scholarships, residential facilities at educational institutions, exemption from school fees, financial assistance to needy students, reservation of places, lowering of minimum qualifying marks and raising of the maximum age limit for admission to technical and educational institutions.
>
> The educational programmes are considered necessary to prepare young men from the backward classes to play their part in the life of the country on the same footing as members of other communities. Education is the key to advancement to a level where nothing can stand in the way of equality of opportunity. This idea was underlined in the third five-year plan, which stated that education was 'the most important single factor ... in creating a social order founded on the values of freedom, social justice and equal opportunities.'" 62/

62/ P.M. Menon. "Towards equality of opportunity in India", International Labour Review, October 1966, pp. 367-368.

269. As regards the provision of scholarships, grants or special allowances for indigenous communities, the Government of the Lao People's Democratic Republic states that the Government has always encouraged the mountain or minority peoples to send their children to school by offering them scholarships and installation grants.

270. The Government also states that the Ministry of Education has prepared special admission lists, in favour of the various nomadic ethnic groups, for entry into teachers' training colleges.

271. In Malaysia, the Department of Orang Asli Affairs gives all necessary assistance, lodging, food, transport and clothing to children attending primary grades outside their own communities and staying at the established hostels. In connection with whatever scholarships, grants or aid may be given to Orang Asli students in secondary schools and at university levels, the Government stated that:

> "1. Orang Asli pupils requiring assistance to attend secondary schools, and this means almost all doing so, are given the following assistance by this Department:
>
> 1. Payment of school fees including special fees such as those for sports, library, and others;
>
> 2. Free school uniform and clothing;
>
> 3. Free textbooks, exercise books, etc.;
>
> 4. Free hostel accommodation, and food;
>
> 5. Extra tuition if necessary;
>
> 6. Payment of bus fares;
>
> 7. Pocket money.
>
> 2. Orang Asli attending university or colleges would do so by means of State or federal scholarships, which when necessary include not only tuition fees, etc., but also support grants. In the case of Orang Asli requiring assistance outside the normal arrangements this would be given sympathetic consideration based on individual circumstances."

272. As regards the formal availability of assistance by way of scholarships, allowances, etc., the New Zealand Government has pointed out that approximately 400 special Government scholarships for Maoris are granted per annum, and that these are quite separate from those granted by the Maori Education Foundation. The Government states:

> "Maori children are eligible for all of the usual scholarships and grants that are available to other children. State schools, which are attended by the great majority of Maori children, are free. For children living at a distance from school, free transport is provided in Government buses. Children in very isolated communities who are unable to attend a primary or secondary school are catered for by the Government correspondence school which is free of charge, or bursaries are available to enable the children to board at secondary school. At all schools, State and private, primary and secondary, textbooks

are provided free of charge. In addition certain special scholarships and other financial grants are available for Maori children. These include some of the measures adopted following the 1959 survey and are specially designed as interim measures to help the present generation of Maori school children to overcome handicaps while other long-term measures are taking effect. The Maori Education Foundation was established in 1962 with funds provided by the State and other sources. From this fund bright Maori children may receive whatever finance is necessary to enable them to proceed to the full extent in education which is warranted by their ability. The Foundation also assists with clothing grants in deserving cases. Apart from the Maori Education Foundation, the Government provides 140 scholarships annually to enable Maori children in rural areas to attend boarding-schools where there is a wider range of courses than is available at the small rural schools. At the tertiary level 15 Government scholarships are allocated to Maori students in addition to normal bursaries which enable students to attend technical institutions or universities. At the post-graduate level Maori students are eligible for all the scholarships generally available and in addition special scholarships are available for Maoris."

273. On the effectiveness of these schemes, the Citizens' Association for Racial Equality states:

"Maoris are eligible for (though seldom gain) the ordinary scholarships and educational grants. In addition there are a number of special Maori scholarships and grants, most of them provided by the Maori Educational Foundation which is funded by Government and private sources (including Maori sources)."

274. In Australia two Government schemes of assistance for Aboriginal students at the secondary, post-secondary and tertiary levels have recently been introduced. The general intention of both these schemes is to reduce the present scholastic and vocational disparity between Aboriginals and other Australian citizens, by encouraging Aboriginals to continue their studies as far as their interest and ability permits, free from any financial burden. Both schemes are administered throughout Australia on behalf of the Department of Aboriginal Affairs by the Commonwealth Department of Education. The Aboriginal Secondary Grants Scheme was introduced to encourage Aboriginal children to stay at school beyond the statutory school leaving age. Benefits include a living allowance or boarding costs, school fees, an allowance for textbooks and clothing, three return fares per annum between the child's home and school where the child must live away from home to attend school, and a small allowance for the student's own personal needs. As the Scheme is intended to raise the general educational level of Aboriginals the only academic standard required is that the student should benefit educationally by attending school. The Aboriginal Secondary Grants Scheme came into operation at the beginning of the 1970 school year. The number of Aboriginal children receiving grants has risen from 2,379 in 1970 to 4,266 in 1972. There has also been a steady increase in the number of Aboriginal children at Senior Secondary level. Initially the Scheme applied only to Aboriginal children aged 14-21 years. A trend towards younger Aboriginal children entering secondary school has highlited the need for financial assistance and encouragement at an earlier stage. On 10 January 1973, the Prime Minister announced that from the beginning of the 1973 school year, benefits of the Aboriginal Secondary Grants Scheme would be available to all children of Aboriginal descent attending secondary school. It is expected that up to 3,500 additional students will now become eligible for grants, and that the total number of students assisted in 1973 could reach 8,500. The Aboriginal Study Grants Scheme

enables Aboriginals to continue their studies after leaving school. Benefits include all compulsory fees, an allowance for textbooks and equipment, a living allowance including components for dependents, and up to three return fares per annum for students who must live away from home to take a course. Awards may be part-time or full-time, and are held subject to the students' satisfactory attendance and progress in the course. The Aboriginal Study Grants Scheme came into operation in 1969. The numbers of Aboriginal students holding awards has risen from 115 in 1969 to 552 in 1972. Award-holders in 1972 included 29 university students, 30 teacher-trainees, 121 technical college students, and 284 at secretarial or typing schools.

275. The Norwegian Government states that:

> "The Lapps do not have the benefit of any special advantages such as free accommodation, free transport or similar facilities which are not likewise available to other Norwegians. There is, however, a grant scheme for young people from families whose chief means of support is reindeer-breeding, or from families who have previously supported themselves by reindeer-breeding and have not found any other satisfactory alternative means of subsistence. The scheme is confined to Inner Finnmark. As already stated, the Lapps will usually be taught in smaller classes and be given priority for admission to certain schools to make up for the fact that Norwegian is not their mother tongue."

276. The Government of Chile has stated that:

> "As regards education, the Development of Indian Affairs (Departamento de Asuntos Indigenas - DASIN) has granted a great many scholarships for basic, secondary and university education ... In 1972, the number of scholarship holders totalled 8,945, in addition to students who had obtained scholarships from the Junta de Auxilio Escolar y Becas (Educational Assistance and Scholarship Board). Assistance was also given in the form of school equipment, clothing and footwear to more than 15,000 students during the period 1964 to 1972. This assistance also included teaching material, materials for the repair of schools, and agricultural implements and carpentry tools. This programme covered 25 schools in the oases in the foothills of the Andes in the Department of Arica, almost all of them situated in the region bordering on Peru and Bolivia. Moreover, DASIN's activities were not limited to assistance of this kind, for it also intervened in obtaining the land necessary for the construction and/or equipment of 63 rural schools built in co-operation with the Sociedad Constructora de Establecimientos Educacionales (Society for the Construction of Educational Establishments) and the Servicio Militar Voluntario del Trabajo (Voluntary Military Labour Service)."

277. In its most recent statements to the VIII Inter-American Indian Conference in November 1980, the Government said:

> "The Ministry of Education distributes to the rural sector, through its ministerial secretariats in Regions VIII, IX and X, a comprehensive system of grants earmarked for students of indigenous origin.
>
> It should be noted that the largest number of Mapuche settlements are to be found in region IX and for that reason most assistance is given in that region. The grants are of the following kind:

Accommodation in student hostels;

Money grants;

Provision of school supplies.

In region IX, a total of 2,850 grants for school supplies are given in the rural sector, where 80 per cent of the population are of indigenous origin; they include grants covering the first to eighth year of primary education and, recently, type 'A', which take the form of the provision of accommodation and money.

The provision of a larger number of grants to university students is under study.

It should be added that, year by year, the education infrastructure is extended both in the urban and rural areas of the regions mentioned and in the country generally, with the building and bringing into operation of new schools". 63/

278. The Government of Canada stated that one of the primary objectives of the Department of Indian Affairs and Northern Development at the present time was "to encourage Indian students to complete their secondary school education. During 1979-80, 34,083 students were enrolled in federal and band schools and 47,184 in provincial and private schools - a total of 81,267 students from the pre-primary to the secondary school level. In addition, there has been a continued growth of kindergarten programmes in communities where the student population and community interest warrant them. College and university enrolment in 1979-80 exceeded 4,200, and more than 4,500 students were enrolled in various vocational programmes. The Economic and Social Development Directorate provides financial and counselling assistance to Indians and Inuit who are enrolled in post-secondary and vocational programmes".

279. The Government of Costa Rica has stated that "the National Commission for Indigenous Affairs (CONAI) as well as other public and private bodies, has plans for scholarships and other assistance for indigenous students at the secondary and university levels".

63/ Government of Chile, National Report for Chile, VIII Inter-American Indian Conference, (Mérida, Yucatán, Mexico), 17-21 November 1980, OAS Doc. No. OEA/Ser.K/XXV.1.8/CII/doc.11, p. 12.

280. The Government of Mexico stated in its national report to the VIII Inter-American Indian Conference that:

> "January 1980 saw the signing of the SEP-COPLAMAR 64/ agreement relating to the implementation of the programme to set up boarding schools for children in the zones marginadas (depressed zones). These will be equipped for the housing, feeding and integral development of children from very small, scattered communities whose families earn less than the minimum salary or who migrate seasonally in search of work. The programme covers children from 9 to 14 years of age. This year, 35 residential schools are being built. Each of them will be able to house an average of 276 children, so that it will be possible to accommodate a total of 7,560 children from about 200 very small communities.
>
> The Co-ordinating Board of the National Plan for Depressed Zones and Marginal Groups has provided 370 million pesos through its system of programme budgeting; next year the operating costs will be incorporated into the education budget". 65/

281. The Government of the United States declared that:

> "The total number of Indian college students is not known, but has been estimated at 20,000. About 14,000 Indian students received scholarship grants from the Bureau of Indian Affairs to further their education activity. In addition, young Indian people get special help in attending elementary and secondary schools - without which they presumably would be unable to attend and learn skills needed to participate in American life. Enrolment in Bureau of Indian Affairs school was nearly 51,000 in the 1971-72 school year."

64/ SEP-COPLAMAR: Secretaría de Educación Publica-Coordinación General del Plan Nacional de Zonas Deprimidas y Grupos Marginados (Ministry of Public Education, Co-ordinating Board of the National Plan for Depressed Areas and Marginal Groups).

65/ National Report for Mexico, VIII Inter-American Indian Conference (Mérida, Yuctán, Mexico), 17-21 November 1980, OAS Document No. OEA/Ser.K/XXV.1.8.CII/doc.8, pp. 35 and 36.

D. Educational material and programmes

1. Initial remarks

282. It is obvious that, in every case, educational material, methods, techniques and programmes must to a certain degree be suited to the pupil if they are to be successful. Among the urban and rural sections of the population respectively, there are certain aspects and phenomena of life which are closer to the knowledge that the child brings with him when he arrives at school, and the initial material should therefore be adapted in order to relate it to the experience of life which the pupil brings with him. It is essential to stimulate the interest of the pupil, to reach his mind simply and directly and to bring into play his physical and emotional resources, in order to begin the educational process successfully. The initial material and techniques must therefore take into account the environment in which the child has lived until his arrival at school and the environment in which his first school years are to be spent.

283. In general, educational material and programmes have been prepared, and techniques and methods developed, on the basis of the fundamental values of the dominant culture of the country concerned, and are suited to pupils from population groups which belong to that culture. Very often, also, they are based on contemporary life in the urban centres. Consequently, certain adaptations should be made to render them suitable for use in educating groups from the rural areas and especially indigenous population groups.

284. It is therefore of vital importance that material and programmes intended for indigenous populations should be prepared in the light of appropriate ethnological studies so that the methods and techniques used are in harmony with the cultural environment and take into account the indigenous population's closeness to or remoteness from the dominant culture of the country. At the same time, the educational process in its initial stages should of course be made easy and attractive for the pupils, and they should not be left isolated in a kind of deliberate rusticity. In order to interest them in formal eucation, it is essential to reach their centre of motivation so as to offer them a better opportunity to profit from their school attendance. Also the introduction of alien cultural elements should be avoided unless there are strong reasons for adopting such procedures, and unless it is clear that the alien elements are not harmful to the indigenous groups concerned, and the methods and techniques must fit in with the cultural environment of the various groups, and must incorporate their own cultural patterns and standards.

285. This approach, which is useful and desirable at all stages as a way of preventing the school from being transformed into an instrument of abusive cultural penetration, is particularly essential in the initial stages of formal education in order to avoid giving rise to undesirable feelings of cultural alienation and estrangement in very young schoolchildren. Educational subject-matter and methods should be adapted to the child who comes from a different cultural environment, in order to start him on the way towards a school life which will be full of significance for him and will provide him not only with information, but also with an effective opportunity to develop his personality and reach the highest educational levels which he is capable of attaining. Once the child is in school, it is not enough to give him merely a particular type or level of education. The pupil must have access to all types and levels of education available; and, in order to ensure that he is actually able to move on to other levels of education, he must be given suitable stimuli and incentives from the moment of his arrival on the first day. Once he has become interested in the educational process, he will map out his own course, and his teachers and the school will simply have to provide him with constant encouragement to go further and attain higher levels based on his own free choice.

286. However, some special problems sometimes arise when the child arrives at school for the first time. Pupils from indigenous population groups often encounter the linguistic and cultural problems to which reference has been made above; and the teaching material must therefore take due account of these problems. There are other aspects too which must be taken into account in preparing educational material and in devising techniques, plans and programmes in order to find the best way of accomplishing the task having due regard to the personality of the pupil and to his cultural world.

287. Attention must be paid to the essential aspects of the content of the teaching material. In countries in which various ethnic groups live side by side children should obtain, from the school they attend, the clearest possible idea of the different population groups in the country. Thus, indigenous schoolchildren must be correctly informed about the non-indigenous groups; and non-indigenous pupils must be provided with information - which is free from prejudice and preconceived notions - about the indigenous groups. Teaching material is the main source of the information which children receive from their earliest days at school, when they are most impressionable. Teaching and information provided at school must therefore avoid the dissemination of prejudices and false ideas, and they must also contain arguments to refute any false ideas which may reach the children from other sources of information. It is important that teaching material should incorporate the most accurate and reliable information available and that this information should be kept up to date by constant revision. Knowledge of the realities of each population is the best way of eradicating arbitrary and distorted versions of reality.

288. In this connection, it is of the highest importance that the information given to each group regarding its own situation in the context of the rest of the country's population should be as realistic as possible and should be free from the emotional overtones of excessive ethnocentrism. It is essential not to propagate, among the members of a given group, any ideas regarding the "inferiority" of that group vis-à-vis others in the nation. This sometimes happens indirectly when indigenous and non-indigenous groups are being taught together on the basis of fundamental elements in the dominant culture which are alien to indigenous pupils. In such cases, the teaching should include adequate information on the history, traditions, customs, culture, arts and handicrafts of indigenous populations; and those aspects should be studied by all pupils not only to provide a better understanding of their real nature, but also to illustrate correctly their importance for all sections of the country's population. There may have to be some difference of emphasis depending on the group concerned, but this aspect must always be present. It is necessary also to stress the right of indigenous groups in a minority situation in the national society to preserve, develop and hand on their distinctive culture as long as they wish to do so.

289. Educational material and programmes should foster in all the various groups a knowledge of each person's rights and obligations as individuals, and of the rights and obligations of each group within the national society. They should place sufficient emphasis on the value of friendship among the various segments of the population, and should promote understanding and appreciation of the culture of other groups. To this end, as has already been mentioned, they should also contain the necessary elements to combat and eliminate prejudices and preconceived notions about other ethnic groups, and to provide the most accurate possible information about all groups of the population.

290. We shall consider first the educational material and programmes prepared and developed for the indigenous populations and, secondly, those which have been prepared for the non-indigenous populations.

2. Educational programmes and material prepared for the indigenous populations

(a) Preparation of programmes and material in the light of appropriate ethnological studies and with sufficient emphasis on indigenous culture, traditions, history, arts and handicrafts

291. For some countries, 66/ the information available on this subject is very limited. In some of these cases, however, it can be deduced from the little information available that teaching programmes, methods, plans and material do not vary, or vary only very slightly, and that they are used throughout the country for all schools and pupils irrespective of the region and of the linguistic or cultural group to which the pupils belong.

292. The information available for certain other countries covered by this report reveals that, in general, the teaching material, methods and programmes used for educating indigenous populations are very similar to those prepared for the other sections of the population, whether urban or rural. In some cases they are exactly the same, without changes or adaptations of any kind.

293. Thus, for example, the Government of Finland has communicated in unambiguous terms that "there are no educational programmes especially prepared for the Lapps, since the schools are common to all".

294. Similarly, the Government of Malaysia has stated that:

> "The curriculum followed in all departmental primary schools is identical to that followed by all Ministry of Education primary schools. It has not been considered necessary to develop separate curricula for Orang Asli since it cannot be said that they represent a completely separate socio-cultural entity. In many areas their way of life contains many elements in common with the Malay community, especially that part of it which lives in the more remote rural areas. In this context the Orang Asli can be said to represent the edge of a spectrum rather than a separate and distinct entity. Another factor here is of course the great need for welding the major racial groups in Malaysia into a national community and ensuring national unity at all levels. Separate or greatly modified curricula for Orang Asli in the field of education would, it is felt, have a divisive rather than a unifying effect, especially so at primary level. It should be pointed out here that in Malaysia children of all communities i.e. Malay, Chinese, Tamil, Eurasian etc., all use the same curriculum at primary level.
>
> ...
>
> "As has been stated previously great emphasis is placed by the Government on the integration of all communities at all levels, as this is essential for national unity. In view of Malaysia's varied racial make-up this question receives far more attention than in most countries. The Department considers the efforts of both itself and the central Government as very satisfactory in this field."

66/ Argentina, Bangladesh, Bolivia, Burma, Colombia, Denmark, Ecuador, El Salvador, France, Guatemala, Guyana, India, Indonesia, Japan, Lao People's Democratic Republic, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Sri Lanka, Suriname and Venezuela.

295. Sometimes these programmes and material are designed for the urban school population and completely ignore the different general environment of schoolchildren from rural areas, in which they have spent their whole life until the moment they arrive at school for the first time. Much less do these school texts and material incorporate any elements of the indigenous culture (and, in particular, the language), which would make them more accessible to indigenous pupils during the initial stages of their school life.

296. With reference to this lack of suitable teaching material, methods and programmes, the Government of Chile has transmitted the following information which is quoted in full:

> "Unfortunately teaching methods in rural schools, whether private or state-run, are based on patterns developed in Santiago and for urban children. This causes difficulties in teaching children in rural areas. A young Mapuche boy from the Cho-Chol region will certainly find it easier to understand that one cow plus another cow makes two cows, than that one orange plus another orange makes two oranges. He is familiar with cows and interested in them because they belong to his environment. As for oranges, he has never seen them growing, he is unfamiliar with the tree which produces them and he therefore finds it difficult to picture them. Pythagoras's theorem will be almost impossible for these children to understand if the explanation is given merely in geometrical and arithmetical terms; but they would certainly understand it much more quickly if they were told that, and how, it is used to measure land and determine its area. Teaching material should be adapted to suit rural areas: rural areas cannot be adapted to suit the material".

297. The Government has also transmitted the following ideas regarding the steps which should, in its view, be taken to organize the education of indigenous pupils on better lines:

> "Greater importance should be paid to manual work. Each child in a rural school should be taught to use agricultural implements and should learn when the various kinds of vegetables and cereals are sown, what fertilizers they require, how to apply them, etc. But this kind of teaching should be practical, with crops grown on the school's own land, even if only on a very small scale. The pupil should be taught at school how to handle a saw, a plane, a hammer, an anvil, a vice, a file, a drill, etc., by carrying out small jobs. It is inconceivable that a pupil in the eighth basic year should still not know what a fuse is or how to repair one; if he does not know, it is not his fault but a gross defect of his education.
>
> "A young person completing his basic education in a rural school should know how to vaccinate an animal against foot-and-mouth disease, and what are the most urgent measures to be taken in cases of epidemics affecting cattle. The teaching on all these aspects of day-to-day work in the fields should not be theoretical, but practical and in vivo; this is the only way to ensure that the pupil will never forget it. If this course were adopted, there would soon be an end to all those sterile discussions of linguists concerning the indigenous child's difficulties of comprehension.
>
> "We say that these arguments are sterile and even senseless because, if there were any real lack of intelligence, it would be inconceivable that Mapuches could succeed in becoming good stock farmers, cobblers, industrial workers, etc., or that the army could succeed in giving them military training. The education given by the army is generally practical and not theoretical: hence the results it produces ...".

298. The Government adds:

"Programmes and teaching materials are the same for all pupils in Chile. This is due to the fact that Chile does not have indigenous populations or peoples as is the case in other Latin American countries. There are only groups of indigenous people who are living side by side with non-indigenous people, who attend the same schools, without discrimination of any kind. For this reason, there are no educational programmes designed for indigenous children".

299. In Brazil article 53 of Act No. 6001 provides that:

"Handicrafts and rural industries are to be encouraged with a view to raising the Indian's standard of living by suitable adaptation to modern technical conditions."

300. There appears to be no specific provision in educational programmes and materials for emphasis on the culture, traditions, history, arts and handicrafts of the indigenous populations. Article 47 of Act No. 6001 provides "respect for the cultural heritage of the native communities, their artistic values and means of expression is hereby assured". As already noted in paragraph 239, in article 50 of the same Act it is provided, however, that "the education of the Indians shall be oriented towards integration in the national community by means of a process of gradual comprehension of the general problems and values of the national society as well as development of their natural aptitudes."

The Special Rapporteur requested but did not receive information on the actual operation of these provisions.

301. Different groups of indigenous populations are taken into account for the preparation of educational programmes and materials.

In that connection an official publication reports:

"The tribes are divided into various categories, which include:

"(a) Groups living in economically marginal areas or areas being developed economically where individuals from elsewhere appear sporadically, which have contact with few white men (FUNAI staff, missionaries, gold diggers, rubber workers); certain changes are already apparent in such groups' language and customs with the emergence of new needs (iron instruments, nylon, etc.) but these do not compromise their autonomy, their physical vigour and joie de vivre being characteristic traits;

"(b) Groups living in national development nuclei and therefore in continuous co-existence with Brazilian society. Changes may be noted in their social structure, command of Portuguese and level of dependency on the national society, particularly as regards satisfying their requirements in manufactures;

"(c) Groups whose members act as a reserve labour force or as specialized producers of certain goods for consumption in Brazilian society which have lost most of their tribal customs, sometimes even their native language, which live almost in the same manner and look the same as the Brazilian rural population around them, but which even so continue to think of themselves as Indians." 67/

302. According to one source, however, this is interpreted to imply that:

"To integrate means to substitute the values of a culture in favour of another.

"On integrating himself in our culture, the Indian must stop poligamy, adhere to an economy based on profit and also abdicate his mythical beliefs. However, the Indian comes from a millenary culture that is solid, rich and deep. If cultural adaptation introduces elements of another culture, integration is all the more damaging." 68/

303. The Government of Costa Rica states: "There are no programmes or teaching material for the indigenous population. It would be desirable to adopt special measures, including all the points mentioned under this heading".

304. According to information submitted by the Government "The structure of programmes does not meet existing needs ...".

305. In 1975, the establishment of an "indigenous education unit" in the Ministry of Public Education was announced. 69/ In 1979, in reply to a question from the Special Rapporteur, the Government stated that this unit was in operation and was primarily concerned with a project, headed by an indigenous primary-school teacher, for programming and using of teaching material in indigenous schools. The Government added that there were also plans to undertake, in co-operation with the Ministry of Public Education, the improvement of the regional education system by adapting national plans and programmes to the interests and requirements of the indigenous population.

"However, owing to the lack of supervision in introducing these new educational methods they have so far been unsuccessful because they have not secured the conscious participation of the indigenous population and there has been no sustained and methodical process in keeping with their own cultural patterns. There has been neither interest nor personal commitment on the part of the indigenous population for they have not been sufficiently motivated and outmoded paternalistic approaches have been followed in the isolated attempts to apply programmes in their communities".

67/ O que é a FUNAI, Assessoria de Relaçoes Publicas da Fundaçao Nacional do Indio, (Brasilia, D.F., April 1973) p. 4.

68/ News from Survival International, October 1974, No. 8, p. 29.

69/ "Noticiero Indigenista", loc.cit., vol. XXXV, No. 4, 1975, p. 878.

306. The Anti-Slavery Society reports that in Paraguay: "... normally no effort is made to take into account the traditional indigenous cultures. The textbooks officially recommended are not even appropriate to the non-indigenous environment, as they are based on the image of a non-existent white society of European culture. A typical example is the textbook for adult literacy officially recommended in Paraguay:

> "It carries the deceptive name of 'Guarani', although it is drafted exclusively in Spanish. As it was elaborated in Venezuela, it contains many expressions and names completely unknown in Paraguay. Thus, it could only be used with many restrictions even among Paraguayans who speak Spanish correctly, but since the group of illiterates is not composed of persons with Spanish as their own language, we consider it practically useless".

307. While various countries are silent whether or not they are contemplating the possibility of developing methods or preparing special programmes for indigenous populations, some have indicated that they do not intend to do so for various reasons. 70/ In other countries, although no special programmes and material existed in the past, they are now being prepared and developed. Thus, for example, the Government of Australia writes:

> "Educational policies and programmes for Aboriginals are being developed taking account of Aboriginal cultural traditions. Where Aboriginal communities are least acculturated, programmes are developed in close consultation with the community leaders and incorporate such elements of the local culture and traditions as are determined by the Aboriginals. Aboriginal instructors in traditional arts and crafts are employed in most schools in remote communities."

308. In various countries, however, ad hoc programmes, plans, methods and material of this kind already exist and have done for some time. On the basis of the information available to date, it is not possible to undertake a comparative analysis of their contents and orientation. The information contains no direct reference to these aspects, although there is some indication of the methods used for the adoption of programmes and plans and the preparation of material. Thus, for example, the Government of New Zealand states, without referring to their actual contents, that:

> "The special programmes and materials prepared for Maori pupils have been recommended by the National Advisory Committee on Maori Education ... . This committee includes a number of Maoris with special expertise in different facets of education. In the Education Department there is a division responsible for putting into effect the recommendations of the committee. The four senior officers in this division include three experienced Maori teachers and a non-Maori teacher with wide experience in Maori education. All of these officers have an intimate knowledge of Maori society and Maori attitudes and aspirations. In the School Publications Branch of the Education Department the teacher in charge of special textbooks for Maori children and printed material in the Maori language is an experienced Maori teacher."

70/ See in this connection, the statement by the Government of Malaysia in para. 294 above.

309. The Government points out, however, that suitable emphasis is placed in schools on the indigenous culture, traditions, history, arts and handicrafts. It states that:

> "The social studies syllabus in both primary and secondary schools has for a number of years included material on culture, traditions, history and arts of the Maori. The syllabus has recently been revised to place greater emphasis on these matters and to increase the quantity of material on contemporary Maori society.
>
> ". . .
>
> "As mentioned above there is growing emphasis upon the nature, characteristics and importance of contemporary Maori social and cultural institutions in order to give Maori children an awareness of, and non-Maori children a respect for, such institutions.
>
> "The present school curricula place great emphasis on the fact that New Zealand is a bicultural country which demands respect and understanding between Maori and non-Maori."

310. According to information furnished by the Norwegian Government, it would appear that special educational materials for Sami students are being developed:

> "The development work now in progress in connection with the present situation of the Lapps is based on relatively comprehensive research and fact-finding work ... carried out by experts. The active support now so evident in the local population will facilitate the continued improvement of these measures. According to the majority of Lapp educators, material, techniques and methods to improve the situation of the Lapps remain to be developed. The next stage of the work on Lapp questions will proceed on the basis of Recommendation No. 196 (1962-1963) to the Storting concerning cultural and economic measures of special interest for the Lappish-speaking population, and report No. 13 to the Storting (1974-1975) on the Plan of Action for the Main Lapp Settlement Areas. Report No. 33 to the Storting (1973-1974), concerning a Development Programme for Northern Norway, proposes a separate Lapp Schools Council. In addition the Ministry of Church and Education has established a separate Select Committee, which includes representatives of the northern Lapp and southern Lapp population, whose mandate is to report on the facilities for further education for Lapps."

311. According to the statement from the Mexican Government, special materials are available in that country. It has been the bilingual educators and teachers who, with advice from experts in indigenous education, have devised teaching materials and curricula based on research by professional ethnologists. These curricula and materials are adapted to the cultural environment of the indigenous community and to its degree of proximity to, or remoteness from, the dominant culture. In order to consolidate what has so far been achieved as regards curricula and teaching materials for indigenous populations, there is a comprehensive programme which takes into account indigenous traditions, history, arts and crafts and ensures that valuable elements in indigenous oral culture are not destroyed when they are set down in written form.

312. The targets of objective III (education, justice and employment) in the work programme of the National Indigenous Affairs Institute in the educational field are to help ensure that the education imparted in indigenous communities incorporates the cultural characteristics of these human groups; to uphold the values of these communities in order to strengthen, at the regional level, the sense of ethnic belonging and, at the national level, the awareness of forming part of a multi-cultural society; to ensure that ethnic groups acquire an awareness of the reasons for their marginal status and are enabled to overcome them by organizing themselves and to contribute thereby to national development; to make the best use of the educational resources provided for the indigenous population by the organization of programmes in terms of the communities, the technological knowledge and practices and the socio-cultural characteristics of the ethnic groups and by marrying theoretical systems to practical requirements so as to achieve a many-sided effect that will enhance the transforming powers of reality; to ensure that the national language fully fulfils its role as a link between all Mexicans and as an instrument to protect the interests of the indigenous communities.

313. The Special Rapporteur requested information about the efforts made and the results obtained in pursuance of the plans and programmes mentioned by the Government in the report referred to in the preceding paragraph. In that connection, the Government stated (1980):

> "Indigenous education received substantial budgetary allocations and it was therefore possible to expand educational services. To that end, it was necessary to increase the number of schools and permanently increase the number of bilingual staff.
>
> As a result of the foregoing, the programme of boarding schools (1,019) was extended in the 70s and, in 1978, with the support of the National Fund for Social Activities (Fondo Nacional para Actividades Sociales - FONAPAS), an experimental programme was undertaken to reorient the functions of such schools, with the result that 19 of them became production schools. Also in 1978, the Ministry of Public Education, acting under the national plan "Education for All" charged the Directorate General of Indigenous Education and the National Indigenous Affairs Institute with the implementation of a large-scale programme for pre-school tuition in Spanish. The National Indigenous Affairs Institute, in conjunction with the Directorate of Popular Culture of the Ministry of Public Education, organized courses to train bilingual experts in indigenous culture with the object of familiarizing members of the communities with the social sciences that would enable them to protect their cultural heritage. Six courses were held, attended by 140 indigenous scholarship holders.
>
> As part of the integral Training Plan for Bilingual and Bicultural Teaching Staff, the Ministry of Public Education, the Centre for Advanced Research of the National Anthrophological and Historical Institute (Centro de Investigaciones Superiores del Instituto Nacional de Antropología e Historia - CISINAH) and the National Indigenous Affairs Institute are hoping to train at least a generation of graduates in vernacular linguistics with a knowledge of the language and culture of their own ethnic groups."

314. According to the Government of the United States: "For many years the emphasis in the culture of the United States was on conformity with the majority European population. However, increasing value is being given to minority cultures including Indian cultures. There has long been considerable interest among all Americans about American Indian culture and efforts have been made by the United States Department of the Interior to encourage its manifestation in crafts such as basketry, rug weaving, jewellery manufacture. Indian militants are increasingly bringing to the attention of the main population interpretations of Indian culture or the lack of attention to it that is offensive to the indigenous people."

315. It has been communicated that:

> "Perhaps one of the best pieces of legislation for Indian education was signed into law in 1972. It was entitled 'the Indian Education Act of 1972' and provided monies for supplementary innovative programs for Indian students. The chief administering office was the U.S. Office of Education. The monies from the Act are controlled by local parent committees and they cannot be used for operational expenses, except in the case of Indian-controlled schools. In other words, the Act made possible funding of the programs that Indian tribal and community members want for their children and which could never find an authorization under any other legislation. The initial appropriation under this Act was $18 million. It also established a Bureau of Indian Education within the Office of Education and a National Indian Education Advisory Council.
>
> "It is important to note that the program under the Indian Education Act would not have been implemented without the untiring efforts of Indian people throughout the country because this was one of the programs which was caught in the impoundment squeeze of 1973. Rescued by lawsuits litigated by Indian attorneys, the Indian Education Act had the potential of building strong Indian community-controlled educational programs on State and Federal reservations in rural communities and in cities across the country." 71/

316. In an official report it is stated that:

> "Until a few years ago, many policy-makers viewed education as a key to Indian assimilation and often regarded Indian culture and history as impediments to the full participation of Indians in American life. The excesses of this period resulted in great damage to Indian people, producing statistics of low educational achievement and a host of related problems, including the disruption of Indian families and cultural and tribal life styles.

71/ Lynn Kickingbird and Curtis Berkey, "American Indian Treaties - their importance today", American Indian Journal, vol. 1, No. 1, October 1975, p. 12.

"The older policies were phased out in the early 1970s and were replaced with the more enlightened policy of today. Under the current policy, assimilation is a choice for the individual Indian to make. Indian history and culture are viewed as positive assets, rather than negative impediments to Indian adjustment to contemporary American life, and the control of Indian education is in the hands of the people most directly affected by the education being provided, the Indian tribes and Indian people.

"The intent of this policy is not only to increase Indian participation and involvement in the educational process but also to improve the quality of Indian education through the development of programs designed to meet the unique educational needs of Indian tribes and communities." 72/

317. In response to a request for information from the Special Rapporteur, he Government of the United States declared in 1982 that:

"Materials which are used in education programs for Native Americans include both those which are used by the non-native population in the United States (readers, workbooks, science, social studies and language arts texts, etc.) as well as material which has been prepared especially for the particular tribe or Alaska Native entity. Preparation is most frequently done at the local level and very often by the school which will utilize the materials. This is highly desirable since it is government policy that the tribe will have the decision-making power as to which elements of the culture are to be taught in the classroom. It is also a tribal decision as to whether the tribal language is to be used in the classroom. These decisions are made through the local schoolboard which is made up of tribal members.

"Within the Bureau of Indian Affairs, the Research and Cultural Studies Development Section in Santa Fe, New Mexico devotes itself to the study of indigenous culture, traditions, history and language and has published, or assisted in publishing, tribal legends and histories and native language learning materials, in both the native language and English. A great deal of work has also been done in recording, in poetry and prose, the experiences of Native Americans in English.

"The Bureau's Institute of Indian Arts places major emphasis on the arts and craft work of Native Americans. It also has an on-going collection of oral history.

"Materials for the learning of English which have been prepared for Native Americans by the Bureau of Indian Affairs, educational laboratories, universities, and individual linguists are tailored to the needs of the particular language group they address and are developed on the basis of a constructive analysis, thereby giving special emphasis in the teaching materials to those difficulties in English caused by the particular characteristics of the native language of the group being taught."

"To promote a greater awareness and understanding of the non-native culture, emphasis is given to field trips by BIA schools." 72/

72/. Report prepared by the United States Commission on the Conference on Security and Co-operation in Europe for the European Review Conference in Madrid (November 1980), pp. 162-163.

(b) Preservation, in authentic form, of the valuable elements of oral indigenous culture when they are set down in writing

318. The importance of oral tradition in the preservation and transmission of the indigenous culture, especially when the tradition has not been set down in written form, cannot be exaggerated. In illiterate communities, oral tradition is the sole means of achieving these praiseworthy objectives. Moreover, education has its roots both in the teaching represented by behaviour and in the customs, traditions and history of the community handed down in oral narratives. Very frequently a large part of the cultural heritage of these groups has never been set down in writing, and it is only recently that written records are beginning to appear. The production of written records is a time-consuming, complex and difficult process if, in the preparation of the written version, efforts are made - as they should be - to avoid adulterating the oral tradition by the introduction of alien values and cultural patterns. Every precaution must be taken to prevent any possibility of adaptations or distortions, or the destruction of valuable elements of the oral tradition which are important for the indigenous communities. The understandable desire to promote feelings of national unity in all groups of a country's population may, in spite of the best intentions, lead to adaptations which are unnecessary and ineffective in achieving this purpose, and which also represent a serious adulteration and even falsification of authentic indigenous oral tradition. These spurious forms should be avoided at all costs. Efforts should be made to set down the traditions in faithful written records, and not to adulterate them.

319. Of all the countries studied in this report, only Malaysia has provided information on this question. 73/ Reference is made to efforts to obtain recordings or written records of the extant traditions of the Orang Asli. The Government states that:

> "Oral culture is considered to be still strong and living among all Orang Asli groups and, as has been stated previously, is still the chief method of transmitting and preserving their culture and traditions. An increasing amount of material is being recorded and is currently under assessment.
>
> "In general it can be said that all Orang Asli groups in Malaysia are pre-literate in respect of their own languages, and literate in respect of "Bahasa Malaysia" (Malay) which is used as the medium of instruction at primary level. As a result of this, culture, traditions, history, etc. are transmitted by oral and not literary methods, and to a considerable extent much of their culture and traditions etc. remained unrecorded until quite recently. However over the past few years an increasing amount of research has been carried out by qualified anthropologists from both Malaysian and foreign Universities and from this Department. This is now being assessed by this Department to determine what part it will play in the culture of the Orang Asli." 74/

73/ See, however, the allusion in passing by the Mexican Government in paragraph 311 above.

74/ In this quotation, the words "this Department" should be read as references to the Department of Orang Asli Affairs.

(c) Requisite elements for making indigenous populations aware of their rights and obligations as a group and as individuals. Emphasis on the value of friendship between the various segments of the population and promotion of understanding and appreciation of the non-indigenous culture

320. Education should foster the full development of the human personality, strengthen respect for all people's human rights and fundamental freedoms, and encourage understanding, tolerance and friendship between the ethnic groups in the national society.

321. One of the main functions of education is therefore to provide the pupil with information on his rights and obligations as a member of society. Every pupil must, as a future citizen, be aware of his own rights and obligations, and of those of others, so that all persons can live in harmony with one another. When there are different ethnic groups in a single country, these aspects of education are even more important. It then becomes necessary both to provide each group with information concerning its own rights and the rights of other groups in the national society, and to place sufficient emphasis on the value of friendship between the different groups and on the promotion of understanding and appreciation of the different cultures which co-exist in the national society.

322. With regard to the first aspect, it is important that educational material should contain elements relevant to the social and cultural characteristics of indigenous communities so that they may gain awareness of their rights and obligations as a group and as individual persons in the national society. Malaysia is the only country that has provided specific information in this respect, as follows:

> "In the interests of national unity Orang Asli are encouraged to regard themselves as an integral part of the national community. Emphasis at primary school level is therefore placed on their rights and obligations as members of that community both as individuals and as a group. In addition the Department runs frequent civics courses and arranges visits by its own mobile information unit to all Orang Asli groups to explain exactly how the Orang Asli fit into national life."

323. The Government of Mexico states:

> "The National Indigenous Affairs Institute proposes, in general objectives III and IV of its programme of work for the six-year period 1977-1982, to increase the capacity of ethnic groups to defend their individual and social rights (objective III: education, justice and employment) and to strengthen national awareness through respect for ethnic pluralism (objective IV: cultural heritage and social organization)."

324. We must now examine the information relating to the emphasis placed, in educational material and programmes, on the value of friendship between the various segments of the population and on the promotion of understanding and appreciation of the indigenous culture among non-indigenous peoples, and vice versa.

325. The Government of Sweden has communicated that teaching in Swedish schools has, as one of its general goals, the "promotion of tolerance and understanding with regard to other people or categories of people".

326. The New Zealand Government has stated that "the importance of friendship between the various segments of the population is fully recognized in the educational system".

327. In this connection, it has been stated before that according to the New Zealand Government 'the present day school curricula place great emphasis on the fact that New Zealand is a bicultural country which demands respect and understanding between Maoris and non-Maoris'. The Government points out that:

> "A modern phenomenon of New Zealand life in the last 20 years has been the growth of Maori cultural clubs in the schools. A fast growing number of secondary schools now have these organizations which are guided either by Maori teachers on the staff or by knowledgeable Maoris in the community and a great interest is being taken in the perpetuation of oral tradition, poetry, etc."

328. The Governments of Chile and Mexico state in identical terms that the materials and curricula prepared for the indigenous populations (Mexico) and uniform materials and curricula for all (Chile) stress the importance of friendship among the various segments of the population and the promotion of understanding and appreciation of indigenous cultures. 75/

E. Educational material and programmes for the non-indigenous populations

I. Elimination of prejudices against indigenous populations in educational material and programmes

329. It is important that the educational material and programmes prepared for non-indigenous populations should embody appropriate measures to combat and eliminate the misconceptions and prejudices which the non-indigenous populations may have with respect to the indigenous communities of the country, and that they should include appropriate information on the history, traditions, customs, culture, arts and handicrafts of the indigenous populations and on their contributions to the cultural environment of the non-indigenous populations.

330. It is well-known that the supporters of racist trends and attitudes have spared no effort to propagate their ideas. In colonial times, the concept of the superiority of the populations and cultures of the metropolitan countries was propounded as one of the "justifications" for the subjection of indigenous territories and peoples to a foreign Power. The leit motif was invariably the need to "civilize" the subject peoples and to "elevate" them to a satisfactory

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75/ Both Governments thereby repeat exactly the terms of paragraph 43 (e) of the outline used for the collection of data for the study.

level of co-existence. These and other propitiatory devices instilled into people's minds some preconceived notions which have proved very difficult to eradicate. It is only recently that indigenous populations have come to be regarded as the source of some major features of the culture of the countries concerned; in other words, after long periods in which the colonialists pretended to extol the virtues of the communities which inhabited a country prior to colonial rule but at the same time exploited the indigenous masses actually living in the country, it is only in the last few decades that the true importance of the indigenous cultural heritage in the cultural patrimony of the countries in question has come to be 'discovered". Only since then has it been recognized that indigenous groups have made a major contribution to the customs, institutions, habits, language and diet of the population of the countries concerned.

331. While it is fair to say that the situation in this respect varies considerably from one country to another, it is a fact nevertheless that effective efforts to combat and overcome these misconceptions have, in all the countries concerned, been undertaken only very recently. The press, radio and television - three excellent media for this purpose - are now being used in concerted programmes to combat and eliminate a priori prejudices and derogatory attitudes with respect to indigenous populations. 76/

332. Offensive attitudes are found most often, and are most marked, in the areas of immediate contact between indigenous and non-indigenous groups, although unfortunately they are not altogether absent in other environments and segments of the population as well. What is required is a systematic, persistent and generalized campaign against these ideas, feelings and attitudes, which are so harmful to the achievement of true national unity in the necessary environment of respect for the different population groups in a multi-racial nation.

333. It is not enough to ensure that educational material does not propagate these misconceptions, and to eliminate all traces of them that may exist in this material. Educational material must incorporate all the necessary elements for dispelling and eradicating these prejudices, and must rather promote correct knowledge of the indigenous communities and their true socio-cultural characteristics, and encourage respect for both.

334. As an absolute minimum, it is necessary to revise school texts and remove from them all traces of prejudice and of fixed or erroneous ideas regarding indigenous populations. The necessary corrections must then be made to provide accurate information on these groups, their traditions, habits and customs, and their contribution to the development of the habits and customs of the other population groups.

335. Furthermore, it is imperative to encourage due respect for these population groups and for authentic expressions of their culture, and to instil into the minds of school children the principle of respect for the different cultural characteristics of other sections of the national population. This is the only way of achieving, one day, the ideal of a truly integrated national society, which cannot be founded on ignorance of or contempt for the culture of certain groups of the population that are wrongly described as "inferior" or 'primitive"

76/ Information on general activities in this field which are not specifically connected with schools and educational material will be considered in chapter IX on fundamental policy with regard to indigenous peoples.

and are regarded - though not always openly - as obstacles to national development. Indigenous cultures are very largely the product of circumstances that are local in origin, and not imported from abroad, as is generally the case with the "alien oriented" groups which are often to be found among the dominant groups of the population. There is much more to be learnt about the ways in which indigenous populations have succeeded in preserving ecological conditions in places where their forefathers created a civilization and culture.

336. For some countries, 77/ no information on these questions is available.

337. The information available on one country is explicitly negative with regard both to the existence of special materials and curricula and to the existing uniform materials, which contain no information whatever relating to the indigenous populations. Indeed, the Government of Costa Rica states that "there are no educational programmes or materials prepared for the non-indigenous populations which cover indigenous aspects; therefore, the citizen is educated in complete unawareness of the national indigenous groups".

338. In another country with uniform texts there has, however, been a tendency, both in public schools and in some private schools, to include elements aimed at combating prejudices and misconceptions about indigenous groups and activities and these efforts have been partly effective. With regard to the public school system, it is pointed out that, on 1 July 1956, the Paraguayan Ministry of Education sent a circular to the directors of primary schools requesting their collaboration "in the task in which, with a view to the defence and rehabilitation of our indigenous groups, the Ministry is engaged".

339. The Anti-Slavery Society states, however, that

> "Paraguayan children are normally taught that the Indians were part of their ancestry, and that the old Guaraní were "a noble race". Reference to descent from those "noble Guaraní warriors" and to the "Treaty of Friendship between the Guaraní and the Spaniards", after which the Indian chiefs gave their women to the Europeans, is part of the history of the Paraguayan nation. Patriots, including patriotic teachers, call Paraguay "the Guaraní land" and like to stress that they are "of Guaraní blood".
>
> "But this patriotism, especially taught in school, has two weak points: (a) "Noble" Indians are only the Guaraní, while the other indigenous groups of Paraguay (the majority) are only briefly mentioned as "more primitive than the Guaraní". (b) It is mainly the Guaraní of the past who are so treated, whereas their actual indigenous descendants are neglected. In fact, the strong patriotic accent on the "Treaty of Friendship" which is said to have founded the Paraguayan mestizo nation, is on a treaty of subjugation which led to the absorption of those Guaraní into the mestizo nation. Looked at more closely, the "Guaraní" pride of the Paraguayan patriots is a mestizo pride which implies discrimination not only on the part of the pure Europeans but also of the pure Indians. This was proved

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77/ Argentina, Bangladesh, Bolivia, Burma, Colombia, Denmark, Ecuador, El Salvador, France, Guiana, Guatemala, Guyana, Honduras, India, Indonesia, Japan, Lao People's Democratic Republic, Nicaragua, Pakistan, Panama, Peru, Philippines, Sri Lanka, Suriname and Venezuela.

recently by a field study, in the course of which Paraguayans were asked among other things if they were proud of being Guaranís and to enumerate some indigenous ethnic groups. Many of those who declared themselves proud of being Guaranís did not mention the Guaranís among the indigenous groups, although they form the most important ethnic group among the Paraguayan Indians - it seems that many people in Paraguay do not really realize that the "Guaraní" referred to in school are the Guaraní Indians of today.

"On private initiative and outside the official school curriculum, some rural schools have recently made efforts towards improving teaching about Indians. These are the same schools which try to introduce teaching in Paraguayan Guaraní".

340. During his visit to Paraguay in June 1974, the Special Rapporteur was informed that it seemed necessary to launch a more energetic educational campaign for the non-indigenous sectors concerning the importance of the country's indigenous groups and the need to pay more attention to their problems and to recognize the fact of the country's cultural and linguistic diversity.

341. Although the information available on other countries indicates that they have only uniform texts utilized for all, these texts contain material of relevance to the subject dealt with in this section.

342. For example, although the Government of Chile says that in its country there are no programmes or materials specially prepared for indigenous or non-indigenous groups, it does point out that the programmes and materials prepared for the entire Chilean population "contain elements to combat and eliminate the misconceptions or prejudices which might be held with respect to the indigenous communities and that subject-matter in various branches and at all levels of education highlights the values of the indigenous groups".

343. The information available is extremely limited, but it does show that most countries which have transmitted information have begun to take measures in this respect, including the preparation of special materials and programmes. 78/

344. The Government of Australia has communicated that "suitable materials designed to combat prejudice and to disseminate accurate information about Aboriginal life and culture are being made available to schools throughout Australia". 79/

78/ Some information has also been provided on certain general measures designed to eliminate discrimination against indigenous populations, with special reference to the elimination of prejudice that is not related to schools or educational material or programmes. This has been considered together with other measures embodying basic principles relating to equality and non-discrimination, in the relevant chapters of the report.

79/ See paragraph 366 below.

345. On the question whether the educational programmes and materials prepared for the non-indigenous populations are designed to combat misconceptions and prejudices against indigenous populations and inform them on indigenous culture and promote understanding and appreciation of the indigenous culture, the Government of the United States has stated:

> "American school children have a great interest in the indigenous population and the Bureau of Indian Affairs publishes material which it distributes to increase knowledge about this group of people. This includes a leaflet on how to find an Indian pen pal. An all Indian group particularly interested in correct interpretation of American Indian life and history is the American Indian Historical Society in San Francisco".

346. In this connection, see paragraph 202 above for a critical comment on the pen pal programme.

347. According to a writer, however,

> "there are broad categories of problems that affect most Indians for at least part of their lives in the city and that probably afflict most Indians as long as they reside in an urban area. These problems revolve around two aspects of cultural conflict: the American non-recognition of, or hostility to, Indian cultures and the specific personal conflicts within oneself generated by urban residence. In addition, the Indian faces socio-economic problems as a result of poverty, poor education and, in many cases, varying forms of discrimination that he experiences from the larger society". 80/

348. In response to a request for information by the Special Rapporteur, the Government of the United States of America declared in 1982 that:

> "The Federal Government does not prepare educational programs or classroom materials for non-Native students in the public schools. It does, however, distribute a wealth of materials which may be used by classroom teachers to inform their students on the history, and culture, including the arts and crafts, of native groups within the United States. Materials include booklets on individual tribal groups, bibliographies, maps, information on volunteer work with Indians, and how to initiate a "pen pal" relationship with Indian schools. Presentations are made by Bureau of Indian Affairs personnel at public schools and other institutions which emphasize not only the historical aspects of Indian life, but attempt to create a greater awareness of the present-day life of Indian and Alaskan native peoples as well as the historic contributions of Native Americans. Certain States having large Indian populations, such as Oklahoma, have circulation books and pamphlets concerning Native American culture and history.
>
> Efforts have been made in recent years to eliminate the stereotyping and generalization, distortions and omissions found in many educational materials which deal with Native Americans. In the early 1970s, such a project was undertaken by the American Indian Historical Society. More recently, in September 1981, guidelines for evaluating textbooks from an American Indian

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80/ Joann Westerman, "The Urban Indian", Current History, December 1974, p. 259.

perspective were developed by the Education Commission of the States. These guidelines pertain to content, language and illustrations used in teaching materials for all levels. They stress the importance, particularly in the lower grades, of students being taught that all people are important regardless of their sex, race, ethnic heritage, socio-economic background or religion. It is hoped that projects such as these will help to undo some of the damage that has already been done by the media to which children are exposed before they start school, particularly through television and movies".

349. The Government of Mexico states that the design of the educational materials and curricula prepared for non-indigenous populations "is adequate to combat and eliminate any misconceptions or prejudices that might be held by those populations with respect to the country's indigenous communities. The textbooks which are freely distributed in all of the country's primary schools stress appreciation of indigenous cultures and their importance to the national culture".

350. In Brazil, the Indian Museum seems to have a programme, mainly directed towards school children and students, for the elimination of misconceptions about "the Indian". Thus, according to a source 81/ "in its fight against stereo-typed misconceptions of the Indian as 'vengeful' and 'childish', the Indian Museum spends a great deal of effort on conferences, the projection of films, slides, speeches, guided tours, permanent and travelling exhibits, museums and ethnology courses. This programme is, for the most part, directed towards the younger elements of the population such as university students, high-school students, primary and even pre-primary students, as well as members of associations and clubs".

351. According to the New Zealand Government "both the school curricula and the school publications emphasize the need to understand and respect the differences which exist between the various cultures".

352. The Citizens' Association for Racial Equality states, however:

"It is doubtful whether schools in New Zealand are doing as much as they could do to combat racial prejudice - for instance, Governments in the past have done little to ensure a widespread distribution of the UNESCO publications on race questions ..."

353. In the summary relating to New Zealand transmitted to the Government for comments and supplementary data, the Special Rapporteur included the following statement:

"While in Auckland during his official visit [to New Zealand] (June 1973), the Special Rapporteur heard repeated reports that despite significant gains, there was still, in that area, an important segment of the European population which held fast to racialistic attitudes in general and to racist behaviour in particular, towards Maori persons and groups. The case of school guidance personnel was mentioned in particular. This personnel was almost exclusively non-Maori and did not pay due attention to the desires of Maori students, but consistently oriented them towards studies 'more suited for you, your background and your future role in society'. These studies consistently fell short of the actual aspiration

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81/ O que é a FUNAI, published by the FUNAI Public Relations Advisory Service, Brasilia, 1973, p. 12.

of Maori students, and the pushy attitude in this regard was attributed to preconceived ideas on 'what was good for Maoris'."

354. The Government of New Zealand has commented upon that statement in the following terms:

"In recent years there has been a shortage of qualified vocational guidance experts and it is probably true that some of them in the past had insufficient appreciation of the needs and aspirations of Maori children. This is being corrected by joint discussions and joint staff training courses attended by vocational guidance officers and Maori social workers of the Maori and Island Affairs Department. However, ... quite apart from the vocational guidance system, Maori social workers of the Maori and Island Affairs Department visit, twice a year, every secondary school with any significant number of Maori children for the purpose of explaining vocational opportunities and helping them to decide what they would like to do when they leave school. This service is also being extended to intermediate schools. By these means, Maori children are probably getting more attention than non-Maori children".

355. One of the guiding principles of the policy officially adopted since 1961 in Malaysia concerning the Orang Asli populations, reads as follows:

"Educational and other measures shall be taken among the other elements of national population with the object of eliminating hereditary prejudices that they harbour in respect of the aborigines."

356. The Government states that the Department of Orang Asli affairs is very active in the field of eliminating prejudice against the Orang Asli. The many measures mentioned in this connection include "requesting, where necessary, revision of text books both school and others which contain inaccurate information on any aspect of Orang Asli life and culture".

357. It has been written that in Canada,

"Since October 1971, the Federal Government has had an official cultural policy ... The new policy is designed to break down discriminatory attitudes and cultural rivalries ... Assistance is given to members of all cultural groups to overcome cultural barriers to full participation in Canadian society ... The Government promotes creative encounters and interchange among all Canadian cultural groups in the interest of national unity ...

"The Ontario Institute for Studies in Education, with the sponsorship of the Ontario Human Rights Commission, has published Teaching prejudice: A Content Analysis of Social Studies Textbooks Authorised for Use in Ontario. According to the present Premier of Ontario, the study was commissioned

" ... not just for the purpose of removing material which may be offensive to any of the groups which make up our multi-national family, but more important, to make sure that our textbooks do contain the type of material which does full justice to the contributions of many people to the development of our province and nation."

"The researchers discovered considerable deficiencies in textbooks about various racial and national groups. They found that misinformation was passed on to school children indirectly - by inference and implication - with the excessive use of negative images. Also, negatively value-laden words were used in writing and in discussions that described certain minority and racial groups to disadvantage.

"The researchers made the following recommendations in Teaching Prejudice:

"That publishers of school textbooks be asked to make appropriate revisions in all texts containing errors and defects, and that in the interim all school teachers be supplied with lists of errata.

"That books which provide an up-to-date and scholarly information on the status and history of minority groups in Canada and elsewhere be sought or, if necessary commissioned, by the Ontario Department of Education. These books should include information on the dynamics of prejudice.

"That to prevent the use of inadequate or biased textbooks the Department of Education develop guidelines for authors and publishers, and that a standing committee, which would include in its membership representatives of the Ontario Human Rights Commission, be established to evaluate textbooks.

"That since the matter of intergroup relationships is of national importance, all teacher-education authorities give this matter top priority in developing their instructional programmes.

"Teaching Prejudice was published as a book, and has received wide distribution in Canada". 82/

2. Information on the history, traditions, customs, culture, arts and handicrafts of the indigenous populations and on their contributions to the cultural environment of the non-indigenous populations

358. The Governments of some countries point out that educational material contains information on indigenous populations and their history, tradition and customs, culture, arts and handicrafts.

359. Thus, for example, the Government of Finland states that in that country:

"The materials used in schools contain information on the Lapp populations and their history and culture. Educational programmes are prepared in each commune taking into consideration the local needs. The communal School Boards play an active role in their preparation. This function is supervised by the appropriate county governments and, at the final stage, by the Central Board of Schools. The respect for human rights is one of the leading principles observed in the preparation of educational programmes".

82/ United Nations Yearbook on Human Rights for 1971 (United Nations, New York, 1974), pp. 59, 60 and 67.

360. The New Zealand Government indicates:

> "As already stated, all New Zealand school children are given instruction on the history, traditions, customs, culture, arts and handicrafts of the Maori population and their importance to the cultural environment of the whole population.
>
> "A considerable amount of work has been done to help Maori children to preserve and develop their own culture. In many schools Maori woodcarving and weaving are taught and there is widespread encouragement for the learning of Maori singing and dancing."

361. The Citizens' Association for Racial Equality has, however, stated that:

> "It is also doubtful whether very much has been done by the educational system to preserve and develop the cultural characteristics of the Maori population. Some schools, especially those with a high concentration of Maori and other ethnic groups have tried long and earnestly to promote understanding of and respect for indigenous and minority cultures; but at the other end of the scale there are some state schools and most of the private schools that cater almost exclusively for middle class European clientele which are doing virtually nothing to educate Maoris or other ethnic groups or to promote respect for their culture".

362. The Government of Mexico says that teaching materials "include appropriate information on the history, traditions, culture, arts and handicrafts of the indigenous groups and on their contributions to the cultural environment of the non-indigenous populations" and "place sufficient stress on the need to recognize the right of the indigenous populations to preserve and develop further their cultural characteristics".

363. The Special Rapporteur requested information on the precise way in which the above assertions had been borne out not only with regard to pre-Colombian cultures but also in respect to present-day indigenous populations.

364. In response, the Government of Mexico provided the following information in 1980:

> "In the free textbooks for primary schools, and essentially in the area of "social studies", stress is placed on the human and legal equality of all Mexicans, without any distinction being made with regard to the country's indigenous communities. In addition, although current books rarely mention present-day ethnic groups and emphasize pre-Colombian culture, it is envisaged that in the near future the text books will draw attention to the history, cultural traditions, arts and handicrafts of indigenous groups and their contributions to the environment of the non-indigenous populations".

365. The Government of Chile points out that educational materials "include information and data relating to the history, traditions, customs, cultures, arts and handicrafts of indigenous groups and stress the need to be acquainted with these populations and to ensure the development of their cultural characteristics".

366. The content of this information is in many countries, however, not always appropriate. It is often found to be quite inadequate by independent experts. As an example of criticism expressed in this connection it is deemed useful to quote here from the findings of a team from the World Council of Churches which visited Australia in 1981 and which has reported that

> "In terms of the content of school curricula, it is absolutely essential that the so-called Australian history - a white history - be rewritten to give adequate account of the infinitely longer and more varied history of the Aborigines. The racism so common in school textbooks in descriptions of Aboriginal people must be removed". 83/

3. Emphasis on the value of friendship between the various segments of the population and promotion of understanding and appreciation of the indigenous culture

367. The information received on this aspect is reproduced in paragraphs 325-328 above. It is couched in general terms and refers to all population groups.

368. According to the Government of the United States:

> "In a number of cases Indian tribal governments have contracted to operate the schools that serve youthful members of the tribe. They do so with the Bureau of Indian Affairs, which supplies funds for the project."

369. The World Council of Churches team which visited Australia in 1981 has reported that:

> "At Oombulgurri in North Western Australia, the children were proud and enthusiastic about the black run - white staffed school. We strongly support adequate funding for communities to run their own schools. We also support the extension of bilingual and bicultural Aboriginal education curricula". 84/

370. With respect to schools and other educational institutions, the Government of Chile stated in 1975: "As regards educational institutions, indigenous people, like all other Chileans, join in their founding and operation, by donating land for schools, helping in their construction and, in general, furnishing manual labour of every kind".

371. In Costa Rica, according to the Government, "With respect to schools and educational institutions, the indigenous communities take part or collaborate in their founding but play a lesser role in their operation, participation in which is through school boards or local committees".

83/ Adler and others, op.cit., p. 43.

84/ Adler, op.cit., p. 44.

372. It has been written with regard to Canada that:

"The past practice of using the school committee as an advisory body with limited influence, in restricted areas of the school program, must give way to an education authority with the control of funds and consequent authority which are necessary for an effective decision-making body. The Federal Government must take the required steps to transfer to local Bands the authority and the funds which are allotted for Indian education.

"The Band itself will determine the relationship which should exist between the Band Council and the School Committee: or more properly, the Band Education Authority. The respective roles of the Band Council and the Education Authority will have to be clearly defined by the Band, with terms of reference to ensure the closest co-operation so that local control will become a reality.

"The local Education Authority would be responsible for:

- budgeting, spending and establishing priorities;
- determining the types of school facilities required to meet local needs: e.g. day school, residence, group home, nursery, kindergarten, high school;
- directing staff hiring and curriculum development with special concern for Indian languages and culture;
- administering the physical plant;
- developing adult education and upgrading courses;
- negotiating agreements with provincial or separate school jurisdictions for the kind of services necessary for local requirements;
- co-operation and evaluation of education programs both on and off the reserve;
- providing counselling services.

"Training must be made available to those reserves desiring local control of education. This training must include every aspect of educational administration. It is important that Bands moving towards local control have the opportunity to prepare themselves for the move. Once the parents have control of a local school, continuing guidance during the operational phase is equally important and necessary". 85/

F. Educational establishments and institutions

1. Participation or collaboration of indigenous communities in the founding or operation of educational establishments and institutions that are active in these communities

373. The participation or collaboration of the indigenous communities or their leaders or of indigenous persons, groups or organizations in founding and operating official or unofficial educational establishments and institutions in their

85/ Indian Control of Indian Education, op.cit., pp. 6-7.

communities is very important. Through such activities, indigenous groups and communities take a greater interest in the operation of such establishments and identify themselves far more with them since they can look upon them, to some extent at least, as their own creation. This fact is also highly significant in orienting these establishments and institutions to serve the authentic aspirations of these groups and communities. It is of the highest importance that the schools should be largely the creation and instrument of the indigenous communities and groups.

374. For a number of countries, 86/ no information is available in this respect. The information that is available indicates that these important aspects are dealt with in various ways in the different countries which have supplied information on the subject.

375. The Anti-Slavery Society reports that in Paraguay "Indigenous communities or their leaders have no participation at all in the official school institutions. Some missionaries have recently begun to consult the indigenous parents about school questions, and there are interesting experiments like that among the Maká near Asunción, where a "To the New Tribes" missionary submitted his work on a Maká school textbook to the Maká community for discussion. But these are isolated experiences of individuals outside the majority of official lines".

376. The Government of Australia reports:

> "... Aboriginals are being involved in decision-making about educational provisions in their communities. Special institutions elsewhere are being established with Aboriginal participation, as in the case of the School of Aboriginal Education at Torrens College".

377. The Finnish Government has communicated that:

> "As members of the appropriate Communal Councils and School Boards the Lapps have participated in the administration of school education in their communes".

378. In Malaysia, one of the principles established in 1961 for the purpose of guiding official policy towards the Orang Asli populations read as follows:

> "In all matters concerning the welfare and development of the aboriginal peoples, Government will seek the collaboration of the communities concerned or of their representatives".

379. The Government of New Zealand has submitted information on this aspect, giving an historical background on the question as well as information on the present situation, as follows:

86/ Argentina, Bangladesh, Bolivia, El Salvador, France (Guiana), Guyana, Honduras, India, Indonesia, Japan, Lao People's Democratic Republic, Nicaragua, Pakistan, Panama, Sri Lanka, Suriname and Venezuela.

"In the early days of formal education amongst the Maori people, the Maori population largely resided in tribal communities and special schools for Maori children were established in many parts of the country. These schools had curricula which varied a little from the non-Maori schools to meet some of the particular needs of the Maori people at that time. The Maori communities co-operated fully with the Government in establishing these schools and in many cases provided the land for the buildings. A few years ago, with the spread of the Maori population throughout the rest of the community, the separate Maori schools were abolished and Maori parents are now entitled to participate in school committees and parent teacher bodies in the same way as the rest of the population. School committees are statutory bodies elected by the parents to take charge of various aspects of the administration of the school. Parent teacher associations are voluntary bodies comprising teachers and parents who establish a link between the school and the community. In some areas Maori parents have a long tradition of active participation in these bodies but in other areas there seems to have been a reluctance to do so. Social workers of the Maori and Island Affairs Department have been actively encouraging Maori parents to participate fully in school activities and have been gaining considerable success in this. There are no formal educational establishments operated by Maoris in their communities, but there are many Maori communities who have in recent years established classes in traditional oral material, tribal histories, genealogies, songs, etc."

380. The Citizens' Association for Racial Equality states in this regard:

"Maori leaders who were a product of church Maori schools have had some part in the policy and administration of these establishments, but otherwise Maoris do not play a large part in educational administration. A few are elected to school committees but invariably they constitute a minority of one".

381. The Mexican Government points out that "The indigenous communities, their leaders and indigenous groups and organizations have formed part of, and collaborated in, the founding and operation of the official educational establishments and institutions active in their communities. They work together and co-operate with the educational authorities, bilingual educators and teachers, supervisors and directors. When the community requests the establishment of a school or a boarding school, it cedes the land necessary for the building and the school grounds, carries out various tasks, furnishes regional materials, sets up the school committee and provides board and lodgings for the teaching staff". 87/

87/ Something very similar appears to take place in Guatemala and Peru.

2. Independent indigenous facilities or institutions

382. The traditional education of indigenous persons is still being continued. The culture inherited from their ancestors, with the changes introduced by each generation, is being transmitted to the young people, now as in the past. This practice has in some cases taken the form of the creation and operation of educational facilities and institutions organized in accordance with the precepts of the traditional culture, side by side with the public or private schools which are active in the indigenous communities. These facilities or institutions may operate along parallel lines with the private or State schools or may be created to supplement them with a view to keeping alive the traditional attitude to schooling.

383. Three of the countries covered by this study have transmitted negative information on this subject. They all state that there are no independent indigenous educational institutions or establishments. Costa Rica, Denmark and Sweden simply state that they do not exist while two other countries 88/ explain why there are none. Still another country 89/ says that there are no independent institutions or establishments, but mentions certain schools which are partly of this kind.

384. The Government of Chile states that "all official and non-official educational institutions and facilities are created for the entire Chilean population; none are specifically designed for the indigenous groups".

385. The Malaysian Government has communicated that:

> "There are no non-official independent educational facilities for Orang-Asli. This does not mean that the formation of such facilities has been or is discouraged by the Government but simply that the need for such facilities does not as yet appear to have arisen."

386. As concerns New Zealand, there is non-governmental information as well as governmental information in this connection. The Citizens' Association for Racial Equality states:

> "There are no indigenous educational facilities, though some of the Church schools have a substantial Maori character; most of their pupils and some of their staff are Maori. Maoris have little or no say in the recruitment and selection of teacher trainees."

387. The Government has transmitted the following information in this regard:

> "The only educational establishments particularly concerned with Maori children are the six secondary schools operated by Christian Churches. These are boarding-schools which pay special attention to Maori cultural activities, but otherwise conform with the official educational requirements. They receive financial aid from the State on condition that they comply with the standards laid down by the Education Department and that the Education Department's school inspectors have access to the schools."

88/ Chile and Malaysia.

89/ New Zealand.

388. The Government of Mexico states that "there are traditional educational systems in some communities in which arts and techniques as well as the history and legends of the region are transmitted in an organized and continuing manner."

389. During his official visit to Guatemala in 1977, the Special Rapporteur was informed that this country also has traditional educational systems. Judging from the description given, these systems are very similar to those mentioned in the previous paragraph.

390. The World Council of Churches team which visited Australia in 1981 has reported that:

> "In Alice Springs, we heard of the enthusiasm of Aboriginal children to attend the Aboriginal run Yipirinya School and of the struggles of Yipirinya to continue with no funding coming from the Government." 90/

391. According to information provided by the Canadian Government, the approach of the Department of Indian Affairs and Northern Development to education "is based on the principles of local control and parental responsibility, originally recommended in the 1972 National Indian Brotherhood Policy paper INDIAN CONTROL OF INDIAN EDUCATION, and adopted by the department in 1973. One hundred and thirty-seven Indian schools on reserves across Canada are now being operated by Indian bands, with departmental funding assistance".

392. The Government of the United States has communicated that

> "Three Indian tribes have established community colleges independent of the Bureau of Indian Affairs to serve their people. The Navajo Community College was established by the Navajo Indian Tribe, but later received $5 million from the Federal Government to encourage its continuation and expansion. Smaller community colleges were also established in the Plains area of the United States by American Indian tribes. Each of these offers two years of college and each offers Indian studies including instruction in Indian languages."

393. Native American Alternative Educational Programmes and Schools and particularly the Native American Controlled Survival Schools deserve special mention. These more formalized manifestations of indigenous alternative educational programmes and schools formed a Federation in 1975 grouping several projects most of which are in the United States of America, but a few are located in Canada.

On the establishment of this important federation it has been written that

> "The Federation of Native American Controlled Survival Schools was formed in September of 1975, in response to the need to have a formalized voice for the growing concerns of Indian alternative education programmes.
>
> It was felt at the time of the Federation's inception, that alternative programmes had unique needs which were not being addressed by other Indian education groups whose primary concerns were with the public system of education and post-secondary institutions. The already existing alternative programmes had experienced instances of financial difficulties and programmatic hardship in which their projects stood alone without the help and the support of any advocate agency.

90/ Adler, op. cit., p. 43.

In listening to the concerns voiced by Indian people from across the country during the First Annual Survival School Conference, the foundations and purposes of the Federation were laid.

We have formed this Federation because the Federal government, state governments, and the churches are not going to support real Indian schools, Indian self-determination, or sovereignty. Since the time of the first mission schools, they and all their programmes have been trying to get us off our land and to get our land from us. Urbanization, relocation, and assimilation is what their educational programmes mean at best, at worst they are genocide." 91/

394. On the purposes and goals of these alternative programmes and schools it has been explained that

"Initially a defensive action to safeguard the well-being of our children, the Survival Schools (and other alternative Indian schools) have, over the past several years, developed into real and thriving manifestations of our attempts to combine the teaching of basic skills with the wise ways of traditional Native culture.

They have also grown in number. All over North America, native people are exploring ways to control the education of their children. Often they have nowhere to turn for information and assistance. Our Federation was formed to meet that need.

... Over the years, we have grown to include nearly 20 sovereign educational efforts. And yet, almost by the month we hear about a new school being started or we are contacted by groups of parents desiring information and assistance.

The Federation serves as a clearinghouse for curricular materials, grant information, teacher-student exchanges, etc. for its member schools. In addition, the Federation is a political advocate for the schools on a local and national level." 92/

395. As to the composition of the Federation, some time ago it was stated that

"The Federation of Native American Controlled Survival Schools is presently composed of nearly 20 Indian educational projects located throughout the United States and Canada. Seven of its member projects are Indian-controlled with the parents of students enrolled in the schools making all programmatic and fiscal decisions. In order to maintain their sovereignty, these schools have of necessity, existed outside of the regular school system, receiving no financial help from the states in which they are located. Consequently, these schools and the Federation are always in need of contributions and donations to aid them in their efforts to provide a quality education for the young of the Indian Nation." 93/

91/ Information furnished by the International Indian Treaty Council for the purposes of the present study. Communication of 18 January 1983.

92/ Ibid.

93/ Ibid.

396. A partial list of Alternative Educational Programmes and Schools would include:

Keeper of the Feathers Survival School (Madison, Wisconsin); Oakland Indian Community School (Oakland, California); Face the Enemy Survival School (Wagner, South Dakota); Return of the Buffalo Survival School (Browning, Montana); Gah-Wah-Bin-I-Kag Anishinable Survival School (White Earth, Minnesota); Na-Wayee School (Center School) (Minneapolis, Minnesota); Muskogee Indian Way School (Okemah, Oklahoma); Red School House (St. Paul, Minnesota); Hupa Valley Survival Group (Hoopa, California); Heart of the Earth Survival School (Minneapolis, Minnesota); "Abinodji Wakaigan" (Superior, Wisconsin); Wandering Spirit Survival School (Toronto, Ontario); We will Remember Survival Group (Porcupine, South Dakota). 94/

397. As to what a Survival School does and what it offers to students, it has been written that:

> "What is at stake here is the same thing that I see when they talk about the buffalo or the golden eagle or any other species of bird or animal that is on the verge of extinction. The way of life that our grandfathers said that we should adhere to or be in harmony with is at stake. Our language, our beliefs, and all that which makes us a people are at stake.
>
> If we lose the control to determine our own affairs, then we lose all and we become nothing. So this is a fight not only of laws and principles, but it is a fight to survive, that we may have the spirit that makes the body mean something ... - Sakokwenonkwas -
>
> A casual observer of the school will see parents and children in the classroom taking part in everything that makes up a school day. Take a closer look and you will see other members of the community equally involved in the education of the young people. Traditional resource people eagerly share their vast knowledge and experiences. A typical day at the Freedom School ends with everyone learning something, teachers and students alike.
>
> The students have the benefit of learning the skills necessary to live in a traditional native society from a variety of sources. They find that the old ways are just as meaningful and valid in a modern world. One of the philosophies of the school is that students learn best by being directly involved in what they are studying. If students are to learn about biointensive gardening, appropriate technologies, solar energy, and alternative housing styles and construction, then they actually participate in projects that are practical and make a contribution to the community as a whole." 95/

94/ Ibid.

95/ Ibid.

398. The following has been written on the Heart of the Earth Survival School:

"As Indian People we continually look to the young and yet unborn - the survival of our race and culture. In so doing, we have witnessed and experienced the struggles that meet our young at each door step. We realize that without education, we cannot survive. And yet, we also realize that all too often, education has become the tool of our destruction.

In times past, Indian people educated their own young bestowing upon them the knowledge necessary to survive in the wilderness that was America. Tomorrow, the survival of Our People will be dependent upon the strengths, spiritual and academic, which we build in our educational programmes today.

Toward this end, we are continually called upon to define the elusive quality of 'survival' as it relates to Indian youth in today's society and the educational programmes we propose to serve them.

Heart of the Earth Survival School has committed itself to the value of cultural instruction as a basis for all education. In listening to the voices of the young, we heard the repeated complaints about the public school system, teacher insensitivity, peer-group hostility, irrelevant curriculum, etc. These complaints were born out of the great disparity which exists when the educational system devised by and for the dominant society is imposed on those culturally and/or linguistically different. Thus, the complaints of Indian youth were not only valid, but significant, for they told us in what direction we must move when we gained control of our own educational programmes." 96/

399. It has further been written on the Adult Education Programme of that School that:

"The Heart of the Earth Survival School Adult Education programme is an extension of the successful pre-school through the 12th grade education programme, which has been operative at the school since January of 1972. The elementary and secondary programmes continue to be viewed by the community as a viable alternative to the public system of education and as an educational diversion from the incarceration of Indian youth in Minnesota's juvenile correctional facilities. This fact is witnessed in the continuing high enrollment and retention of the school.

Quite unintentionally, the Heart of the Earth Survival School Adult Indian Education Programme has assumed an appeal much like the school's pre-school through 12th grade educational programme for those Indian adults who have had negative educational or life experiences. In the component of the programme serving Indian community members, many of the student clientele are Indian people who come from treatment centres where they are trying to put their lives back together. The important aspect of Heart of the Earth Survival School's adult education programme is that the Indian community members feel comfortable in the school and consider education as an important part of their recuperative processes and future lives.

96/ Ibid.

The Heart of the Earth Survival School has long been concerned with the problems of the Indian inmates in the State's correctional facilities. The commission of crimes by Indian persons and their subsequent incarceration, and their eventual release from correctional facilities all have a great impact on the Indian community as a whole. Too often we ignore the role the Indian community may have played in the encouragement of crime as we rationalize our negligence in the rehabilitative processes of the Indian offender." 97/

3. Beneficiaries of educational activities: school age children only; the adult population; or the community as a whole

400. Owing to linguistic and cultural differences, and the degree of illiteracy among indigenous communities in the past, formal education for indigenous populations should be geared not only to school age children but to the community as a whole irrespective of age, and the adult population in particular.

401. Adult education, which is now generally provided in almost every country as a necessity of modern times in view of the wide variety of specialized branches of knowledge, is of particular importance in the case of indigenous populations. These have been by-passed by the tremendous development of specialized disciplines that have taken place in the highly industrialized countries and also in segments of the urban population in areas where industrial development has been equally rapid. Most indigenous groups form part of the rural population. Consequently, they have acquired the general characteristics of rural communities where the increasing specialization of the "modern" type - to be found in urban areas - is non-existent. On the contrary, adult education for the indigenous populations is usually designed to teach adults to read and write, and to familiarize them with certain forms of co-existence with other population groups, especially when they have lived until very recently in relative isolation. Other groups which have long been in contact with the rest of the population will display a wide variety of needs ranging from rudimentary initial instruction to increasingly complex and specialized types of knowledge which they themselves consider to be useful. Excessive interference in these matters should not be permitted, and due attention should be given to the wishes of the communities themselves. Their wishes should be in harmony with their real needs, determined in the light of their cultural patterns, for the specific circumstances in which they live. This raises some basic problems in all educational work which should serve the interests of the communities themselves and not the interests of those who are trying to introduce changes and orientations which have not been freely chosen by the indigenous communities.

402. There is very little information on this matter. Few details are available on the manner in which these activities and arrangements actually work. Generally, this information would merely permit a statement on their existence and little more.

403. In Australia, the Aboriginal Family Education Centres are independent from the official education system and provide for pre-school children and their parents.

97/ Ibid.

404. The Government of Finland has communicated that:

"In the Lappish region, as well as in other parts of the country, there are several adult education institutes, known as Citizens' Institutes, which have been established on private initiative. Their curriculum consists of both theoretical and practical subjects. They are administered by their own Boards and subsidized by the State up to 70 per cent of their total expenses."

405. The Constitution of the Philippines (1947) provides in Section 7 (6), that:

"The State shall provide citizenship and vocational training to adult citizens and out-of-school youth, and create and maintain scholarships for poor and deserving students."

406. According to a source, in the Philippines: 98/

"... The community school assumes responsibility for improving general living conditions through a curriculum based on local needs, environment and resources. It helps out-of-school youth and adults without sacrificing the growth and development of the children in school.

"Adult education through the community school includes demonstrations, community forums, literacy classes, study sessions, field trips and home industry centres."

407. In New Zealand the six secondary schools operated by Christian Churches mentioned above 99/ serve secondary school children only. The Government states that at present it is planning the formation of community schools "which will involve the whole community and particular attention will be paid to the needs of the Maori community. The governing bodies [will] include leading Maoris".

408. According to an official Swedish publication, 100/ in Sweden:

"For the past three decades, there has been a special residential folk college for the Lapps which has given especially older groups of Lapps some degree of compensation for their previous inadequate schooling. By providing joint instruction together with non-Lappish students and offering special courses in Lapp culture the school is expected to remain in existence and to expand its activities."

409. With regard to adult education in Peru, the following should be noted:

"In response to needs, extension programmes have been developed with a view to giving adults the knowledge and basic skills that will enable them to improve their conditions of life and to begin to participate in communal life.

98/ Chaffee, and others, op. cit., p. 129.

99/ See para. 387 above.

100/ The Lapps in Sweden. Fact sheets on Sweden, published by the Swedish Institute (FS 59 Mcs), Sweden, 1972.

These programmes, which are informal in nature, include:

(a) Literacy courses, given by specialists in adult literacy, teachers and educators within the communities themselves;

(b) Primary education extension courses, given by the bilingual teachers and educators, are again held in the communities themselves;

(c) Domestic studies courses intended for housewives are given by appropriately-trained female educators, or the wives of bilingual teachers in the communities themselves;

(d) Domestic studies courses for the wives of bilingual teachers are held in Yarinacocha during the vacation periods, simultaneously with teacher training course." 101/

410. According to the Government of Mexico, "the 'traditional systems' are interwoven with the community as a whole".

411. The Government of the United States of America states that

"Community colleges operated by Indian tribes have broad functions, including those that better the entire tribe. Tribal museums also increase the knowledge of all members of an Indian tribe and the public at large."

412. As regards the question whether educational institutions are also intended to serve the educational needs of the adult population, the Canadian Government states that

"A considerable adult education programme extends to Indian and Eskimo communities, with a wide variety of courses and facilities being offered.

Among the Indian people, discussions have been under way to ensure greater participation in administration, and at a conference of governmental regional superintendents in February 1973, a proposal for a new policy was accepted. The Indian representatives (from the National Indian Brotherhood) had proposed that the Federal Government deal directly with local Band Councils to institute a school system under local Indian control, and financed not by the provinces but by the Federal Government. The curriculum should be redesigned to teach the history and culture of the Indian people. The value system of the Indians, which included pride in oneself, living in harmony with nature, and a sharing of resources, should be taught to the Indian child."

413. According to Government information, in Greenland there are two institutions giving educational help:

"Two high schools have been established for young people and adults, on the initiative of private organizations: Knud Rasmussens Højskole, at Holsteinsborg, which was inaugurated in 1962, and Sulisartut Højskoliat, located at Julianehab, which was inaugurated in 1977.

101/ Ministry of Education, La educación bilingüe ... op. cit. p. 5.

As of 1 August 1980, Knud Rasmussens Højskole had a capacity permitting admission of 60 students for a 9-months' stay, while as of the summer of 1981 the Sulisartut Højskoliat was in a position to admit 40 students.

The said high schools are supervised by and receive aid from the public authorities, and the students receive assistance for their stay from the Danish Government.

The high schools are intended to provide a general education for the students. The language of instruction is Greenlandic, and the instruction is based on Greenlandic culture.

In the remaining three months the high schools are used for a series of courses of a limited scope."

4. Indigenous teachers and instructors, and collaboration with the leaders of the indigenous community

414. An important question is whether teachers and instructors are recruited, in so far as is possible, from among the members of the indigenous communities themselves and preferably by persons who are familiar with the vernacular language and the customs of such communities and who work closely with the leaders of the community in carrying out their duties.

415. This question is obviously important in connection with the linguistic and cultural aspects of the unusual situation of the indigenous populations. It is important also, because the indigenous teacher becomes living evidence of the fact that formal instruction has not been completely alien to indigenous people in the past, so much so, that some have even become full teachers in their own right themselves. Further, if this has been possible without alienation from the indigenous environment, but rather in harmony with and within the purview of the indigenous way of life and cultural traditions, this fact will be accepted by the members of the indigenous community as a clear indication that because of the very presence of these indigenous elements in them, the school and its activities deserve its confidence and support. From another viewpoint, it is assumed that such a non-alienated indigenous teacher will be more inclined to respect indigenous culture when performing his tasks, as he understands, and even perhaps still shares, fundamental indigenous attitudes and tendencies towards school. He can, therefore, help the community and the student to cope successfully with the school activities, in an atmosphere of respect and consideration for the pupil's and the parents' motivations and purposes. His presence in school is then conducive to a more harmonious and smoother scholastic life for the pupil and for a more successful acceptance of the school as an added dimension of the ever-increasing grasp of indigenous culture. Formal education is thus accepted by the community at large, as its own product and manifestation. All will, therefore, be more inclined to help the continued presence of the school in their midst and to consider it an asset of considerable value.

416. The information available on these matters is scanty and devoid of any details, beyond the mere notice of the existence of teacher-training arrangements among the indigenous populations.

417. In two countries, there appear to have been difficulties for indigenous teachers. 102/ For example, according to information given by the Government of Costa Rica, "In the official services, indigenous professors and instructors are not given contracts unless they are fluent in the vernacular and familiar with indigenous customs.

"... a joint programme with the Ministry of Public Education was recently initiated through the creation of the 'Indigenous Education Unit'."

418. With regard to Ecuador it has been stated that:

> "Despite the fact that the Otavalo area is predominantly indigenous and that there are several trained indigenous teachers, both men and women, only mixed-blood teachers work in the 22 purely rural schools. On various private and public occasions, these professions have requested assignments in Imbabura province with a view to serving their group; however, this request has been denied on account of personal and political commitments and the existing places are filled by teachers from the predominant group." 103/

419. The Australian Government states that "teachers are recruited as far as possible from the Aboriginal people and special training is provided. Aboriginal instructors are employed especially in the bilingual education programmes".

420. A Brazilian official publication 104/ simply contains the statement that "FUNAI is training teachers to teach in their communities" without giving any other details.

421. According to the Finnish Government, the teachers in schools where the Lappish language is taught or used in teaching are recruited, as far as possible, from among persons who have Lappish as their mother tongue.

422. In Malaysia, the Government reports, nearly one half of the teachers active among the Orang Asli populations are Orang Asli themselves. The Government states:

> "At present there are 106 qualified school teachers on secondment from the Ministry of Education teaching at departmental schools. There are also 101 departmental personnel - Field Staff Education Grades II and I - carrying out a dual role in teaching and in educational administration especially in deep jungle areas, i.e. visiting isolated villages to persuade parents to send their children to schools, supervising hostels, and supervising pupils outside school hours. As can be seen from the above the teaching strength at schools consists of 50 per cent Orang Asli. This proportion is felt to be the correct one for the purpose of bringing about integration in the field of education. The Department feels that

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102/ Costa Rica and Ecuador.

103/ Gladys Villavicencio R, op. cit., p. 275.

104/ O que é a Funai, loc. cit., p. 6.

it would not serve the interests of the Orang Asli to be taught by a teaching cadre consisting of 100 per cent Orang Asli teachers as this would tend to make primary education for Orang Asli a closed system in which only they themselves participated. It is felt to be more useful to accustom Orang Asli children at an early age to mixing with non-Orang Asli in as many areas as possible including that of education. This method, it is felt, benefits in the long run both the Orang Asli and non-Orang Asli communities."

423. The Government of New Zealand has pointed out in this connection that apart from the few Church schools which cater in particular to Maori children, the latter receive their education in State schools "which are open to children of all races. The Government adds:

"... There are no segregated classes of Maori children and there would be very few classes either in primary or secondary schools nowadays where all of the children would be Maori. The recruitment of teachers is carried out regardless of race and with one exception, the standards and the method of recruiting do not vary. The present policy, introduced only recently, is to ensure that all teachers during their training at teachers' colleges are given a grounding in Maori culture and elementary Maori language instruction, with an option for students to take an intensive course in Maori studies. There are significant numbers of Maoris in the teaching profession and increasing use is being made of their knowledge of Maori language and culture for instruction to the pupils. With the significant growth of Maori language instruction in the schools, there has recently been a recruitment campaign for native speakers of Maori who will attend a teachers college to get a proper grounding in teaching methods. The selection panel includes Maori speakers."

424. The Government of Sweden states that in that country "the teachers are normally Lapps at the nomad schools, as well as at the [Lapp County] College functioning at Jokkmokk, which is operated jointly by the State and the municipality of Jokkmokk. The special nomad schools are operated by the State".

425. No information is available on current participation of Lapp teachers in the teaching of Lapp children in Norway. The Government has, however, furnished data on several fact-finding measures taken in connection with the establishment of a separate Lappish School Council and the development of materials, techniques and methods to bring about the improvement of the situation of the Lapps. 105/

426. In Canada, the following was a proposal made some time ago, and, according to the Government, forms the basis of its current educational policies.

"If progress is going to be made in improving educational opportunity for native children, it is basic that teacher and counsellor training programmes be redesigned to meet the needs. The need for native teachers and counsellors is critical and urgent; the need for specially trained non-Indian teachers and counsellors is also very great.

It is evident that the Federal Government must take the initiative in providing opportunities for Indian people to train as teachers and counsellors. Efforts in this direction require experimental approaches and flexible structures to accommodate the native person who has talent and interest, but lacks minimum academic qualifications.

105/ The Government adds that the Ministry of Church and Education has established a separate Select Committee consisting, inter alia, of representatives of the northern Lapp populations and the southern Lapp populations. The Select Committee's mandate consists of reporting on facilities for further education for Lapps".

Native teachers and counsellors who have an intimate understanding of Indian traditions, psychology, way of life and language, are best able to create the learning environment suited to the habits and interests of the Indian child.

Primary teachers in federal or provincial schools should have some knowledge of the maternal language of the children they teach.

Until such time as Bands assume total responsibility for schools, there must be full consultation with the Band Education Authority regarding the appointment of teachers and counsellors. As part of its involvement, the community should also take the initiative in helping the teachers and counsellors to learn the culture, language and history of the local community." 106/

427. The Government of the United States reports that "Teachers for tribal community colleges and for elementary and secondary schools operated by Indian tribes are recruited on the basis of the contribution they can make - in some cases knowledge of the Indian culture. However, in other cases knowledge of a subject area in demand by the people who attend the school has the emphasis."

428. According to a government statement, in Mexico "there is a large number of indigenous teachers and educators in institutions of this type, as has already been stated (17,000)".

429. In both Guatemala and Peru, there are many indigenous teachers and educators in similar institutions.

430. On the subjects of vocational guidance and social workers, the New Zealand Government stated in 1974 that:

"In recent years there has been a shortage of qualified vocational guidance experts and it is probably true that some of them in the past had insufficient appreciation of the needs and aspirations of Maori children. This is being corrected by joint discussions and joint staff training courses attended by vocational guidance officers and Maori social workers of the Maori and Island Affairs Department. However, quite apart from the vocational guidance system, Maori social workers of the Maori and Island Affairs Department visit, twice a year, every secondary school with any significant number of Maori children for the purpose of explaining vocational opportunities and helping them to decide what they would like to do when they leave school. This service is also being extended to intermediate schools. By these means, Maori children are probably getting more attention than non-Maori children."

106/ Indian Control of Indian Education, loc. cit., pp. 18, 19 and 20.

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STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST INDIGENOUS POPULATIONS

Final Report (First Part) submitted by the Special Rapporteur, Mr. José R. Martínez Cobo

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XIV. LANGUAGE 1/ 2/

A. Introduction

1. The purpose of this chapter is to examine the information on spoken and written language made available in connexion with this study, bearing in mind, in particular,

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1/ In reading this chapter, account should be taken of the information contained in other chapters of the study, particularly those relating to education, to culture and cultural, social and legal institutions and to legal assistance and equality in the administration of justice. The latter chapter is still to be submitted. At present the first two appear in document E/CN.4/Sub.2/L.622 and have to be completed for inclusion in the final report.

2/ It is considered useful to define the meaning of the most important and frequently used terms in this chapter. No claim is made as to the validity or scientific accuracy of the definitions given. They may simply be of some use in ensuring proper understanding of this chapter. Reference was, naturally, made to the definitions proposed by UNESCO experts on this subject and they have been taken duly into account in the definitions given, which are based partly on those proposed on page 46 of the study on The use of vernacular languages in education (UNESCO, Monographs on fundamental education, VIII, Paris, 1953). It should, however, be pointed out that neither the terms used nor the meaning attributed to them in this paper are necessarily the same as those contained in the work by UNESCO, the validity of which is not questioned. The particular requirements of this chapter of the present study provide the basis for and explain the differences. The terms used are the following: 1. Acquired (or second) language: a language different from and learned in addition to the mother tongue. This term denotes any language which is not the mother tongue; where there is more than one such language, the others may be described as "third", "fourth", etc., depending on the case and the relative command a person has of them; 2. Lingua franca: a language used habitually by people whose mother tongues are different in order to facilitate communication between them; 3. Indigenous language: the language of a population which is indigenous according to the working definition adopted for the preparation of the present study (see document E/CN.4/Sub.2/L.566, paras. 34 and 45); 4. Local language: the mother tongue of groups which are not culturally, socially or politically dominant and which is spoken in a specific place (see below, "vernacular language"). 5. Mother (or native) tongue: the language which a person acquires in his early years and which normally becomes his natural instrument of thought, expression and communication; 6. International language: a language spoken over wide areas and in many countries of the world. The most important international languages have therefore been adopted for use in intergovernmental organizations; 7. National language: the language of a social and cultural entity which is in widespread use in a country; 8. Official language: a language used in the business of government (legislative, executive, administrative and judicial) and in the performance of the various other functions of the State; 9. Regional language: a language used as a medium of communication between peoples living in a particular region of a country who have different mother tongues (see above, "lingua franca"); 10. Vernacular language: the mother tongue of a group which is not culturally, socially or politically dominant and which speaks a different language (see above, "indigenous language" and "local language"); 11. Teaching of a language: teaching someone to speak, read and write a language correctly, as a course of study and a subject in the school curriculum; 12. Teaching in a language: education in a language which is used as a vehicle or language of instruction; the language in which all instruction in schools, except for courses in different languages, is given; 13. Informal education: corresponds to the process of socialization, which is defined in greater detail, particularly in paragraph 203 below (q.v.); 14. Formal education: corresponds roughly to the schooling process and is defined in greater detail, particularly in paragraph 204 below (q.v.); 15. Bilingual literacy: learning to read and write properly in two different languages; 16. Bilingual education: schooling in two languages, both of which are used as languages of instruction.

the wishes and preferences of the indigenous populations of the countries covered by this study and the attitudes of other population groups and of the State towards them.

2. The attempts by the dominant sector of society to impose its language on the indigenous populations and by the indigenous populations to preserve and defend their own languages are a long-standing and constantly recurring phenomenon involving a permanent struggle.

3. After the initial contact, the claims of the new arrivals to supremacy over the natives led to a clash which resulted in the domination of the latter by the former. Thus began a complex process of subjugation which included attempts to impose culture and language. Acts, programmes and policies of linguistic penetration and aggression - the topic of concern here - often led to indigenous languages being relegated to a position of secondary importance or even officially banned, depending on the degree to which it was sought to impose the language of the conquerors in a colonial context. The latter was the language of the authorities and of public education. The process continued, with varying degrees of intensity and with different characteristics, throughout the beginning of the period of independence in many countries which gained political independence as new countries.

4. The process involved the reaffirmation of established positions, i.e. aggression and penetration on one side and preservation and defence on the other. Indeed, a language is a system of phonetic symbols for the expression and communication of thoughts and feelings, a cultural product of the people to whom it belongs. Language embodies a series of unconscious but enduring cultural traits symbolized by words.

5. A language is the product of a slow and complicated process of social co-operation, the sediment of a culture. It is in the nature of a record of the cultural history of the society using it. It is not only the expression of a particular community, but also the most important force making for the community's integration. A person's first words are in the language spoken around him. This mother or native tongue is his main vehicle for contact with the world around him and shapes the specific images he forms of it.

6. In learning a language, a child acquires the basic cultural heritage of his people and his times. Language gives him a particular mental set and, one might say, a general life style. Each language reflects a particular way of seeing things and the world. The entire indigenous Weltanschauung is symbolized in the indigenous language.

7. A language is the expression of the common culture of the people who speak it as their mother tongue. When a person learns a foreign language, his conceptions acquire a new dimension. Unlike a child establishing contact with the world about for the first time, he acquires a new way of seeing things.

8. The expansion or reduction of the size of the area in which a language is spoken is a social reflection of power in all the various forms that power can take, i.e. political, social, economic and cultural power.

9. Any person and any society react unfavourably when they feel that their language is under attack and ready themselves to defend it. This phenomenon occurs even more frequently when linguistic aggression forms part of more generalized aggression, as it usually does in the case of indigenous populations.

10. During this century, in particular, there has, however, been a growing tendency to recognize the existence and importance of indigenous languages. This favourable development has led to recognition of the need to teach persons who do not know to read and write by using their mother tongue before giving them instruction in the official language. In some countries, there is already a trend towards the greater use of indigenous languages in schools. It is thus being recognized that these languages are an integral part of the various cultures in the country; such recognition has begun to be explicitly embodied in basic legal texts. In some countries, there are also plans to make these indigenous languages official languages of the State, alongside other non-indigenous official languages, with all the consequences resulting therefrom. In so far as the information available to the Special Rapporteur permits, all these aspects will be dealt with in this chapter.

11. During the Special Rapporteur's visits to various countries in 1973, 1974, 1976 and 1977, 3/ indigenous peoples and some non-indigenous groups and persons stated with varying degrees of emphasis according to the country, that the instruction provided by the State or by the local authorities usually does not make adequate use of indigenous languages or cultural patterns. Teachers nearly always come from outside the indigenous communities and are not sufficiently familiar with the language, traditions and culture of the indigenous peoples. Teaching materials do not take sufficient account of the particular needs of indigenous pupils since they are often designed for pupils in general and are not as specialized as they should be.

12. All the indigenous groups and individuals consulted complain that their languages are not properly recognized and used by the State and public and private agencies involved in indigenous action programmes. According to these complaints, such recognition and use do not exist in any of the relevant areas of activity, because of a lack of interest or deliberate policies of neglect.

13. In a community in one of the countries visited, we were informed that one of the main indigenous languages was not used in schools because ministerial instructions prohibited it. However, the members of the community who were present expressed the strong desire that their language should be used in the schools and that, in so far as possible, indigenous communities should have indigenous teachers, preferably from the same community. 4/

3/ As the Sub-Commission knows, the following 11 countries were visited: Australia, Bolivia, Brazil, Canada, Guatemala, Malaysia, Mexico, New Zealand, Paraguay, Peru and the United States.

4/ In this connexion, see para. 246 below.

14. Indigenous populations in all parts of the world are increasingly becoming aware of and taking action to defend their cultural values and patterns against cultural homogenization programmes and policies entailing the disappearance of their own culture and language. Public education systems whose purpose is "de-Indianization" and policies designed to eliminate indigenous languages or relegate them to a position of secondary importance, which exist in most States and have often been inherited from their colonial periods, have been questioned and strongly resisted. There has been increasing emphasis on the need for full recognition of the multilingual and multicultural nature of the countries in which indigenous populations live and for the adoption of policies which allow and encourage the preservation, development and spread of the ethnic specificity of such populations and its transmission to future generations. One aspect of this is that indigenous languages have to be preserved, defended, strengthened and where necessary, revitalized and promoted.

15. In this connexion, mention should be made of the relevant parts of some resolutions adopted at recent meetings of representatives of indigenous populations. 5/

16. The Declaration of Barbados II 6/ contains the following provision which is relevant in this connexion: "We must preserve and reinforce forms of internal communication, the language of each group, at the same time creating a means of communication between peoples in different languages and preserving basic cultural patterns, especially in the education of each group" (strategies, paragraph (E)).

17. At the First Inuit Circumpolar Conference in 1977, 7/ representatives were requested to call upon the Governments of Canada, the United States and Denmark to co-operate with the Conference to establish mutual exchange programmes in fields such as education and language (resolution 77-12, single operative paragraph). 8/ The Inuit language will, of course, be the official language at future meetings of the Conference (resolution 77-04, second operative paragraph). 9/ Provision was also made for exploring the possibility of establishing an Inuit common writing system (resolution 77-04, first operative paragraph, subparagraph 5). 10/

5/ See also the resolutions of the International Congresses of Americanists, document E/CN.4/Sub.2/476/Add.5, para. 140 (a-ii), (b-i), (f-i) and (i-iv).

6/ Document E/CN.4/Sub.2/476/Add.5, annex II, p. 2.

7/ The Second Inuit Circumpolar Conference was held in June-July 1980. The Special Rapporteur does not yet have the relevant documents which would enable him to quote the resolutions of interest.

8/ Document E/CN.4/Sub.2/476/Add.5, annex I, pp. 7-8.

9/ Ibid., p. 4.

10/ Ibid., p. 3.

18. At a recent meeting of representatives of indigenous peoples in South America, which was held at Cuzco in February-March 1980, the following resolution was adopted: 11/

"IV. NATIVE LANGUAGES

Considering

That, before the European invasion of 1492, our peoples had their own languages, which were technically and scientifically structured and reflected the Indian vision of the world;

That, as a result of the European invasion, our languages were denied their true social and political importance by the official imposition of the conquerors' neo-Latin 'dialects';

That, in the various countries of the continent today, there persists a deliberate segregation of the Indian languages which is seriously harming the inhabitants, who are unable to communicate as a result of the haughtiness of the inheritors of the conquest;

That, despite the invaders' brutality and the systematic aggression, the native languages still form a comprehensive system of communication and transmission of culture both in time and in space;

Resolves

1. To revitalize and promote the use of our own languages as natural media of communication and transmission of cultural values;

2. To reject any form of linguistic aggression designed to bring about the destruction or distortion of our linguistic wealth;

3. To request official status for the native languages to ensure that they receive the respect and consideration they deserve from a society which discriminates against Indians."

19. In so far as the incomplete and limited information available permits, reference will be made in this chapter to various aspects of the right of indigenous populations to use their own languages in carrying out their public and private activities.

20. An account will be given of the situation in the countries covered by the study with regard to the use by indigenous populations of their own languages in their private life, social relations, religious services, public meetings and local trade and industrial activities.

11/ Primer Congreso de Movimientos Indios de Sud América, Ollantaytambo (Cuzco, Peru), 27 February-3 March 1980. Mitka Publications, Paris, France. The resolutions adopted by the Congress appear on pp. 133 to 162 and the resolution quoted here, on pp. 149 and 150.

21. The State has not taken any particular interest in regulating such uses of indigenous languages, which involve the exercise of a fundamental right, because the authorities hoped that, within a short time, these languages and the desire to use them would disappear. The reality has been very different: the indigenous languages have survived and flourished despite years and sometimes centuries of systematic aggression and penetration.

22. Reference will then be made to the use of indigenous languages in the communications media, which is important in terms of society as a whole and as a means of documenting the continuing existence of these languages and vital to these languages themselves as a means of spreading and preserving them as living languages used daily by large sectors of the population. It is of particular importance to the people who speak these languages to have various materials in them.

23. One difficulty here is that one of the other functions of the official language is that the mass media have to use it as one of their languages - usually as their main language. The mass media have occasionally been required to use the official language exclusively. Although such measures are usually directed against foreign languages, they may create legal difficulties for the use of indigenous languages in the media. One part of this chapter refers briefly to the use of indigenous languages in the daily press, periodicals, books and various other publications and in radio and television. Mention is also made of the use of such languages in tape and gramophone recordings of various kinds.

24. There follows an examination of the rules which govern the use of indigenous languages by the State in the exercise of its basic functions or by indigenous populations in their dealings with the public authorities and the bodies administering justice.

25. Reference will also be made to the attitude of the State towards such matters and to its use of indigenous languages in the performance of its functions and in public education, as well as to the arrangements made to enable indigenous populations which do not speak the official language fully to exercise their civil rights in their dealings with the administrative authorities and bodies responsible for the administration of justice.

26. A description will also be given of activities designed to encourage the systematic study of vernacular languages by non-indigenous persons and the technical and scientific study of these languages by private bodies and the State with a view to increasing knowledge of them and developing them in order to adapt them to the purposes proposed.

27. The chapter will then focus on the teaching of the official language to indigenous populations and on their access to the official language once they have learned it so that they can practise and master it to the extent they desire.

28. Before concluding this introduction, the Special Rapporteur should point out that the policies followed by many States have consistently been based on the assumption that indigenous populations, cultures and languages would either die out naturally or be absorbed by other population groups and "national cultures". It was

hoped that perhaps even before that, the indigenous languages would die out as a result of the pressure, quality and attractiveness of the official languages - international languages which were supposed to have advantages of all kinds, both real and imaginary, and to be particularly well suited to science, technology, art and civilization. Little emphasis was therefore placed on State plans for the teaching of indigenous languages and their use as languages of instruction in the early stages of education. That was thought to be contrary to the best interests of society because it might endanger national unity and it was feared that it would inevitably lead to linguistic isolation and to excessive social and political fragmentation.

29. It is now believed that such policies, which in some cases were followed for centuries, were, to judge by the facts, ill-founded. Although some peoples and their languages have died out for various reasons, most of them have survived. The presence of indigenous peoples and languages is strongly felt in many parts of the world. These groups are defending their languages with determination and tenacity. The linguistic deadlock is practically the same as before. In addition, many contemporary experts question and deny the supposedly undesirable effects - namely, insularity and competing micronationalism - of promoting indigenous languages. It is now being affirmed that diversity in itself is not contrary to unity. It is also said that uniformity does not necessarily produce the desired unity. Indeed, artificially produced uniformity may be a source of weakness and hostility, while there may be strength in co-ordinated diversity within a multifaceted but harmonious whole, based on respect for the particular characteristics of each component.

30. In this connexion, it is considered useful to quote the following statement made by experts at an important international meeting a few years ago: 12/

> "(c) The meeting pointed out that there is no basis in fact for the view that a multiplicity of national languages is an obstacle to national unity. Indeed, the experience of other countries shows that it strengthens national unity. The choice of a language for national development necessarily places those whose language is not chosen at a disadvantage and privileges those whose language is chosen. Unless such a policy is implemented very wisely, it may be a divisive, rather than a uniting, factor."

31. It is now said to be unrealistic to believe that one language is better suited than another to culture, science, art and civilization. Every language is as suitable as any other for use as a medium of communication. Languages which, for various reasons, have had less contact with current advances in various modern fields of human know-how and endeavour may easily be brought up to date. Scientific and technological terms have been formed from Greek and Latin words and have come to be used in all "developed" languages. It is not difficult to incorporate them

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12/ UNESCO, Final Document, Meeting of experts on the use of the mother tongue and the preparation of alphabets for literacy, Ibadan, 1964.

in other languages. The use of indigenous languages in teaching reading and writing or, at least, at certain stages in the education of those who speak them is simpler and ultimately more effective and economical because instruction is given in a language which the pupils know, not in one which they first have to learn.

32. For all these reasons, there is now a trend towards change and many countries are questioning the virtues of the methods followed until recently and approaching these matters from the point of view of cultural and linguistic pluralism. The use of indigenous languages often means that they must be developed as modern languages, something which, according to the experts and as has been pointed out, is not technically difficult or costly. As has also been stated, teaching pupils to read and write and providing them with primary education in their own indigenous languages is easier, more economical and more effective.

33. Thus, the time has perhaps come, as some States have acknowledged, for countries with large groups of indigenous-language speakers to rethink their linguistic and cultural policies and place them squarely on a course designed to ensure respect for and recognition and use of these languages.

34. Of course, this chapter makes no claim - far from it - to cover all the important questions raised by indigenous languages as they relate to the culture and life of indigenous populations and the other languages with which they coexist in the countries covered by the study. This is an extremely complex topic that cannot possibly be dealt with fully in this chapter, particularly in view of the above-mentioned incompleteness of the data made available in connexion with the study. Moreover, the chapter in no way sets out to prescribe or even suggest linguistic policies to be adopted by States - something which must be done by each one of them on the basis of their own situations and policies - but it is to be hoped that such policies will be duly taken into account. What it has been sought to do in the chapter is to review the measures taken and to consider the views in favour of and against certain solutions and positions and the importance of the issues at stake.

35. The chapter on conclusions, proposals and recommendations will contain the conclusions which seem to have emerged clearly from the review of the information used. On the basis of the available data, proposals and recommendations will also be made in that chapter for measures deemed essential to ensure respect for the human rights and fundamental freedoms of indigenous populations as far as language is concerned. In the hope of having a more complete over-all view and of being able to reconsider these matters in the light of the other chapters of the final report, these proposals and recommendations are not referred to in the present chapter.

36. Thus, this chapter merely examines the relevant points to emerge from the information available to the Special Rapporteur in connexion with these matters. He is fully aware that it only touches on some of the important aspects of this complex problem. He hopes at least to have described some of the aspects of the problem which have a bearing on indigenous populations and their treatment on an equal footing with other segments of the population, for these are, as has already been pointed out, elements that are important to the assertion of their human rights and fundamental freedoms as far as language is concerned.

B. Recognition of indigenous languages by the State

1. Initial remarks

37. Except in a few cases and for limited purposes, the State has not granted indigenous languages formal recognition of any kind. This situation has nevertheless begun to change in the past few decades and previous policies on the matter are now being seriously reconsidered.

38. Determination of the language or languages in which the authorities are to conduct their business, in which all official documents are to be drafted and which is to be used in all the normal affairs of civic life is always a matter of concern to the State. This does not give rise to major problems in countries which are highly homogeneous, but it does in multi-ethnic, pluricultural and plurilingual countries - i.e. all the countries inhabited by indigenous populations.

39. During the historical process of nation-building, a particular language, usually that of the segment of the population which gains supremacy and imposes itself socially, politically and militarily on other segments in various regions and whose language dominates the other languages or dialects in the country, becomes, because of these extra-linguistic factors, the language of highest standing and, ultimately, the official language. Official recognition is of great importance to this and the other languages spoken in the country because, whether or not it is provided for in the Constitution or other basic law, such a selection means that this privileged linguistic instrument will be used in the various activities of the State. This official language will be used by the State in the performance of all its functions and its use will be required in all official business, in public education and in the courts of law.

40. At the end of the colonial dependence to which they were subjected for varying lengths of time, the peoples of many of the countries covered by the study faced the problem of having to decide which language would henceforth be the official language of their new States. During this process, what became the official language - either the single official language or one of them - was often the language introduced by the colonizers. In a few cases, a national language was chosen. By contrast, the indigenous languages, i.e. the languages which existed in the country before the beginning of foreign domination, were often relegated to the status of vernacular languages; they usually had no specific privileges of any kind, but were, in many cases, given an increasing number of auxiliary functions, which will be studied below.

41. When a country has overseas territories in other parts of the world, its official language becomes that of those territories, either as a single transferred language, as in the French department of Guiana, or on the basis of sharing with the local language, as in the case of Danish and Greenlandic in Greenland, Denmark.

42. In many countries, the language of the former colonizers has been kept as the official language, as in the case of Spanish in Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela; English in Australia, Guyana, New Zealand, the United States and Canada (along with French); Portugese in Brazil; and Dutch in Suriname.

43. Other countries have chosen one or more national languages in addition to English, the language of the former colonizers. Thus, English and Bengali are used in Bangladesh; English and Burmese in Burma; English, Hindi and other languages in India; English and Malay in Malaysia; English, Urdu and other languages in Pakistan; and English, Sinhalese and Tamil in Sri Lanka.

44. In some countries, although the official language is a national language, some official use is made of the language of the former colonizers, as in Laos, where French is used to some extent as well as Lao, and in the Philippines, where English is used to some extent as well as Tagalog.

45. In Indonesia, the official language is Bahasa Indonesia (Indonesian language).

46. In countries such as Finland, Japan, Norway and Sweden, the official language is the national language, i.e. Finnish, Japanese, Norwegian and Swedish, though, in Finland, Swedish is also an official language.

2. Recognition as official languages

47. According to the information available to the Special Rapporteur on this subject, there is, at present, no country in which indigenous languages or one indigenous language, in cases where one is predominant, are formally recognized as official State languages. As will be seen below, there are some countries which have announced their intention to proclaim the indigenous language of the country or the main indigenous language as an official language throughout the country (Chile, New Zealand) or in an autonomous region of the country (Greenland, Denmark), but none has yet done so. There is, moreover, one country in which such recognition has been formally granted (Peru), but in which the situation in this respect is not clear at the time of writing this chapter. The information available on this subject is reproduced below.

48. The Government of Chile reports that "the State does not recognize the indigenous languages. There is a study concerning the declaration of Mapuche as an official language, not as a necessity for the development of the indigenous population, but, rather, for the purpose of cultural preservation."

49. It seems that in the other two cases in which it is intended formally to declare an indigenous language an official language - i.e. Maori in New Zealand and Inuit in Greenland - this action will be taken in recognition of the importance of these languages and for practical purposes which will benefit the country in general and the development of these languages in particular as important components of the indigenous cultures of the countries (New Zealand, Peru) or the autonomous region (Greenland, Denmark).

50. The following was included among the conclusions and recommendations contained in the report of the Commission on Home Rule in Greenland (Denmark): 13/

> "As a separate issue, the Commission has also dealt with the language problem, having found it important that in connexion with the introduction of Home Rule the Greenlandic language should be given formal acknowledgement as the principal language in Greenland. The Commission has, therefore, recommended that firstly, provision should be made for Greenlandic to become the principal language in Greenland and secondly, that really thorough instruction must be provided in the Danish language. Finally, the Commission has recommended that the two languages be given equal status in public relations." ... .

13/ IWGIA Newsletter No. 22, Copenhagen, June 1979, p. 10.

51. In New Zealand draft legislation introduced into the New Zealand Parliament is directed at providing for the recognition of the Maori language as one of the official languages of New Zealand. It would also provide for setting up in the Maori Affairs Department a service for the translation of important material.

52. In India the Federal Constitution contains provisions to the effect that "the Legislature of a State may by law adopt any one or more of the languages in use in the State... as the language or languages to be used for all or any of the official purposes of the State (art. 345, first paragraph).

53. The Constitution of India also makes provision relating to languages spoken by a section of the population of a State in the following terms: "On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognized by that State, direct that such language shall also be officially recognized throughout that State or any part thereof for such purposes as he may specify." (art. 347).

54. A special officer for linguistic minorities has been provided for in the Federal Constitution. This officer is to be appointed by the President of India.

55. It shall be the duty of this special officer to investigate all matters relating to the safeguard provided for linguistic minorities under the Constitution of India and he shall report to the President upon those matters at such intervals as the President shall direct, and the President shall cause all such reports to be laid before each house of Parliament, and sent to the Governors of the States concerned (art. 350-B).

56. Under these provisions tribal languages of certain importance could benefit from such directives as those contemplated in articles 345, 346 and 350-B and become for a State, or for a region within a State, an official language. No confirmed information is available on whether any such tribal languages have been recognized in this status, however, but the provisions that make it possible for this to happen were considered to be of enough importance to discuss them in this connexion.

57. On 28 March 1975, Peru enacted Decree-Law No. 21,156, which recognizes Quechua as an official language of the Republic and reads as follows:

"Considering:

That it is the aim of the Revolutionary Government of the Armed Forces to provide the least favoured sectors of the population with higher standards of living compatible with their human dignity by, inter alia, reforming the country's cultural structures, promoting the integration of Peruvians and thus strengthening national awareness;

That the Quechua language is part of the ancestral heritage of Peruvian culture, the essence of which must be protected by the State, and that it is now the natural medium of communication of a large part of our population;

That, because they have no direct access to knowledge of the laws and cannot appear before agencies and departments in the national public sector because of their language, vast sectors of the population are unaware of their obligations and limited in the exercise of their rights, to the detriment of the principle of equality before the law;

That the Revolutionary Government has a moral obligation to preserve our native language as an essential means of bringing about national unification;

By the powers invested in it;

And with the approval of the Council of Ministers;

The Revolutionary Government enacts the following Decree-Law:

Article 1. Quechua shall be recognized as an official language of the Republic on an equal footing with Spanish.

Article 2. As from the beginning of the 1976 school year, the teaching of Quechua shall be compulsory at all levels of education in the Republic. The Ministries of War, the Navy, the Air Force, the Interior and Education shall be responsible for the implementation of this provision and all the provisions contained in Decree-Law No. 19,326 shall remain in force.

Article 3. The judicial power shall adopt all necessary measures to ensure that, as from 1 January 1977, legal proceedings in which the parties speak only Quechua are conducted in that language.

Article 4. The Ministry of Education and other sectors shall be responsible for ensuring the preparation and publication of dictionaries, texts, manuals and other documents necessary for the full implementation of this Decree-Law.

They shall also provide all necessary support for institutions engaged in research into, and the teaching and promotion of, the language in question.

Article 5. All legal provisions which are contrary to this Decree-Law are hereby repealed."

58. There have been persistent reports that this Decree-Law is not being given any practical effect in Peru at the present time. It has not been possible to determine whether such reports are true or to find out whether this Decree-Law has simply not been applied, either in whole or in part, or has been formally repealed. Efforts will be made to determine exactly what the current situation is with regard to the validity and practical application of these very important provisions and the relevant information will be provided in the final report.

3. Recognition as national languages or as integral parts of national culture

59. There are systems in which some indigenous languages have not been given the status of official languages, but have been constitutionally recognized as "national languages" and as "integral parts of the national culture".

60. For example, articles 1 and 27 of the Constitution of Ecuador give the following special privileges to the indigenous languages: "Quechua and other indigenous languages shall be recognized as integral parts of the national culture". "In schools set up in areas where the population is predominantly, indigenous, Quechua or the other indigenous language concerned shall be used in addition to Spanish."

61. Specific information is lacking on the practical effect of these provisions, which have only recently been adopted.

62. In Paraguay, article 50 of the Constitution provides that "the national languages of the Republic shall be Spanish and Guaraní, with Spanish being used officially" and article 92 provides that "the State shall protect the Guaraní language and promote its teaching, development and improvement". It should be understood that the reference is to the Guaraní known as "Paraguayan Guarani" and not to "indigenous Guaraní" (or classical Guaraní), which has also been mentioned. According to information from a non-governmental source, "Paraguayan Guaraní is officially recognized as a 'national language' (to be distinguished from the 'official language', Spanish)". This source adds that, despite such recognition, the Guaraní language has been treated with some disdain: 14/

> "However, in spite of its continuing importance and the positive value given it by many citizens, Guarani is and has been the object of considerable disdain. Many urban Paraguayans feel that Paraguay's progress is impeded by the widespread lack of knowledge of Spanish and by the continuing use of Guarani. Monolingual speakers of Guarani are often the object of a series of pejoratives. The man who controls only Guarani is called a Guarango (country-bumpkin, boor), he is thought to be menos inteligente (less intelligent), menos desarrollado (less cultured), and no tiene principios (without principles). Monolingual speakers of Guarani even refer to themselves as tavi (stupid) because they are unable to speak Spanish. The continuing use of Guarani is often seen by literary scholars as an important factor in the dearth of Paraguayan Spanish literature. Guarani is said to entorpecer la lengua (dull the tongue). This fact then serves to explain Paraguayan inability to speak or write effectively in Spanish."

4. Use as auxiliary languages: general declarations

63. In other countries, although indigenous languages have not formally been given any special privileges, they play an important role as instruments for teaching persons who do not speak the official language to read and write in their mother tongues or as auxiliary languages of instruction in the early stages of public

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14/ Joan Rubin, "Language and education in Paraguay," in: Language Problems of Developing Nations, John Wiley and Sons, New York, 1968, p.479.

education, as will be seen below. 15/ With regard to other countries, it is known only that these languages are used for this purpose, but there is no information on the legal basis for such use. 16/

64. In still other countries, general declarations have been made concerning the importance of indigenous languages to the State and the specific obligations created for it in this respect. Examples are to be found in the following statements made by Burma, Costa Rica and Mexico: 17/

65. In Costa Rica, article 4 of Act No. 5251 of 11 July 1973 establishing the National Commission on Indigenous Affairs provides that:

> "The basic objectives of the National Commission on Indigenous Affairs shall be:
>
> ...
>
> (d) To foster knowledge of indigenous affairs in order to create awareness of them and thus be able to stimulate interest in the study of indigenous cultures and, in particular, of indigenous languages, whose use and study shall be actively promoted." (Emphasis added by the author).

66. Information was lacking on any measures taken to give effect to the provisions of article 4 of Act No. 5251. The Special Rapporteur requested the Government to provide information on such measures, but has received no relevant information of any kind.

67. In Burma the official policy toward indigenous populations in Burma expressly recognizes that "all nationalities have the right to work for the preservation and development of cherished culture, religion and customs, but that any action that would adversely affect national security should be avoided."

68. It has been pointed out further that the Government of Burma continued to recognize that the national groups could freely preserve and develop their language and culture as long as they did not adversely affect the unity of the nation.

69. It has been reported that as a result of this policy, "local languages" are used for teaching purposes in certain districts and that small portions of radio newscasts are in indigenous languages.

70. The Government of Mexico stated that, with regard to the recognition of indigenous languages by the State, the National Institute for Indigenous Affairs has the specific objective of promoting respect for, dignifying and disseminating Mexico's indigenous languages.

71. Indigenous languages are used in the early stages of education and are the subject of the kind of technical study which such use requires.

15/ For example, in Australia, Bolivia, Brazil, Canada, Colombia, Denmark, Finland, Guatemala, Guyana (an isolated case), India, Indonesia, Laos, Malaysia, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Sweden and the United States.

16/ For example, Guyana (an isolated case), Laos and Pakistan.

17/ In Burma and in Mexico, such statements have been translated into practical measures but this is not the case in Costa Rica, where indigenous languages are used neither in the early stages of public education nor in other areas of importance to the indigenous populations.

C. Use of indigenous languages in non-official matters

72. The available information on this question indicates that indigenous persons are free to use their own languages as they please in non-official matters. The information provides no example of a legal restriction or formal prohibition of the right to use their own language in their private relations which they have under the provisions of article 27 of the International Covenant on Civil and Political Rights. Brief reference is also made to certain practices, which are generally said to have been eliminated, whereby indigenous persons, and especially schoolchildren, were in certain circumstances discouraged from using their own languages to communicate with each other.

73. Information contained in statements on this point - whether stemming from Governments or from non-governmental sources - generally stresses the freedom of people 18/ or specifically of indigenous people 19/ to use, as they may desire, their own language 20/ in non-official matters. 21/

74. Some statements report an absence of any impediments, 22/ limitations, 23/ restrictions 24/ or obstacles, 25/ any law that hinders, 26/ or of any "prohibition or prevention" of the use of the language or languages mentioned in the respective formulation. 27/ Others affirm the existence of the freedom to use the language or

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18/ Whenever this is not left in abstract terms - as in Bangladesh or Canada, merely referring to the use of language - formulations like the following are used: "a person" (as in India), "people" (as in the Philippines), or in less ample terms "citizens" ("American citizens" as in the United States).

19/ Referred to as "indigenous populations" (as in Mexico, Panama, Costa Rica), "indigenous persons" (as in Chile), "the Lapps" (as in Finland, Sweden), "aboriginals" (in Australia), "the Maori" (in New Zealand).

20/ Described in general terms as "any language a person chooses" (as in India), "whatever language they chose" (as in the United States), "whatever language is convenient, will facilitate, accomplish or achieve the purpose" (Philippines). In less ample terms referring to: "any other language" (as in Malaysia - meaning other than the official language), "their own language" (as in Australia, Costa Rica, Chile), "their mother tongue" or "aboriginal languages" (as in Panama), "Lappish" (as in Finland, Sweden), "Maori" (New Zealand), "dialect" (as in Bangladesh).

21/ Whenever this is not left in abstract terms (as in Finland, Sweden), this is referred to as: "otherwise than for official purposes" (Malaysia), in "non-official transactions" (as in Guyana), "informal transactions" (as in Bangladesh), "private relations" (as in Australia, Canada, Costa Rica, Chile, Mexico, New Zealand, Paraguay, United States), "everyday life, in public, in assembly" (as in India), "in their personal relations, in their congresses" (as in Panama).

22/ As in Canada, Chile, Mexico, New Zealand, Sweden.

23/ As in Canada, Chile, Mexico, New Zealand, Sweden.

24/ As in Australia, Bangladesh, Canada, Chile, Mexico, New Zealand, Paraguay, Sweden, Guyana.

25/ As in Chile, New Zealand, Sweden.

26/ As in India.

27/ As in Malaysia.

languages referred to, with different formulations. 28/ For the sake of giving a clear idea of how all these elements combine in the particular formulations, it is deemed indispensable to reproduce those statements, grouping them as statements of a "negative" or "positive" approach. 29/

75. Statements using the "negative approach" include the following. The Government of Bangladesh reports that there is no restriction on the use of dialect in informal transactions. In Guyana there is nothing to indicate that the use of Amerindian language, in non-official matters, is restricted. The Government of Canada has stated that there are no impediments, limitations or restrictions on the use of indigenous languages in private relations. The Swedish Government has communicated that no impediments, limitations, restrictions or obstacles exist in regard to the right to use the Lappish language. The Government of New Zealand states that there are no impediments, restrictions or obstacles of any kind whatsoever affecting the Maori population in the use of their own language in their private relations. The Government of Chile states that "no prohibitions, limitations, restrictions or obstacles of any kind are imposed on indigenous persons ... in the exercise of their right to use their own language in their private relations", and adds that "for this reason, there are no measures of protection in this respect against prohibitions, limitations, restrictions or obstacles of any kind, since such measures are unnecessary".

76. Some statements make reference to "legal measures". Thus, it is stated that in Paraguay no legal restrictions are imposed on the use of indigenous languages in private relations. The Australian Government has stated that no legal, administrative or other restrictions have been placed on the right of Aboriginals to use their own languages in their private relations. No measures of protection against such restrictions have therefore been considered necessary. In India there is no law which hinders the use of any language a person chooses in everyday life or in public or in assembly, which would not include Parliament or the Legislatures of States, for which there are special rules.

77. According to information supplied by the Government of Panama, that country's indigenous population is free to use its mother tongue in its personal relations. The indigenous language is widely used, inter alia at indigenous assemblies, which are held with the assistance of Government authorities and in which interpreters into Spanish are used.

78. In one country, the Government's statement is supplemented by a fundamental law which provides for the encouragement of the use and the study of indigenous languages. The Government of Costa Rica states that no limitation or restriction is imposed on indigenous populations in the exercise of their right to use their own language in their private relations. Moreover, it should be noted that in accordance with article 4 (d) of Act No. 5251, the National Commission for Indigenous Affairs "shall encourage a wider knowledge of indigenous affairs with a view to creating an awareness of them and in this way stimulating interest ... particularly in indigenous languages, the use and study of which shall be actively promoted". 30/

28/ As "can use" in the United States: "are completely free to use", as in Finland.

29/ As is explained in paragraph 82 below, the statement concerning one country combines the "negative" and the "positive" approaches here described.

30/ As already stated in paragraph 66 above, no information is available about possible measures for implementing this provision.

79. In another country, the relevant provisions of the Constitution have been confirmed by information from non-governmental sources and Government statements. The Government of Malaysia has transmitted non-governmental statements according to which in that country "there is nothing to stop anyone from using his own language in everyday life". The Government has also transmitted the following comments made by the Department of Orang Asli Affairs in this respect and which read as follows:

> "1. To the knowledge of this Department no attempt has ever been made to persuade or prohibit Orang Asli groups from using their own languages as fully as they wish in all aspects of their personal and private lives. This is of course apart from the fact that the medium of instruction in all departmental schools is "Bahasa Malaysia" (Malaysian Language). However it should be pointed out here that this Department has no reason to believe that this is not perfectly acceptable to all Orang Asli groups, and in fact no Orang Asli group has yet requested that any part of the present primary school curriculum be taught in a language other than Bahasa Malaysia. In fact this question has never been raised by the Orang Asli either formally or informally.
>
> "2. Since no agency either governmental or likewise has ever suggested that Orang Asli should not make full use of their own languages, or that such use should be limited in any way, there seems to be no need to protect what in fact has never been threatened. This is hardly surprising in a country where a large number of Malay languages i.e. Javanese, Buginese, Archinese etc., some 9 Chinese dialects, some 7 Indian languages, and also the Thai language are in constant use amongst private citizens.
>
> "3. This Department therefore feels that all Orang Asli groups enjoy exactly what the constitution of the country specifies and that any question of a need to make operative the provisions of the constitution on such a matter is academic to say the least."
>
> "152. National language
>
> '(1) The national language shall be the Malay language and shall be in such script as Parliament may as law provide:
>
> 'Provided that:
>
> '(a) no person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning any other language; and
>
> '(b) nothing in this Clause shall prejudice the right of the Federal Government or of any State Government to preserve and sustain the use and study of the language of any other community in the Federation.'"

80. Statements using the "positive" approach are the following.

81. According to the Government of the United States "all American citizens can use whatever language they choose in private relations". The Government of Finland states that "the Lapps are completely free to use Lappish in their private relations".

82. In a somewhat more comprehensive statement combining what have been called the positive and the negative approaches described above, the Government of the Philippines has stated that "there are no restrictions or prohibitions for the use of any language in private life, social relations, religious services, public meetings, commerce and industry, newspapers, books, periodicals and private radio and television broadcasts. In non-official matters whatever language is convenient will facilitate, accomplish or achieve the purposes, is used by the people."

83. No statements of this sort are available in relation to a number of countries. In the light of legal provisions and/or arrangements to use these languages in public schools, coupled with the absence of reports on the lack of freedom on the part of the indigenous populations in this regard it may, however, be assumed that the indigenous populations suffer no impediments, limitations, restrictions or obstacles in the use of their own languages in their private relations.

84. In the case of some of these countries for which no statements of this kind are available among the information collected for this study - for instance, Bolivia, Brazil, Guatemala and Peru - the Special Rapporteur, during his visit to these countries in connexion with the study, asked indigenous persons, groups and leaders whether that freedom existed and was invariably informed that it did exist in private relations. 31/ There is also supplementary information in these countries. In Peru, the use of vernacular languages as a means of communication and cultural expression has been recognized in legal texts, which provide that care shall be taken to preserve and develop such languages and that they should even be used as a vehicle for education. (In this connexion, see articles 12 and 98 of the General Education Act, referred to in paragraphs 252-254 below.) It should be added that Decree-Law No. 21,156 recognized one of the indigenous languages, Quechua, as an official language of the country on an equal footing with Spanish, provided for its use in the law courts and made its teaching compulsory at all levels of public education. As is said elsewhere in the report the latter provisions seem to have remained without practical application up to the present time. 32/ Indigenous persons in Guatemala communicate with each other in one or more of the 23 languages of pre-Spanish origin which are widely known and used for educational and cultural purposes. (In this connexion, see articles 9 and 60 of the National Education Act, referred to in paragraph 250 below.) In Bolivia, too, a number of indigenous

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31/ At the same time, in these countries, as in the others which were visited in connexion with this study (Australia, Canada, Malaysia, Mexico, New Zealand, Paraguay and the United States), all indigenous groups complained that the State was not making sufficient use of indigenous languages or giving them the recognition they deserved. See paras. 11-13 above.

32/ See para. 58 above.

languages are spoken as a means of communication between members of the various linguistic groups, and the Education Code provides for the use of some of these languages in education (see paragraphs 245 and 246 below). In Brazil, there are a number of groups living in isolation and communicating with each other in their own languages; other groups live in areas which are also inhabited by indigenous groups speaking other languages or by Portuguese-speaking groups. Act No. 6001 (Statute concerning the Indians) authorizes persons who are learning to read and write, either in their own language or in Portuguese or in both, to use the language of the group to which they belong (see paragraph 247 below).

85. A very similar situation exists in Ecuador, where the Constitution recognizes the indigenous languages of the country as elements of national culture and provides for those languages to be used in the schools in areas where the majority speaks an indigenous language (see paras. 60-61 above). The Special Rapporteur is able to confirm this fact, since Ecuador is his own country.

86. Honduras offers a similar case of the constant use of indigenous language among members of certain indigenous groups. Although the Special Rapporteur did not visit Honduras and has no personal knowledge of the situation in that regard, he has received reports about the existence in that country of groups speaking an indigenous language in which they communicate with each other. There is some specific information about the Jicaques, about whom it is said that although the majority of male adults speak a little Spanish, "all indigenous persons speak Jicaque among themselves".

87. Likewise, in the absence of any explicit statements of the kind considered in paragraphs 73 to 82 above, there are strong indications that the indigenous populations use their own languages freely in their private relations in those systems where indigenous languages, or some of them, enjoy auxiliary, supplementary or full status as languages of instruction at some level in the State schools. This is the case in Laos, where the indigenous languages are used in primary education in State schools. In Indonesia local languages seem not only to be in general use, but they also seem to be used as complementary languages of instruction. Use is made in Norway of the Same language in school instruction and in church.

88. Turning now to instances of non-encouragement or outright hindrance of the use of indigenous languages by indigenous persons in non-official matters, it should be pointed out that they generally involve some aspect of the educational processes.

89. A basic and very generalized complaint is that, during colonial times and for extended periods in the independent life of the countries concerned, indigenous languages were under constant linguistic aggression, as concerted

efforts were made to have indigenous people abandon their own languages, and make them adopt the tongue that now enjoys the status of official language of the respective countries. It is contended that, taking due account of those circumstances, mere granting of freedom now to use the indigenous languages in private relations means very little, precious as it is. In compensation for those years of linguistic persecution, which in some cases may not be altogether finished, the State should organize much-needed campaigns of language development, recovery or salvage, to make this free use become meaningful. The following information from New Zealand may serve as an example of this which, it should be stressed, is not to be construed as exclusive of that country in any way.

90. The Citizens' Association for Racial Equality states in this regard:

> "There are no restrictions on the use of Maori in private relations - other than the impediment that a large part of the Maori population, especially in urban areas, no longer speaks the language."

91. During his official visit to New Zealand (June 1973) the Special Rapporteur heard similar complaints. It was the contention of many informants that the State should be doing more than it was doing to preserve the language and to assist its resurgence. Official policy, it was stated, had been responsible for the loss of Maori language by several generations. Now, it was not enough to merely allow them freely to speak it. There were whole sections of the population who had lost the use of their language and would like to regain knowledge of it. Special measures, more and better ones, were needed.

92. Other cases involve more directly aspects of educational processes associated with schools. They are also general occurrences and not to be associated exclusively with the countries yielding the examples given here. In Canada it was charged that the denominational schools formerly adopted a policy of discouraging the use of native languages but this policy has been reversed. It was reported that in boarding schools in the United States Indian children who were thus separated from their parents were forced to speak English. They were made to feel ashamed of their language and culture. It has been reported that in Panama the exception to the freedom of indigenous Panamanians to use their own languages in their private relations is "that constituted by the schools, where, in general, indigenous students are forbidden to use their own languages to communicate with each other".

D. Use of indigenous languages in communication media

1. Initial remarks

93. Indigenous languages are used in all media, but in general there are no major daily newspapers or periodicals which are published by indigenous persons themselves or which are entirely printed in these languages. On the other hand, many publications of this kind contain pages or sections in indigenous languages.

94. There are different tape and gramophone recordings which reproduce a variety of literary material spoken in indigenous languages, as well as indigenous music; many of these recordings are made for the purpose of preserving cultural manifestations which are either disappearing or in the process of change. Photographic material and cinema films are being prepared with the same object or for information purposes.

95. Radio and television broadcast programmes involving indigenous groups or designed for and aimed at them; there is no information available as to whether these broadcasts take place on days and at times when they will make a strong impression on the general public or how frequent they are.

2. Printed media

(a) Newspapers and magazines

96. Information available on this question shows that in several of the countries surveyed there exist some newspapers and a few magazines at least partially written in indigenous languages.

97. In Norway the Government runs a comprehensive information service of up-to-date information on statutes and regulations in force. The public notices addressed to the national press in this connexion are also sent to the Lappish-language publications Ságát and Nordkalott, which themselves translate as much material as they may deem necessary. Two newspapers (Nordkalott and Ságát) are issued with text partly in Norwegian and partly in Lappish. There is also a periodical Reindriftsnytt (Reindeer-breeding News published by the Ministry of Agriculture) with text partly in Norwegian and partly in Lappish. The religious publication Nuorttanaste is only in Lappish, and Samenes Venn, the Lapp Missionary Society's press medium, usually includes an article in Lappish.

98. In Paraguay some newspapers and magazines publish pages or sections in Paraguayan Guaraní.

99. In Canada the Department of Indian Affairs publishes newspapers and magazines in the Eskimo and Indian languages.

100. In New Zealand ordinary newspapers and periodicals are not printed in Maori: the only exceptions are a few broadsheets or periodicals published by Maori organizations.

101. The Government states that the Maori and Island Affairs Department has for many years produced a quarterly periodical for Maoris in which both languages are used. It is added that this bilingual magazine contains "matters of interest to the Maori people".

102. In Pakistan newspapers and magazines numbered 1,200 in 1973: 19 were English-language dailies, 83 were vernacular dailies and the rest were periodicals in English and regional languages. In pursuance of the Government's objective of making the press a popular medium, English-language newspapers are becoming less predominant as the Government continues to promote the vernacular newspapers.

103. A number of newspapers are printed in a variety of languages other than Urdu and English; they are printed in Sindhi, Pushtu, Gujarati and Punjabi.

104. In Burma indigenous languages seem to be used to a certain limited extent in books and radio newscasts as suggested by the following statements:

> "One of the oldest and most active of the private learned organizations is the Sarpe Kelekman Management Board. This group, formerly called The Burma Translation Society, produces, translates, publishes, and distributes books in Burmese and indigenous languages and encourages research in Burmese literature and fine arts. It was, and remains, in the forefront in providing textbooks for Burmese schools. The board also maintains a public library in Rangoon stocked with over 50,000 volumes, about 30,000 of which are in Burmese."

> "Approximately two-thirds of the BBS (Burma Broadcasting Service) programmes are in Burmese; about one-third are in English; and a small or portion of the newscasts are in Shan, Karen, Kayah, Kachin and Chin languages."

105. In Sweden since 1919 the Lapps have had a newspaper of their own. It was started by Torkel Thomasson as a result of talks at a national meeting of Lapps at Ostersund in 1918 and was known at first as Samefolkets Egen Tidning (The Lapp People's Own Newspaper). It is now published under the name of Samefolket (The Lapp People). The paper's chief language is Swedish, but it has a Lappish section, in which an orthography common to Norway and Sweden has been used since 1957. Samefolket's principal aim is to reflect the changes that take place in the living conditions of the Lapps. Among the important matters which the paper deals with are those concerning organizations, conferences, State surveys and legal questions. Problems of livelihood, particularly those connected with reindeer breeding are of vital importance.

106. There are also book reviews and articles of less topical interest on such things as cultural history, living conditions in the other Nordic countries, other races, etc. The leading articles put forward the Lapps' views on various controversial subjects. The section in Lappish contains mostly stories and poems.

107. There is a general policy in this respect and under that policy a special government subsidy is granted to a Lapp periodical. It may also be mentioned, in this connexion, that a committee of Parliament found objectionable the decision of the Committee for press support to withhold a subsidy to a newspaper published in a minority language on the grounds that it was not published in Swedish.

(b) Books and other publications

108. In the data available on this matter in connexion with the present study mention is made of books, information sheets and brochures of different sorts that are issued in indigenous languages or in those languages and in the official tongue.

109. In Norway in addition, some information brochures have been issued in Lappish, for example by the National Insurance Institution some time ago on national insurance questions. The National Insurance Institution is now preparing a brochure in Lappish on the National Insurance Scheme. In Karasjok there is a Lapp library with books on Lapp conditions both in Norwegian and Lappish. This library also serves the Lapp population in Sweden and Finland, as well as in the rest of Norway.

110. In New Zealand the Education Department regularly publishes literature in the Maori language for the use of Maori schoolchildren but these are also available on a wider scale. The Maori and Island Affairs Department produces a quarterly bilingual magazine containing matters of interest to the Maori people. The New Zealand Maori Council also publishes a bilingual quarterly.

111. Most public libraries in New Zealand have a section dealing with Maori publications; the universities are particularly active at the present time in collecting material in the Maori language, both written and oral. The Auckland University has established an archive of Maori and Polynesian music where all possible resource material on Maori songs, poetry and dancing are being gathered together with a view to use not only by the university but by the Maori people and any other people interested.

112. In Mexico, the Government states, one of the most important new programmes of the National Institute for Indigenous Affairs is undoubtedly the one aimed at preserving and making better known the cultural heritage of ethnic groups and promoting an awareness by Mexican society of its own diversity. It is also claimed that the communities themselves receive the major part of the material benefits deriving from these activities.

113. According to the Government of the United States the Bureau of Indian Affairs school books are often in two languages, the Indian language that is appropriate and English. This statement has, however, been challenged in the American Indian Response to the Response of the United States of America (America Indian Law Newsletter, Special Issue No. 11, 1974, p. 41) in the sense that "It is not true that Bureau of Indian Affairs school books are 'often' in the Indian language and English - such an occurrence is rare indeed".

114. In Sweden the use of Lappish for literature has been restricted, but the written language has been used to some extent ever since the seventeenth century. In the eighteenth century, however, more literature in translation began to be published. In 1755 the New Testament appeared and in 1811 the whole Bible was published in Lappish. Other literature to be translated has been almost exclusively of a religious nature. Ever since the beginning of the present century one or two Lapp authors have written in their mother tongue.

115. In Paraguay a certain respect exists towards the indigenous Guaraní languages commonly considered "purer" versions of the Paraguayan language. Nevertheless, these indigenous languages have no printed literature (except in a very few works for specialists and except some short religious texts edited by missionaries) and no radio programme.

116. The situation is worse for non-Guaraní indigenous languages as they do not profit from the respect given to Guaraní. They are not recognized otherwise than as "dialects" one day to be substituted by Spanish or Paraguayan Guaraní.

117. There is a printed literature, of local importance, in Paraguayan Guaraní, but with only very restricted editions.

3. Recorded media

118. Magnetophonic and grammophonic recordings are being prepared on spoken indigenous languages like readings, speeches, story telling, traditional narratives as well as music. Only one Government mentions films and photographs in an explicit manner in the data available on these questions.

119. In Malaysia sound recordings on tape of many aspects of Orang Asli culture are kept by the Department of Orang Asli Affairs and universities in Malaysia.

120. In New Zealand the universities are particularly active at the present time in collecting material in the Maori language, both written and oral. The Auckland University has established an archive of Maori and Polynesian music where all possible resource material on Maori songs, poetry and dancing are being gathered together with a view to use not only by the university but by the Maori people and any other people interested.

121. In Australia Aboriginal languages have been studied and recorded by a variety of public and private institutions and by individuals.

122. In Mexico, under the programme aimed at establishing a system to collect elements of the cultural heritage of the ethnic groups, a project for the preparation and centralized storage of cinema films, recordings, photographs and documents has been launched in order to complete the Audiovisual Ethnographic Archives of the National Institute for Indigenous Affairs (INI) by using an internationally recognized guide (Murdok), a record that the country does not currently possess. In 1978, the professional and technical staff of the Institute plan to make an initial ethnographic survey of this kind in 82 areas, covering a total of 56 ethnic groups. In accordance with the rules laid down in the Bases for Action (INI, Bases for Action, IV (I)(2)(A), page 65), it has been decided that as soon as these materials are exploited commercially, all proceeds from them will be allotted to development programmes in the inter-ethnic regions. This cultural preservation project has been called "Ollin-Yoliztli", which in the Nahuatl language means "life and movement".

123. Other INI programmes in this field are aimed at promoting indigenous music through the meetings of regional musical groups which are now being held and the establishment of a Centre for the Teaching of Traditional Music in the Mixe area.

124. In Norway the above-mentioned Karasjok library contains a collection of tapes and records. The Committee for the Promotion of Lapp Literature intends to produce a number of gramophone records/tapes with recorded readings (anthologies, etc.). There are also plans to build up a collection of tapes with recordings of discussions and meetings held by Lapp organizations. It is assumed that these will come to have a certain cultural value in future, although out of consideration for the persons involved, such recordings will not be available for public use in the years immediately ahead.

4. Radio and television

125. Programmes mentioned in the available information on this question are mainly news programmes and general information broadcasts. Some religious programmes and musical and cultural broadcasts are also briefly mentioned.

126. In Norway Lappish is also used for a regular morning news bulletin transmitted over the national radio network, as well as for a local programme every afternoon. Lappish speech or text occurs only sporadically on television. There is a separate news programme in the same language on the national network.

127. The Canadian Broadcasting Corporation, through its Northern Service, has a regular shortwave transmission of news and other programmes in local Indian and Eskimo languages. Feature programmes in a news-magazine format and musical programmes are produced in the North. Discussions have begun leading to the development of native television programmes to be broadcast by way of the new telecommunications satellite, Anik.

128. In New Zealand the national radio service provides a weekly news in Maori and one or two cultural programmes. Television provides no regular service.

129. According to the Government, under a revision of the New Zealand Broadcasting Service, special consideration is being given to Maori language programmes on radio, possibly through a broadcasting station which will be particularly devoted to the Maori and Polynesian population of the country.

130. The New Zealand Broadcasting Service, which is a Government corporation, has a Maori language news session once a week and other programmes with a Maori cultural content at intervals during the week. The Broadcasting Service is at present being restructured and it is planned to have a radio station in Auckland (which is within reach of well over half of the Maori population) which will be operated for the Maori people and other Polynesians resident in New Zealand. It will broadcast in both Maori and English and will have programmes specially catering for the Maori community. It is proposed that the governing body of this radio station will comprise predominantly Maoris with expertise in the social and cultural institutions of their people.

131. In Pakistan radio broadcasts within the country originate in 22 different languages. Television broadcasts in the vernacular as well as in English are common.

132. In Sweden there is no private broadcasting system or television company. In the state-owned broadcasting and television there are regularly programmes in Lapp and Finnish.

> "Of very great informational value to the Lapps and others are the regular radio programs broadcast by the Swedish Broadcasting Corporation once a week over the network in Norrland. They have gradually increased in number and scope and pay particular attention to news concerning the Lapps and their living conditions and matters of current interest. A pharmacist in Jokkmokk, Nils Hövennark, did valuable work for several years in editing the transmissions in Lappish, called Sámi-Ságat.
>
> "In July 1966 the Swedish Broadcasting Corporation engaged a special editor for the Lappish broadcasts, Maj-Lis Skaltje, whose mother tongue is Lappish.
>
> "In collaboration with the Norwegian Broadcasting Corporation, news in Lappish has been broadcast from Tromso over the Norrbotten network since 1965.

"During 1963/64 and 1964/65 the Swedish Radio broadcast a course in Lappish, Sami-Giella, gallí-giella. The textbook was compiled by Nils Erik Hansegard. The radio extra-mural courses in Lappish are planned to continue.

"Thanks very largely to the various national congresses held in the Nordic countries, the press has taken an increasing interest in Lapp affairs. There has been a marked change from exotic reportage to a factual treatment of questions vitally affecting the Lapps."

133. In Venezuela there is a beginning of radio transmission in Indian languages, promoted by the Commission for the Development of Southern Venezuela (CODESUR).

134. In the United States of America the Government states that it has appropriated funds for radio broadcasts in Indian languages. The Federal Government has also funded Indian language radio broadcasts to give out information on health and nutrition when this has been the most effective way to reach the Indian population.

135. In Burma approximately two thirds of the BBS (Burma Broadcasting Service) programmes are in Burmese; about one third are in English; and a small proportion of the newscasts are in the Shan, Karen, Kayah, Kachin and Chin languages.

136. According to the Government of Mexico, its programme aimed at encouraging respect for and dignifying indigenous languages as elements of the national culture, not only includes activities relating to the training of language experts among the indigenous people themselves but makes provision for the establishment of radio stations broadcasting in vernacular languages, "which is a magnificent and sometimes the only, instrument for social guidance and cohesion where other media are lacking.". The Chiapas Heights station is already operational and another station is being constructed on Mount Guerrero, and the headquarters of the operation is in the Tlapa Indigenous Co-ordinating Centre, from which broadcasts will be made in Tlapaneco, Nahuatl, Mixteco and Amuzgo, as well as in Spanish. Lastly, it is planned to take over operation of the radio broadcasting station Maya de Carrillo Puerto Q.Roo.

137. According to the Malaysian Government, "Radio and Television Malaysia - a Government Department - has a special radio programme for Orang Asli. This is on the air for 2 hours daily from 2 p.m.-4 p.m. and broadcasts in the 2 major Senoi languages - Semai and Temiar. One hour in Semai and one hour in Temiar. In the case of Negrito groups these are too small to warrant separate programmes and in fact a considerable number of Negritos are fluent in Temiar. In the case of Proto Malay groups, 4 of these are too small to justify separate programmes and as a whole the fluency in Bahasa Malaysia rate amongst Proto Malays is very high. However a large number of Proto Malays do in fact listen to the Semai and Temiar programmes."

138. It should be pointed out that in Bolivia the Aymara communities in the Tiwanacu region have insisted that transistor radio sets, which are now owned in great numbers by members of the community, should not lead to extensive and unwanted cultural penetration and have set up a transmitter, of low power but adequate to serve the community, which will remedy the shortcomings and counter the alienating influences of other State and non-State broadcasting stations within range (information gathered during the visit to Bolivia in 1974).

139. Further in connexion with Paraguayan Guaraní it has been reported that in Paraguay there are few radio programmes in that language. Television has "lectures of Guaraní" some two or three hours per week.

E. Use of indigenous languages in official matters

1. Initial remarks

140. The policies adopted by States as regards the use of indigenous languages by legislative organs, by administrative authorities and by the courts will be discussed in this part.

141. In none of the countries surveyed are indigenous languages used extensively in official matters; their use is restricted to specified activities, when permitted. In several countries indigenous languages are not used at all in official matters.

142. Communications to the administrative authorities that have been written in a language other than the official language - including indigenous languages - are not to be rejected and are to be processed. Replies to these communications using indigenous languages are allowed, under certain circumstances.

143. Certain practices concerning the use of indigenous place-names and personal names are briefly mentioned in this part.

2. In legislative assemblies

144. In several of the countries for which information on this matter is available, indigenous languages are not used by members of legislative bodies in their debates. Although there is no country in which an indigenous language has been adopted by any legislative assembly as its language or as one of its languages, use of indigenous language is not forbidden and in some countries is authorized or even provided for, under given circumstances. Members of legislative bodies can, therefore, under specified conditions use indigenous language in that capacity and when participating in the work of these bodies. Communication from non-official language-speakers can, however, be received by them in exceptional circumstances, according to need. Provision is made for interpretation and translation, as necessary.

145. Information on this matter is available only for a few countries. Among the important functions of an official language is its use in Parliament or in legislative bodies of federated entities in case of federal States. It is known that this position would prevail in many countries. Thus, for instance, the Swedish Government has simply communicated "In the Riksdag and the local assemblies Swedish is spoken". The Government of Mexico, for its part, has stated that there is no perceived need for the indigenous populations to use their own written language in legislative bodies, since these bodies do not know the indigenous languages. In cases of oral communication by indigenous groups indigenous interpreters are provided and delegates from indigenous communities, many of whom are Indians, take part in this kind of discussion. The Malaysian Government has communicated that in the case of legislative bodies the use of the Malaysian language is compulsory and is usually insisted on, unless there are overriding reasons for not doing so but this is becoming less and less frequent and, at present, is unusual. It should be pointed out here that the Government appoints a person to represent Orang Asli interests in the Senate.

146. On the other hand, according to the Government of the Philippines, there is no prohibition of the use of indigenous languages in representative assemblies, but "only the official language will have official recognizance".

147. Moreover, in New Zealand the use of the Maori language in Parliament is provided for in the Standing Orders of the House of Representatives, should a Member wish to use that language. According to the Government, in recent years Maori Members of Parliament have made very little use of this provision. As all of the Maori Members of Parliament are fluent in English, they prefer to use that language in Parliament.

148. In India, although by constitutional mandate Hindi or English are to be used in Parliament, the presiding officer is empowered also by the constitution to permit any member who cannot adequately express himself in either of those two languages to speak in his mother tongue. So far as the States are concerned, the languages to be used in the legislatures are the official language or languages of the State concerned or Hindi or English. If, however, a member cannot adequately express himself in any of these languages, the presiding officer may permit him to use his mother tongue. All this, as per explicit provisions of the Federal Constitution.

149. In Pakistan some of the legislative debates at the provincial level take place in the regional tongues.

150. The Norwegian Government has communicated that, although the relevant rules governing use of language provide no authority for the use of Lappish in the legislative machinery, no prohibition can be deduced from this against the use of Lappish in communications to and from legislative bodies.

3. In administrative action and in dealings with administrative authorities

151. In some of the countries surveyed, the right of indigenous people to use their own language in their dealings with administrative authorities is guaranteed by law or other special arrangements or practices. This right usually entails translation of texts and the work of interpreters. It can also involve policy principles for the appointment of personnel having fluent knowledge of indigenous languages in the public services located in areas where indigenous persons are strongly represented in the local populations. In some countries indigenous languages do not enjoy the same situation accorded to other minority languages in these respects.

152. In Canada interpreters are used in the Northwest Territories to translate Government statements for the native people.

153. In New Zealand, Government statements are not made in Maori, except at formal Maori gatherings. The Government has reported that in the early 1970s the Minister of Maori Affairs, who was a Maori, held frequent meetings in Maori communities where both English and Maori were used. On the other hand, as reported by another source, 33/ in New Zealand there is little recognition of the Maori language by public institutions. Legal documents and public notices are rarely translated. In this connexion it should be noted that the draft submitted to Parliament and directed at the recognition of Maori as one of the official languages of New Zealand would also provide for setting up in the Maori Affairs Department a service for the translation of important documents. The status of this draft was unknown to the Special Rapporteur at the time this chapter was drafted.

154. The Norwegian Government states that the rules governing the use of language in the Civil Service provide no legal authority for the use of Lappish in the administration, the legislative machinery or the judiciary. It is stipulated that the written paper work in the Civil Service shall be done in Norwegian - in either 'bokmål' or 'nynorsk', which are the two official forms of the Norwegian language.

33/ The Citizens Association for Racial Equality. Information furnished in connexion with the present study as a result of the visit to New Zealand in 1973.

No prohibition can be deduced from this against using Lappish, for instance by a civil servant replying in Lappish to a letter written in that language. However, according to the circumstances, the use of Lappish in civil service documents would be contrary to statute, cf. Courts of Justice Act, Section 136 under which court records shall be written in Norwegian or accompanied by a translation. Nor is it possible to ignore the possibility that the use of Lappish in the Civil Service might imply a breach of the principle relating to public access to documents in the official administration, since it could de facto, if not de jure, represent a barrier to understanding the actual content of a document.

155. During the 1960s a trend became obvious in Pakistan towards the increasing use of the local languages, both in the lower levels of government and in education. The Language Committee of West Pakistan has undertaken a project to translate many provincial Acts, records and documents from English into Urdu.

156. In Sweden the law also provides that in their dealings with administrative authorities, non-Swedish-speaking persons are entitled to be assisted by an interpreter free of charge. Under section 9 of the Administrative Procedure Act, the administrative authorities themselves can, since the turn of the year 1971/1972 on their own initiative, appoint an interpreter to assist them in their dealings with non-Swedish-speaking persons. According to Government Bill 1971:30 this provision should be considered a recommendation to the authorities to call in an interpreter, if required. Letters written in any language other than Swedish must not be rejected by the authorities.

157. Although the language of the administration is Swedish, letters written to authorities in a language other than the official one must not be rejected by the authorities, according to administrative instructions in force. In this connexion, a central translation service has been established by the National Immigration and Naturalization Board, among others, and in about 40 places local immigration centres provide the services of interpreters.

158. A Government programme has been in operation since 1965 under which information from Government and local authorities is translated to an increasing extent into a large number of languages spoken by immigrants and linguistic minorities. In certain spheres of activity, the labour market in particular, extensive documentation is provided to minority members in their own languages.

159. According to the Malaysian Government, which transmits a statement prepared by the Department of Orang Asli Affairs, as far as is known all Orang Asli deal with administrative bodies through the medium of the Malaysian language both orally and in writing. In nearly all cases the person concerned will first obtain advice from this Department on his problem. It should be pointed out here that 75 per cent of the staff of this Department are themselves Orang Asli and are usually fluent in more than one Orang Asli language. By this means this Department will not only give advice and guidance, but usually intervene on behalf of the person with the administrative agency concerned.

160. The Mexican Government reports that in the case of oral communication with the administrative authorities in an indigenous language, arrangements are made for indigenous interpreters to be present, as the authorities do not know the indigenous languages. It also states that the attorneys of indigenous communities, many of whom are Indians, take part in this kind of arrangement.

161. In India the Government's decision in 1965 to use a so-called three-language formula had an immediate bearing on the schools. Under this formula, regardless of linguistic background, candidates for national civil service were to be tested first on their proficiency in English; Hindi speakers would then be tested on their knowledge preferably of a south Indian language; and candidates from non-Hindi areas, were to be tested on their knowledge of Hindi. Written examinations were, however, to be taken in the candidate's own tongue.

162. At the district level, whenever 60 per cent of the population uses a language other than the official one, that language may be recognized as an additional official language for that district. Knowledge of the State official languages is a prerequisite for recruitment to State services, and the option of using English or Hindi as a medium of examination is allowed. A test of proficiency in the State official languages is held during the period of probation.

163. At district level and below, where a linguistic minority constitutes 15 to 20 per cent of the population, important government notices rules and other publications are to be published in minority languages also.

164. The constitution of India provides that "every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be" (Art. 350).

4. In court

165. Unfailingly, the official language of the country is the language used in court. This is one of the main functions intended in the officialization of a language, as action of jurisdictional organs and bodies is performed in discharge of one of the essential functions of the State and is a prominent aspect of official action.

166. The use of non-official languages in the courts, whenever this becomes indispensable in service of an equitable administration of justice, has been regulated by the constitution or by the law. In general these measures are directed at allowing any person (whether he is a national or a foreigner, or indigenous or non-indigenous), who is involved in a court action, to understand the proceedings in which he may be involved.

167. It is deemed appropriate to quote here the pertinent provisions of Article 14 of the International Covenant on Civil and Political Rights, which contain the general principles underlying legal provisions and State action in this respect. Bearing in mind the context of the rest of article 14, only the relevant parts of paragraphs 1 and 3 (a, b, d and f) are quoted here:

"Article 14

"1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law ...

"...

"3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

"(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

"(b) To have adequate ... facilities for the preparation of his defence and to communicate with counsel of his own choosing;

"...

"(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

"...

"(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

"...".

168. It is clear that unless special measures are taken, persons who do not have a full command of the language used in court are handicapped in the representation of their own interests and suffer difficulties which should be overcome in the interest of a fair and equal justice for all. This applies whatever the kind of proceedings and in all branches of the judiciary and of any quasi-judicial bodies administering justice. It also applies irrespective of whether the person coming to court is an accused, a litigant, a witness or an expert. Its effects are felt also regardless of whether the language spoken by the person concerned is a foreign language or one of the other languages spoken in a given country, but which has not been recognized as an official language thereof. It, therefore, affects in particular citizens of the country who do not have a full command of the official language, whether they are persons of a linguistic group, members of the linguistic minorities of the country or, of course, the indigenous populations of this country. The effects of this situation are also felt out of court, especially in the delicate and complex relationship between client and counsel, both oral and written, as well as in the study and elaboration of documents that are to be submitted to court or in studying those that form the basis for the preparation of a given case.

169. A fuller discussion of the linguistic and cultural difficulties facing indigenous populations in court and out of court in connexion with the intended settling of certain contended matters before the organs administering justice will be found in the chapter relating to equal administration of justice and legal assistance.

170. Suffice it to say here that the right of indigenous persons to use their own language when appearing in court generally entails the designation of interpreters and the translation of documents.

171. Interpretation and translation services are provided for in the laws of most countries in general, and in all of the countries surveyed in criminal cases. No precise information is available on who bears the costs of interpretation and translation outside of criminal cases, where the State provides those services free of charge.

172. In a few countries other arrangements in this regard would include also the appointment of judges belonging to the indigenous group concerned or the establishment of special courts in the districts where indigenous populations live.

173. In fact, however, not always are there appropriately serious endeavours made to implement all these provisions in actual practice. Often the interpreters act in a rather perfunctory manner, in particular when the assistance is to be provided free of charge and the payment made to the interpreter is not considered adequate. In most countries for which there is information in this respect, the State provides services of interpreters and translators free of charge in criminal cases, but to a lesser extent in civil, commercial and other cases. Legal arrangements are made available to a certain extent which, judging from the many complaints made in the mass media and elsewhere by indigenous groups, do not seem to be adequate.

174. Statements discussing the situation obtaining in the different countries on which there is information in this regard are contained in the following paragraphs.

175. In New Zealand while the law provides for the exclusive use of English in court, it nevertheless requires the courts to appoint interpreters whenever a party to a suit is not versed in English. Thus, in the case of judicial proceedings a Maori has the right to have an interpreter and to have Court documents translated.

176. In the Philippines, only Tagalog is used in court proceedings, but interpreters may be provided; this shall necessarily be done whenever languages other than the official language are used or involved in the proceedings.

177. In Malaysia, according to the constitution, all proceedings except the taking of evidence shall, in principle, be in English for a period of ten years after independence and thereafter until Parliament otherwise provides. Nevertheless, in the courts any person has a right to speak in any language with which he is fully conversant and it is the duty of the courts to find the appropriate interpreter. The Government has stated that any Orang Asli appearing in a court has the right to speak in his own language. On several occasions the Department of Orang Asli Affairs has been requested to provide interpreters for this purpose and has always been willing to do so.

178. In Sweden, while the law provides for the exclusive use of the Swedish language in court, it nevertheless requires the courts to appoint interpreters whenever a party to a suit is not versed in Swedish. Under this system, extensive use of interpreters is made.

179. As an illustration of the importance of the practice, it should be mentioned that on the suggestion of the commission on immigrants, interpreters are now required to hold a university degree. A training and examination programme has also been established under the supervision of the National Immigration and Naturalization Board. In the financial year 1970/71, the costs for interpretation at the courts of appeal and city courts amounted to about 900,000 Swedish crowns.

180. In India the language of the Supreme Court and of the high courts continues to be English; but, so far as the lower courts are concerned, the language of the particular region is used for all purposes (except for the judgement or order, which has to be written in English). Under the Act of 1963, the governor of a State, with the consent of the President, may authorize the use of Hindi for the purpose of any judgement, decree or order passed or made by the high court of that State, and where such judgement, decree or order is in any other language, those texts must be accompanied by a translation in the English language.

181. In the United States, the language of the courts is English, but any person who is not conversant with this language is entitled to interpretation and translation services being provided by the court. According to information furnished by the Government, in some cases tribal courts conduct business in a tribal language and transcripts of court cases are in both the tribal language and in English. Some tribes have official interpreters who speak both the tribal language and English and who are called upon to function in particular tribal situations.

182. In Peru, under decree 21156 (1975), the judiciary was to take all the necessary steps to ensure that, as from 1 January 1977, court cases would be conducted in Quechua where the parties to them were able to speak only that language. It is not clear to the Special Rapporteur however, whether in practice these provisions are applied today in court in Peru (see para. 58 above).

5. In place names and personal names

183. The traditional names of places and of persons are of deep significance for indigenous peoples and persons. The unsolicited attribution of names, and the changing without consent of traditional names in favour of alien names from other cultures and other regions of the world, constitute at the very least an act of cultural imposition and aggression.

184. This is the view taken by the indigenous peoples themselves. In the words of a major indigenous congress, the attribution of personal names alien to indigenous culture is "an act of aggression which depersonalizes our peoples" (third preambular paragraph of the resolution on Indian place names and personal names, Cuzco Conference, 1980). 34/ The replacement of the original names of villages, towns, mountains, rivers, streets, squares, etc. by foreign names also constitutes cultural aggression (fourth preambular paragraph of the same resolution). 35/ Consequently, the operative part of the resolution resolves "to set indigenous peoples the goal of recovering and restoring personal names and place names with all their depth of meaning".

185. Although such place-name and personal-name changing practices exist in many places, only two examples of these practices are included in the information available to the Special Rapporteur. One on personal-name changing (from Paraguay) and one on place-name changing (from Norway). Without in any way suggesting that these practices are typical of, or restricted to, these two countries, a short discussion of these two cases follows.

186. To many Paraguayan Indians, the name is an unseparable part of personality and soul. But indigenous names are rarely recognized, so that many Indians are forced, against their will, to change their names.

187. Obviously against their will, the Aché of the reservation Colonia Nacional Guyakí are given the family name "Guayakí", e.g. a man called Tatúgi is now called officially Tatúgi Guayakí - although the word "Guayakí" (the common, contemptuous Paraguayan word for the Aché, originally meaning "wild rat")is, to the ears of the Aché, an offence. Moreover, recently, the aborigine Aché names have been completely forbidden. In the Aché system of religious beliefs, this means that they lose their souls.

188. The draft containing information relating to Norway that was sent to the Norwegian Government in quest of comments and supplementary data, contained the following material concerning place-names in Finnmark:

> "The Norwegianization of Lappish place-names continues unabated. It may be mentioned that the regulations governing the sale of land in Finnmark demand that the land in question should be described in Norwegian; this leads to the abandonment of many good old Lappish terms."

189. In its 1975 reply, the Norwegian Government communicated:

> "It is perfectly true that there used to be provisions of this nature. According to rules issued pursuant to an Act of 1965 "relating to the Transfer of State-owned Land and Real Estate in the Rural District of the Finnmark Amt' (now County) it was explicitly laid down that 'real property distributed under survey shall be given a specific Norwegian name'. Under the Act of 1965 'concerning the State's

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34/ First Congress of South American Indian Movements, Ollan-Taytambo (Cuzco, Peru), 23 February-3 March 1980, op.cit., pp. 150-151.

35/ Ibid.

Unregistered Land in the Country of Finnmark', this provision has lapsed, and it is stated by the Directorate of State Forests, which is in charge of the transfer of State-owned land in Finnmark, that there is no discrimination in practice in this sector either.

"The regulations in force concerning the use of Norwegian names on the maps of Northern Norway are to some extent discriminatory in relation to the Lapp population In brief, the rules are as follows:

"If the local population uses only a Lappish name, this is entered on the map. If such a Lappish name ends in one of several specified common designations, for example "javrre" meaning "lake", this ending shall be translated into Norwegian unless the remainder of the name contains special Lapp letters. If, however, the local population uses both a Lappish and a Norwegian name, as a general rule only the Norwegian name is entered on the map. If the Lappish name in question is of such a kind as to represent a particularly good description of the locality concerned, this too shall be entered onthe map, space permitting. The Lappish name may be translated in its entirety, when its Norwegian form provides an apt name and the translation excludes all doubt as to the original name. If the translation has a close acoustic resemblance to the original, the Lappish name may be included on the map beside the translation. 'Norwegianized' forms of names, where the whole name is adapted to suit Norwegian pronunciation, shall as far as possible be used, to the extent that such forms of the names are actually in general use.

"The Geographical Survey of Norway has taken steps to have these regulations annulled, with a view to establishing the same system here as is used for the rest of the country, i.e. that in principle the name-forms to be entered on the maps must be those used by the local population.

190. On future action, the Government has stated that it will probably not be long before the regulations are annulled as planned. In this connexion it should be noted that in 1971 the Ministry of Church and Education with reference to names of postal stations recommended that the postal authorities, in cases where the name of a postal station is different in Lappish and Norwegian, should introduce parallel name-forms. At the request of the postal authorities, the matter is now being reconsidered by the Ministry. It is not yet possible to make any definite statement regarding how far the Ministry will uphold the recommendation for parallel name-forms, but if this should happen, it would presumably also influence the Ministry's attitude in regard to the question of entering double names on maps.

"It is certain, however, that the Ministry will be aware of the inherent dangers in solutions to the problems concerned with place names in Northern Norway when these might be said to imply any discrimination against the Lappish-speaking population.

"As regards the alleged Norwegianization of Lappish place names, the Ministry of Church and Education is not in possession of the necessary material to be able to pass any judgement on the question, beyond what is stated above. However, the question will be looked into in more detail and, if necessary dealt with in due course."

F. Use of indigenous languages in public education

1. Initial remarks

191. This study will not deal with the fascinating aspects of education relating to the personal development of the student in terms of his self-fulfilment, through processes which stimulate the development of his personality and abilities, the fundamental importance of which is again stressed here. It will instead focus on the transmission of culture, knowledge and techniques, and on some aspects of the impact of formal education on a pupil belonging to an ethnic group whose culture and language are not those which predominate in the school.

192. The process of informal education, whereby individuals in a community are trained to replace other members of that community, contains mechanisms which serve to integrate the individual in his society and prepare him for life as the community knows it. It consists mainly of learning the language, Weltanschauung and life-styles of the group, as well as its values, techniques and attitudes, which are acquired without apparent effort in the course of daily life.

193. The process of formal education involves the transmission of some of the components of the group's culture, including the knowledge, techniques, arts and values which constitute the content of the education system; these become increasingly complex and specific with each successive stage of education. Initially, it prepares individuals for life; it ends up training them as highly specialized technicians and scientists.

194. The formal education which a person receives always comes in addition to his informal education, which is a life-long process. In societies which do not have institutionalized education, the informal educational process often includes aspects of formal education, although these are less plentiful and less varied than in societies where it has been institutionalized. In communities where there is little or no writing, informal education prevails and reaches its highest levels. Communities which have a marked division of labour and are highly complex industrially and commercially attach so much importance to formal education that it becomes confused with education itself.

195. In an ethnically, culturally and linguistically uncomplex society, there is a smooth progression from initial, informal education to stages in which informal education co-exists with formal education. The same is true in the dominant segments of multi-ethnic, pluricultural and plurilingual societies, as the individual is not faced with drastic changes of group, culture or language. He remains within his own community, with people who speak his language and behave in a familiar way. The transition from learning at home to instruction in school does not involve any sharp breaks, and occurs without serious psychological disturbance, especially when the child attends nursery school from a very early age.

196. This is not true in the case of members of indigenous groups which are ethically, culturally and linguistically different from the dominant sectors of the societies of which they are a part. In the passage from informal indigenous education to formal education dominated by non-indigenous patterns, there is a clear break between what is learnt in the home and what is taught in the school. Naturally, the psychological shock to the indigenous child entering school is greater and involves severe trauma when the school is staffed with teachers from the dominant group, when instruction in the school is dispensed in the official language which is not his own, or when he is removed from the family and community environment and placed in a boarding school.

197. The problems arising from non-indigenous teachers and from boarding schools far removed from the family and the indigenous community are discussed elsewhere in this study. This section deals with the question of the language in which the child is received upon arrival at school.

198. As stated earlier, language is a fundamental element of a people's culture, and the vehicle through which that culture is disseminated, developed and transmitted. As the expression of the ethos of a people, language is the best means of transmitting its cultural heritage and its particular traditions. The indigenous peoples have shown great stubbornness in conserving and developing their language as a cultural vehicle - in some cases over several centuries - initially during their colonial subjection, and subsequently with its continued subordination as a vernacular.

199. The relationship between language and culture is so intimate that the latter is expressed in the former; hence the need to accept that education must be given in the pupil's mother tongue, not only in the case of informal education but also, at least initially, in the formal schooling process, until he has thoroughly mastered the second language which is used in the school as the language of instruction. When introducing schooling into indigenous communities, each group's own vernacular must be used as the vehicle of literacy and tool of education. Subsequently, the official language must also be taught as a second language, with the deliberate aim of providing the community with a broader and, in some cases, international system of communication, whereby its members may receive the scientific, technical and other information they desire.

200. To use indigenous languages in the public educational system of a country is to recognize the multi-ethnic, pluricultural and plurilingual nature of the population of the country in question, as well as the importance of an indigenous language for an indigenous population. It is also to recognize that a considerable number of students enter school without knowing any language other than their own, or with a very poor grasp of the official language.

201. Consequently, wherever possible the mother tongue should always be used, since it is through his mother tongue that every person first learns to formulate and express his ideas about himself and the world around him. Every individual is born in a specific cultural environment of which language is both a part and at the same time the expression. Thus, the learning of that mother tongue is part of the process whereby the child assimilates his cultural environment. It therefore plays an important role in the formation of the child's first ideas, and he will have difficulties with any new ideas which are alien to his cultural environment, to the point of being unable to express them easily or faithfully in his mother tongue.

202. Anyone learning a foreign language may have difficulties in mastering it sufficiently to express his ideas in that language. When the person in question belongs to a civilization very different from the one to which he is giving expression, additional and more serious difficulties may arise when he tries to translate those ideas into his mother tongue. He must make a great effort when expressing his ideas and thoughts using the forms of the foreign language which are new to him. The ideas which have been formulated in his own language are so difficult to convey because of the pitfalls presented by another language that a person constantly called upon to make such an effort may rapidly find his ability to express himself stunted, even in his mother tongue.

203. A child placed in this position at an age when his capacity to express himself in his mother tongue is not yet fully developed runs the risk of never being able to express himself entirely satisfactorily. That is why it is important to make every effort to provide education in the mother tongue. For instructional reasons, it is advisable to prolong the use of the mother tongue in education as long as possible. In particular, it is desirable from every standpoint that primary education should be in the mother tongue, because it is the language the children understand best; the gap between home and school will be reduced as far as possible if children begin their school life in their mother tongue.

204. The change from home to school produces such a severe shock that everything possible must be done to alleviate it. At school, instead of being surrounded by his loved ones, the child is surrounded by strange children whom he does not know. Instead of being free to run, play and shout as he pleases, he is forced to remain seated quietly, to do what he is told, not what he wants, to listen and to answer the questions he is asked. All this is difficult for him. If, in addition, the language in which he receives all these new instructions is itself new, the effort required of the child increases proportionately.

205. If he has to carry out the tasks involved in his lessons in a language which is not his mother tongue, it will be more difficult for him to handle all the new ideas he receives. He will assimilate them more easily in his own language. The relationship between school and home will also be easier if the mother tongue is used. The child will be able more easily to assimilate and apply the new ideas imparted at school. The parents will have a better grasp of what is being done at the school and of the problems arising in it, and hence to lend it more effective assistance where necessary.

206. The mother tongue should not be abandoned during the early stages of schooling except when there is a vernacular language closely related to it which is in more widespread use in the region and which may therefore be used more easily in education than the child's mother tongue. This will create some small difficulty for him, which he will be able to overcome without major effort. This should only be done when it is absolutely preferable for proven and sound reasons, and not on the basis of vague ideas.

207. Thus, the use of indigenous languages is essential in public education systems in order to respect the determination of the indigenous peoples to conserve, develop and transmit to future generations their ethnic specificity with its important linguistic and cultural elements. In the circumstances of daily life, their survival as a cultural group is endangered if education is not provided in those languages, and the deliberate elimination of indigenous languages therefore bears the unmistakable imprint of cultural suppression. In short, those groups can only ensure their own cultural life by receiving instruction in their own language, or at least by learning to read and write in that language and its teaching. In order to overcome the feeling that indigenous languages are looked down on and excluded from the major activities in which the State is involved, it is essential that those languages should be used by the State and the communication centres under its responsibility.

208. This has not been fully recognized in the practice of the countries covered by this study, although in a few of them it is a goal pursued by the new educational policy of the Government. The great majority of the States only aim to use indigenous languages at the early stages of education as a means of teaching reading and writing

and as a short-cut to the use, as rapidly as possible, of the official language which thereafter is the only language of instruction. The lack of broader use may be the result of a series of factors already pointed out by UNESCO 36/ as presenting difficulties for the use of vernacular languages in education as languages of instruction. These difficulties include the alleged profusion of languages (multiplicity of languages in the country or in certain regions of the country) and the small numbers of speakers and of likely pupils. Technical difficulties relating to teaching staff and materials are also mentioned, such as the shortage of qualified teachers with suitable training and the absence of teaching materials adapted to real needs and practices. There are also technical difficulties deriving from the indigenous languages themselves, which may lack vocabulary or be insufficiently developed for educational needs. Where they exist, these difficulties may generally be overcome without major investment or difficulty, according to the UNESCO experts. 37/ They do not exist in the case of all indigenous languages, which are often perfectly developed languages which can do everything that the others can do, and are even considered by some to be superior. Where it may be necessary to revitalize and to increase the word stock of indigenous languages, this should be done without delay, provided there are sizeable population groups which speak the language. Linguistic aggression must be stopped, as it is unnecessary, harmful, misplaced and reprehensible from any standpoint which respects the cultural integrity of indigenous fellow-citizens. To give those languages the status of national or official languages with all the ensuing consequences might make a positive contribution to solving the linguistic impasse which exists in many countries.

209. To conclude these initial remarks, there follows a brief review of the basic features of possible educational systems from the standpoint of the use of indigenous languages.

210. There are, of course, two basic possibilities, according to whether or not those languages are used. One system would be to use the official language from the start in teaching reading and writing to indigenous pupils, in order to enable them to master it as rapidly as possible, without including indigenous languages at any level of education. 38/ The other system would involve the use of indigenous languages for indigenous pupils throughout, from the beginning to the end of the public education process, and of the official language throughout the process for non-indigenous pupils. 39/

211. A third system might be conceivable, which would provide for the use of the official language and the relevant indigenous languages for all indigenous and non-indigenous pupils at every level and in every type of public education. 40/

212. The first system is the simplest, as it uses only one (official) language, and is therefore claimed to be less costly. The difficulties experienced in implementing the system show that the process is much slower, a factor which largely offsets the lower cost of the system, because by creating serious didactic and personal problems for pupils who do not know the language on entering school it means that they have to

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36/ The use of vernacular languages in education, (UNESCO, Monographs on fundamental education, VIII, Paris, 1953), pp. 47-54.

37/ Ibid.

38/ See paras. 225-230 below.

39/ There is no example of this in the available information. It is mentioned as a theoretical possibility.

40/ See footnote 39 supra.

repeat grades, often several times, with the ensuing psychological trauma. As a rule, the results achieved are of little significance in the context of the surrounding circumstances, and this, through the total elimination of the indigenous languages, generates rejectionist and defensive attitudes and actions which further undermine the speed of the process and its results.

213. The second system would have the advantage of overcoming the above problems, but it has been pointed out that it would be relatively costly and technically complicated, in comparison with the first system. The expense and technical complications arise from the duplication of the teaching and auxiliary materials such as primers, reading books and exercise books which have to be prepared in the indigenous languages, or at least in one indigenous language, as well as in the official language.

214. Another problem to be overcome is the absence or shortage of indigenous teachers, and the total or relative ignorance of the indigenous languages by all or some of the members of the teaching profession when the decision is taken to introduce schooling in two or more languages, i.e. in the official language for non-indigenous pupils and in the indigenous languages for the indigenous people. Furthermore, this sytem would tend to keep the two linguistic groups apart and confine their members to their own group.

215. The third system would suffer from the same problems as have been indicated in the case of the second, and would enjoy the advantages of the second system to the full, since it would result in the entire school population of the country becoming bilingual.

216. The systems which take account of indigenous languages as languages of instruction sometimes encounter difficulties stemming from the profusion of indigenous languages and their different stages of evolution, which complicate the situation in some cases. The small number of potential students in some languages which are not spoken by many people also raises difficulties when it occurs.

217. Without disregarding these complications, and for the reasons given above, many countries have nevertheless recognized the need to provide instruction in their mother tongue to indigenous pupils who do not know the official language, at least up to a certain educational level and in general and primary education.

218. This has led to an eclectic or mixed system in which the official language is used exclusively for the non-indigenous pupils who speak it, together with the relevant indigenous languages initially, and then those languages plus the national language, or only the latter, after a given stage. This system takes account of the indigenous languages at least in the initial stages of the schooling process, and consequently it does not traumatize the indigenous child who speaks only an indigenous language, because he does not receive instruction in a foreign language at school. The variations in the system depend on the exact stage at which the indigenous language is replaced by the official language as the language of instruction, with the indigenous languages becoming optional instead of compulsory or disappearing altogether from the curriculum. This may happen, according to the system, up to the end of secondary school, of primary school or of third grade, or only after the achievement of basic literacy, which may occur in primary school, in pre-school education, or outside the school. In any event, as was pointed out earlier, it is essential that the official language should be taught only once the pupil has become fully literate in his mother tongue, and the switch should be postponed as long as possible in order to avoid the unfavourable consequences likewise described above.

219. All these variants have indiscriminately been labelled "bilingual education". Strictly speaking, the name should apply only to the systems which provide instruction in indigenous languages - used as languages of instruction and not as subjects for study - at least until the end of primary education. All the others are merely systems of "bilingual literacy", when their activity clearly falls into the above categories.

2. For the indigenous population

(a) Initial remarks

220. The situation obtaining in the different countries on which there is information in this regard goes from the total inexistence of instruction in indigenous languages at any level or type of educational institution (with occasional isolated instances of teaching of some indigenous languages), to what are called bilingual (and sometimes bilingual and bicultural) educational systems in which, in general, indigenous languages play an important although limited role. Among the countries included in the latter group, a few give the indigenous languages a somewhat larger role, although sometimes not as large as that given to other non-indigenous minority languages. In any case, none of the systems described in this part seems to be a true approximation to real bilingualism in education and in school as regards the indigenous languages concerned.

221. As discerned from whatever information is available on these matters, the so-called bilingual education and bilingual schools consist of the following. School children coming from indigenous groups and who at their arrival at school do not speak the official language (which ordinarily is the language of instruction at all levels and in all types of schools), are given their first formal education in their mother tongue or in the vernacular prevailing in the region concerned. In principle this is to be done by teachers coming from the same ethnic and linguistic group and starts with instruction as to how to read and write in their mother tongue and only exceptionally in the vernacular prevailing in the region.

222. After the first stage, these children start getting initial instruction in the official language and this parallel instruction continues for a time. During the latter part of this period, instruction in the official language is gradually increased until it reaches the level attained by the instruction in indigenous language. This stage, in which both languages are languages of instruction approximately to the same extent, may last through the lower grades usually not exceeding third grade. From then on, more and more importance is given to the official language, while the indigenous language is de-emphasized until it becomes nothing more than a compulsory subject or even an optional one, or else it may be dropped altogether. This usually takes place before the end of primary school. There are cases of course, in which the rhythm of this process or the duration of the stages mentioned above may be shortened or lengthened. The former case seems to be far more common than the latter.

223. There are, however, educational systems in which indigenous languages play a larger and more important role as languages of instruction throughout the primary. This happens in certain special schools that exist in some countries.

224. It must be stressed that the information available on these matters is very scanty and rather fragmentary; often it is also inconclusive. Two points however, emerge neatly from the data available: (1) indigenous languages after their initial use as explained above are kept - if at all - only as special subjects. In other words, there is then only teaching of these languages, not teaching in them; (2) teaching of indigenous languages reappears with some strength at terciary level, after having been almost completely absent at secondary school. University teaching of indigenous languages appears to be taking increased importance at present.

(b) At primary level

225. Some of the countries on which there is information on this question 41/ have reported that indigenous languages are not used at all in public schools as languages of instruction. Thus, the Government of Chile reports that "there is no instruction in indigenous languages at any level for indigenous or non-indigenous persons". In Costa Rica, there is no instruction in indigenous languages at any level. All public

41/ Chile, Costa Rica, Japan, Malaysia.

education for the indigenous peoples is in Spanish, which is the official language. The fact that this education is not in their own language and does not take into account their cultural traditions particularly handicaps children in primary school, as the Government itself states. The Government of Japan has stated that "the Ainu are not taught in their own dialect". It has been reported that in Paraguay there is no instruction in the indigenous languages, except in the "not really indigenous Paraguayan Guaraní".

226. In a few countries there are constitutional and other provisions allowing or providing for the use of indigenous languages in education for indigenous persons but at present no use is made of those languages for that purpose. 42/

227. In Malaysia one of the officially adopted principles of policy concerning the Orang Asli provides for measures to be taken for the preservation of aboriginal languages and dialects and their possible use in education of Orang Asli persons or groups (principle (e)).

228. The Malaysian constitution provides that no person shall be prohibited or prevented from teaching or learning any language other than the official one and that the federal and state Governments have the unhindered right to preserve and sustain the use and study of the language of any other community in the Federation. (Article 152, (1), (a) and (b)).

229. The Malaysian Government has stated that:

> "1. There are at present no arrangements made by governmental or private agencies for instruction in Orang Asli languages at primary, secondary or tertiary levels.
>
> "2. Pre-school training of Orang Asli children in the language forming the medium of instruction in the schools they will attend has not been found necessary as this is in all cases the Malaysian languages, and pre-school children come into sufficient contact with the Malaysian language for them to obtain a sufficient knowledge, and use of its."

230. In Panama, in conformity with the Constitutional mandate of 1972 concerning the conservation and dissemination of indigenous languages and the promotion of bilingual literacy programmes in indigenous communities (article 83), the first steps have been taken to set up a Department of Indigenous Comprehensive Education, which will provide for bilingual education, according to the Government's report. The Government also states that "instruction in indigenous languages for indigenous persons has not yet commenced, and Spanish is still taught as the mother tongue".

231. In the rest of the countries for which there is information on this point, the official language 43/ (a non-indigenous language in all cases, whether it be of foreign origin or the language of one of the ethnic groups of the country) 44/ has been designated as the sole language of instruction 45/ in public schools, a position which in some cases, however, it shares with indigenous languages at initial stages of schooling. This is the system that has been described as bilingual schooling or bilingual education.

42/ Malaysia, Panama.

43/ In some countries, as discussed, there is more than one official language.

44/ See paras. 41 to 46 above.

45/ As indicated above, this means language in which instruction in different subjects is given, and not merely the learning of that language through instruction.

232. In Colombia, according to article 9 of Decree No. 1142 of 19 July 1978, which regulates article 11 of Decree-Law No. 088 of 1976 on education for indigenous communities, "instruction in reading and writing will be given to the communities in their mother tongue, with provision for the gradual learning of the national language without detriment to the mother tongue". Since the text made available to the Special Rapporteur contains no saving clauses and there are no explanations on the subject, the legal situation on this matter is not clear, in view of the provisions of the Law on the Defence of the National Language in accordance with which all instruction is to be given in Spanish.

233. In the Philippines, Tagalog is the prescribed 46/ language of instruction; indigenous languages are used only as auxiliary or support languages.

234. In Indonesia teaching is carried out in the regional vernacular for the first three years. After that, Bahasa Indonesia is to be the language of instruction. Instruction in the vernacular is dispensed with when the school children already know the national and official language and are able to use it from the beginning, as is the case in certain areas of Sumatra.

235. In Burma, Burmese is the only authorized language of instruction and is generally used for teaching purposes. Local languages are also used in certain districts, however, and English is also taught, even in some primary schools.

236. In Laos, the children of certain indigenous ethnic groups are initially educated in their mother tongue by teachers with the same ethnic background and concurrently receive education in the national language which increases with their progress in elementary school. The Lao language is the principal language of instruction.

237. In Canada instruction in the indigenous languages takes place in school particularly at the early stages of school and in pre-school instruction.

238. In Guyana there is information only as regards one particular programme for one group. In 1961 school was begun for the Wai-Wai in their own language. Later on in their primary education, basic English conversation was taught to the Wai-Wai school children, gradually introducing more and more English. Working from Wai-Wai to English was found to lead to a better end-product as well as making it possible for older Wai-Wai to learn English.

239. It is Australian Government policy that Aboriginal children living in predominantly Aboriginal communities should receive their early education in their own language. A bilingual education programme is being developed in the Northern Territory. To encourage similar programmes in the States, the Aboriginal Government provides funds in support of Aboriginal linguistic work and bilingual education programmes throughout Australia.

240. On 14 December 1972, the Prime Minister announced that the new Government would launch a campaign to have Aboriginal children living in Aboriginal communities given their primary education in Aboriginal languages. The Commonwealth Departments of Aboriginal Affairs and Education are currently planning the immediate implementation of this policy in the Northern Territory. When the policy is fully implemented it will affect Aboriginal children in the Northern Territory, and in areas of north Queensland and Western Australia. Some years ago the South Australian Education Department instituted similar programmes in all Aboriginal schools in the sparsely settled north of the State where one main Aboriginal language is in use.

46/ English seems to be also used at some levels. See chapter on Education in document E/CN.4/Sub.2/L.622, para. 360.

241. For some time the Commonwealth Government has assisted a variety of activities connected with teaching in Aboriginal languages: funds have been provided for studying and recording languages, for preparing educational and literacy materials in them, as subsidies towards the salaries of linguists developing in particular adult literacy programmes in Aboriginal languages, and for a pilot project in bilingual education.

242. Among other factors inhibiting work in this field, or more rapid advance in it, the Government has also mentioned the diversity of languages existing in certain areas. In this connexion, in the draft transmitted to the Government in quest of comments and supplementary data, it was stated that during his official visit to Australia (June 1973) the Special Rapporteur was repeatedly told that Aborigines would welcome instruction in their own languages. It was reported to him that the diversity of languages in certain regions (Palm Island, for example) was due, in large measure, to past actions of non-Aboriginal authorities.

243. The Government has commented in this regard, that it is correct that the diversity of languages in some areas reflects, either directly or indirectly, past administrative actions. The Queensland authorities in the period between about 1920 and 1940 removed to Palm Island Aboriginals from communities all over Queensland. In other areas Aboriginals from diverse language groups have voluntarily congregated at a central point such as Maningrida - attracted by the goods and services provided there by the authorities.

244. In Bolivia, the Education Code of 1955 provides that Aymara and Quechua shall be used in the early stages of teaching reading and writing in Spanish in communities where they are the main languages spoken. It has been said that teachers who speak these indigenous languages are not always available and that in practice the people who learn to read and write in Spanish are those who already speak it.

245. During the official visit to Bolivia in June 1974, as in the case of all the other countries visited in connexion with this study, as already indicated, all the indigenous groups and individuals consulted complained that the indigenous languages were not sufficiently recognized or used by the State and by private or public bodies in any of the relevant areas of activity, owing to lack of interest or to a deliberate policy of neglect.

246. According to statements by residents of a community in the Bolivian altiplano who were interviewed during the visit, Aymara was not used as a language of instruction in the schools because it was forbidden by ministerial instruction. However, the members of this community who were present at the interview expressed a strong desire for the language to be used in schools and for those communities to be assigned Aymaran teachers as far as was possible, preferably teachers from the same community. In that connexion, special mention should be made of the efforts of members of another Aymara community of the Bolivian altiplano, who have adopted a phonetic alphabet drawn up by an Aymara language expert and have used this alphabet to prepare reading primers in Aymara and also a number of leaflets for the general information of the community and for vocational training of the Aymara-speakers.

247. In Brazil, article 49 of Act 6001 provides that "the Indians shall be taught to read and write in the language of the group to which they belong and in Portuguese, safeguarding the use of the former tongue". No information of the use of indigenous languages beyond teaching to read and write has been available.

248. According to information provided by the Government of the United States work in Indian languages has been introduced in many Federal schools for Indians and in some public schools. Most schools that Indian tribes have contracted to operate include considerable work of a cultural nature, and emphasize Indian tribal languages. There is Indian preference regulations in the hiring of teachers for Bureau of Indian Affairs schools. However, not enough Indian people are qualified for teaching positions to fill the openings. Qualifications for teachers are similar to those for non-Indian schools. As a result, non-Indians often teach Indians but in the primary grades there is often an Indian teacher's aide who is a member of the tribe - or one of the tribes - served by the school and speaks the language of the tribe if a tribal language is still in common use.

249. Mexico has a national system of primary education with bilingual leaders and teachers. There is also a Federal Government national plan for the promotion of Spanish established in September 1973 with the initial aim of teaching Spanish to 200,000 monolingual children of pre-school and school age - about 25 per cent of the non-Spanish-speaking population of five years or older. This plan also provides for the promotion and improvement of Spanish among the adult indigenous population and the improvement of knowledge of Spanish by indigenous and non-indigenous children in intercultural areas whose command of the language is poor.

250. In Guatemala the National Education Act (Decree No. 73-76 of the Congress of the Republic, of 1 December 1976, promulgated on 4 January 1977) takes account of indigenous languages as languages of instruction and dissemination of culture, and provides for their inclusion in educational programmes in the following terms:

> "Article 9. Education and dissemination of culture shall be in the official language and in the indigenous languages. The Minister of Education shall regulate their inclusion in educational programmes with a view to promoting their study, dissemination and use.
>
> ...
>
> Article 11. The achievement of literacy, directed towards basic education for the people, is declared to be a pressing national need. Contributing to the achievement of literacy is a social obligation. The State shall organize and promote it with all its resources.
>
> ...
>
> Article 59. The Ministry of Education shall give priority to literacy programmes, teaching Spanish and education for development within its school and out-of-school education plans.
>
> Article 60. Attending to the cultural needs of indigenous people and incorporating them into the educational process without discrimination shall be considered to be a matter of national interest."

251. The materials made available in connexion with this report include reading books and primers and other materials in various indigenous languages. These educational materials contain texts in indigenous languages only or in Spanish as well but in much smaller print than that used for indigenous languages. There is no precise information available on the level to which this indigenous-language or bilingual teaching is given. Mention should also be made of efforts to train indigenous teachers, which are discussed in another part of the report.

252. In Peru, Decree-Law No. 19,326 - the General Education Act - provides that all educational activity must take into account the existence of the various indigenous languages in the country as means of communication and cultural expression and preserve, develop and encourage learning of those languages. The General Education Act contains the following provisions:

> "Article 12. In all educational activities, account shall be taken of the existence in the country of various languages which are means of communication and cultural expression and efforts will be made to ensure their preservation and development. In teaching the population as a whole to speak Spanish, the cultural identity of the various groups which make up national society shall be respected and their languages used as a means of instruction.
>
> ...
>
> Article 98. The learning of vernacular languages shall be encouraged. Education centres shall provide facilities for studying those languages and their influence on the national language and culture."

253. Decree-Law No. 21,156 of 27 May 1975, which recognized Quechua as an official language of Peru on an equal footing with Spanish (article 1), also contained the following provisions: 47/

> "Article 2. As from the start of the 1976 school year, the teaching of Quechua shall be compulsory at all levels of education in the Republic. The Ministries of War, the Navy, the Air Force, the Interior and Education, shall be responsible for implementing the present provision, and all the provisions of Decree-Law No.19,326 shall remain in force.
>
> ...
>
> Article 4. The Ministry of Education and other sectors shall be responsible for ensuring the preparation and publication of dictionaries, texts, manuals and other documents necessary for the full implementation of this Decree-Law.
>
> They shall also provide all support required by the institutions concerned with research into, and teaching and promotion of, the language in question."

254. There is no accurate information on the present situation regarding Quechua under Decree-Law No. 21,156, or, in general, on the level to which this instruction in indigenous languages is given.

255. In Finland the use of minority languages as languages of instruction depends on the number of pupils attending the classes in each commune. As primary education is a communal responsibility, it follows that the language used in primary schools is that of the commune. According to the present rule, a minority school must in principle be set up if the number of children speaking a minority language reaches 18, whether the commune is bilingual or monolingual. This should then fully apply to some students.

47/ See para. 58 above, concerning the uncertainty regarding the practical implementation of Decree-Law No. 21,156 at the present time.

256. Information furnished by the Finnish Government, however, indicated that in primary schools oral instruction is given in Lappish, if possible, to all whose mother tongue it is, but that in all types and levels of education, instruction is given in Finnish or Swedish which are the national and official languages of the country. (Underscoring added).

257. Thus, while the Swedish minority receives primary education in its mother tongue according to the law on compulsory education, the Lapps do not fully benefit from such a privilege. The Primary Education Act of 1958, which contains provisions dealing specifically with the situation of the Lappish minority, only provides that the education of Lapps should be arranged in their mother tongue in primary schools according to the needs and possibilities, such as sufficient teachers familiar with the Lapp language and the availability of textbooks. However, as the problem of the most suitable orthography for Lappish has not yet been solved, Finnish remains the main language of instruction in a few schools set up in areas inhabited by Lapps: in those regions, Lapp is used in oral instruction as an aid.

258. The Swedish Government has stated that instruction in the Lappish language is provided in the nomad schools, which are separate schools operated by the State. However, Lappish children who go to ordinary Swedish schools can also receive instruction in Lappish, since the school curriculum allows for instruction in minority languages.

259. The situation has been further described as follows: Same children who receive their basic education in the ordinary public schools, have a right to have two hours a week devoted to instruction in the Same language, as is the rule for students belonging to minority groups.

260. In exceptional circumstances they may be offered possibilities through special arrangements to study in their own mother tongue as special homework or as remedial instruction.

261. In the case of the Finnish minority it has however been reported that in the large cities there are now classes where virtually only Finnish is used. On the other hand, when schools for the Lapps have been established in various places in areas inhabited by Lapps, they have, however, been organized according to the principles of the ordinary public schools, with Swedish as the main language of instruction. Only in a few nomad schools is Lappish used as the language of instruction in the lower grades of primary schools.

262. Since 1967 Lappish has been taught at the primary level in the elementary schools in Norway.

263. Lapp parents are free to choose for their children initial instruction in Lapp or Norwegian. The children who have their first instruction in Lapp are taught Norwegian as a second language, which at a further stage can then be used as a medium of instruction. Thus the pupils first learn to read and write Lappish before going on to Norwegian. The syllabus in the elementary schools in districts with substantial Lapp elements in the population has its starting-point in the Lapp's own language and traditions.

264. The Constitution of India provides:

> "350A. Facilities for instruction in mother-tongue at primary stage. It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities".

265. The Education Commission report of 1966 endorsed the three-language formula, but did not clarify the future position of English as an official language. The result was continued controversy over the language issue, as indicated in April 1967 when, at the conference of the States' Ministers of Education, the Ministers from the non-Hindi States opposed the three-language arrangement in favour of a two-language formula. The latter scheme called for the study of the mother tongue and English and for a speedy change-over from English to the regional languages as media of instruction at all levels of schools and, for all practical purposes, excluding Hindi from the curriculum in the non-Hindi States.

266. The conference decided that regional languages should be the media of instruction in all institutions of higher learning, but was unable to agree on the media of instruction for the lower level institutions or on the three-language plan. The conference was, however, nearly unanimous in accepting the positive significance of language as a national unifying force and the need to spare children the trouble of learning many languages.

267. It has been reported that the Greenlandic language has always been used as the school language in Greenland. The dual-language education now arranged at the larger schools aims at giving the pupils, who are found suitable therefore, such knowledge of both Danish and the Greenlandic language, that they may naturally express themselves in either language. It is expressly stated in the syllabus that the teaching of Danish must not supersede the subjects taught in the Greenlandic language.

> "The background for the development which has taken place is the ever-increasing connection between Greenland and other parts of the Kingdom including the technical development of trades in Greenland, which makes it necessary for the Greenlanders to be able to receive education and general information in a language possessing a larger measure of technical and vocational literature. In the training in Danish modern pedagogical systems are used, the children being taught a 'basic language' comprising a vocabulary of about 3,000 words enabling them to express themselves and to read ordinary Danish."

> "In the dual-language schools physical training, physics, sloyd, needlework and domestic science are compulsory subjects. In these schools the 1st and 2nd classes receive Danish language instruction in the subjects Danish, if possible, arithmetic, and partially in audiovisual lessons, and from the 3rd class and upwards the number of subjects taught in the Danish language is gradually increased ...

"Considering the school service as a whole, instruction in the subjects enumerated in the foregoing must be said to have been somewhat heterogeneous. In the elementary subjects: Greenlandic language, verbal and written, writing, arithmetic, and religion, all children have, however, received instruction. In the subjects Danish language and singing, 91.1 per cent and 88.5 per cent, respectively, of all schoolchildren received instruction. As far as many children are concerned, the teaching of Danish has, however, been confined to an elementary introduction to the language." 48/

268. In New Zealand, instruction at all levels in the educational system is carried out in English. Nevertheless, in several schools Maori is taught as a compulsory or as an optional subject. According to government information in 1969 it was decided as a matter of Government policy that the Maori language should be available to all school pupils who desire to study it. At present Maori is being taught in primary schools and intermediate schools which contribute pupils to secondary schools where there is already a Maori language course established. The number of primary schools teaching Maori is increasing rapidly.

(c) At secondary level

269. In none of the countries surveyed is secondary education provided in indigenous languages. In most of these countries indigenous languages are not available at secondary school level, neither as compulsory nor even as optional subjects. In a few countries optional courses of indigenous languages are available at secondary educational level. In one country, optional as well as compulsory courses exist.

270. In Norway, Lappish is one of the subjects on the syllabus of the Lapp Folk High School. Virtually all the pupils at this school have Lappish as their mother tongue and the pupils learn to read and write this language.

271. The upper stage secondary schools (gymnas) in Norway teach two written forms of the Norwegian language. At the Lapp "gymnas" in Karasjok, one of these alternatives may be Lappish.

272. In addition, Lappish is taught at the Teachers' Colleges in Tromso and Alta. The majority of pupils who enrol on these courses are Lappish-speaking, but occasionally non-Lappish-speaking pupils complete such courses. A number of Lapps have thus learned to use their mother tongue in writing as a result of these courses. Some teachers (mostly Lapps) have availed themselves of their right to a period of leave from teaching duties for the purpose of studying for the primary arts degree in Lappish.

48/ Report on Greenland, 1953; (published by the Prime Minister's Second Department, The Greenland Department, Copenhagen) pp. 68, 69.

273. In Finland an optional course in Lappish can be arranged at the upper level of the fundamental school where there are pupils having Lappish as mother tongue.

274. In New Zealand the Maori language is taught as a compulsory subject in some Church secondary schools, and as an optional subject in some of the State secondary schools. As far as the latter are concerned, and according to government information, there are 229 State secondary schools in New Zealand and 112 Church and private schools. Fifty-eight of the State secondary schools have either no Maori children or less than 20, the majority of these schools being in the South Island where there are large areas with no Maori population, or very few Maoris. The same applies to the Church and private schools, 95 of which have either no Maori pupils or less than 20. This means that out of a total of 341 secondary schools, there are a total of 188 with rolls of 20 Maori children or more. At the latest count, 87 secondary schools now provide for the teaching of Maori and at least another 30 have arranged for pupils wishing to study Maori to receive lessons through the Government Correspondence School. When it is borne in mind that the decision to make Maori available to all pupils who wished to study it was only made in 1969 then progress can be considered fairly rapid, and there is no reason to doubt that it will continue to be so until the objective is fully achieved. One factor which has been retarding progress has been the lack of trained teachers of Maori. There are at present 43 teacher trainees studying at teachers' colleges who are native speakers of Maori and will at the conclusion of their training considerably add to the numbers in the schools. In 1970, 2,318 pupils were studying Maori at secondary school and in 1974 the number was over 8,000. In addition, the Government-Correspondence School provides Maori language lessons in 30 additional schools. The stage will be reached very shortly when Maori language will be available in almost all secondary schools with Maori pupils.

(d) At tertiary level

275. In principle, all universities use the official language or languages as language or languages of instruction. As none of the indigenous languages existing in the different countries enjoys such a status at present, there are now no universities giving instruction in indigenous languages in any of the countries surveyed.

276. There are, however, in many countries, universities and other tertiary level educational institutions in which teaching of the indigenous languages exists, and where such courses are definitely on a marked increase, as compared with the situation prevailing only a few years ago.

277. The Government of Mexico states that at the National College of Anthropology and in some universities, optional courses are given in the principal indigenous languages. The situation in this respect is roughly the same in Guatemala. In Paraguay, the Language Institute of Paraguay, established in 1961, organizes 'beginners', specialization, grammar and teachers' courses. Guaraní courses are given at the Faculty of Philosophy of the National Autonomous University. The Higher School of Languages, which is part of the University, issues B.A. degrees in the Guaraní language.

278. At tertiary level in Sweden instruction in Lappish is given at the Lapp County College; Lappish can be studied at the University of Uppsala and the University of Umea. At the latter University, a chair in Lappish has been founded.

279. In Finland Lappish can also be studied at the Universities of Helsinki, Turku and Oulu as well as in the Summer University of Lapland. In the University of Oulu the Lappish language and culture constitute a separate subject in the education programme. Furthermore, the Lappish language and culture are taught at the Christian Citizens' Institute of Lapps in Inari and in the Citizens' Institutes of Inari-Utsjoki and Enontekiö-Muonio. The instruction given in Lappish is aiming at both the learning of language and the development of it. The emphasis varies depending on the institute and the needs.

280. In Norway Lappish is one of the subjects on the syllabus of the Lapp Folk High School. Virtually all the pupils at this school have Lappish as their mother tongue and the pupils learn to read and write this language. The upper stage secondary schools (gymnas) in Norway teach two written forms of the Norwegian language. At the Lapp "gymnas" in Karasjok, one of these alternatives may be Lappish.

281. In addition, Lappish is taught at the Teachers' Colleges in Tromsø and Alta. The majority of pupils who enrol on these courses are Lappish-speaking, but occasionally non-Lappish-speaking pupils complete such courses. A number of Lapps have thus learned to use their mother tongue in writing as a result of these courses. Some teachers (mostly Lapps) have availed themselves of their right to a period of leave from teaching duties for the purpose of studying for the primary arts degree in Lappish (see attached survey).

282. In Australia instruction in Aboriginal languages beyond secondary school including general courses on Aboriginal languages are available in a number of tertiary educational institutions, and as a part of some teacher training courses. Intensive courses aimed at fluency in a particular Aboriginal language have recently become more popular and more widely available, for example, the Department of Adult Education of the University of Adelaide offers regular intensive courses at both introductory and advanced levels in Pitjantjatjara, a central Australian language; and the Institute for Aboriginal Development in Alice Springs, a private organization supported by Commonwealth funds, offers courses in two Aboriginal languages.

283. In the United States there are three tribally-operated community colleges; each include Indian studies material and language classes. In addition, courses are offered in a number of universities and colleges.

284. In New Zealand, according to government information, courses in Maori are now available at university level in five of the six universities and plans exist for its introduction at the sixth. It should be added that this is reported to have happened only in the last 20 years, although Maori has been accepted as a Bachelor of Arts subject (without formal teaching of it), since 1926.

(c) In adult education arrangements

285. There is some information relating to university extension courses and other adult education arrangements which include courses of indigenous languages which are available to everyone, of course also including indigenous people.

286. In New Zealand, apart from schools, considerable numbers of people are studying Maori, not only in the universities themselves, but also through university extension courses and other adult education courses. In addition, the Government Correspondence School provides Maori language lessons in several schools.

287. The information received indicates that in Guatemala and Mexico and other Latin American countries there are similar university extension course schemes and that the activities of the Summer Institute of Languages in all those countries include programmes for the adult population.

288. In Norway some institutions of adult education also include Lappish among the courses offered. This likewise applies to some units of the Forces' civilian training scheme in Finnmark. Adult education and civilian training schemes have included both Lapps and non-Lapps among their pupils. It is assumed that these institutions will continue to offer courses in Lappish.

289. In two countries instruction in indigenous languages is provided to certain public employees and, although these courses seem to have been instituted mainly with non-indigenous persons in mind, there is no reason why they should not be given to indigenous persons who meet the relevant requirements.

290. In Malaysia if any Government Servant can show that he requires a knowledge of an Orang Asli Language in order to carry out his duties then the Government will be prepared to pay a bonus of $1,000.00 to such an officer should he succeed in passing a Government prescribed examination in such language. In addition all Group III, II and I personnel of this Orang Asli Affairs Department are required to pass an examination in one or more Orang Asli languages in order to be confirmed in their appointments.

291. In Paraguay the Guaraní language (Paraguayan Guaraní) has been included in all the Military College courses for over 20 years; it has been taught in the Cadet School since about 1960 and in the Police College since 1966.

3. For non-indigenous persons

(a) Initial remarks

292. In this part we consider the information available on the teaching of the indigenous language concerned to non-indigenous persons. The latter learn it as a second language and as a subject, except in the case of literacy training or bilingual teaching in an indigenous school attended by non-indigenous pupils for any reason (geographical distribution of schools, bilingual community or other circumstances).

293. The free choice to learn an indigenous language where its teaching is optional shows a personal interest in the language and also indicates that the public authorities, who make it available to people who are interested, recognize the existence of such languages and their importance to society as a whole. This latter aspect is brought out even more clearly when the teaching of these languages is included in the curriculum on a compulsory basis.

(b) At primary level

294. Specific information on this question is available only for two countries.

295. According to information transmitted by the Government of New Zealand considerable interest is also being shown by non-Maori pupils at the primary level. In all cases Maori is an optional course, but as a matter of policy all primary school children are to be taught the proper pronunciation of Maori and elementary conversation.

296. In Norway the relevant provisions providing for instruction in Same language in Same districts have been changed so as to make this instruction available - upon request - to non-Same children at school. The Government has stated that:

> "In Ot. prp. No. 64 (1973-74) it is proposed that "children in a Lapp district" (as against the previous wording: "Children of parents who habitually speak Lappish") shall be taught Lappish if required by the parents. This means that non-Lapp parents in Lapp districts shall henceforth be entitled to request that their children be taught Lappish at school."

297. The Government has added that as a result of this "non-Lapps have also availed themselves of the existing facilities for learning Lappish".

(c) At secondary level

298. There is specific information regarding only one country.

299. The Government of New Zealand states that about one-third of the secondary school pupils taking Maori are non-Maori children. This is regarded as a very healthy sign of a general appreciation of the importance of the Maori language.

300. In Norway, from the broad terms used in drafting the relevant provisions quoted under "At primary level" it may be assumed that the Same-language instruction that is available in Same districts is available to non-Same students in those districts at secondary school level (see para. 307 above).

(d) At tertiary level

301. As regards New Zealand, it has already been stated that Maori has been accepted as a Bachelor of Arts subject since 1926 and that since the 1950s several universities teach the Maori language. Courses in Maori are now given in five of the six universities in the country and its introduction to the sixth has been foreseen for the near future. The Government has pointed out that "a high proportion of the students taking Maori at university are non-Maori."

302. It has also been indicated that in Mexico and Guatemala some universities provide special courses in the relevant principal indigenous languages. 49/

303. In the United States of America, courses are offered in a number of universities and colleges. They are available to both indigenous and non-indigenous persons who are interested in this effort.

304. According to information provided by the Government of Panama, university language curricula have included special courses in the indigenous languages (Cuna and Guaymi), as second languages, since 1973.

49/ See para. 277 above.

305. As has already been mentioned, the Norwegian government has stated that non-Lapps have also availed themselves of the existing facilities for learning Lappish and that occasional non-Lappish-speaking pupils complete such courses. 50/

306. In Paraguay, the Paraguay Guaraní Language Institute, already mentioned, 51/ organizes foreigners and beginners' courses and specialization, grammar and teachers' courses, and the Higher Institute of Languages, which is part of the National University, issues B.A. degrees in the Guarani language.

307. The Swedish government has stated that at university level, the language can of course be studied by anybody irrespective of ethnical origin. Instruction in the Lappish language is given to the non-Lappish persons at the College at Jokkmokk.

308. In Finland Lappish can also be studied at the Universities of Helsinki, Turku and Oulu as well as in the Summer University of Lapland. In the University of Oulu the Lappish language and culture constitute a separate subject in the education programme. Furthermore, the Lappish language and culture are taught at the Christian Citizens' Institute of Lapps in Inari and in the Citizens' Institutes of Inari-Utsjoki and Enontekiö-Muonio. The instruction given in Lappish is aiming at both the learning of language and the development of it. The emphasis varies depending on the institute and the needs.

309. In Australia general courses on Aboriginal languages are available in a number of tertiary educational institutions, and as a part of some teacher training courses. Intensive courses aimed at fluency in a particular Aboriginal language have recently become more popular and more widely available, for example the Department of Adult Education of the University of Adelaide offers regular intensive courses at both introductory and advanced levels in Pitjantjatjara, a central Australian language; and the Institute for Aboriginal Development in Alice Springs, a private organization supported by Commonwealth funds, offers courses in two Aboriginal languages.

310. In Malaysia if any Government Servant can show that he requires a knowledge of an Orang Asli Language in order to carry out his duties then the Government will be prepared to pay a bonus of $1,000.00 to such an officer should he succeed in passing a Government prescribed examination in such language. In addition all Group III, II and I personnel of this Orang Asli Affairs Department are required to pass an examination in one or more Orang Asli Languages, in order to be confirmed in their appointments.

(e) In adult education arrangements

311. Paragraphs 285 to 291 above also apply here, since the activities concerned are open to indigenous and non-indigenous persons who wish to engage in them.

312. Once again, it should be stressed that the interest shown in learning these indigenous languages will be an indication of the presence of those languages and their importance for society as a whole, as well as an indication of personal interest by the individuals who devote time and effort to this purpose.

50/ See para. 292 above.

51/ See para. 288 above.

G. Study of indigenous languages

1. Initial remarks

313. A large number of the indigenous languages in common use today in the various countries covered by this study are unwritten languages which have survived through oral tradition from generation to generation despite centuries of concerted linguistic aggression through formal education and lack of recognition.

314. Many of them have lost some of their vitality. But others are vibrant, living languages, an integral part of the culture of the indigenous peoples, a means of cultural training and an important symbol of their determination to defend, preserve, develop and transmit to future generations this cultural heritage which is the essence of the values of the indigenous ethnic identity.

315. However, to be used for the purposes indicated in the previous sections of this chapter and to aspire to recognition as official languages of the States concerned, indigenous languages must be capable of expression in writing. To this end, they must be studied thoroughly in all their important grammatical and philological aspects and the necessary text books prepared.

316. Alphabets must be devised, where they do not exist, and then tested, improved and screened before being made official; vocabularies, glossaries and dictionaries of those languages must be prepared, and also bilingual dictionaries where none exist. Certain vitally important texts must be translated into those languages and others made available to the persons concerned in the official language of the country and the other relevant languages. It will also be necessary to prepare materials essential for the purposes indicated and for such other purposes for which these languages are used.

317. In this connexion, in addition to the school materials already mentioned, attention must be given to the preparation of educational materials and teaching aids such as primers, readers, textbooks, etc., which will have to be studied very carefully because of their extreme importance in teaching indigenous languages and reading and writing in them. The materials required for teaching the official language to persons newly literate in their own language also require careful study and special programmes, because a special approach is needed which is not used in the case of students who learned to read and write in that language and already know it well.

318. Bilingual teachers must be trained and materials must be prepared to enable existing teachers in the country or the region concerned to acquire the necessary knowledge of indigenous languages.

2. Research and study

319. In Australia for many years Aboriginal languages have been studied and recorded by a variety of public and private institutions and by individuals. Since the inception of the Australian Institute of Aboriginal Studies in 1961, the Institute has carried out a vigorous and wide-ranging programme of research on Aboriginal languages.

320. In 1965 a Linguistic Programme was initiated to create an active policy and interest in the universities in Aboriginal linguistics. A number of scholarships and fellowships were provided in the universities for linguists to study Aboriginal languages. The Institute has sponsored and assisted over 100 studies in Aboriginal linguistics. Most of these have been in depth studies of a single language.

321. In Colombia activity in linguistic research has centred on the attempt to study and record the country's indigenous languages. The Summer Institute of Linguistics initiated this project in 1963, with the co-operation of the Government's Division of Indian Affairs.

322. In Malaysia an increasing number of studies of Orang Asli groups including linguistic matters are being made by Malaysian Universities in the form of student theses for degree awards and also by students and graduate students of overseas universities. A condition of such studies or theses is that a copy must be supplied to this Department.

323. As already mentioned, in New Zealand the Education Department is active in providing material for the study of the Maori language and the five universities which cater for the Maori language are carrying out linguistic research and fostering the study of the language on the widest scale.

324. In Sweden the language question has also been a subject of great interest. The main concern has been to determine how the Lappish Language can best be preserved and renewed. The dialect that has received the most attention scientifically is Finnmark Lappish.

325. As concerns "tribal languages" in India, the only information available to the Special Rapporteur is in connexion with the Central Institute of Indian Languages and restricted to reporting that "The study of tribal languages with a view to devising suitable material for teaching Indian languages to them and teaching their languages to others is a special responsibility of the Institute".

326. In Finland three of the country's institutions of higher education, as well as the Summer University of Lapland offer possibilities for studies in the Lapp language. Some of the difficulties encountered in teaching the Lappish language have been outlined above, and include the following: (1) the Lappish language is very little cultivated in written forms; (2) there are several dialects and vernaculars spoken in different regions; (3) the spelling used by the Lapps in Finland and in neighbouring countries differ from one another; (4) there is a lack of teachers with a fluent command of the Lappish language.

327. It has been stated that in Paraguay there is no study of the indigenous languages beyond individual and isolated efforts of one or two scientists.

328. During his visit to Paraguay in June 1974, the Special Rapporteur spoke to the Vice-President of the Academy of Guaraní Language and Culture which had been established in Asunción a short while previously and was informed that the Academy was planning to carry out thorough, systematic and technical studies on this language.

329. The Government of Canada has stated that in many areas of the country the Government assists local Indian groups to develop the use of their languages. With the aid of grants and technical assistance, programmes have been instituted to create reading and teaching materials in one language and to revive several other languages. Several southern universities have Centres of Indian studies, and many universities include a study of Indian and Eskimo linguistics in specialized departments.

330. The Inuit Tapirisat of Canada has stated that Canadians have managed it thus far, with two official languages and an official policy of multi-culturalism which claims to offer equal opportunity to all, regardless of ethnic background. The Inuit of Northern Canada want to be partners in Confederation, too. They have their own problem in communicating. The language is basically the same wherever Inuit live, but dialects are different. And the written language is also different - syllables in Northern Quebec, the Baffin Region and Keewatin; Roman orthography in Labrador, parts of the Central Arctic and the Western Arctic. That's why the Inuit Language Commission was launched late in 1973.

331. Priority tasks include the development of a standard system of writing in Inuktitut, and some input into the school curriculum in the North. To that end, some fundamental questions are being put to Inuit residents of Arctic Canada: 1. Should we think of adopting an international writing system with an orthography that is understandable in Canada, Greenland and Alaska? 2. Should Inuktitut be a real working language? 3. Can we create a university - an Inuit centre for advanced learning? 4. Should Inuit Tapirisat teach its philosophy to Inuit students? 5. Should Inuit assume all responsibility for education of Inuit? Like the Inuit Cultural Institute, the Language Commission is concerned with salvaging what remains of a unique culture and a way of life. Language is an integral part of culture. Written communication is increasingly important as a means of exchanging views and ideas. In the long-run, a standard orthography would help Inuit to unite in their efforts to become equal partners in a multi-cultural Canada.

332. In Panama linguistic studies over the past four years have resulted in the creation of official alphabets for the indigenous languages of the country. Research was conducted in the first place by the Summer Institute of Languages, which concluded a 10-year contract with the National Government; by missionary groups, such as the Mennonite brethren and the "A Nuevas Tribus" group, and by individuals working independently among the various indigenous communities of the country. In the second place, the Historical Heritage Department of the National Institute of Culture and Sports is conducting research on the Cuna language through its Linguistics Section and is also responsible for co-ordinating the work of the bodies mentioned above and publishing the linguistic studies carried out in this field.

333. According to information provided by the Finnish Government, in 1971 the Nordic Lapp Council established a language working group to prepare a Lappish dictionary. It also studies the possibility of developing a common language and orthography for all Lapp populations in the Nordic country. The Lapp Institute which was established in Norway at the initiative of the Nordic Council is working on the systematic development of the Lappish language. Also in Finland, some efforts have been made recently to unify the spelling and to develop a common Lappish language.

334. As per information transmitted by the New Zealand Government the Maori language is, like many others, deficient in scientific and technological terms. This gap has been filled by transliterate terms used in English if there is no other way of expressing a particular concept in Maori. There is a considerable battery of such transliterated words that are widely known to and used by the Maori people.

335. In Mexico, the National Institute of Anthropology and the Centre for Advanced Research have a linguistics department which carries out studies on indigenous languages.

336. The situation is similar in Guatemala, where there is also the Maya Quiché Language Academy, which operates in Quezaltenango, the second largest city of the country. The Academy, whose teaching staff consists largely of indigenous persons, is concerned with the historical and technical study of the Maya-Quiché languages, in particular the Quiché language. It has put forward several formal proposals on matters including an alphabet for the language and on certain aspects of spelling and syntax. (See also, para. 342 below).

337. In New Zealand the Education Department is active in providing material for the study of the Maori language and the five universities which cater for the Maori language are carrying out linguistic research and fostering the study of the language on the widest scale.

338. Some activities seem to involve salvage operations through which some indigenous languages can be recovered and revived. Thus, according to the Australian Government, some of the study programmes sponsored and assisted by the Institute of Aboriginal Studies involve "salvage" work on disappearing languages spoken by a few persons only. The Institute has published a number of monographs on Aboriginal language studies.

339. In Canada several languages, including Mohawk, Algonquin, Cree, Ojibwa, Sioux, Gitksan, Kluane and Nootka are being revived with the aid of grants and technical assistance.

3. Rendering oral indigenous languages into written form. Preparation of alphabets, glossaries of terms and dictionaries. Grammatical and philological studies

340. In Peru, Decree-Law No. 12,156, which declared Quechua to be an official language of the country on an equal footing with Spanish, provided for "research into, and teaching and promotion of" Quechua and for the preparation of dictionaries, texts, manuals and other documents necessary for full compliance with that Decree-Law (article 4). Information on the practical implementation of these legal provisions, which imposed special obligations on the State in this regard, was not available to the Special Rapporteur.

341. In Panama, official alphabets for the country's indigenous languages, have been devised on the basis of the linguistic studies conducted (see paragraph 332 above).

342. In Guatemala, alphabets have been prepared for the great majority of the country's 23 indigenous languages. These alphabets have been made official and have been applied in preparing educational materials and teaching aids for use in teaching reading and writing in indigenous languages. Grammars and dictionaries exist in various languages and in some cases bilingual dictionaries with Spanish. In recent decades a number of specialist studies have been made of various indigenous languages. The principal bodies active in this field, apart from the Maya Quiché Language Academy mentioned above, are the National Indigenous Institute - a State agency - and two private bodies, namely the Summer Institute of Languages and the Francisco Marroquín Language Project, which are both concerned with the study of vernacular languages, particularly from the standpoint of applied linguistics. In addition to the preparation of official alphabets for those languages, this work involves publication of grammars, popular reading primers, translation of literary and technical texts and other necessary tasks.

343. In India under the scheme for the development of modern Indian languages, assistance is provided to voluntary organizations for bringing out publications like encyclopaedias, bilingual dictionaries, books of knowledge, catalogues of manuscripts and books of cultural, literary, Indological and scientific interest. Grants are given for holding literary conferences, seminars and exhibitions for the development of Indian languages. Assistance is also given by way of purchasing copies of printed publications. Production of books in Urdu and Sindhi has been undertaken at the Central level. State Governments are given special help for the production of university-level books in regional languages.

> "The Central Institute of Indian Languages, Mysore, serves as a nucleus to bring together all the research and literary output from the various linguistic streams to a common head, thereby demonstrating the fundamental unity of the country. It achieves this by identifying the bonds of unity among different Indian languages in terms of history, vocabulary, cross-fertilization, grammar, linguistic structure, literary and cultural themes and subject content. The Institute also evolves techniques for the teaching of languages and preparing basic vocabularies. The study of tribal languages with a view to devising suitable material for teaching Indian languages to them and teaching their languages to others is a special responsibility of this Institute.
>
> "For facilitating multi-lingualism and for implementing the three-language formula, four regional centres of the Institute at Bhubaneswar, Mysore, Patiala and Poona impart training to teachers in second language teaching."

344. In Australia the Summer Institute of Linguistics (Australian Aborigines Branch) trains linguists and supports and co-ordinates their work in the field, in co-operation with the Commonwealth and State Aboriginal Affairs authorities and the Australian Institute of Aboriginal Studies. The work of this Institute involves recording and analysing the language and workers generally undertake the production of educational and other materials in the Aboriginal language, and the translation of Aboriginal songs and myths into English. The Commonwealth Government provided funds in support of work undertaken by the Summer Institute of Linguistics.

345. In Mexico there are numerous grammatical and philological studies of indigenous languages and also dictionaries and bilingual textbooks.

346. In Colombia, in this respect the long-range goal is to devise for each language a written vocabulary that may be transcribed into Spanish. The Colombian Government hopes to facilitate communication and education of the Indians, thereby easing their assimilation into the larger society.

347. According to the Canadian Government systems of syllabics for the Cree and Eskimo languages were originally conceived by missionary teachers and are still preferred to a system of orthography devised under the aegis of the Eskimo Linguistic Section of the Educational Division Department of Indian Affairs and Northern Development. The Olivetti Company has devised a standard Western Cree syllabic keyboard, and is now working on an Eastern Cree syllabic keyboard.

348. According to the Government of the United States the indigenous languages were not written languages but oral ones prior to the coming of the Europeans. Some Indian languages have been rendered into written forms by scholars. Those written forms are used to teach indigenous children the correct and written form of their own language.

349. The Indian languages, in some cases, have been made written languages. Sequoyah, one of the most brilliant figures in the annals of the American Indian, devised a system of writing for the Cherokee in about 1821. This is the only case in American Indian records of a writing method invented without white prompting. Other Indian languages have been made into written ones by anthropological linguists or through Federal projects - for example, the Navajo language.

350. There is some interest in compiling dictionaries on the part of Indian tribal groups, religious workers, and interested non-indigenous people. There are dictionaries of the Papago, Cherokee, Chickasaw, Navajo and Sioux languages and probably several more.

351. In Norway work on the study and development of the Lapp language is being carried on at Oslo University, Tromso University and the Lapp Institute in Kautokeino, among other institutions. In this connexion it may be mentioned that the older form of the Lapp written language (from the second half of the last century) is based in the main on the Karasjok dialect. The Bible, for example, has been issued in this language. Since World War II, however, the so-called Lapp written language has been developed, based rather more on the Kautokeino dialect. This written form of the language can be used in a larger area, even among Swedish Lapps. However the two written languages are not very different, so that a person who has learnt one of them is easily able to read the other.

> "The aim of the central authorities is to improve living conditions for all minority groups, not only socially, culturally, legally and economically, but also in respect of the individual's existence in human terms. Institutions and organizations of both a public and private character co-operating to achieve this aim."

352. In Sweden, in 1929 appeared an exhaustive text-book in three parts, comprising grammar, texts and glossary, by Konrad Nielsen, professor of Finno-Urric languages in Oslo. The vocabulary is presented in a most exemplary way by the same scholar in his Lappish Dictionary, of which the third and last part appeared in 1938.

353. A related question has to do with the use of the Lappish Language in the schools. A beginning has already been achieved through the publication of a Lappish grammar and a number of textbooks written in the so-called North Lappish dialect, which is spoken by about 75 per cent of all Lapps. A common orthography has been adopted for both Sweden and Norway.

354. In New Zealand the Maori language was first committed to writing in 1814 since when there has been an officially recognized orthography. The standard Maori dictionary is revised every few years by competent Maori linguists and is published by the Government Printing Office. There are other smaller dictionaries and numerous Maori grammars. The Maori language is, like many others, deficient in scientific and technological terms. This gap has been filled by transliterate terms used in English if there is no other way of expressing a particular concept in Maori. There is a considerable battery of such transliterated words that are widely known to and used by the Maori people.

355. In Pakistan a programme has been initiated to teach the regional languages including Baluchi and the Federal Ministry for Education has undertaken compilation of the working volabulary of about 15,000 Baluchi words which could be of use to other linguistic groups.

356. In Guyana the Wai-Wai language has been reduced to writing and a number of primers produced in that language with the result that some seventy-five per cent of the adults are more literate in their own language. Several portions of the New Testament and parts of the Old Testament have been translated in Wai-Wai.

357. In Malaysia there are, as far as is known, no recognized alphabets, dictionaries, grammars, etc. of any Orang Asli languages, or the transliterations of important texts to and from any Orang Asli languages. In the case of Orang Asli languages no written texts exists, as all literary culture is, as has been stated previously, oral in form. Dr. G. Diffloth of Chicago University is understood to be engaged in producing a Semai/English Glossary which should contain 20/25,000 terms.

358. In Japan a phonetic alphabet for the Ainu language was devised by John Batchelor at the end of the nineteenth century.

359. In Chile, the Government states, many publications, especially grammars and dictionaries, exist in Mapuche, although it is not an official language.

4. Translation of important texts into the vernacular languages and from these languages into others

360. The Australian Government reports that workers in the Institute of Aboriginal Studies generally undertake the translation of Aboriginal songs and myths into English.

361. In Pakistan the Language Committee of West Pakistan has undertaken a project to translate many provincial acts, records and documents from English into Urdu.

362. In New Zealand a draft submitted to Parliament makes provision for the establishment of a service for the translation of important documents to be set up in the Department of Maori Affairs.

363. According to the Finnish Government ..... so far, official texts are not regularly translated into Lappish through the State action. However, this lack has been partly compensated by the fact that most of the Lapps in Finland possess the knowledge of one of the official languages of the country.

364. The Malaysian Government has reported that it can be said that although for practical reasons it has not been found possible to translate nearly all types of documents or codes into all Orang Asli Languages, or indeed into any of them, the Orang Asli themselves do not suffer any difficulties from this. The Government has added that, as far as is known, there are no translations of important texts to any Orang Asli languages, nor from those languages into others.

365. The Mexican Government states that there are many translations of indigenous texts into Spanish and of Spanish texts into various indigenous languages. INI is at present preparing translations of the up-to-date text of the General Constitution of the Republic into various indigenous languages.

366. The Norwegian Government states that very little technical and specialist literature has been translated into Lappish. This is connected with the fact that cost of publishing it in translation for such a limited readership would be disproportionately high. Foreign, i.e. French, English and German, specialist literature is very rarely translated into Norwegian because the majority of readers will understand the original language. Some fiction and poetry however, is Lappish in the original, and more is expected to follow. As to translations into Lappish, attention is drawn to Report to the Storting No. 13 (1974-75) and to extracts from NOU 1972: 33 concerning a regional plan for Northern Norway. The Ministry of Agriculture has arranged for the translation into Lappish of regulations for the purchase of stock reindeer and regulations concerning grants for operative costs in reindeer husbandry.

367. In Burma one of the oldest and most active of the private learned organizations is the Sarpay Beickman Management Board. This group, formerly called the Burma Translation Society, produces, translates, publishes, and distributes books in Burmese and indigenous languages and encourages research in Burmese literature and fine acts. It was, and remains, in the forefront in providing textbooks for Burmese schools. The board also maintains a public library in Rangoon stocked with over 50,000 volumes, about 30,000 of which are in Burmese.

368. According to the Government of the United States the American Indian population of the country is less than 1 per cent of the population of the United States and there are over 400 tribes. It is therefore difficult to include all tribal languages in much material since to do so would serve a very small number of persons. Some tribes have official interpreters who speak both the tribal language and English and who are called upon to function in particular tribal situations. The translations of important documents seems to be one of those situations, as per additional data available to the Special Rapporteur and as communicated to him during his visit to the United States in 1977.

369. It has been stated that one aspect that really would need translation is the body of Indian law so that the indigenous population affected by these provisions might know what they contain:

> "Virtually every part of an Indian's life is covered by some law or regulation, but little effort has been made in the 150 years of the existence of the Bureau of Indian Affairs to translate major regulations and laws into Indian languages so that those who are expected to obey or be governed by them will have notice of the law." 52/

370. Similar complaints exist in many countries. 53/ As regards New Zealand the Citizens Association for Racial Equality has stated that "government and public notices are rarely translated". According to the Government, legislation introduced into the New Zealand Parliament aiming at the recognition of Maori as one of the official languages of the country would also provide for setting up - in the Maori Affairs Department - a service for the translation of important material, as mentioned in paragraph 362, above.

52/ "American Indian Response to the Response of the United States of America", in American Indian Law Newsletter, Special Issue No. 11, 1974, p. 41.

53/ In the Latin American countries, for instance.

5. Preparation of materials

371. In order to use indigenous languages in education and the mass media, it is essential to prepare and publish the relevant materials in some form. The training of specialists, mentioned in the information on various countries, also requires adequate materials. Thus, in all the countries where indigenous languages are used for education, for training of specialists in various branches, for at least some radio and television broadcasts and certainly for the press and other publications of various kinds, the necessary basic materials have to be prepared. Something is said about this subject in the relevant parts of this chapter and also in connexion with education and occupation, employment and vocational training.

372. In Canada there exists in Nova Scotia, a project financed by a cultural grant to create reading and teaching materials in Micmac language.

373. The Norwegian Government simply states that textbooks in Same Language are published. In central Norway there is quite a small group using the southern Same dialect. For these Same people, up to now, only one reading book has been published.

374. According to information furnished by the Australian Government, workers at the Institute of Aboriginal Studies generally undertake the production of educational and other materials in Aboriginal languages.

375. The National Institute for Indigenous Affairs of Mexico is preparing for publication bilingual manuals and texts for the indigenous communities and ejidos, for bilingual leaders and teachers and for Government personnel and will be promoting and organizing training courses for members of the ejidos and communities.

376. It has already been stated that in Guatemala, the National Institute for Indigenous Affairs is co-operating with private bodies such as the Summer Institute of Languages and the Francisco Marroquín Institute, inter alia, in the production of educational materials or teaching aids in indigenous languages. Popular materials of general interest have also been produced in many of the country's various indigenous languages.

377. In New Zealand, as already mentioned, the Education Department is active in providing material for the study of the Maori language and the five universities which cater for the Maori language are carrying out linguistic research and fostering the study of the language on the widest scale. Maori texts are available and considerable work is being done in the universities to increase the supply. Important texts, such as the Universal Declaration on Human Rights, have been translated into Maori and made freely available to the Maori community.

378. In the United States, the Bureau of Indian Affairs has produced some bilingual materials as explained above. The Government has reported that because of the great number of languages and the small number of members of linguistic groups it is difficult to include all tribal languages in much materials since to do so would serve a very small number of people.

379. More specifically in connexion with religious and church materials, in Norway the religious publications Nuorttanaste is only in Lappish, and Samenes Venn, the Lapp Missionary Society's press medium, usually includes articles in Lappish. "The Church has used Lappish longer and more often than any other institution. The whole church service (the Prayer Book) is in Lappish in Lapp districts, and divine service is often held in Lappish with simultaneous translation into Norwegian."

380. In Paraguay, there exist some religious texts edited by missionaries.

6. Training of teachers and experts

381. However well conceived and well planned they may be, and even if there are adequate means and resources, educational programmes will never produce the results that they should unless they are properly executed. The personal qualities and vocational training of the language experts and teachers and their knowledge, understanding and appreciation of indigenous culture and language are essential for the satisfactory functioning of the programmes. Hence the importance of careful selection and training of teachers, who should preferably be indigenous and speak the languages of the groups among whom they perform their important work. Similarly, it is necessary to train language experts, who will play an essential role in equipping these teachers and preparing the materials they are to use.

382. Information is available on only a very few countries (Guatemala, Mexico and the United States). Starting with Mexico, the National Institute for Indigenous Affairs has set up a centre at Acayuca, Veracruz, to train indigenous teachers as language experts. The tasks of those experts include giving guidance to bilingual teachers in preparing primers and teaching material.

383. According to information furnished by the Government of the United States "There is Indian preference regulations in the hiring of teachers for Bureau of Indian Affairs schools. However, not enough Indian people are qualified for teaching positions to fill the openings. Qualifications for teachers are similar to those for non-Indian schools. As a result, non-Indians often teach Indians but in the primary grades there is often an Indian teacher aide who is a member of the tribe - or one of the tribes - served by the school and speaks the language of the tribe if a tribal language is still in common use."

384. In Guatemala there are various projects and programmes for training rural indigenous teachers. In October 1959 the Quiché Rural Training College was set up in Totonicapán, for training rural teachers particularly well qualified to give bilingual instruction to the indigenous population in the western part of the country. On leaving the College, teachers give classes in the rural schools of this region in the Quiché language during the first year, with Spanish teaching beginning in the second year of studies. In December 1959 the Quekchí Central Cultural Institute of Alta Verapaz was established. Its objects and methods are similar to those of the Quiché Rural Training College, but in the Quekchí-speaking region, students must wear regional dress. The Western Regional Training College, Santa Lucía Utatlán, Solalá, trains teachers of various languages of the western part of the country so that they may return to their communities and teach in their respective languages and in Spanish. All the students and the teaching and administrative staff live in the College which contains a variety of facilities. Emphasis is placed on knowledge of the respective indigenous language in the criteria governing selection of students and their stay in the College. "Does not know his native language" is a reason for rejecting applicants, on the basis of oral and written examinations conducted at the establishment. Since every student speaks at least one of the country's indigenous languages, courses in those languages take the form of a kind of a continuous seminar with the following objects, among others:

"(1) Allowing all students to practise their vernacular language and not abandon it;

(2) Enabling students to acquire a better knowledge of the grammar and structure of their native language and an awareness of its value;

(3) Arranging for students to carry out comparative studies with a view to identifying similarities and differences and thus finding a better method of communication between the different language groups of the country;

(4) Improving students' use of the languages for the purposes of spoken and written communication."

H. Teaching of the official language to indigenous persons and access by such persons to written materials in that language

1. Initial remarks

385. In the preceding parts of this chapter it was stated that it is appropriate to use the indigenous languages in various State activities, including public education. It was mentioned in the relevant part that indigenous schoolchildren who do not know the official language must be taught reading and writing in their mother tongue, even though later on they may receive instruction in another language as they continue their studies. This use of the vernacular language in teaching children to read and write helps to consolidate their cultural and linguistic base before they go on to learn the other language with all its cultural ramifications. This also applies mutatis mutandis to literacy for adults, in whose case this base may be considered to have been consolidated when they have learnt to read and write their own language.

386. In considering the teaching of the official language to people who speak the indigenous languages, it is essential to take account of the needs and interests of indigenous persons, bearing in mind particularly - and this must be repeated - that the second language should never start to be taught, either to schoolchildren or to adults, until they have a sound grasp of reading and writing in their own language.

387. It is vitally important that indigenous populations should not be forced to learn the official language; that teaching of the official language should not be seen as incursion or aggression directed against indigenous languages; and that it should not be taught from the narrow point of view of establishing the domination of a supposedly superior language. Rather, it must be conceived as a contribution freely accepted by the indigenous populations for their own benefit, as providing a means of communication between groups speaking mutually unintelligible languages.

388. Thus, the official language can serve as a means of communication or a lingua franca between groups who speak different vernacular languages and do not

understand each other, and between the individual groups and those who do speak the official language, whether other segments of the country's population or the populations of other countries who have the same official language.

389. It is worth remembering that where the second language is an international language, the people who learn it will have the benefit of gaining access to scientific and technical literature which may be useful to them, as well as cultural contacts - but the important point is that this should be done from a position of strength and a solid foundation already established in their own culture and language.

390. The need for proper teaching of the official language should be emphasized, for a second language which has not been learnt well will give rise to more difficulties and problems than advantages. There will then be problems of incompetence and growing frustration leading to embarrassing situations and a sense of inadequacy and ineptitude; this does not solve anything and inflicts humiliation on people who have not acquired a proper knowledge of the language they are trying to use.

391. Teaching the official language can help indigenous people out of a linguistic isolation which cuts them off from other groups and denies them access to opportunities which should be open to everyone. It is essential, therefore, that they should not be taught merely rudiments of limited use; they should be given comprehensive instruction in the official language so that they can use it correctly and effectively in the same way as the other sectors of the population. They must also be provided with the reading matter which enables them to keep up the second language at a functional level, for without it, facility in the language will soon be lost, and with it the usefulness of the language.

2. Examination of available information

392. In all countries for which there is information susceptible of analysis in this regard, the official language 54/ is taught throughout the country at all levels of instruction and in educational institutions of every kind. The situations existing in the different systems, as reported in the information available to the Special Rapporteur, are examined in the following paragraphs.

393. Regarding certain countries 55/ there is no specific information on these matters. Nevertheless, from the content of other information available on them it may be assumed that the official language of these countries is the language of instruction at all levels and in all types of public educational institutions, as this is one of the fundamental functions of any official language and among the main reasons for its adoption as such, apart from its use in official matters.

54/ The expression "official language" will be used in the general discussion in this part although there are countries in which more than one language is official (e.g. Canada, French and English; Finland, Finnish and Swedish; Philippines, Tagalog and English).

55/ No specific information was available on this point as regards Argentina, French Guyana, Honduras, Japan, Philippines, Sri Lanka, Suriname and Venezuela.

394. Some information is available on other countries regarding the choice of official language, sometimes also referring to the fact that this language is also considered to be the "national" language of the country, or mentioning some of the responsibilities of the State as regards that language, and these provisions are revealing of some of the functions of the official language. In some cases, in fact, all that has been available to the Special Rapporteur are the constitutional or other fundamental legal provisions that are transcribed below. For example, in Nicaragua, article 6 of the Constitution contains the following provision: "Spanish shall be the national and official language of the State". In El Salvador, article 11 of the Constitution provides: "The official language of the Republic shall be Spanish. The Government shall be obliged to ensure that it is preserved and taught." In Pakistan, the pertinent provisions of article 251 of the Constitution declare: "(1) The National language of Pakistan is Urdu, and arrangements shall be made for its being used in official and other purposes within 15 years from commencing day, (2) Subject to clause (1) the English language may be used for official purposes until arrangements are made for its replacement by Urdu." As can be seen, the scope of these provisions varies from case to case.

395. It is not a far-fetched conclusion, however, to assume that as official languages and particularly as part of the duties of the State to promote their preservation and teaching or as an example of the "other purposes" for which they are "to be used", they should be used as the language of instruction in public schools.

396. There are somewhat more explicit data concerning other countries.

397. The information available on these aspects will be organized as follows: countries in which the indigenous language is used at initial grades in primary education to teach indigenous pupils how to read and write, the official language taking over afterwards as the only language of instruction; and countries in which instruction of indigenous languages is available throughout, at all levels of education and in all types of schools, as second languages and as optional subjects, all other instruction being carried out in the official language which is the language of instruction.

398. Countries in which all public instruction is to be carried out in the official language, to the exclusion of all others, will be discussed in the first place.

399. As reported by the Government of Japan, Japanese is the only language of instruction and the Ainu are not taught in their language at any stage of public schooling.

400. The official language of Malaysia is the Malay language as provided by the Constitution (Art. 152(1)). Instruction at primary, secondary and tertiary levels is carried out in the Malaysian language. It may be noted that in all schools visited by the Special Rapporteur during his official visit to Malaysia in June 1973, instruction was imparted in the Malay language.

401. In Chile, according to information provided by the Government, indigenous schoolchildren learn to read and write in Spanish: "Instruction in speaking and writing correctly is given solely in Spanish, which is the official language of the Republic" and "instruction is given by teachers of indigenous and non-indigenous origin, using only the Spanish language".

402. In Costa Rica, education at all levels and in all institutions is provided in the official language, Spanish. Thus, indigenous people continue to be taught at all levels in the official language and not in their own language. As already indicated, this puts indigenous children attending primary school at a disadvantage. It has been pointed out that "indigenous persons have access to all information media using this [i.e. the official] language once they have learned it".

403. The Constitution of Panama states that Spanish is the official language of the Republic (article 7) and that the State shall ensure the protection, dissemination and purity of the Spanish language (article 77). As already stated, it is intended to promote bilingual literacy programmes in the indigenous communities, but at the time information was provided in connexion with the present study, this had not started. Thus, according to information from the Government, Spanish was still being taught "as a mother tongue".

404. In other countries instruction at all levels and in all types of educational institutions is in the official language. As explained before, indigenous tongues are admitted at initial stages of schooling, in recognition of the lack of sufficient knowledge of the official language by the indigenous pupils who have been speaking an indigenous language at home. At a certain level the official language takes over and becomes the exclusive language of instruction. This is the most generalized kind of approach.

405. In Indonesia the number of people who speak Bahasa-Indonesian is growing rapidly since the government has made it the language of instruction in its educational programme for both adults and children except in grades 1, 2 and 3, in which it shares this function with local languages. (see paragraph 234, above).

406. As to the access of such people to all information media utilizing that language, it should be noted that, as stated before, "all official government publications are in Bahasa-Indonesian". Translations will be provided "only if necessary and then they will be oral".

407. English is the official language of Guyana and is taught at all levels and in educational institutions of every kind and indigenous persons have access to information media utilizing that language.

408. English is used throughout Australia at all levels and in educational institutions of every kind. Aboriginal children are taught English as a second language where their mother tongue is an Aboriginal language. All children are taught to read and write the English language.

409. In Burma, Burmese is the only authorized language of instruction and is a compulsory subject in all primary schools. The literary form differs considerably from the spoken. Thus the child who learns to read Burmese does not learn the same form he has been talking for the previous years of his life but is acquiring a new form of the language, which he will solely use when he is called upon to make a formal speech.

410. In Bolivia, Spanish is the official language and the language of instruction and, as such, it is taught at all levels and in all kinds of institutions. The use of the Quechua and the Aymara languages is limited to the initial grades and is reported not to be always available.

411. According to information furnished by the Government of the United States of America all schools Indians attend emphasize proper English speech and they teach it in a variety of ways - as a second language, in conjunction with the Indian language, etc., - so that the indigenous person may learn it better. Almost every Indian tribe has a tribal newspaper in the English language which is read quite widely by members of the tribe - depending upon their facility in the use of the English language.

412. In certain systems, three languages seem to be in general use as vehicles of instruction, although there is a certain preference for a two-language formula combining the local mother tongue to teach the children how to read and write with instruction in the official language(s) then taking over, as for example in the Philippines, in Laos and in India.

413. In the Philippines, Tagalog (Philippino) is the official language of the country and it is the language of instruction in schools. Local languages are taught in grades one and two, together with Tagalog. From grade three onwards, English is added to Tagalog, as language of instruction.

414. In accordance with article 6 of the Constitution of Laos, the official language is Lao. All Laos attend the same schools and the official language is taught at all levels. According to the information available, children at elementary school also study French. In a number of secondary schools, teaching is in French. The position of Lao is similar to that of a foreign language.

415. As has already been stated, Canada has two official languages: English and French. As has also been stated above, English and French were for many years the only languages of instruction in public schools. At present, although there is some instruction in the indigenous languages at the early stages of formal education, instruction in English and/or French is considered essential to equal opportunity both economically and socially. For these reasons both, English and French, are the languages of instruction at the higher grades and the only vehicle of educational instruction in post secondary levels.

416. According to the Government all schools in Sweden use Swedish, the official language, as the main language of instruction. Lappish is also taught in Lapp nomad schools, but, the use of Lappish language instruction should not prevent Lapps from learning Swedish, nor from participating in the activities of the community as a whole. Lappish persons have access to all information media utilizing the Swedish language.

417. In Finland, article 14 of the Constitution provides, inter alia, that Finnish and Swedish shall be the national languages of the Republic. The Government has indicated that although in primary schools oral instruction is given in Lappish, if possible, to all whose mother tongue it is, in all types and levels of education, instruction is given in Finnish or Swedish which are the national and official languages of the country. The Government has added that Lappish pupils receive sufficient instruction in speaking, reading and writing correctly the official languages of the country, and that all Lapp persons have access to information media utilizing the official languages of the country.

418. In Norway instruction in public schools is given in Norwegian as a general rule; two written forms of the Norwegian language are taught. As has been said before there seems to exist a bilingual Norwegian-Lappish language instruction at primary level in elementary schools so that the same pupils learn to read and write Lappish before going on to Norwegian, which from then on is the language of instruction at all levels and in all types of schools.

419. According to Article 176 (3) (I) of the Brazilian Constitution "elementary education shall be given only in the national language". Article 49 of Act 6001 provides, however, that "the Indians shall be taught to read and write in the language of the group to which they belong, and in Portuguese, safeguarding the use of the former tongue". It may be noted also, that in Article 9 of Act 6001, knowledge of the Portuguese language is stipulated as one of the requirements for the release of an Indian from tutelage (i.e. emancipation).

420. In Colombia the Language Protection Act, promulgated in 1960, provides that, except for words and names which cannot be translated, only Spanish must be used in the official activities listed. These include "teaching". As already indicated, it was subsequently provided (Decree No. 1142 of 1978) that indigenous people should be taught to read and write in their respective mother tongues in order to facilitate the progressive acquisition of the national language "without detriment to the former". There is no information which would indicate the scope of those words. It is therefore presumed that once the process of learning to read and write has been completed, only Spanish will be used as the language of instruction.

421. In Mexico, the official language is taught to indigenous people at primary school level, but it is not taught in any other institutions, since it is thought that the indigenous population already know enough Spanish after completing their six years of primary school education. Spanish is the language of instruction at all levels and in all types of institution, with the exception already mentioned. The indigenous population has the same opportunities as the non-indigenous population for access to all information media using the national language.

422. In Guatemala, teaching of Spanish starts at the end of the first grade. It is assumed that at that stage pupils can already read and write in their mother tongue and the object is to teach them to read and write in the two languages - their mother tongue and Spanish. Spanish is the language of instruction from then on, although reading in the indigenous language continues until the fourth grade of primary school, that is until the end of the first school cycle.

423. In Ecuador, Spanish is the official language, according to article 1 of the Constitution. As such, it is the language of instruction although, as already stated, in certain regions where the population is predominantly indigenous it shares that function with the indigenous languages of Ecuador in a manner which remains to be determined.

424. It has already been pointed out that, in Peru, Decree-Law No. 21,156 of 1975 recognizes Quechua "as an official language on an equal footing with Spanish" and provides that "the teaching of Quechua shall be compulsory at all levels of education in the Republic". It has already been indicated that according to persistent reports received by the Special Rapporteur, these provisions have not yet been given practical effect. It is assumed that only Spanish is considered as the official language of Peru today, by virtue of article 12 of the Education Act, which provides that "the entire population" shall be taught Spanish. It must therefore be concluded that Spanish is to be taught at all levels and in all kinds of educational establishments.

425. The unsatisfactory level of knowledge of the official language attained by numerous indigenous groups and persons - generally as a result of past decisions and practices of the public authorities concerned - is a common complaint in several of the countries surveyed. Such complaints appear only in the data available of a few countries. It will be presented together with information on instruction in the official language in the following paragraphs, in connexion with New Zealand, Paraguay and Denmark (Greenland).

426. In New Zealand, where draft legislation that would provide for the recognition of the Maori language as an official language, equal to English has been introduced in Parliament (See para. 51 above), English is taught at all levels and in all educational institutions of every kind. 56/ It has also been pointed out before that in many cases the level of English spoken in Maori homes is not very high. 57/

427. It has been reported that in Paraguay instruction given to students in the rural areas as well as in urban areas is in Spanish. The Ministry of Education seems to have assumed that Spanish was to be the official language of instruction even in the face of the discrepancy between the requirement for the Spanish instruction and the language ability of the pupils. It has been written in this respect:

> "Even today the discrepancy goes largely unrecognized. The normal schools do not deal with the problem in their training of teachers. On the other hand, rural teachers in interviews expressed awareness of the difficulties created by monolingualism but they did not feel it was particularly serious. Instead they indicated that the difficulty encountered was a 'normal' part of teaching. In the rural areas we visited, teachers stated that although their students could not speak Spanish, almost all of them could understand it. Our classroom visits usually indicated the opposite. On a couple of occasions, we requested that a class be given in Guarani. The difference in student response was appreciable. Instead of students evidencing the apathy and lack of understanding obvious in the classes given in Spanish, student participation and interest were extremely high when the class was in Guarani.
>
> "...
>
> "A byproduct of the insistence on Spanish in the classroom is the widespread conviction that Spanish alone is appropriate there, even among students who speak only Guarani. So strong is this feeling that when we requested the use of Guarani both teachers and students broke into laughter. Parents who are incipient or subordinate bilinguals are often inhibited in their conversations with others because they feel Spanish is the appropriate language for such a meeting.
>
> "...
>
> "... throughout Paraguayan history Guarani had an important role as a means of communication for all Paraguyans and often served as a source of group identity once independence was gained. At the same time, Spanish served as the language of government and as a vehicle for communication with other countries. Through these functions, Spanish gained prestige. Thus, although Guarani seems to have been in greater use, it was often viewed with disdain as the more primitive language. As a result educational policy has always prescribed Spanish as the only possible medium of instruction". 58/

56/ See chapter on Education, in document E/CN.4/Sub.2/L.622, paras. 351 and 354.

57/ Ibid., paras. 355 and 356.

58/ Rubin, loc. cit., pp. 480, 481 and 482.

428. As regards the unsatisfactory level of knowledge of Spanish in schoolchildren in the rural areas, it has been written that:

> "Although there is a greater need for a good Spanish model in the rural areas than elsewhere, it is unfortunately true that rural teachers are often limited in their ability to speak Spanish and their general academic preparation. The result is that rural students are less skilled in Spanish and in their school subjects than their co-equals in town.
>
> "The lack of attention to the language problem resulting from the fiction that Spanish is heard by all has many serious repercussions. To mention one, students acquire Spanish very slowly. High-school teachers reported that students in the seventh grade level were often so deficient in Spanish that they could not understand instruction in that language adequately.
>
> "Most rural speakers who have had only second- or third-grade education are not very proficient speakers of Spanish. In fact, there is a high correlation betwe the degree of proficiency in Spanish and the number of school years completed. The number of years of school completed is the major determinant of the linguistic skill of rural inhabitants and indeed, a major determinant of the skill of many townspeople as well." 59/

429. In Denmark the report of the Home Rule in Greenland included statements to the effect that the Commission had recommended that "provision should be made for Greenlandic to become the principal language in Greenland"; that "really thorough instruction must be provided in the Danish language" and that "the two languages be given equal status in public relations". 60/

430. According to an official Danish publication "The Greenlandic language has always been used as a school language in Greenland. The dual-language education now arranged at the larger schools aims at giving the pupils who are found suitable therefor such knowledge of both Danish and the Greenlandic language that they may naturally express themselves in either language ...". This publication also contains the following information: 61/

> "The background for the development which has taken place is the ever-increasing connexion between Greenland and other parts of the Kingdom including the technical development of trades in Greenland, which makes it necessary for the Greenlanders to be able to receive education and general information in a language possessing a larger measure of technical and vocational literature. In the training in Danish modern pedagogical systems are used, the children being taught a 'basic language' comprising a vocabulary of about 3,000 words enabling them to express themselves and to read ordinary Danish.

59/ Ibid., p. 482.

60/ IWGIA Newsletter No. 22, Copenhagen, June 1979, p. 10.

61/ Report on Greenland, pp. 61, 62. See footnote 48/ above.

"In the dual-language schools physical training, physics, sloyd, needlework and domestic science are compulsory subjects. In these schools the first and second classes receive Danish language instruction in the subjects Danish, if possible, arithmetic and partially in audiovisual lessons, and from the third class and upwards the number of subjects taught in the Danish language is gradually increased, thus,

"Considering the school service as a whole, instruction in the subjects enumerated in the foregoing must be said to have been somewhat heterogeneous. In the elementary subjects: Greenlandic language, verbal and written, writing, arithmetic and religion, all children have, however, received instruction. In the subjects Danish language and singing 91.1 per cent and 88.5 per cent, respectively, of all schoolchildren received instruction. As far as many children are concerned the teaching of Danish has, however, been confined to an elementary introduction to the language."

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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

(Thirty-sixth session)
(Item 11 of the provisional agenda)

STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST INDIGENOUS POPULATIONS

Final report (last part) submitted by the Special Rapporteur, Mr. José R. Martínez Cobo

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XV. CULTURE AND CULTURAL, SOCIAL AND LEGAL INSTITUTIONS

A. International provisions

1. The International Bill of Human Rights contains, under various headings, provisions relating to the "right to culture". The Universal Declaration of Human Rights contains express references to culture in the following articles:

> "Article 22. Everyone, as a member of society, has the right to .... realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."
>
> "Article 27. (1) Everyone has the right freely to participate in the cultural life of the community ..."

2. Article 27 of the Declaration also deals in paragraph (1) with the right to "share in scientific advancement and its benefits".

3. The International Covenant on Economic, Social and Cultural Rights likewise contains some express references to culture in the following terms:

> "Article 15. (1) The States Parties to the present Covenant recognise the right of everyone:
>
> (a) to take part in cultural life
>
> ...
>
> "(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
>
> "(3) The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
>
> "(4) The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields."

4. This provision includes, in paragraph (1) (b), the right of everyone to "enjoy the benefits of scientific progress and its applications".

5. The International Covenant on Civil and Political Rights contains the following provision:

> "Article 27. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion or to use their own language."

6. Other provisions concerning culture appear in the texts of international conventions, agreements, and declarations. The International Convention on the Elimination of All Forms of Racial Discrimination contain the following provision:

"Article 7. States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention."

7. The Indigenous and Tribal Populations Convention, 1957, adopted by the General Conference of the International Labour Organisation on 26 June 1957, provides: 1/

"Article 2. (1) Governments shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries.

"(2) Such action shall include measures for -

(a) enabling the said populations to benefit on an equal footing from the rights and opportunities which national laws or regulations grant to the other elements of the population;

(b) promoting the social, economic and cultural development of these populations and raising their standard of living;

(c) creating possibilities of national integration to the exclusion of measures tending towards the artificial assimilation of these populations.

"(3) The primary objective of all such action shall be the fostering of individual dignity, and the advancement of individual usefulness and initiative.

"(4) Recourse to force or coercion as a means of promoting the integration of these populations into the national community shall be excluded."

"Article 4. In applying the provisions of this Convention relating to the integration of the populations concerned -

(a) due account shall be taken of the cultural and religious values and of the forms of social control existing among these populations, and of the nature of the problems which face them both as groups and as individuals when they undergo social and economic change;

(b) the danger involved in disrupting the values and institutions of the said populations unless they can be replaced by appropriate substitutes which the groups concerned are willing to accept shall be recognised;

(c) policies aimed at mitigating the difficulties experienced by these populations in adjusting themselves to new conditions of life and work shall be adopted.

1/ ILO, Conventions and Recommendations adopted by the International Labour Conference, 1919-1966, Geneva, International Labour Office, pp. 901-908.

"Article 7. (1) In defining the rights and duties of the populations concerned regard shall be had to their customary laws.

"(2) These populations shall be allowed to retain their own customs and institutions where these are not incompatible with the national legal system or the objectives of integration programmes.

"(3) The application of the preceding paragraphs of this Article shall not prevent members of these populations from exercising, according to their individual capacity, the rights granted to all citizens and from assuming the corresponding duties.

"Article 8. To the extent consistent with the interests of the national community and with the national legal system -

(a) the methods of social control practised by the populations concerned shall be used as far as possible for dealing with crimes or offences committed by members of these populations;

(b) where use of such methods of social control is not feasible, the customs of these populations in regard to penal matters shall be borne in mind by the authorities and courts dealing with such cases."

"Article 10. ...

"(2) In imposing penalties laid down by general law on members of these populations account shall be taken of the degree of cultural development of the populations concerned.

"(3) Preference shall be given to methods of rehabilitation rather than confinement in prison."

8. The Declaration of the Principles of International Cultural Co-operation proclaimed by the General Conference of UNESCO in Paris on 4 November 1966 (fourteenth session), contains the following provisions: 2/

"Article I. (1) Each culture has a dignity and value which must be respected and preserved.

(2) Every people has the right and the duty to develop its culture.

(3) In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.

"Article II. Nations shall endeavour to develop the various branches of culture side by side and, as far as possible, simultaneously, so as to establish a harmonious balance between technical progress and the intellectual and moral advancement of mankind.

"Article III. International cultural co-operation shall cover all aspects of intellectual and creative activities relating to education, science and culture.

2/ UNESCO, Cultural Rights and Human Rights. Studies and Documents on Cultural Policies, No. 3, Paris, 1970, pp. 123-125.

"Article IV. The aims of international cultural co-operation in its various forms, bilateral or multilateral, regional or universal, shall be:

1. The spread knowledge, to stimulate talent and to enrich cultures;

2. To develop peaceful relations and friendship among the peoples and bring about a better understanding of each other's way of life;

...

5. To raise the level of the spiritual and material life of man in all parts of the world.

"...

"Article VI. International co-operation, while promoting the enrichment of all cultures through its beneficent action, shall respect the distinctive character of each.

"Article VII. (1) Broad dissemination of ideas and knowledge, based on the freest exchange and discussion, is essential to creative activity, the pursuit of truth and the development of the personality.

"(2) In cultural co-operation, stress shall be laid on ideas and values conducive to the creation of a climate of friendship and peace. Any mark of hostility in attitudes and in expression of opinion shall be avoided. Every effort shall be made, in presenting and disseminating information, to ensure its authenticity.

"Article VIII. Cultural co-operation shall be carried on for the mutual benefit of all the nations practising it. Exchange to which it gives rise shall be arranged in a spirit of broad reciprocity.

"Article IX. Cultural co-operation shall contribute to the establishment of stable, long-term relations between peoples, which should be subjected as little as possible to the strains which may arise in international life."

9. The Declaration on Race and Racial Prejudice 3/ adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 27 November 1978 provides:

"Article 1 (1) All human beings belong to a single species and are descended from a common stock. They are born equal in dignity and rights and all form an integral part of humanity.

"(2) All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such. However, the diversity of life styles and the right to be different may not, in any circumstances, serve as a pretext for racial prejudice; they may not justify either in law or in fact any discriminatory practice whatsoever, nor provide a ground for the policy of apartheid, which is the extreme form of racism.

"(3) Identity of origin in no way affects the fact that human beings can and may live differently, nor does it preclude the existence of differences based on cultural, environmental and historical diversity nor the right to maintain cultural identity.

3/ Text taken from the booklet "Declaration on Race and Racial Prejudice adopted by the General Conference at its twentieth session, Paris, 27 November 1978." UNESCO, Paris, 1979, pp.4-5.

"(4) All peoples of the world possess equal faculties for attaining the highest level in intellectual, technical, social, economic, cultural and political development.

"(5) The differences between the achievements of the different peoples are entirely attributable to geographical, historical, political, economic, social and cultural factors. Such differences can in no case serve as a pretext for any rank-ordered classification of nations or peoples.

"Article 2 (1) Any theory which involves the claim that racial or ethnic groups are inherently superior or inferior, thus implying that some would be entitled to dominate or eliminate others, presumed to be inferior, or which bases value judgements on racial differentiation, has no scientific foundation and is contrary to the moral and ethical principles of humanity.

"...

"Article 3 Any distinction, exclusion, restriction or preference based on race, colour, ethnic or national origin or religious intolerance motivated by racist considerations, which destroys or compromises the sovereign equality of States and the right of peoples to self-determination, or which limits in an arbitrary or discriminatory manner the right of every human being and group to full development is incompatible with the requirements of an international order which is just and guarantees respect for human rights; the right to full development implies equal access to the means of personal and collective advancement and fulfilment in a climate of respect for the values of civilizations and cultures, both national and world-wide.

"Article 4 (1) Any restriction on the complete self-fulfilment of human beings and free communication between them which is based on racial or ethnic considerations is contrary to the principle of equality in dignity and rights; it cannot be admitted.

"(2) One of the most serious violations of this principle is represented by apartheid, which, like genocide, is a crime against humanity, and gravely disturbs international peace and security.

"(3) Other policies and practices of racial segregation and discrimination constitute crimes against the conscience and dignity of mankind and may lead to political tensions and gravely endanger international peace and security.

"Article 5 (1) Culture, as a product of all human beings and a common heritage of mankind, and education in its broadest sense, offer men and women increasingly effective means of adaptation, enabling them not only to affirm that they are born equal in dignity and rights, but also to recognize that they should respect the right of all groups to their own cultural identity and the development of their distinctive cultural life within the national and international context, it being understood that it rests with each group to decide in complete freedom on the maintenance and, if appropriate, the adaptation or enrichment of the values which it regards as essential to its identity.

"..."

B. Initial remarks

10. To the extent possible this chapter includes a number of preliminary basic considerations concerning the meaning of the concepts "right to culture" and "cultural rights" in reference to the situation of indigenous peoples. 4/

11. It may be mentioned that in a series of interesting international meetings - mostly held on the initiative or under the auspices of UNESCO - attention has been directed to important aspects of the diffusion and development of the cultural policy of the State. Although not much attention seems to have been given at these meetings to situations in which groups of different cultures live together in a single country and may perhaps be in a state of conflict, mention may be made here of certain areas in which there seems at present to be general agreement concerning the participation of the State in the development and diffusion of culture, and also concerning the need to co-ordinate activities undertaken in this area with social and economic development measures.

12. The fact that the State has clear positive responsibilities in matters of cultural rights is generally recognized today. For a long time, cultural life was regarded as a preponderantly private matter. 5/ While of course, individuals, groups and communities have primary roles in the development of their own culture, it has been recognized that at least some form of financial assistance is needed from the local, regional and national authorities in order to maintain adequate improvement of economic and social conditions and the rate of technical developments which will make it possible for everyone, without discrimination, to take part in the cultural life of his community and that of the nation at large. 6/

13. It is realized that a country's administrative structures dealing with cultural affairs will necessarily reflect the general structures and mentality of that country's administration. 7/ The fundamental ideology, the socio-economic system and the technical development of the country concerned will necessarily shape its cultural policy and the degree and extent of direct government involvement in general cultural policy planning and its implementation. 8/ Even those countries that are cautious about centralization, and about the predominant role of the State in the direct management of cultural institutions "because of the danger of cultural action being reduced to uniformity and lest the controversial element in art be neutralized", agree that the State should at least give financial assistance to cultural action. 9/ It has become clear that cultural policy cannot be confined to "patronage" type of actions, even on a much larger scale, and that it should consist of a body of operational principles, administrative and budgetary practices and procedures which provide a basis for cultural action by the State, and be linked both with a policy of continuing education and a policy of decentralization and regional and

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4/ In this connection, see in particular paragraphs 18 to 25 and 29 to 33 below.

5/ UNESCO, Cultural Policy; a Preliminary Study. Studies and documents on cultural policies, No. 1, Paris, 1969, p. 35.

6/ Ibid., pp. 9 and 35.

7/ Ibid., p. 35.

8/ Ibid., p. 8.

9/ Ibid., p. 9.

local development. 10/ Cultural policy 11/ should be closely co-ordinated with the social and economic development of the nation. 12/

14. The need for socio-economic and cultural development to go hand in hand was stated as follows by the participants in the Round Table Meeting on Cultural Policies, organized by UNESCO in Monaco from 18 to 22 December 1967: 13/

> "It was recognized that economic and social development should go hand in hand with cultural development; culture has a beneficial effect on the means of production available and on man himself; every improvement in physical well-being helps to promote culture, by freeing man from enslavement to physical obligations, and by giving him leisure for the activities of the mind. The march of economic progress is generally reflected in the cultural sphere, and cultural activity stimulates economic life. Emphasis was placed on the need to integrate science in culture, and to study the way in which culture evolves under the influence of science and technology. Attention was also drawn to the fact that literacy programmes and cultural development form an indivisible whole: it is the cultural advancement of the whole people that imparts force to the literacy movement.
>
> "Over the last 20 years or so, and more especially since 1960, an increasing number of Governments have set up departments of cultural affairs distinct from their departments of education. This trend reflects, on the one hand, a new phenomenon - sometimes referred to as 'cultural development' connected with improvements in school enrolments, communication media, town planning and living standards and, on the other, the determination of governments to take deliberate measures, on a national scale, to meet this new demand."

15. Participants in the United Nations Seminar on the Promotion and Protection of the Human Rights of National, Ethnic and Other Minorities, held in 1974 in Ochrid, Yugoslavia, stressed the same general line of ideas, while recognizing some of the differences in this respect between "developed" and "developing" countries. It may be useful to quote the following paragraph: 14/

> "Several participants emphasized that economic and social development represented the essential basis on which the promotion and protection of the human rights of minorities were possible. The situation of a minority depended primarily on its members' standard of living as defined in article 25 of the Universal Declaration of Human Rights, according to which everyone had the right to a standard of living adequate for the health and well-being of himself and of his family, including food,

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10/ The participants in the Round Table on Cultural Policies took "cultural policy" to mean: "the sum total of the conscious and deliberate usages, action or lack of action in a society, aimed at meeting certain cultural needs through the optimum utilization of all the physical and human resources available to that society at a given time." (UNESCO, Cultural Policy ..., op.cit., p. 8).

11/ UNESCO, Cultural Policy ..., op.cit., p. 10.

12/ Ibid., p. 8.

13/ Ibid., p. 8.

14/ Report on the Seminar on the Promotion and Protection of the Human Rights of National, Ethnic and Other Minorities, held in Ochrid, Yugoslavia, 25 June - 8 July 1974 (ST/TAO/HR/49), para. 28.

clothing, housing and medical care, and on their enjoyment of the right to education as defined in article 26 of the Universal Declaration. The gap between the levels of economic development of various regions of the world constituted an essential element in the sharp differentiation between the situation of minorities in the advanced industrial States and that of minorities in the developing countries. The promotion and protection of the latter could not be realized so long as various groups, because of their economic, social and cultural underdevelopment, could not enjoy even elementary human rights, such as the right to work or the right to culture. It was pointed out that the highest priority had therefore to be given to the economic and social development of those countries. The achievement of the necessary progress in that direction was a prerequisite for the promotion of the rights of minorities in the developing countries. It was further stated that it would, therefore, be a mistake to apply general concepts with respect to the rights of minorities without specifically relating them to the over-all economic and social environment. One participant referred to the need for special economic aid to underdeveloped regions of a country where minorities lived, in order to build the economic foundation for the promotion and protection of their rights."

16. The need to strike a balance between the promotion of economic development and the preservation of the social cohesion of groups, which is an integral part of their cultural identity, is recognized wherever there is concern for such matters. In this connection, it is deemed useful to quote, from the material available for the study, some statements that are considered applicable wherever ethnic groups exist as differentiated entities within a larger society. The following information concerns India:

"The Indian administration recognizes in principle the danger of loss of tribal morale and social cohesion which could result from technological and political changes in the tribal areas. Since they do not wish to have a political vacuum or unrest on the borders of Burma, China, and Tibet, they hope to assimilate the tribes into the Indian nation, but they hope also to preserve tribal languages, their arts and games, and other traits that are important to their culture and could enrich the general Indian culture.

"The aims of the administration have been to improve communications, bring in water and electricity, increase literacy, record languages, promote local dances and handicrafts, and improve the subsistence level. As far as possible, and as far as their understanding points the way, they hope to let local organization deal with civil problems. There will be changes for most of the tribes, but they should be less disruptive than the changes for the Deccan plateau tribes under the British." 15/

17. In this connection it has been written:

"It is generally stressed in relation to the Scheduled Tribes in all discussions and recommendations about their welfare that, while every effort should be made to improve their economic conditions, equal attention should also be paid to preserving their culture. But in a sense these two objectives appear to be incompatible. Culture is not an absolute entity.

15/ Rinn-Sup Shinn and others, Area Handbook for India (Foreign Area Studies by the American University), Washington, D.C., 1970, p. 124.

It is related to the environment: social (including religious, economic, and politcal frameworks therein) and geographical. Economic development demands that the existing system of resource utilization, of production and the distribution of returns be changed. This cannot be done by opening up ways and means for interchange of men, roads and services. This in turn depends upon a communication and transport network. In the process of this interchange, communication of values, ideas and ideologies, and their interchange as well, do take place to some extent at least. This latter interchange or change is expressed in practice by adopting new goals, new standards of living, new vocations, new training and new tools, which necessitate new associations of men and environment. Broadly speaking culture does undergo change in order to adapt itself to the changing conditions and the converse is also true that without the change in goals or economic objectives voluntary efforts may not be made by the people. In any case economic development has to accept certain modification of the culture of the people concerned as inevitable.

"...

"The tribal culture should be left to shape and adapt itself to changing conditions. It need be neither stressed nor derided. Already Hindu-isation has taken place among them with no missionary work. In his attempt to be one with the larger society the tribal man alone is the best judge as to what elements of his culture are to be retained." 16/

18. In this connection, it is deemed useful also to recall here that the "right to culture" and "cultural rights" are relatively new concepts. It should be pointed out that concern for these rights responds to different motivations in different societies; emphasis is placed on the popularization and diffusion of culture and the utilization of leisure time in "developed" societies while, in "developing" societies which have emerged from colonial rule, self-determination and the recovery, protection and further development of cultural heritage is stressed. It is generally agreed that cultural interaction is necessary to cultural growth, but that evolving cultural processes must be shielded from the systematic onslaught of forces threatening their authenticity. It is taken for granted that the realization of "cultural rights" depends, perhaps even more than others, on the realization of other rights, among which the following are generally mentioned: the "right to an adequate standard of living"; the "right to self-determination"; the "right to education"; the "right to inform and be informed". The problems involved both in the preservation of traditional culture and in the co-existence of sub-cultures within the same society are known to be sharpened in multi-ethnic communities where "ethnicity" may or may not coincide with differing cultural values and cultural expressions. The significance of group rights is prominent in multi-ethnic societies where they should presuppose equal cultural rights for the different ethnic groups. The State has clear responsibilities to formulate and implement a cultural policy which, among other things, creates the necessary conditions for the harmonious co-existence and development of the various ethnic groups living on its territory, whether under pluralistic arrangements that guarantee the absence of impingement of one group on another or by virtue of integration-oriented programmes guaranteeing equal and effective opportunities for all.

16/ M.G. Kulkarni, Problems of Tribal Development, A Case Study, Harsul Blok, Nasik District (Maharashtra). Gokhale Institute of Politics and Economics Bombay, India, 1968, pp. 205 and 234.

19. It must be remembered that in most cases the situation of indigenous populations in matters of culture is in a very profound sense exceptional within the society of the countries where they live. The cultural divide between them and the dominant segments of the population does not comprise merely differences of language, of ethnic origin, of religion or a combination of all those elements. There are differences in techniques, in economy, in organization and in social institutions. The differences often relate to the material, social, psychological and spiritual aspects of the culture and they do not amount simply to the sum of these aspects. There is something more. There is a different way of understanding the world. Every human group seeks the satisfaction of a basic social interest which consists of the need to live in a comprehensible world; and its pattern of responses stems from the historical and environmental circumstances in which it has developed.

20. Indigenous groups have preserved their own basic concepts through years or centuries of co-existence with other segments of the population, or in isolation from these other segments, which are governed in their fundamental conceptions by other criteria and cultural values.

21. The dominant segments of the population and the indigenous peoples often differ in their conception of the world and of the things that exist, or the phenomena that occur, therein. As soon as man is born he comes into contact with the body of ideas and values that give shape to this view of the world (cosmovisión, imago mundi, Weltanschauung). The diametrical opposition between the impersonally and rationally ordered "modern" worldview of the scientific world, and the "traditional" worldview which is personal and steeped in concepts of magic or religion, is a useful reference point. It must be pointed out that these views do not present themselves in an absolute form in either case, since there are always "rational" elements in the "traditional" and even in the "primitive" views of the world, and the "scientific" views of the world always contain, to a greater degree than is generally supposed, elements of magic or religion.

22. The true picture is, however, more complex. Among the elements of the population which in theory include the "modern" sections of societies - and with them the dominant groups - there are also some sections which distort "rational" realities. They resort to an ideology which usually has its origin in a colonial situation and proclaims the need to "civilize" groups with a "primitive" worldview, on the basic assumption that "modern" culture is superior to the "primitive" culture and in accordance with the ideas of social Darwinism which justify the predominance of "Strong" groups over the "weak". This approach frequently forms part of the conceptual outlook of the dominant groups in areas of direct co-existence. Scientific hypotheses and interpretations are contradicted, and ad hoc frameworks are set up which differ from and are even opposed to them.

23. The cultural policy of the State should in such cases take due account of these different factors and should promote attitudes of understanding - in all groups - of the orthodox interpretations of the dominant "rational" culture; but it should do this in a climate in which the existence of the culture of indigenous groups is recognized, and in accordance with standards of behaviour that respect the expressions of the indigenous culture and the right of indigenous populations to maintain and develop their cultures and hand them on to their descendants, if they clearly express their wish to do so.

24. Consideration should be given at this juncture to the policies of indigenous self-management and ethnodevelopment that have been advocated as effective methods of assuring indigenous populations the preservation, development and transmission of their ethnic specificity to their descendants while taking part in the life of the country in which they live. Attention is drawn to what is said in this connection in chapter IX on basic policy and chapter XIII on education.

25. It may be useful to mention briefly the gist of the relevant provisions of the San José Declaration, proclaimed in December 1981 at San José, Costa Rica, by a group of Latin American experts. 17/ The Declaration affirms ethnodevelopment to be an inalienable right of Indian groups (paragraph 2), meaning by ethnodevelopment strengthening and consolidating a culturally distinct society's own culture, by increasing its independent decision-making capacity to govern its own development and the exercise of self-determination, at any level considered, and implying an equitable and just power structure. This means that the ethnic group forms a political and administrative entity, with authority over its own territory and decision-making powers in areas constituting its own development within processes of expanding autonomy and self-management (paragraph 3).

26. It states that as creators, transmittors and disseminators of their own civilization, as unique and specific representatives of the heritage of mankind, the Indian peoples, nations and ethnic groups of the Americas are, collectively and individually, entitled to all the civil, political, economic, social and cultural rights which are today threatened and demands universal recognition for all these rights (paragraph 5), pointing out that for the Indian peoples the land is not merely an object of possession and production. It is the whole basis of their physical and spiritual existence as an autonomous entity. Territorial space is the fundamental reason for their relationship with the universe and for the maintenance of the cosmic vision of the Indian peoples; they have a natural and inalienable right to keep the territories they possess and to claim the lands which have been taken from them. In other words, they are entitled to the natural and cultural patrimony contained in the territory and to determine freely how to use it and benefit from it (paragraphs 6 and 7).

27. The Declaration states that the philosophy of life of these peoples, their experience, their knowledge and their accumulated historical achievements in the cultural, social, political, juridical, scientific and technological fields are an essential part of their cultural patrimony. Hence they are entitled to enjoy access to, utilization, dissemination and transmission of this entire patrimony (paragraph 8).

28. Recognizing that respect for the forms of autonomy required by these peoples is an essential prerequisite for guaranteeing and implementing these rights, it also states that the specific forms of internal organization of these peoples are part of their cultural and juridical heritage, which has contributed to their cohesion and the maintenance of their socio-cultural tradition (paragraphs 9 and 10).

29. It would be an extremely interesting undertaking to develop these ideas and refer to the subjective and objective elements of the concept of culture, as well as to the rights to be enjoyed in this respect by individuals, groups and nations from the point of view of the rights of indigenous populations, but it would obviously exceed the scope of this study.

30. It is sufficient to point out here that among the indigenous populations which are in contact with the dominant segments of the population of the States in which

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17/ Text adopted by acclamation on Friday, 11 December 1981, as a result of the work of the Conference of Specialists on Ethnocide and Ethnodevelopment in Latin America, convened by UNESCO and the Latin American School of Social Sciences (FLACSO) and held at La Catalina, Santa Bárbara de Heredia, Costa Rica (6 to 13 December 1981).

they live, there are various attitudes to cultural rights. There are some communities, groups or individuals who have little or no interest in the preservation of their special cultural heritage and prefer to embrace the culture of the dominant segments of the country's population. There are on the other hand communities, groups and individuals who are determined to preserve their own cultural heritage and style, and who resist the imposition of the cultural patterns and values of the dominant groups. They wish to continue to develop still further their distinctive cultures, and to hand them on to their descendants. Between these two extreme positions there is of course a whole range of intermediate attitudes. It is self-evident that where various cultures exist side by side they influence each other in a constant "give and take" process. The attitudes expressed must therefore be understood in the context of the situations in which they exist, and as a manifestation of subjective positions which have been expressed by these groups through their conduct within society as a whole. In short, the co-existence of various ethnic groups in one society involves a series of reciprocal influences, and calls for the establishment of conditions and the application of measures favourable to the development of a harmonious existence - perhaps not without some conflict and tension between groups but certainly without unwarranted attacks or attempts to impose a culture. The State should recognise the cultural diversity which exists and should formulate a suitable policy for the peaceful and dignified co-existence of the various cultural groups in the nation.

31. Indigenous groups which have little or no interest in preserving their own distinctive culture are mainly concerned that there should be no discrimination against them by the dominant groups, and that no obstacles should be placed in the way of their efforts at assimilation with the latter groups. Indigenous groups which are resolved to preserve their own distinctive culture will of course also not wish to be subject to any limitations or restrictions; but they will adopt the view that without the special rights and facilities required by their particular situation, the equality that might be established vis-à-vis the dominant group would only be a formal equality without any real significance for them. Thus situations arise in which certain groups should have rights in relation to the State and the State should have certain obligations in regard to these groups.

32. This situation is usually complicated by the fact that within the respective groups there may be dissenting individuals or families who reject both the efforts of the group and the efforts which the State may be making in response to the group's wishes. They may therefore oppose any efforts to induce or oblige them to maintain the traditions or characteristics of the group to which they belong and which has decided to preserve its culture; and vice versa the groups which have expressed a desire to be assimilated to the culture of the dominant groups may contain some individuals or families who reject that policy, who wish to maintain their distinctive cultural identity, and who will therefore refuse to support the efforts of their group and of the State towards assimilation. The rights of the individual in relation to his group will therefore have to be recognised, and his right not to participate in the culture of his community but rather in another group or community which has adopted a contrary policy, will have to be safeguarded.

33. Sometimes Governments welcome the attitude of those who abandon their distinctive culture, and at the same time permit or encourage discrimination against those who insist on retaining and developing still further their customs, habits and special traditions. In cases where such measures can be described as acts committed for the deliberate purpose of eliminating the culture of a group by systematically destructive and obstructive action, they could be deemed to constitute clear cases of ethnocide or "cultural genocide".

34. With regard to ethnocide, the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 should be borne in mind. The acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such listed in article II as acts constituting genocide within the meaning of the Convention include certain acts that correspond to the concept of ethnocide. They include causing serious bodily or mental harm to members of the group (subparagraph b); deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part (subparagraph c); imposing measures intended to prevent births within the group (subparagraph d) and forcibly transferring children of the group to another group (subparagraph e) (our underlining).

35. During the process of formulating the provisions of the Convention there were proposals for the inclusion of provisions on ethnocide or "cultural genocide" and counterproposals that sought to restrict genocide to forms of direct biological suppression. The arguments for and against the inclusion of provisions on ethnocide in the Convention, which are reflected in the documents of the Ad Hoc Committee on Genocide and the Sixth Committee, were mentioned by the Special Rapporteur, Mr. Nicodème Ruhashyankiko, in paragraphs 441 to 461 of his report to the Sub-Commission in 1978. 18/

36. Against inclusion, it was argued, inter alia, that the concept of ethnocide was too vague and that the looseness of the definition might lead to abuses and practical difficulties. It might also prevent some States from ratifying the Convention. 19/

37. In favour, it was argued, inter alia, that it would be impossible to separate cultural genocide from physical and biological genocide, as a group may be deprived of its existence not only through the mass destruction of its members, but also through the destruction of its specific traits, the loss of which leads to the dissolution of its unity, even though no attempt has been made on the life of its members and, for that reason, cultural genocide is an integral part of the general definition of genocide; if attacks against the culture of a group went unpunished for the want of appropriate provisions in the Convention, the perpetration of physical genocide, in which such acts normally culminate, would be facilitated; acts of cultural genocide have always been inspired by the same motives as those of physical genocide and have the same object, namely, the destruction of racial, national or religious groups. 20/

38. The Governments of Austria, Ecuador, Israel, Oman and Romania among others considered that the possibility of including cultural genocide among acts of genocide ought to be examined. 21/ It may be useful to quote the statement by the Holy See in this connection:

18/ E/CN.4/Sub.2/416.

19/ Ibid., paragraph 448.

20/ Ibid., paragraph 447.

21/ Ibid., paragraphs 450 and 451.

"Genocide is also a crime against the rights and dignity of a people. Each people has its own heritage. Although it is true that every people should be open to other cultures and grow in terms of union and exchange with other peoples, the fact remains that more or less natural groupings of persons exist in the form of peoples, each of which has a particular cultural heritage and is often of a particular racial type or a particular mixture of racial types. It is a people's cultural heritage that is the expression of that people and that is the true bond of the people's unity. A people's heritage with its traditional language, customs, beliefs, art, music, laws, social patterns, and ways of looking at reality, is not a static structure. It is a dynamic bond of unity, a matrix of human development, and a promise for the future of the people.

"All the individuals and social groups that make up a given peoples should be able to attain full cultural development in accord with their traditions. They should not be held back, nor have other cultures imposed on them.

"...

"In view of the above-stated principles, serious consideration should be given to the matter of those acts which might be called 'cultural genocide' or 'ethnocide' or 'ecocide'." 22/

39. The question whether ethnocide is or is not a form of genocide is important, but however it is decided the fact remains that ethnocide consists of a series of serious violations of human rights which resemble genocide and which must be forestalled and punished. This was recognized by the participants in the Conference of San José, Costa Rica, organized by UNESCO-FLACSO 23/ which in December 1981 formulated and issued the Declaration on ethnocide and ethnodevelopment already discussed in this chapter. 24/

40. In the terms of the San José Declaration, ethnocide means that an ethnic group, collectively or individually, is denied its right to enjoy, develop and disseminate its own culture and language. It represents an extreme form of massive violation of human rights, in particular that of the right of ethnic groups to respect for their cultural identity, as contained in numerous declarations, agreements and conventions of the United Nations and its specialized agencies, and as proclaimed by various regional intergovernmental organizations and non-governmental organizations. Consequently, the Declaration affirms that ethnocide, i.e. cultural genocide, is a crime against international law, on the same footing as the crime of genocide condemned by the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, 1948 (paragraph 1). It recalls that since the European invasion the history of the Indian peoples of America has been suppressed or distorted, in spite of their major contributions to the progress of mankind, which has amounted to a negation of their existence, and it rejects this unacceptable falsification (paragraph 4).

22/ Ibid., paragraph 450.

23/ See foot-note 17 above.

24/ See paragraphs 25 to 28 above.

41. After referring to the main aspects of a policy of ethnodevelopment, 25/ it points out that disregard for these principles constitutes a flagrant violation of the rights of all individuals and peoples to be different and to consider themselves as different and to be considered as such, a right recognized in the Declaration on Race and Racial Prejudice adopted by the General Conference of UNESCO in 1978 and hence must be condemned, especially when it creates a risk of ethnocide (paragraph 11); this disregard creates a disequilibrium and a lack of harmony within society and may induce these peoples, as a last resort, to rebel against tyranny and oppression and thus endanger world peace and, consequently, is contrary to the Charter of the United Nations and the Constitution of UNESCO (paragraph 12).

42. It is not considered appropriate to include any further reflections on ethnocide in this chapter mainly because the revision and updating of the study on the question of the prevention and punishment of the crime of genocide will soon begin and special attention will certainly be given to these matters. At its thirty-ninth session, taking up the suggestion by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1982/2 of 7 September 1982, the Commission on Human Rights adopted resolution 1983/24 of 4 March 1983 in which, mindful of the Sub-Commission resolution and reflecting its deep concern and anxiety at the fact that acts of genocide are being committed in various regions of the world, it recommends that the Economic and Social Council should adopt a draft resolution in which the Council:

> "Mindful of resolution 1982/2 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and resolution 1983/24 of the Commission on Human Rights, related to the revision and updating of the study on the question of the prevention and punishment of the crime of genocide,
>
> 1. Requests the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint one of its members as Special Rapporteur with the mandate to revise, as a whole, and update the study on the question of the prevention and punishment of the crime of genocide taking into consideration the views expressed by the members of the Sub-Commission and the Commission on Human Rights, as well as replies of Governments, specialized agencies and other organizations of the United Nations system, regional organizations and non-governmental organizations to a questionnaire to be prepared by the Special Rapporteur;
>
> 2. Further requests the Sub-Commission to consider and to submit to the Commission on Human Rights at its fortieth session the aforementioned revised and updated study."

43. In this revised and updated study considerable attention will have to be given to ecocide, whether or not it is decided to suggest its inclusion in the new convention that may be proposed. The deliberate destruction or substantial modification of the natural environment to bring about changes which are not desired by the population of the region and which are detrimental to it may, in certain serious circumstances, be tantamount to ecocide which, with the consequent ethnocide, may ultimately result in a form of genocide. Preventing

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25/ See paragraphs 25 to 28 above.

an ethnic group from preserving its traditional forms of life and bringing about the destruction of its culture based on those forms of life and the disappearance of the group as such, are serious violations of the basic rights and fundamental freedoms of the populations in question.

44. Obviously, in order to respect the fundamental rights of indigenous populations who clearly express their wish to preserve, develop and transmit their culture to future generations and thus affirm their right to be different within the over-all society of the country in which they live, a pluralist policy needs to be adopted. To develop such a policy, a series of measures must be taken that are designed to make possible this different life, freely selected by the human groups concerned, while harmonizing it with that of other segments of society. Consequently, while in the case of groups desiring total assimilation in the dominant groups, the only problem is to arrange for them to participate without restrictions in the cultural life of the country, in the case of the others a series of other possible measures will have to be envisaged. This chapter accordingly concentrates on special measures going beyond the minimum requirement of non-discrimination that is always applicable.

C. Consideration of the information available

1. Introductory remarks

45. A survey may now be made of the information available on this subject. The first point to be stressed is that the information available is fairly limited. For some countries, 26/ only scant information has been obtained. For most other countries no details were available on certain aspects and on other aspects on which details were given, they were invariably fragmentary and insufficient. Only a few countries supplied fairly satisfactory data. It must be stated, however, that attention has from the outset been concentrated only on aspects of paramount importance, and that the corresponding chapter of the outline was drafted accordingly. The available information is presented within the framework of the basic ideas underlying this part of the outline. The available information is examined in relation to the specific topics selected, but it should be noted that because of the disparities in the data, the information available does not lend itself to comparisons. It may be felt that the chapter dwells too much on certain countries, but this is necessitated by the nature of the information available. It should also be noted with regard to the treatment of "culture" in relation to isolated groups (forest and mountain dwellers etc.) which have not been in contact with the dominant segments of the population, that the information on these groups is presented together with the rest of the information without differentiation, since there is insufficient information for a more systematic approach or to provide a basis for a considered decision.

46. The subject of culture and cultural, social and legal institutions is closely linked with that of the fundamental policy adopted with regard to indigenous populations, since in States which adopt - under whatever name - policies of assimilation such as those described in the relevant chapter, one is faced with a system that does not give the indigenous culture its true place and postulates as an ideal solution the abandonment of that culture in favour of the culture of the dominant non-indigenous groups. This may lead in extreme cases to measures which, by deliberately seeking that solution, involve the elimination of the indigenous culture in circumstances that will constitute a trend towards ethnocide. It is evident too that this subject is closely linked to educational policy and to the role educational policy assigns to indigenous cultures and languages in both general and vocational education and their representation in educational materials and among teachers.

47. The importance and recognition accorded to the indigenous language in the activities of the State authorities, and the facilities provided for the study and teaching of the various indigenous languages and cultures will be decisive factors in this respect.

48. It will also be highly important to bear in mind the relevant cultural and religious traditions and to take into account the wishes and opinions of the various groups both in formulating the fundamental policy and in developing and applying that policy in all areas of State activity that may affect the population

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26/ Argentina, Bangladesh, Bolivia, Colombia, Ecuador, El Salvador, Honduras, Japan, Laos, Nicaragua, Pakistan, Panama, Peru, Sri Lanka, Suriname and Venezuela.

groups concerned. The policies adopted by non-official organizations, such as religious missions and any scientific, anthropological, ethnological and sociological committees or groups which may have undertaken programmes of action among the indigenous populations, will also have to be reviewed.

49. It is clear that control, examination and review of State policy will be of crucial importance in order to ensure that the State itself and all non-State organizations involved act with due respect for indigenous culture, traditions and customs.

50. Of great importance also will be the measures taken to encourage the elimination of any barriers that may exist between the indigenous and the non-indigenous segments of the population and measures intended to discourage any action likely to accentuate divisions and rivalries that may prove detrimental to the indigenous populations, as well as measures to counter and eliminate misconceptions or prejudices which the non-indigenous populations may have with regard to the indigenous communities in the country, or which some indigenous groups may have with regard to some non-indigenous groups. Another important aspect will be the dissemination of better knowledge of the history, traditions, customs, culture or cultures, arts and handicrafts of the indigenous population, and of the latter's contributions to the cultural environment of the non-indigenous populations. Knowledge and recognition of the rights of indigenous populations and of the cultural, social and legal institutions which they value and have preserved up to the present is also vitally important. The non-indigenous populations must be made to realize and recognize the importance, for society in general, of the preservation and development by indigenous populations of their particular cultural characteristics.

51. Equally important are the aspects mentioned in the chapter on the religious rights and practices of the indigenous population, which play so large a part in their lives, and also measures taken to ensure some reflection of the indigenous culture in State political bodies by suitable methods which might include the representation of these population groups in legislative bodies, in public administration and in the judicial organs of the State as well as recognition of organs and bodies of this kind established by the indigenous groups themselves and of their internal control machinery, the necessary support being provided to enable them to function effectively without outside interference. In this connection it is important to recognize indigenous organizations and communities as local or regional political entities and to give indigenous communities the necessary degree of autonomy or self-government in political or administrative matters and in the establishment of their own courts. In conclusion, it is vitally important to recognize the communal forms of ownership of land and of the related resources required for working and developing the land, and also to recognize and support the authorities which exercise legitimate control within indigenous communities or groups according to tradition and custom, particularly in the assignment and distribution of land among the members of the groups or communities.

2. The right of indigenous populations to equality with other segments of the country's population in access to cultural institutions and activities

52. The information available does not reveal any cases of denial of, or legal restrictions on, the right of indigenous peoples to equality with other segments of the population of the country in access to cultural institutions and activities. The countries which have provided information on the subject merely

state that there are no problems in this respect. 27/ Some countries couch their replies in negative terms. For example, the Government of Sweden states that "no impediments or restrictions exist in [these] matters". 28/ Similarly, the Government of Norway says that in this respect "[there exist] no de jure or de facto restrictions". The Government of Guyana, for its part, states that "There are no impediments to the exercise of or restrictions on the right of indigenous populations to equality with other sections of the country's population in access to cultural institutions and activities." 29/ The Government of New Zealand also states: "There are absolutely no impediments to the exercise of or restrictions on the right of the Maori population to equality with other segments of the population in access to cultural institutions and activities. In fact, in some forms of cultural activities, such as amateur drama and opera, Maoris are playing a prominent part."

53. The Government of Australia states, in positive terms, that "Aboriginals have equal access to cultural institutions and activities with all other Australian citizens".

54. The Government of Chile states that "indigenous peoples have equality of access to cultural institutions and activities with the rest of the inhabitants of the Republic, and consequently there are no special legal provisions regulating such situations ... [Indigenous peoples] have equal opportunities and possibilities of being admitted to any performance or attending theatrical productions in any theatrical premises".

55. Article 19 of the Constitution of Ecuador specifies that "every person shall enjoy the following guarantees ... 15. The right to participate in the cultural life of the community".

56. These provisions and this information are in accordance with the relevant provisions of the Bill of Human Rights, which are referred to above. It is clearly important to ensure that no segment of the population is deprived of the right to take part freely in the cultural life of the community. However, it must be recognized that apart from the specific denial of this right and even denials and restrictions of other types which are not intended specifically for this purpose but which have the same result, there are circumstances which, while not involving actual deprivation of rights, result directly or indirectly in limitations or restrictions.

57. It is clear that both, in fact and indirectly, problems of an economic and geographical nature will arise in this respect.

58. The unequal distribution in the countryside and in cities of cultural institutions such as libraries, public newspaper and periodical reading rooms, libraries of records and tape recordings, museums, theatres, cinemas, concert

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27/ However, many of them provide additional information on other points relevant to this subject.

28/ The Governments of Finland and Mexico reply in the same manner.

29/ In a very similar manner, the Government of Canada has stated that "There are no impediments to the exercise of, or restrictions on the right of indigenous populations to equality with other segments of the population in access to cultural activities and institutions".

halls, etc., which tend to be unduly concentrated in urban centres, undoubtedly creates a situation in which the urban and rural sectors of the population have unequal access to such institutions. Even where the imbalance in the geographical distribution of cultural institutions and establishments is less extreme, the activities carried out or planned by such establishments are still oriented in favour of urban centres. Consequently, there are still considerable inequalities in this respect which affect rural population groups seeking access to such institutions.

59. The fact that access to these establishments is not always free and that payment is generally required is an additional cause of unequal access. Persons who do not have enough money to pay the charge, however small, in order to gain access to the institutions and the activities carried on there or who have to use a prohibitively high percentage of their income to cover the cost of admission will not have access to these establishments and performances in the same degree as persons in higher income groups.

60. As a result in part of technological advances, there has recently been a sharp reduction in costs and increasing popularization, which has made these institutions and cultural activities more accessible to low-income groups in all countries. In addition, undeniable efforts are being made in many countries to bring such activities to populations situated in areas remote from urban centres. However, even where no deliberate attempts are made to deny or restrict access, the actual opportunities for enjoyment and exercise of the right of access to these activities and institutions are still fewer in the rural communities in which the vast majority of indigenous populations live.

61. It is clear that, if the State merely takes steps to ensure that there are no direct or specific denials of, or restrictions on, the right of all population groups in the territory under its jurisdiction, it will not be fully discharging its obligations towards those groups which wish to have access to these activities and institutions. In order to discharge its obligations in this respect, the State should try to make all these activities and institutions accessible to low-income groups and should endeavour to bring such cultural activities and institutions to rural areas and to promote their expansion in these areas.

62. As indigenous populations at present live, almost always involuntarily, in the most remote areas of the countries concerned and are among the economically least advantaged groups in the money economy prevailing in these countries, States should fulfil their obligations primarily in regard to those indigenous populations which are already in contact with other segments of the population and freely express the wish for access to cultural activities and institutions. 30/

63. Another set of problems arises from the fact that all written materials (books, magazines, periodicals, texts of various kinds, etc.) are inaccessible to persons who do not know how to read or write. As has been mentioned in various

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30/ With regard to isolated groups which have not been in contact with other segments of the population, it will obviously be necessary to adopt an ad hoc policy, as will be pointed out below.

parts of this report, this situation, which is found more frequently among rural populations than among urban groups, is even more pronounced among the indigenous populations which invariably have the highest illiteracy rates. This is largely due to difficulties caused by lack of knowledge of the official language or languages or of those used by the State and to the lack or scarcity of written material in the indigenous languages.

64. It has frequently been pointed out that radio and television are overcoming some of these difficulties, particularly the uneven geographical distribution and illiteracy, since they are media through which cultural activities can be widely disseminated and understood even by persons who cannot read or write. Television, as an audio-visual means of direct perception, offers great possibilities as a means of cultural diffusion.

65. To some extent and for certain cultural activities, these two types of difficulties have been overcome with the introduction of transistor radios. The low cost and portability of small transistor radio receivers have partly reduced the economic difficulties and those due to uneven geographical distribution.

66. However, in spite of the reduction in cost, and in spite of the accessibility resulting from the advent of portable transistor radios and the increased and cheaper access to other cultural programmes and establishments, the latter will still be beyond the effective reach of large sectors of the indigenous population because of their extremely low income. These new facilities also suffer from additional disadvantages and defects, which affect other means of cultural dissemination as well. These other aspects are of great importance for indigenous populations of all types and in all areas, and relate not so much to the means of dissemination or the question of physical and economic accessibility, but rather to the content of the activities and of the programmes broadcast.

67. Frequently, programmes broadcast by radio and television are still beyond the reach of the indigenous populations since these means of communication, like the press, libraries, public newspaper and periodical reading rooms, libraries of records and tape recordings, theatres and cinemas, etc., have other disadvantages and raise other problems when the language used is a language that is not known at all or is imperfectly known by the indigenous population, which is thus placed at an additional disadvantage.

68. Thus, another example of inequality in access to cultural institutions and activities occurs in the case of persons or population groups who do not know, or have an inadequate knowledge of, the language used in these institutions and activities. For these groups, access to such institutions or establishments is limited or restricted de facto if the material used or the programmes shown are in the official language only, or primarily in this or other languages of the dominant segments, and if they are not available at all, or available only to a very small extent, in the indigenous languages concerned. No legal provisions or policemen will be required to prevent these population groups from having physical access to such establishments and activities; limitations or restrictions will exist simply as a result of the language used. In addition, where such activities are conducted or such establishments exist solely within the cultural framework of the dominant population groups, this may result not only in unequal access to such activities or establishments but also in the exertion of undesirable influences or the imposition of the culture of the dominant groups.

69. Radio, television and the press are effective cultural transmission media, but may be used to exert cultural influences and pressures which are not always desirable. Even where such media are not deliberately used for cultural penetration, they reflect the cultural framework and patterns of the dominant groups in forms which are perhaps not always suitable.

70. In countries which have adopted a policy of assimilating the indigenous groups to the culture of the dominant groups, these efforts will be deliberate. However, even where such a policy is not adopted, and even in the absence of any deliberate intent by the dominant segments of the population, there are often clear cases of cultural influence which is not always desired by the indigenous populations or which should perhaps be presented in a different form.

71. Furthermore, in many countries radio and television broadcasts, as well as the press, include advertisements and other means of exerting pressure on the consumer, which may be harmful for the other segments of the population but always have a particularly damaging effect on the indigenous populations. 31/

72. It is highly important that the existence of the indigenous culture (languages, traditions, history, customs, cultural contributions to other segments of the population, music, plastic arts, handicrafts) should be reflected in the State cultural diffusion media. This will not only help to make the non-indigenous populations aware of the existence and importance of the indigenous populations in the country concerned but will also contribute to the diffusion of the culture of the indigenous populations and make for a better understanding and wider diffusion of the cultures existing in the country. It will also widen the framework in which the cultures of the various communities in the nation are diffused and promoted and will thus give fuller significance to the right to take part in the country's cultural life.

73. This aspect clearly comes within the context of the special measures which the State should take so as not to encourage or permit the undesirable imposition of a culture or cultural penetration, and so as to ensure that the different languages and cultural groups may, if they so desire, preserve and develop all manifestations of their particular way of expressing themselves and of viewing the world.

31/ The following information from the Government of Colombia may be quoted as an example of the effects of cultural penetration on certain indigenous communities in that country and is valid mutatis mutandis for a large number of countries and situations. The Government states:

> "It is not just the demonstrable usefulness of the products of the national society that encourages people to consume them; the values of that society have been introduced through one of its media (evangelisation) into the tribe as standards of what is good and evil, beautiful and ugly, attractive and undesirable, and so on, and they have been accepted as the genuine ideological condition for consumption. Thus, the Indian not only works for a month in order to be able to buy a kilo of salt but for three years to acquire a transistor which places him in a situation of passive communication, as a mere receiver of the stimuli of the national society; thus, the more products he consumes from the outside, the more exploited he becomes. One of the consequences of the major literacy and evangelization campaigns is that he becomes a member of the consumer society, since it provides the indigenous person with value systems that prepare him for the use of the merchandise produced by ... [the] cultural and economic sectors [of that society]".

3. Protection of indigenous persons, groups and communities against the use of force of intimidation to compel or induce them to abandon their own culture, to accept the culture of the dominant groups, to attend cultural institutions or to take part in cultural activities against their will

74. States commonly try by various means to stimulate feelings of national unity which are regarded as essential for establishing the idea of nationhood and for maintaining nationalistic feelings. These aspirations may, however, present themselves in many different forms and embody many different policies even within the same general trends, as is pointed out in the chapter on fundamental policy in regard to indigenous populations. 32/

75. Without repeating the ideas expressed in that chapter, it may be stated here that a policy of assimilation adopted by a State should never be imposed on any social group, and particularly not on groups which are opposed to such a policy.

76. With particular regard to the question of "involuntary minorities", 33/ it was stated at the Seminar on the Promotion and Protection of the Human Rights of National, Ethnic and Other Minorities, held at Ochrid in 1974 and mentioned earlier that: 34/

> "... assimilation, though desired by some minorities, should not be forced upon any minority, as it was a process that should depend exclusively on free will. One participant felt that the pursuance of a policy of forced assimilation for minorities violated the fundamental principles of self-determination and equality of nations and the basic human rights which were enshrined in the Charter of the United Nations. Moreover, assimilation implied a series of measures of direct or indirect coercion for the purpose of denationalizing minorities, negating the rights of individuals to their own identity and thereby the rights of a national and ethnic minority as a whole, and from that point of view it could be considered to approach the threshold of genocide. A harmonious integration rather than full assimilation might be a way of preserving the characteristics of various groups and thus achieving unity among diversity and the building of pluralistic or multicultural societies, which might be preferable, under certain circumstances, to multinational federal structures. ..."

32/ See chapter IX above.

33/ A distinction was drawn between "historical", "classical" or "involuntary" minorities, resulting from events of a historical or geographical nature (for example, changes in frontiers, transfer of populations, and slavery) and "minorities by election", "voluntary minorities" or "new minorities" consisting of persons who have recently and voluntarily left their country of origin and moved to other countries (such as immigrants and foreign migrant workers). Report on the Seminar, (ST/TAO/HR/49) op. cit., para. 33.

34/ Ibid., para. 42.

77. Violence or intimidation, suggestion by coercion, material incentives, explicit and violent condemnation of the indigenous culture as a whole should be regarded as illegitimate means of exerting influence and of bringing about cultural or religious changes. The use of these methods is tantamount to ethnocide.

78. Those measures constitute an attack, whether deliberate or not, on the fundamental elements of the social cohesion of the indigenous community, which is seriously affected by the disintegration of the indigenous moral, social and legal standards and the weakening of the means used for the social control of the community.

79. Systematic and deliberate opposition to certain social or religious customs of the indigenous populations would be acceptable 35/ only as a way of discouraging, by appropriate means, certain practices which violate the sanctity of human life even though they may be associated with a particular religion, as may happen in very exceptional cases.

80. However, other beliefs and religious or magic rites, which have always been of vital importance for the indigenous cultural world, constitute one area that has been especially affected by intolerance and ethnocentric rejection, which have resulted in abuses throughout the whole period in which the indigenous cultures have been in contact with those of the dominant non-indigenous populations. In most cases, people have not understood or not tried to understand the disastrous effects of these abuses on the cultural life of the indigenous community, although on some occasions such abuses have been part of a deliberate policy.

81. In the past, there have been cases of "forced" conversion to the religions of the dominant groups, and pressure or intimidation has been used to induce the indigenous populations to discontinue the practice of certain rites or ceremonies which were regarded ethnocentrically as offensive to the ethical and religious principles of the dominant groups. Pompous "acts of faith" have led to the disappearance not only of religious objects and relics but also of documentation or records of enormous cultural value to the indigenous populations and to mankind as a whole.

82. These barbaric acts of suppression have resulted in serious losses for the cultural heritage of the world, but for the groups of mankind which have been victims of acts of fanatical intolerance or incomprehension, such acts have been merely the major incidents in the continuing process - planned and subtle or straightforward and simple - of the cultural suppression and cultural imposition which all indigenous groups and nations in all parts of the world have suffered in varying degrees at various times. All indigenous groups, communities and nations which have been vanquished in wars of conquest or subjection or in

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35/ Although it would not perhaps be advisable as a means of inducing the group in question to abandon such customs altogether.

"punitive" campaigns, or which have been placed under a regime of colonial subjugation in some other way, have been subjected to limitations and restrictions which placed serious obstacles in the way of their free expression and cultural development. For many indigenous groups, these impositions in their most serious forms have come to an end only recently; for others, unacceptable acts of suppression and imposition are still being committed on a large scale. For a few others, lastly, the period of cultural attrition seems to be a thing of the past, and new horizons have been opened up for the renascence and further development of their distinctive cultures.

83. Let us now consider the information available on these matters. Among the countries which have supplied information in this respect, Malaysia reports that the principles to be used as a guide for official policy regarding the Orang Asli include the following: 36/ "The social, economic and cultural development of the aborigines should be promoted with the ultimate object of natural integration as opposed to artificial assimilation. The primary objective should be the fostering of individual dignity and the advancement of individual usefulness and initiative. Recourse to force or coercion as a means of promoting integration shall be excluded."

84. Some of the Governments which have provided information on this question merely state that, since the use of force or intimidation to compel or induce indigenous persons, groups or communities to take part in cultural activities or to attend cultural institutions against their will is unknown in their countries, it has not been necessary to adopt any measures in this respect.

85. Norway for instance states that "there is no question of such protective measures being necessary. Australia reports that "Aboriginals are not subject to force or intimidation to compel them to take part in cultural activities or attend the cultural institutions unwillingly". New Zealand reports "There are no known instances in modern times of the use of force or intimidation to compel or induce Maoris to take part in any types of cultural activities or to attend cultural institutions against their will."

36/ Part of principle (b) in "Statement on Official Policy regarding Orang Asli populations". These principles, which seem to be based on the provisions of article 2, paragraphs 2 (c), 3 and 4, of ILO Convention No. 107, are reproduced below (para. 534).

86. Some countries make reference to the fact that criminal law provides for redress against the use of force or threats against anyone, adding that this includes the indigenous populations. 37/

87. In several of the countries reporting that no specific legislative provisions have been considered necessary to prevent interference with indigenous culture in its varied manifestations, there has been, however, an intensification of efforts to protect sites and objects of archaeological importance that have endured up to the present time and which have been disappearing through intentional destruction, through systematic drainage abroad to art collectors of different kinds including some reputable museums, or through simple lack of care. These endeavours have resulted in enactments of a protective character. The sites in question may be, and some are indeed, places of religious and cultural significance to present day indigenous populations. In other instances, on the other hand, some indigenous religious rites and practices that have also survived until the present time have been objected to in violent ways by the prevailing segments of the population. But acts of this sort are not indispensable to identify instances of lack of recognition and respect for indigenous cultural manifestations and efforts to impose alien cultural values and patterns on them. In some matters, indeed, the unqualified application of the general law could limit indigenous freedom to carry out traditional practices. There are, for example, matters dealing with marriage, family relationships, burial of the dead, etc., where the indigenous persons or groups still adhere to traditional customs and practices. Some concessions must be made in matters of this kind. There are, for example, general laws on the burial of the dead which, if strictly enforced, would interfere with some indigenous customs. Certain customs relating to marriage have been strongly objected to and discouraged by missionaries who felt that these practices were offensive to their cultural tenets. This has been the case with practices of polygamy which some missionaries have, in the past, actively discouraged.

88. In Australia, for instance, although there have been and there are no legislative or administrative restrictions on the form of Aboriginal marriage, in the past polygamy has been discouraged by some missionaries. While the form of Aboriginal marriage has not been officially restricted, neither has it been officially recognized. In relation to certain social service benefits, customary marriages are fully recognized, but this administrative practice has not been extended to recognition of the entitlement in relation to all wives of polygamous unions. The Government has stated "this matter is under review".

89. Another area of problems in this regard has involved practising medicine-men or priest doctors. In many places, there has been a concerted effort to hamper their work. In New Zealand for instance it is reported that there was formerly a statute making it illegal for Maori tohungas (priest doctors) to attempt to cure diseases by magic rituals. This Act was repealed in 1944, as the practice had long died out since the introduction of the social security programme and the extension of medical services throughout the country.

37/ For example, Guyana.

4. Measures to safeguard the maintenance and further development of the indigenous Culture and its transmission to future generations

90. If the fundamental right of the indigenous populations to the free development of their personality within their own cultural patterns is to be respected, the cultural institutions and activities of the dominant segments of the population should never be imposed on persons who resent and reject such intrusion. The cultural background of these groups, and the close attachment of indigenous persons, groups and communities to this background, should always be respected. It is necessary to understand or at least to envisage the destructive effects which abusive interference of this kind may produce in indigenous societies.

91. Procedures must be devised to prevent outright attacks and abusive impositions in the cultural field; the influences of one culture on another should be oriented to the greatest extent possible through channels leading to positive cultural exchanges and not merely to the cultural undermining and alienation of certain segments of the population. Regardless of the final objective of the policy chosen by the State in this respect, an approach of this kind is essential if one wishes to avoid the destruction of indigenous communities. Even where State policy is aimed at inducing indigenous populations to abandon their traditional culture and to adopt the culture of the dominant segments, it is essential to be clearly aware of the effects that the proposed measures may produce. It is obvious that this policy will be legitimate only where it is carried out with the consent of large sectors of the populations concerned. Where, on the contrary, the indigenous populations have manifested their determination to preserve their traditional culture, this desire should obviously be respected and appropriate measures should be taken.

92. It is not enough, therefore, to prevent or punish abusive conduct involving cultural penetration or imposition. It is essential to recognize and to protect the right of the indigenous populations to preserve, develop and perpetuate their culture and cultural, social and legal institutions by transmitting their cultural heritage to future generations, whenever they clearly express the wish to do so.

93. In this regard, there are a series of measures which the State can and should take to discharge this important function. Some measures will involve the protection of this right and of activities carried out in exercise of it. Others will consist of positive measures of assistance and promotion on the part of the State.

94. The information available on these matters is considered below.

95. There are no legal impediments in Sweden preventing the Lapps from transmitting to future generations their traditions and cultural characteristics, "but on the other hand," the Government states, "there is no special legislation which gives positive support to such efforts." In a similar manner, the Government of Guyana has stated: " ... Amerindians are free to maintain and further develop their culture but there are no special legal enactments directed to this end."

96. Measures of this type are surely not enough, if the indigenous communities have clearly expressed their desire to preserve and develop their cultural heritage and to transmit it to future generations. Suitable positive measures are then necessary and the State should act constructively to this end.

97. In Finland, the Government reports, ethnic minorities are at liberty to maintain their cultural heritage and to transmit it to new generations. Their cultural activities are encouraged and subsidized by the State. On measures taken for the preservation of Lapp culture and cultural, social and legal institutions the Government states:

> "The measures taken for the preservation of Lapp culture ... mainly ... aim at the preservation and development of the Lappish language and handicrafts and the facilitation of their traditional means of livelihood. These measures, which are to some extent dealt with in other paragraphs, often comprise administrative orders by central or local authorities. As an example of such orders, mention might be made of the one given by the Central Forestry Board on the principles to be followed in the care of State-owned forests in Lapland. According to this order, the interests of reindeer breeding shall be taken into consideration. At the moment, there is a working group studying ... how best to reconcile the interests of forestry and those of reindeer breeding in areas where they coincide."

98. The Norwegian Government states that the maintenance and further development of the indigenous culture are guaranteed. ... Reference is made to the following measures which have already been initiated in order to protect successful commercial establishments and operations of the indigenous communities and their traditional industrial enterprises:

1. The State grants loans and guarantees to economic enterprises.

2. The State has given grants to reindeer slaughtering firms.

3. The State has given funds to home craft activities.

4. The authorities control the import of reindeer meat in order to protect Lapp reindeer husbandry.

On important matters concerning the Lapps in general, the opinion of the Lapp organizations is ascertained.

99. The Ministry of Agriculture receives all applications for the development of watercourses and sends them to the Lapp organizations for their opinion. If deemed necessary, a committee is appointed to report on any harmful effects to the Lapps. In such a committee the Lapps will constitute the majority. Reports of this nature are funded by the State.

100. According to information provided by the Canadian Government:

> "A Cultural Development Programme operates under the Department of Indian Affairs and Northern Development. Since 1964 it has granted over half a million dollars to registered Indian individuals and groups for the advancement of traditional cultural activities. Two national cultural conferences have been held, and a national cultural committee established to implement their conclusions. An Indian cultural magazine, 'Tawow', has reached a circulation of 15,000, eight books have been published and six are in preparation, including a number of tribal histories. Three documentary films have been made. A fine arts collection of works by registered and non-registered Indian artists had eight major showings across Canada. Special grants were made to subsidize pageants and ceremonial occasions."

101. Reference has been made above 38/ to the Cultural/Educational Centres Programme introduced by the Federal Government in 1971 "to assist native people in the development, preservation and appreciation of the many aspects of native culture." In this connection the Government states that:

"... there are certain intangible results of the participation of Indian people in the planning and operation of their own fulfilment, pride, initiative, creativity and awareness. Such benefits can only contribute to the growth of the culture and the race.

"At present 59 cultural/educational centres across the country share 5.3 million dollars. The centres vary in the size and scope of their programs depending on the population supporting that centre. The largest Centre, the Saskatchewan Indian Cultural College, for example, is funded on the basis of its commitment to service the entire Indian population of Saskatchewan. As a result, the College receives an annual contribution of well over $1 million and is involved in a wide range of programs. There are, however, many centres which service only one band, with the consequence that the diversity of their programs is necessarily limited.

"Since 1972, Government has spent $37 million (to date) on this Program. In the field of literature and art, the Department, through a Grants Program, enables Indian and Inuit artists to enhance their careers in their specialties and thereby encourages potential and increases public awareness of Indian Art."

102. On other programmes the Canadian Government states:

"Under the Department of Indian Affairs and Northern Development, a program of grants for the advancement of Eskimo cultural expression provides funds to Eskimo individuals, groups and organizations requiring assistance in their cultural endeavours for the retention, preservation and promotion of Eskimo culture. Art exhibitions, books and films have been produced.

"The Department publishes a trilingual magazine (Eskimo-English-French) entitled "Inuittituut" which has a distribution to northern communities, libraries and universities. Articles are published in the language of the contributor.

"Another important form of assistance is to organizations of Indian women: Some Homemakers Clubs receive grants from the Indian Affairs Department to assist with their programs. The Department of the Secretary of State also provides funds to assist provincial and national women's native groups. The sum so expended is over $300,000 annually. Grants have been made to Indian Band Councils to develop libraries on the reserves.

"The National Museums of Canada maintain an extensive program of research and exhibition of Indian art and history artifacts. The National Museum of Man, now undergoing extensive renovation, will contain an outstanding exhibition area for this purpose. Currently, a "Museumobile" and several travelling exhibitions of native art and culture have carried

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38/ See chapter XIII on education

collections to many parts of the country, including Indian and Eskimo communities. The Museum has a program of extensive research into pre-history, ethnological history, linguistics and ethnology. Major field studies have been undertaken by Museum ethnologists with the Ontario Iroquois, the Charrier-Chilcotin of British Columbia, Indian tribes on the Prairies and in the northwest. The National Art Gallery has mounted a number of exceptional exhibitions of Indian and Eskimo art."

103. The Government of the Philippines reports that "the Bill of Rights embodied in the old and new Constitutions guarantees the right of all persons to enjoy their own culture in a manner not contrary to the laws of the land. The provisions of the New Constitution are the culmination of the recognized right of the minorities to autonomous cultural development. There is no law abridging or stultifying such a natural right of the individual. The Philippines specifically prohibits class legislation and any law found to be of such nature is declared unconstitutional and, hence, null and void. There is freedom of speech and the press."

104. The previous Constitution (of 1947) provided, inter alia, that the Filipino culture shall be preserved and developed for national identity ... (section 9 (2)), and that the State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of State policies (section 11).

105. In Brazil, the Indian Statute (Act No. 6001 (1973)), referred to above, provides:

"Article 1. This law regulates the juridical situation of the Indians or forest-dwellers and native communities for the purpose of preserving their culture and integrating them, progressively and harmoniously, in the national communion.

"Sole Paragraph. The protection of the laws of the country is extended to the Indians and native communities in the same terms as it applied to other Brazilians, safeguarding native usages, customs and traditions, as well as the particular conditions recognized in this Law.

"Article 2. It is the duty of the Union, the States and the Counties (municipios), as well as the agencies of the respective indirect administrations, within the limits of their competence, for protection of the native communities and preservation of their rights, to:

"I. - Extend to the Indians the benefits of common legislation, whenever application thereof is possible.

"II. - Furnish assistance to the Indians and native communities, even though they are not integrated in the national communion.

"III. - Respect, while providing the Indians with means for their development, the peculiarities inherent to their condition.

"IV. - Assure the Indians of free choice of their way of living and means of subsistence.

"V. - Guarantee the Indians the right to remain, if they so wish, permanently in their habitat, providing them with resources there for their development and progress.

"VI. - Respect, in the process of integrating the Indian in the national communion, the cohesion of the native communities, and their cultural values, traditions, usages and customs.

"VII. - Carry out, whenever possible with the co-operation of the Indians, programs and projects tending to benefit the native communities.

"VIII. - Utilize the co-operation, spirit of initiative and personal qualities of the Indian, with a view to improving his living conditions and integrating him in the development process.

"IX. - Guarantee the Indians and native communities, in the terms of the Constitution, permanent possession of the land they inhabit, recognizing their right to exclusive usufruct of the natural wealth and all the utilities existing on that land.

"X. - Guarantee the Indians full exercise of the civil and political rights to which they are entitled by law."

"...

"Article 28. An Indian park is an area contained within land in the possession of Indians, whose degree of integration is sufficient to allow of economic, educational and sanitary assistance being supplied to them by the agencies of the Union, wherein the flora, fauna and natural scenery of the region are to be preserved.

"(1) In the administration of the parks, the freedom, usages, customs and traditions of the Indians shall be respected.

"(2) The police measures necessary to keep order and preserve the existing natural wealth in the area of the park must be taken with the use of persuasive means and in accordance with the interests of the Indians living there.

"(3) The subdivision of land in the Indian parks shall comply with the tribal regime of property, usages and customs, and likewise with the national norms of administration, which must be adapted to the interests of the native communities.

"...

"Article 47. Respect for the cultural heritage of the native communities, their artistic values and means of expression is hereby assured.

106. In Malaysia, the principles listed in the Statement on Official Policy regarding the Orang Asli populations 1961 include the following, which are relevant in this connection: 39/

"The social, economic and cultural development of the aborigines should be promoted with the ultimate object of natural integration as opposed to artificial assimilation. The primary objective should be the fostering of individual dignity and the advancement of the individual usefulness and initiative. Recourse to force or coercion as a means of promoting integration shall be excluded. Due account must be taken of the cultural and religious values and of the forms of social control existing amongst the various communities, and of the nature of their problems in undergoing social and economic change. The dangers involved in disrupting their values and institutions unless they can be replaced by acceptable substitute must be recognized. The aim should be to mitigate the difficulties experienced by these communities in adjusting themselves to new conditions.

"The aborigines shall be allowed to retain their own customs, political system, laws and institutions when they are not incompatible with the national legal system. In this respect the methods of social control of the deep jungle groups shall be used as far as possible for dealing with crimes or offences committed by aborigines."

107. In this connection, it should also be mentioned that the Aboriginal Peoples Ordinance (1954, amended 1967) provides in section 4 that "nothing in this section shall be deemed to preclude any aboriginal headman from exercising his authority in matters of aboriginal custom and belief in any aboriginal community or any aboriginal ethnic group".

108. The following is one of the criteria guiding the activities of the Department of Orang Asli Affairs:

"(g) The implementation of economic development shall be done in a manner which preserves and makes use of their cultural heritage (e.g. the "Cotong Royong")."

109. In an effort to obtain basic information on Orang Asli groups and their culture, and to preserve some aspects of their material culture as it exists today, the Research and Planning Division of the Department of Orang Asli Affairs has been entrusted with the following functions:

"(a) To carry out research projects in the fields of education, health, economics and sociology in relation to the Orang Asli of Malaysia.

"(b) To procure books, photographs, films, journals etc. in the field of social science and other studies relating to peoples similar to Orang Asli.

"(c) To procure artefacts and specimens of the material culture of the various Orang Asli ethnic groups in Malaysia for record purposes and exhibition in the Library of this Division.

"(d) To provide continuous evaluation of all departmental administrative and development measures.

39/ Principles (b) and (c). See paragraph 83 and foot-note 36.

"Plans for a departmental museum which will provide an adequate record and selection of Orang Asli material culture and also a film library of Orang Asli social activities are under consideration, but a final decision on the form of the museum has not been taken yet."

110. In Australia it is the avowed policy of the Federal Government to give encouragement to the preservation and development of traditional Aboriginal culture and to strengthen the capacity of Aboriginal communities increasingly to manage their own affairs. This action is undertaken in particular through the Aboriginal Acts Board of the Australia Council, which disposes of substantial funds made available by the Australian Government for these purposes. To this end several measures have been taken, as follows:

"... land is being secured for Aboriginal communities to enable them to develop as they choose; Aboriginal languages are being studied and their oral literature is being recorded, both in Aboriginal languages and in translations; Aboriginal sacred sites are being protected; Aboriginal arts and crafts are being encouraged and promoted; and programmes are being developed to help the community generally to understand, respect and enjoy the contribution that Aboriginal culture can make to the national life."

111. During his official visit to Australia in June 1973, the Special Rapporteur came to Maningrida, a small community in the Northern Territory, and among other activities held a meeting with members of the Communal Council and other Aboriginal persons. It was the consensus of Aboriginal persons who met with him, that "a bi-cultural attitude should allow the Aboriginal community to retain the 'good elements' of Aboriginal culture, while also acquiring the 'good elements' of European culture". This statement was included in the monograph on Australia that was sent to the Government for comments and supplementary data. The Government has transmitted the following comments:

"Australian Government policy is in accord with the views expressed by the Maningrida people to the Special Rapporteur.

"Members of various language groups within the Maningrida community have shown preference increasingly in the past few years for establishing satellite communities (outstations) at a distance from the main settlement and usually on their traditional land. These developments, which allow Aboriginals opportunities to maintain and develop their own culture and to adopt such elements of European culture as they choose, are being encouraged."

112. On this matter of the measures taken to protect the maintenance and further development of indigenous culture, the New Zealand Government has reported:

"There has been a tremendous revival of interest in Maori cultural activities in recent years, not only amongst Maoris but amongst non-Maoris as well. Maori culture is included in the curriculum of all schools and it is proposed to increase the time allotted to these activities in the very near future. For the improvement of Maori arts and crafts, the New Zealand Institute of Maori Arts and Crafts was established at Rotorua by the Government in 1963.

"As already mentioned, the Government provides generous subsidies for the erection of tribal buildings; these normally include traditional Maori woodcarving and other forms of Maori art.

"The increasing level of interest in Maori history and culture is evident in, inter alia, New Zealand bookstores which in recent years have come to abound in such materials. Again, all of the larger cities have well-stocked museums which have a major part devoted to Maori cultural material. The museums co-operate with the education authorities in the demonstration and teaching of Maori culture.

"Since the massive migration of Maoris to the cities voluntary Maori cultural organizations have grown up throughout the country and many thousands of young Maoris as well as non-Maoris are learning songs, dances, poetry and other Maori traditional material. These Maori cultural institutions are assisted financially by the Maori Purposes Fund Board which is a statutory body, partly funded from Government sources, concerned with the preservation of the Maori language, poetry, arts and crafts and other traditional culture ...

"The New Zealand Broadcasting Corporation has regular programmes in the Maori language and other programmes related to Maori culture. Consideration is being given at the present time to the allocation of one radio station in Auckland to provide for the needs of Maoris and other Polynesians living in New Zealand."

5. Recognition and protection of the norms of indigenous traditional law

113. This question obviously does not arise where indigenous populations no longer observe the norms of traditional law by which their lives were formerly governed. This appears to be the case in a number of countries where, according to the information supplied by the respective Governments, no measures of this type are required, since the same legal provisions are applied universally. The majority of Governments concerned refer, however, to certain particular areas of the law, especially civil law and family law. In Norway, for example, the Government has indicated that no measures of any kind are required, "since the Lapps have the same family patterns as the rest of the population". The Swedish Government has stated that "in Swedish civil law no special provisions exist regarding, for instance, conditions of inheritance from,or marriage with, persons belonging to ethnic ... minorities." The Government adds: "In those respects the same provisions apply to all the inhabitants of the country." The position appears to be very similar in Finland according to the information supplied by the Finnish Government.

114. The question is relevant, on the other hand, where traditional law is still observed among the indigenous populations. Two questions then arise in regard to its recognition by the State. The first is of course the basic question as to whether such recognition should be granted or not. A number of countries appear to have adopted a positive attitude, although in differing degrees. In one country this question appears to have been decided in the negative, since the Government of Guyana has stated that in that country the "traditional laws of the Amerindians

are not recognized." It is an undoubted fact that the great majority of the Amerindian populations of Guyana live in accordance with their own traditions and customs, since they consist of groups of forest dwellers. The second question relates to the scope of application of this traditional law. Should the scope of application be determined on the basis of geographical-demographic criteria, so that the traditional law will be applicable in areas of the country with a dense aboriginal population? Or should the law be applied on a personal basis in accordance with the following rules? In the case of relations between indigenous persons, the applicable law would be the traditional law common to both parties; in the case of legal proceedings involving both indigenous and non-indigenous persons, conditions would be determined for applying the traditional indigenous law or the general law of the country. Another problem is whether recognition should be accorded only to the norms of private law or to the norms of public law as well.

115. Recognition of traditional customary law in the case of relations between indigenous persons appears to be no more than an inevitable recognition of the facts of social life, and amounts merely to the attribution of official force to legal norms which are in fact applied between indigenous persons as a fundamental element in their mode of existence.

116. State recognition and protection of important norms of indigenous traditional law which are applied in indigenous communities is one important aspect of the process of gaining awareness of the existence of an indigenous cultural world as reflected in legal norms. If indigenous populations have preserved their institutions up to the present time, sometimes after many centuries of contact with the legal system of the dominant segments of the population, it is obvious that they clearly wish to preserve these customs and traditions, which form an integral part of their way of life.

117. We may quote in this connection the following statement by the Government of Australia:

> "While it is Government policy not to interfere with traditional Aboriginal law and custom, it has generally been considered inappropriate to accord formal recognition to these laws and customs. Aboriginal law has not generally been incorporated into Australian legislation, although the Intestate Wards (Distribution of Estates) Ordinance of the Northern Territory provides for the property of Aboriginals who die intestate to be distributed in accordance with Aboriginal traditions. Australian courts increasingly take cognisance of Aboriginal law when considering Aboriginal cases.
>
> "As indicated, formal legislative provision has been made to provide recognition of Aboriginal custom in relation to inheritance. Proposed legislation in relation to Aboriginal lands in the Northern Territory will protect traditional rights in land. Consideration is being given to the possible advantages of the formal legislative recognition of Aboriginal traditional marriage but action has already been taken to eliminate practical disadvantages resulting from lack of such formal legal recognition.
>
> "The Aboriginal Affairs Planning Authority Act 1972-1973 of Western Australia also provides that the estates of certain Aboriginals are to be distributed in accordance with customary law."

118. The continued existence of the indigenous legal system and of indigenous legal usages, customs and traditions may be due to the cultural resistance manifested by indigenous groups which reject the imposition of a system which is not their own. This occurs in situations in which groups are in contact and in conflict with one another. In many cases, however, the legal system of the dominant segments of the population, which is also generally described as the "national" system, is not in fact rejected. There is merely a lack of contact with the national system in circumstances that constitute a real and effective ignorance of the law, which no legal fiction can invalidate. In other cases there is complete lack of correspondence in certain specific aspects between the two legal systems, which adopt positions that are to a large extent antagonistic or contradictory. In these cases, the "national" court cannot of course be required in every instance to apply the indigenous law in preference to the "national" law, but at the same time the disparity between the two legal systems and worlds of culture should not be ignored altogether. Lastly, there will be cases in which the two legal systems adopt positions which are different but not contradictory. In these cases it should always be possible for the court - using its judicial discretion - to take into account the indigenous customary law and thus to render a fairer and more realistic judgement.

119. In the latter case there may also be a legal provision of a general type to the effect that usages, traditions and customs which are not contrary to the law are to be recognized and applied in specific cases where it may be desirable to do so.

120. The Special Rapporteur hoped to be able to analyse this material in a systematic form in the final report on the basis of fuller information which, however, was not available. The information available is in consequence given in the form in which it was possible to present it.

121. In the majority of States the essential condition for the recognition of the norms of indigenous customary law is that they should not be contrary to public order, morality, the general policy of the State, the general principles of the national legislation or the national law or legal system. This is the case in the Philippines, for example, where "customary practices not contrary to law are tolerated and socially recognized. The Courts take judicial cognizance of such customs, traditions and practices". This latter point is of great importance since in the last analysis it is the courts that finally decide what force should be attributed to the norms of indigenous customary law.

122. In Laos the courts are obliged to seek information regarding the special usages and customs of the ethnic groups which live in mountainous areas and have no form of writing. In this connection article 53, paragraph 2, of the Code of Civil Procedure provides that the hill-dwellers may be brought before the same courts, but that:

> "... Nevertheless, before the end of the hearing, in cases involving persons belonging to mountain tribes which have no form of writing, the court shall summon one or more headmen of the tribe concerned to appear before it and shall consult these headmen regarding the special customs and usages of the tribe. Reference to these consultations shall be included in the judgement of the court".

123. The Government of Laos has indicated that, in accordance with this provision, the courts are obliged to "respect the special customs and usages" of the groups concerned. It does not appear that any conditions of any type are imposed in this connection.

124. In Malaysia, in a similar manner the Orang Asli are allowed to retain their own customs, political system, laws and institutions when they are not incompatible with the national legal system. In this respect the methods of social control of the deep jungle groups are used as far as possible for dealing with crimes or offences committed by aborigines. 40/ In this connection, it should be repeated that the Aboriginal Peoples Ordinance provides in section 4 that "nothing in this section shall be deemed to preclude any aboriginal headman from exercising his authority in matters of aboriginal custom and belief in any aboriginal community or any aboriginal ethnic group". The implementation of economic development is carried out in a manner which preserves and makes use of their cultural heritage. (See paras. 106 and 107 above.)

125. In Brazil this recognition does not appear to be subject to any conditions of any type, in the circumstances referred to in Act. No. 6001 of 19 December 1973 (the Indian Statute), which provides as follows:

> "Article 6. The usages, customs and traditions of native communities and their effects shall be respected as regards kinship, order of succession, distribution of property and deeds or business among Indians, unless they opt for application of common law.
>
> "Sole paragraph. Common law norms apply to relations between non-integrated Indians and persons alien to the native community, except insofar as they are less favourable to the former with due exception of the provisions of this Law."

126. As may be seen from the text reproduced above the indigenous law is - in respect to certain matters - applied in relations between indigenous persons, unless the latter opt for application of common law. No details are given of the formalities required for the exercise of this option, in order to establish that it has been freely exercised, and nothing is said with regard to its scope. 41/ Ordinary law is applied in relations between "non-integrated" Indians and persons "alien to the native community," unless the indigenous law is more favourable to the former. Act No. 6001 applies in all cases.

127. The section of Act No. 6001 relating to "Indian parks" includes certain provisions regarding respect for the usages, customs and traditions of the indigenous population residing therein:

> "Article 28. An Indian park is an area contained within land in the possession of Indians, whose degree of integration is sufficient to allow of economic, educational and sanitary assistance being supplied to them by the agencies of the Union, wherein the flora, fauna and natural scenery of the region are to be preserved.

40/ Principles (b) and (c), Statement on Official Policy regarding the Orang Asli population. See para. 106, above.

41/ No reply has been received to a request for information on this point which was included in the summary on Brazil transmitted to the Government for comments and supplementary data.

"(1) In the administration of the parks, the freedom, usages, customs and traditions of the Indians shall be respected.

"(2) The police measures necessary to keep order and preserve the existing natural wealth in the area of the park must be taken with the use of persuasive means and in accordance with the interests of the Indians living there.

"(3) The subdivision of land in the Indian parks shall comply with the tribal regime of property, usages and customs, and likewise with the national norms of administration, which must be adapted to the interests of the native communities.".

128. The information at present available in regard to the recognition of the norms of indigenous traditional law contains references also to a number of specific aspects of civil law and family law institutions, 42/ which will be examined in the following paragraphs.

129. The situation is ambiguous in a number of countries where, however, clear elements of recognition of customary law coexist with clear elements of interference and disregard of indigenous traditional law.

130. For example, the situation prevailing in India has been described thus:

"The major variations in family structure are to be found among the tribal groups and semiaboriginal castes and a few Hindu castes of the southern coast and the northern fringes. The Muslim family is similar to that of the Hindus, except that, unlike the Hindus, the idea of common ownership of property does not prevail among the Muslims; Islamic law regards property as essentially belonging to the individual ...

"The Constitution of 1950 specifies the framework of a uniform civil legislation, including a family code, and states that the Union (central) or any state government may legislate in matters of family life governing marriage and divorce, adoption of infants and minors, wills, intestacy and succession, and joint family and partition. Accordingly, government leaders have attempted to modify or eliminate certain practices that they regard as obsolete in the modern state. Among these practices have been bigamy, child marriage, prohibition of divorce or remarriage by widows, and the lack of property rights for women. Nevertheless, family life has continued to be governed in many instances by customary laws, and governmental efforts have been met with only limited success because of deep-rooted customs ...

"The Hindu Marriage Act of the Hindu Code, adopted in 1955, forbids polygamy and permits intercaste marriage and divorce by either sex on certain grounds. Remarriage is permitted after divorce and payment of alimony to a divorced mate of either sex who does not marry is provided for. Under the Hindu Succession Act of 1956 and other acts, full equality is enjoyed by both sexes with respect to all rights and obligations, particularly the rights of women in inheritance. The Adoption and Maintenance Act of 1956 incorporated legislation on the guardianship and adoption of minors.

42/ The text of article 6 of Act No. 6001, which has been reproduced above, refers in particular to kinship, order of succession, distribution of property and deeds or business among Indians. See para. 126 above.

"These laws are not readily enforceable. They are the basis of a common code of social laws. Their enforcement on all castes and communities is not practical at present, since many social laws are regarded as having a religious basis, and interference with religious practices and tenets is forbidden. In the late 1960s, for example, several women's organizations complained to the authorities that the provisions of the acts dealing with marriage and inheritance among Hindus were more often violated than observed. In the rural areas many daughters continued to be denied the right to inherit their fathers' properties and very few of them had the facility to apply for divorce in the event of maltreatment by their husbands." 43/

131. As regards official recognition and protection of the norms and traditional law of the indigenous communities in Indonesia, the Anti-Slavery Society reports:

"Customary law is recognized and the aim of Law 6 is to "preserve their customs as a cultural heritage. Honesty, truth and justice, based on norms of their customs and their customary law constitute obligations for every member of the society for preserving the foundations of their legal system. Legal decisions are enforced by the head of the community and the Elder with authority concerning their customs. Decisions in disputes and the enforcement of such decisions are carried out by the community, under the influence of the Head. More serious disputes, or those involving outsiders, may be dealt with by the district magistrate or official in the nearest non-tribal village with putative authority over the village. This is extremely rare and cases are only taken outside the village with the utmost reluctance and when all else has failed.

"As there is no legal status for members of isolated groups there is consequently no hard and fast rule when outside authority becomes involved.

"Traditional forms of marriage, adoption, divorce and inheritance are recognized in Indonesian law if such arrangements are part of adat law recognized as a source for Indonesian law ... In the question of transfer of ownership of real and personal property, the adat law of the community will govern such transactions and, if in accordance with that law, will not be overruled by Indonesian law." 44/

132. Some of the available information deals with the question whether marriage contracted by indigenous persons in accordance with their traditional rights and customs is recognized as lawful and, if so, whether it has the same status as marriage contracted with all the formalities established in civil law. Indigenous marriage usually takes place in the context of legal systems in which only civil marriage contracted with all the legal formalities and duly registered will be considered as marriage conforming to civil law.

43/ Rinn-Sup Shinn and others, op. cit., pp. 170-171.

44/ Information submitted on 3 September 1976 and 24 April 1977.

133. In this connection, the relevant statements of the Government of Chile may be quoted:

> "... the institution of marriage is regulated for all inhabitants of the territory in the law promulgated on 10 January 1884 whereby marriage not contracted in conformity with the provisions of this law has no civil effects. The law provides that the contracting parties are free to comply or not with the requirements and formalities prescribed by the religion to which they belong. However, these religious requirements and formalities will not be taken into account in order to determine the validity of the marriage or to regulate its civil effects.
>
> "Indigenous persons may marry in accordance with their religious rights and customs, but if the marriage is to have civil effects it must comply with the rules prescribed by the Civil Marriage Act.
>
> "The Civil Marriage Act regulates the marriages of all persons inhabiting the territory of the country. A marriage solemnized in violation of the provisions of the Civil Marriage Act has no legal validity.
>
> "The rules on impediments and prohibitions, formalities prior to solemnization of marriage, solemnization of marriage, nullity and dissolution of marriage are the same whether they apply to indigenous persons or non-indigenous persons."

134. Thus, in some countries, marriages solemnized according to indigenous rights and customs will produce civil effects only when all the formalities stipulated by civil law have been observed.

135. In other countries, despite the strict regulation of civil marriage, other unions that fulfil certain requirements concerning uniqueness and duration and, in some countries, marriages performed according to indigenous legal rights, ceremonies and customs can be regarded as having the same legal effect as civil marriage. Since it is stipulated that they shall produce the same legal effects as civil marriage, these indigenous unions and marriages are in fact considered as marriages, albeit of a particular kind. Customary formalities in the last case are recognized as effective in producing the desired legal consequences: the solemnization of a marriage that can be registered and that is valid for all subsequent civil purposes.

136. In the framework of inter-american indigenous activities, it should be noted that the Fourth Inter-American Indian Conference held in Guatemala City, Guatemala, from 16-26 May 1959 adopted a resolution, the first operative paragraph of which stated:

> "1. That de facto unions between indigenous persons, in conformity with their rights and customs, should be considered equal to civil marriage." 45/

45/ Quoted by Alejandro Marroquín in Balance del Indigenismo, informe sobre la política indigenista in América. Instituto Indigenista Interamericano, Sección de Investigaciones Antropológicas, Ediciones Especiales, No. 62, Mexico, S.D., 1972, page 33.

137. In Guatemala, where the Conference was held and where civil legislation has fully equated registered de facto unions with civil marriage,46/ marriages between indigenous persons performed in accordance with their rites and customs have been recognized as valid. An authority writes:

> "In 1947, a legislative decree made it possible for a couple living in common-law union to have it legalized by the local authorities. They may do so after three years of living together as man and wife. Indians who have been united through traditional rituals need not wait three years.
>
> "...
>
> "... In isolated areas, a traditional ritual often gives local recognition to the union of a couple. Such rituals have more meaning for the people than recognition by the national government or by the Church." 47/

138. Similarly, the Government of Canada states:

> "Since common law marriages are recognized in Canada, there has been little difficulty in establishing the legality of all marital unions among native people, and few cases have come to court. Legal marriages are in accordance with Canadian requirements for a license, a presiding authority, and witnesses. In fact most Indian marriages are solemnized by the Christian churches."

139. The Canadian Government has stated that the validity of indigenous marriages has been upheld even in cases of marriage between indigenous and non-indigenous persons and in the absence of the observance of the formalities required for "legal marriage", reporting in this connection that:

> "one or two court cases have arisen in regard to inheritance in marital unions involving Eskimo women and white men. One case involving two Eskimos was decided by the Territorial Court of the Northwest Territories in favour of the widow who claimed for herself and her infant child an estate of over $25,000. There was no record of the marriage since she and her late husband had not taken out a license, having been married in accordance with Eskimo custom in a remote region on the coast of Baffin Island. Because the Marriage Ordinance of the Territories did not prohibit the legality of such marriages, the court found that the marriage was valid under the law of England of 1870, and in accordance with established Eskimo custom going back to time immemorial, even though a license had not been obtained."

46/ See articles 173-189 and, in particular, articles 178, 182 and 183 of the Civil Code.

47/ N. Whetten, Guatemala, the Land and the People, New Yale University Press, 1961, pp. 240 and 241.

140. Turning now to a specific aspect, wherever the indigenous populations have continued to contract marriage in accordance with their customary law, indigenous customary marriages should be recognized and, if the parties so desire it, registration should be possible on the basis of the performance of the customary ceremony.

141. In Brazil marriage performed according to tribal rites seems to be recognized, as article 13 of Act No. 6001 provides that "There shall be suitable books available at the competent assistance agency for administrative registration of the births and deaths of Indians, the cessation of legal incompetence and marriages performed according to tribal rites". It is also provided that "administrative registration shall constitute, when appropriate, a sufficient document to justify civil registration of the corresponding act, admitted, in default of the latter, as subsidiary evidence." (Sole paragraph).

142. No information is available 48/ as to whether these marriages are regarded as comparable to or placed on an equal footing with other forms of civil or religious marriage or with marriages or de facto unions that may have been recognized by the State.

143. In accordance with article 12 of the same Act No. 6001, however, "births, deaths and civil marriages of the non-integrated Indians shall be registered in accordance with common legislation, taking into account the peculiarities of their conditions as regards surname, given name and filiation." It is added that "civil registry shall be made at the request of the interested party or the competent administrative authority." (Sole paragraph).

144. In the Philippines, at least for 20 years counting from the date of the adoption of the Civil Code, certain exceptional rules have been operative for Mohammedan and pagan marriages under certain specified circumstances. The Civil Code provides:

> "Article 78. Marriages between Mohammedans or pagans who live in the non-Christian provinces may be performed in accordance with their customs, rites or practices. No marriage license or formal requisite shall be necessary. Nor shall the persons solemnizing these marriages be obliged to comply with Article 92.
>
> "However, twenty years after the approval of this Code, all marriages performed between Mohammedans or pagans shall be solemnized in accordance with the provisions of this Code, but the President of the Philippines, upon recommendation of the Secretary of Interior, may at any time before the expiration of said period, by proclamation, make any of said provisions applicable to the Mohammedan and non-Christian inhabitants of any of the non-Christian provinces." 49/ 50/

48/ No reply has been received to a request for information included in this respect in the summary transmitted to the Government for comments and supplementary data.

49/ Article 92 of the Civil Code, mentioned at the end of the first paragraph of this article, requires registration of priests, ministers and rabbis authorized to perform marriages.

50/ No information has been received in response to the request transmitted to the Government of the Philippines, on the question of whether the proclamation mentioned in the second paragraph of article 78 of the Civil Code has in fact been made.

145. It is also provided that for a period of 20 years from the approval of Act No. 394 (1949) of the Republic, divorce among Moslems residing in non-Christian territories shall be recognized and be governed by Moslem customs and practices.

146. As has already been indicated 51/ the Australian Government has stated that "Aboriginal law has not generally been incorporated into Australian legislation." The Government has added that "under the present law in Australia, Aboriginal customary marriages are not recognized and cannot be registered with the appropriate authorities. There are many difficulties in giving statutory recognition to such marriages including polygamy and child brides. It has been suggested that such marriages be recognized but no decision has been made by the Australian Government concerning this matter."

147. New Zealand reports that there are no special laws and practices relating to marriage formal or informal or to de facto unions. The general practice has been for Maoris, who have been nominally Christians for well over a century, to contract religious marriage; lately, however, increasing numbers of Maoris are contracting marriage under civil law. There are no special laws relating to de facto marriages by Maoris, but permanent de facto unions are recognized for social security purposes whether the parties are Maoris or otherwise. The same law applies to other aspects of family law such as adoption of children and divorce or dissolution of formal or informal marriages, which are all dealt by the courts under the general law of the country applicable to all persons. Non-governmental sources in New Zealand agree that Maori customary practices have been "tolerated" in some aspects. It is pointed out, nevertheless, that the general trend has been to bring Maori marriage and other social customs and land legislation within the scope of traditional English law as it obtains in New Zealand, through registrations of births, deaths and marriages, effected only in this century. Land legislation has evolved with an ultimate goal of "replacing Maori custom with a system of English land law". The Government has stressed, however, that "it should be noted that legislation recently introduced into Parliament provides for the repeal of a law passed in 1967 which modified the Maori customary system of inheritance to land. The new legislation will restore the previous situation." 52/

148. We shall now consider some other matters which come under the heading of culture and cultural, social and legal institutions, and on which information is also available. These matters include de jure or de facto limitations or restrictions with respect to certain civil and commercial acts by indigenous persons or groups, and also certain limitations or restrictions on marriages between indigenous and non-indigenous persons. We shall then deal with the question of assistance to indigenous groups and persons from rural areas who have recently migrated to urban areas.

51/ See para. 117 above.

52/ Information furnished in 1974.

6. Limitations or restrictions with respect to certain civil and commercial acts by members of indigenous populations

149. Very little information is available on the question whether de jure or de facto limitations or restrictions are imposed, with respect to certain civil and commercial acts involving the acquisition, mortgage, transmission or alienation of property by indigenous persons or groups. Some governments have stated that there are no de jure or de facto limitations or restrictions of this kind in their countries. 53/

150. In a number of other countries, there are no general limitations or restrictions of this kind, but restrictions are imposed in the case of acts relating to land and resources connected with land. 54/ These cases will be examined in the chapter on land tenure. It need only be emphasized here that, in these systems, the legal capacity of indigenous persons is full in every sense and that specific limitations exist, by way of exception, only with respect to acts relating to land.

151. The Government of Mexico reports that in this respect a distinction must be made between community property and private property. Community property is subject to a legal regime that precludes mortgage, transmission or alienation. The private property of indigenous persons may be mortgaged, transmitted or alienated, without limitations other than those the law imposes on all Mexican citizens.

152. Another example is New Zealand, where the only acts subject to a certain measure of control are acts relating to the disposal of Maori land. 55/ Any legal acquisition or disposal of property, including land but with the exception of "Maori land", is free from any limitation or restriction, and the Maoris enjoy exactly the same rights in this respect as other citizens. On this question, it is stated that:

> "There are no limitations or restrictions of this kind whatsoever. By far the greater proportion of Maoris buying properties in urban areas at the present time are buying non-Maori land. It is also common for Maori farmers to receive financial assistance through the Maori and Island Affairs Department to buy non-Maori land for farming purposes. A Maori who owns non-Maori land has exactly the same rights as any other citizen in respect to mortgaging, selling, leasing or transmitting such property."

153. From the information available, it would seem that there are a number of clear cases of general limitations or restrictions.

53/ Finland, Norway and Sweden. In the latter case, the Government adds that in "Swedish law no special provisions exist regarding, for instance, conditions of inheritance from ... persons belonging to ethnic ... minorities. In those respects, the same provisions apply to all inhabitants of the country".

54/ For example in Chile, and in New Zealand in relation to Maori land.

55/ The expression "Maori land" broadly denotes land which has belonged to Maori individuals or communities since before the arrival of European settlers in New Zealand or which has become Maori property by virtue of a court decision. These lands are subject to a special regime, which will be dealt with later in the chapter relating to the law of ownership with especial reference to land.

154. In Canada the provisions of the Indian Act apply only to status Indians and, therefore, such limitations and special provisions as are contained in it do not affect non-status Indians, Metis or Inuits:

> "The limitations placed on indigenous people with respect to the acquisition, mortgaging, transmission or alienation of property are those provisions in the Indian Act designed to keep inviolate the land and property of the Band. No such restrictions apply to non-status Indians, Métis or Eskimos.
>
> "The Indian Act exempts from taxation the interest of an Indian or a Band in reserve land and the personal property of an Indian or Band situated on a reserve. No succession duty, inheritance or estate tax is payable on either type of property upon the death of an Indian or the succession thereto if it passes to an Indian. The real and personal property of an Indian or Band situated on a reserve is exempted from charge, pledge, mortgage, attachment, levy seizure, distress or execution in favour of or at the instance of any person other than an Indian. Any passage of title to any personal property - or interest therein - situated on a reserve by reason of its having been purchased by the Crown with Indian moneys or moneys appropriated by Parliament for the use and benefit of Indians or Bands or given to Indians or Bands under a treaty or agreement between a Band and the Crown, is void unless consented to by the Minister of Indian Affairs and Northern Development or entered into between members of a Band. Officers or employees of the Department of Indian Affairs or missionaries or teachers on reserves are prohibited from trading for profit with an Indian or selling him goods without a license. It is also prohibited to remove from a reserve, or to possess after removal without permission, minerals, stone, gravel, clay or soil, or trees, saplings, shrubs, underbrush, timber, cordwood or hay.
>
> "Other provisions of the Indian Act bestow on the Minister the authority to manage Indian Band moneys, and to control the descent of private property, including the granting of approval to wills executed by Indians. Such provisions, however, are yielding to new practices, and there is now extensive Band management in many kinds of economic dealings."

155. Referring to similar restrictions on the alienation of trust property affecting Indians in the United States, a publication has focused on the difficulties this causes in certain circumstances:

> "... Because of this trust status, it is often difficult for Indians to obtain financing for the private development of their own land. It was only in 1974 that the Congress passed an Indian Financing Act, and the benefits to be gained under this act have yet to be realized". 56/

56/ American Indian Law Newsletter, vol. 7, No. 11, Special Issue containing the American Indian response to the response of the United States of America, p. 41.

156. The Anti-Slavery Society states that in India:

"The statement of basic freedoms to be enjoyed by all citizens (art. 19 of the Constitution) has been restricted in the case of Scheduled Tribes by subparagraph (5) which made it possible for the State to control the disposal of STs' property - particularly land. All States in the Union with ST populations have fulfilled this requirement (though in many areas it had been fulfilled since British times) by implementing laws prohibiting the sale of land by tribals to non-tribals.

"The basic law common to all States is that a tribal can only sell land to a non-tribal with the permission of the District Collector (i.e. Administrator) who must fully scrutinize the proposed transaction to check that it is in the tribal's best interest and that the price is fair. In some States such laws are restricted to the Scheduled Areas (Gujarat 1961, Andhra Pradesh 1958, 1971) in others they are of more general applicability (MP 1959, Maharashtra 1966, Rajasthan 1955, West Bengal 1955) and in still others their scope has been widened from SAs to all STs (Orissa replaced the 1956 Act with a more general one in 1960).

"However, such Acts have not succeeded in controlling the process of alienation of tribal land." 57/

157. In Guyana for instance the Government has stated that "Indigenous persons or groups are not subject to de jure or de facto limitations or restrictions involving the acquisition, mortgage, transmission or alienation of property, except under the Amerindian Ordinance." In fact, the Amerindian Ordinance provides in Chapter 58 S.12 (1) that:

"The Commissioner of Interior shall undertake the care, protection and management of the property of the Amerindians and may -

(a) take possession of, retain, sell or dispose of the property of an Amerindian;

(b) in his own name sue for, recover or receive money or other property due to or belonging to an Amerindian or damages for any conversion of or injury to such property;

(c) exercise in the name of the Amerindian any power which the Amerindian may exercise for his own benefit;

(d) in the name and on behalf of an Amerindian appoint any person to act as an attorney or agent of an Amerindian for any purpose connected with his property;

57/ Information submitted on 31 March 1977.

"Provided that the powers conferred by this action shall not be exercised by the Commissioner without the consent of the Amerindian, except in so far as may be necessary for the preservation of his property.

"The Commissioner shall keep records and accounts of all moneys and other property received or dealt with by him under the Provisions of this section."

158. In Brazil, limitations and restrictions are imposed on all non-integrated indigenous persons, as a result of a tutelage regime which is established by law. The Indian Statute (Act No. 6001 of 19 December 1973) provides that:

"Article 7. The Indians and native communities not yet integrated in the national communion are subject to the tutelary regime established by this Law.

"Section 1. The principles and norms of common law tutelage apply, where appropriate, to the tutelary regime established by this law, irrespective, however, of tutelage in the special branch of legally mortgaged real estate, as well as that of real or fidejussionary suretyship.

"Section 2. Tutelage is assigned to the Union, which shall exercise it through the competent Federal agency of assistance to the forest-dwellers.

"Article 8. Acts practised between the non-integrated Indian and any person alien to the native community are null and void, when unassisted by the competent tutelary agency.

"Sole paragraph. The ruling of this article does not apply to the case when the Indian shows an awareness and knowledge of the act practised, so long as it is not detrimental to him, and of the extent of the effects thereof."

159. When certain conditions are met, the tutelage can be put to an end, as provided in the same Indian Statute:

"Article 9. Any Indian can petition the competent Court of Justice to release him from the tutelage provided in this Law, vesting him with full civil capacity, so long as he fulfils the following requisites:

"I. Minimal age of 21 years.

"II. Knowledge of the Portuguese language.

"III. Possession of the necessary skill to perform a useful activity in the national communion.

"IV. Reasonable comprehension of the usages and customs of the national community.

"Sole paragraph. The Court shall decide after summary investigation, in the light of the opinion of the agency of Indian assistance and the Public Prosecutor, and the sentence granting the petition be transcribed in the civil register.

"Article 10. Upon fulfilment of requirements of the preceding paragraph, and at the written request of the interested party, the assistance agency can recognize the Indian's integrated condition by formal declaration, all restrictions as to capacity being thereby removed, so long as, the decision being judicially ratified, it is entered in the civil register."

160. Whole communities can also be emancipated by Presidential Decree, under the following conditions:

"Article 11. By decree of the President of the Republic, emancipation of the native community and its members from the tutelary regime established by law can be declared, when applied for by the majority of the members of the group and proof has been furnished, by an enquiry made by the competent Federal agency, of their full integration in the national communion.

"Sole paragraph. For purposes of the provisions of this article, the requirements established in Article 9 must be met by the applicants."

161. In Australia, the situation prevailing in general is that of absence of limitations and restrictions in this respect. In the State of Queensland there are, however, certain limitations and restrictions on the free management of their property by Aboriginals and Torres Strait Islanders.

162. The Federal Government has considered these provisions to be discriminatory and to violate the fundamental rights and freedoms of Australian Citizens and has accordingly sought, through consultations, to have them repealed. In the light of unsatisfactory action taken by the Queensland authorities, the Federal Government has introduced a Bill in the Federal Parliament seeking to supersede these provisions as they now stand. The Government has stated on this question:

"... Briefly, the Australian Government considers provisions of the Acts which authorize the official management of the property of certain Aboriginals and Torres Strait Islanders without their consent and prevent certain Aboriginals and Torres Strait Islanders from ending the management of their property at will, to be discriminatory ...".

"...

"In November 1974, the Minister for Aboriginal Affairs introduced the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Bill into the Senate ... The purpose of the Bill is to supersede certain provisions of the laws of Queensland that discriminate against Aboriginals and Torres Strait Islanders and deny them basic human rights. These provisions are contrary to the principles embodied in the International Convention on the Elimination of All Forms of Racial Discrimination and the Covenant on Civil and Political Rights. The Bill was passed in the Senate with two important clauses deleted, namely, those relating to entry on to reserves and conduct on reserves. The Bill was received by the House of Representatives from the Senate on 11 February 1975 and the Second Reading Speech stated that the Government will reintroduce both those clauses into the Bill ...

"The restrictions on the management of property by Aboriginals and Torres Strait Islanders in Queensland, were amended by the Queensland Government and [these amendments] came into force on 1 November 1974 ... The amendments permit an Aboriginal or Islander to terminate the management of his property by notice in writing witnessed by a Justice of the Peace. However, the amendments leave intact provisions that authorize the continued management under the present legislation of property managed without the consent of Aboriginals and Islanders under earlier Queensland legislation. Clause 5 of the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Bill will supersede the provisions in the Queensland legislation relating to Aboriginals and Torres Strait Islanders that restrict management of property by such persons."

163. The relevant Queensland laws, and measures taken or envisaged to overcome their restrictive effects, have been described as follows by Senator J.C. Cavanagh, Minister for Aboriginal Affairs, in a speech delivered at the time of the second reading of the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Bill 1974:

"The purpose of this Bill is to supersede certain provisions of the laws of Queensland that discriminate against Aboriginals and Torres Strait Islanders and deny them basic human rights. Some of these laws are discriminatory on grounds of race and others are of general application. They have the effect of imposing on Aboriginal and Islander Reserves a legal regime that is different from that which applies to persons in other parts of Queensland ...

"The present Australian Government has made numerous attempts to resolve these matters by consultation ...

"The introduction of legislation to supersede the Queensland laws was envisaged in the Governor-General's speech on the opening of Parliament on 9 July 1974, and a further letter was sent by the Prime Minister to the Queensland Premier on 20 October 1974 informing him that draft legislation to override discriminatory aspects of the Queensland legislation was being drafted. He pointed out that on this and other matters he had sought mutually acceptable decisions through consultation and was prepared even at that stage to further pursue that course if there was still room for fruitful negotiation. The Queensland Premier replied on 1 November 1974 stating that steps had been taken to enact amendments to the Queensland Acts to remove restrictions on the control by an Aboriginal or Islander of his property. The Premier suggested that consultations be held but it has not yet been possible for this to be done.

"The amendments referred to by the Premier were passed by the Queensland Parliament and came into force on 1 November. The amendments permit an Aboriginal or Islander to terminate the management of his property by notice in writing witnessed by a justice of the peace. However, the amendments leave intact provisions that authorize the continued management under the present legislation of property managed without the consent of Aboriginals and Islanders under earlier Queensland legislation. Moreover, the amendments do not deal in any way with the matters of freedom of movement of an Aboriginal on to a reserve, legal representation before, and appeal from, Aboriginal Courts, compulsory labour and the other unsatisfactory features of the Queensland laws.

"It is the contention of the Queensland Government that the Aboriginals and Islanders in Queensland do not desire any further amendments to the Queensland law. The Australian Government does not accept this contention. It does not believe that any group of Australian citizens should be subject to laws that are inconsistent with fundamental rights.

"The legislation now introduced will deal with the discriminatory aspects of Queensland legislation I have referred to. Clause 5 provides that any property in Queensland of an Aboriginal or Islander shall not be managed by another person without the consent of the Aboriginal or Islander and that any consent so given, whether given before or after the commencement of the Act, may be withdrawn at any time.

"...

"The provisions of the Bill are not intended to replace the whole of the Queensland legislation with respect to Aboriginals and Torres Strait Islanders. They are intended only to remove elements of this legislation that are inconsistent with what the Australian Government regards as basic civil rights to be enjoyed by all Australians, without regard to race or colour. The provisions that the Bill will supersede are quite contrary to the principles of equality and dignity contained in the United Nations Charter and in the other international instruments that I have described. They should form no part of Australian law and ought to be removed."

7. Existence or non-existence of restrictions on marriages between indigenous and non-indigenous persons

164. It is well known that until very recently the legislation of some States contained provisions whose applications rendered such unions invalid and thus caused their offspring to have an inferior legal status. In some States, for example, provisions prohibiting miscegenation had the effect that marriages between persons belonging to different racial or ethnic groups as specified by the law were legally invalid; and, in extreme cases, even sexual relations between persons belonging to different groups were illegal and punishable. If the marriage of the parents was considered merely as a de facto or illicit union, the children were inevitably classified as persons born out of wedlock, with all the consequences which this involved in the legal systems concerned. Where such regulations existed, they were applied inter alia in the case of indigenous persons who married individuals of other racial or ethnic groups.

165. There is very little information on the existence or non-existence of legal provisions which expressly prohibit or restrict such marriages or unions, or which impose legal restrictions on "mixed" couples or families.

166. On examining the available information, we find that all the countries which have transmitted information on this subject state that there are no legal or social prohibitions, limitations or restrictions on marriages or unions between indigenous and non-indigenous persons. 58/ In some cases, it is added that there

58/ Information to this effect has been communicated by Australia, Chile, Finland, Guyana, Laos, Mexico, New Zealand, Norway, Philippines and Sweden.

are therefore no restrictions or limitations affecting "mixed" families or couples, and that the offspring of such families do not have an inferior legal status. 59/

167. Thus, for example, in Swedish law no special provisions exist regarding marriage with persons belonging to ethnic minorities. In those respects the same provisions apply to all inhabitants of the country.

168. More specifically, in Laos, the Government states that marriage is free between different ethnic groups and true Laotians. Laotian civil law does not prohibit marriage between different ethnic groups and true Laotians.

169. The Government of Finland communicates that "no restrictions are imposed on marriage between Lapps and non-Lapps, on mixed families, marriages and unions, or their offspring".

170. In a very similar manner, the Norwegian Government notes that "marriages between indigenous and non-indigenous persons are not prohibited or restricted either de jure or de facto, that there are no impediments to mixed unions or families and that the offspring of such unions have no inferior status".

171. In Japan there do not appear to be any restrictions on marriages or unions between the Ainu and the Japanese. According to one source 60/ "intermarriage over the centuries and a degree of assimilation have lessened the differences in physical and cultural characteristics between the Ainu and the Japanese".

172. The Government states that in Chile:

> "There is full and complete freedom for a person to marry an indigenous or a non-indigenous person. A marriage between indigenous persons enjoys the same social acceptance as a marriage between non-indigenous persons.
>
> "In practice, there are many marriages which may be described as mixed and there is no legal restriction on an indigenous male marrying a non-indigenous female, or vice versa, as the rule applies to men and women alike. The offspring of marriages between indigenous persons do not have an inferior status of any kind. They participate freely and on the same footing as other children, can study in a private school or a State school, enter the universities they wish, study for the professions or occupations chosen by them, and so on.
>
> "In Chile, there is no legal, moral or social rule preventing the marriage of an indigenous person with a non-indigenous person. Nor are there legal or moral restrictions against such mixed families, since they have the same social status as any marriage between non-indigenous persons, the vital consideration being that every married couple should have a sound moral purpose and a continuing desire for improvement."

59/ This would seem to follow from the statement that there are no restrictions on marriages between indigenous and non-indigenous persons, but only Chile, Finland, Mexico, New Zealand, Norway and Sweden expressly say so.

60/ Harris, George L. and others. Area Handbook on Japan. Prepared for the Department of the Army by Foreign Area Studies Division, The American University, Washington D.C. 1964, pp. 74-5.

173. According to the Government of the United States, in that country:

> "Indigenous persons may marry whom they like. However, some indigenous persons and some non-indigenous persons do not always equate a person of mixed blood as being an indigenous person. For example, they may speak of a person of mixed blood as being "part Indian" as opposed to being "an Indian". Some Indian families apply pressure to their offspring to marry within the tribe or to marry an Indian. Some persons of European stock look upon people of Indian descent or of mixed Indian-European blood as being socially inferior. In other cases - such as in the case of the second wife of President Woodrow Wilson - Indian blood was a social distinction. Mrs. Wilson claimed descent from Pocahontas, an Indian maiden given credit by some for saving the Virginia Colony.
>
> "Legally ... mixed blood and mixed marriages do not change the status of the persons involved. The Indian is still entitled to services of the Bureau of Indian Affairs and to membership in his or her tribe. The non-Indian is not entitled to Bureau of Indian Affairs services, although [he] may profit on a marginal basis. For example, the entire family of an Indian man who is receiving vocational training through the Bureau of Indian Affairs employment assistance program shares in the subsistance allowance to which he is entitled if he must live away from his usual location in order to receive training. The wife may be a non-Indian and the children of mixed blood. The non-Indian husband or wife may be adopted into the Indian tribe but if he or she is, he or she is still not entitled to direct Bureau of Indian Affairs services."

174. A publication, however, contains the following information:

> "There is no record that the temporary social prominence of Mrs. Wilson appreciably improved the social or economic status of Indians throughout the United States. Since Indians generally are opposed to the assimilationist policy of the United States, social discrimination is not considered to be a major problem from the Indian point of view." 61/

175. In the Philippines the Civil Code and other laws contain provisions concerning marriage between "Christians" and "Mohammedans" or "pagans". These provisions state that marriages between Christian females and "Mohammedan" or "pagan" males may be contracted in accordance with non-Christian customs, rites and practices, without licence or other formality. Persons performing such marriage ceremonies need not be registered, as must priests, ministers or rabbis authorized to perform marriages. As stated in the relevant article of the Civil Code:

> "Article 79 - Mixed marriages between a Christian male and a Mohammedan or pagan female shall be governed by the general provisions of this title and not by those of the last preceding articles, but mixed marriages between Mohammedan or pagan males and Christian females may be performed under the provisions of the last preceding article if so desired by the contracting parties, subject, however, in the latter case to the provisions of the second paragraph of said article."

61/ American Indian Law Newsletter, loc. cit., p. 41.

176. The second paragraph of article 78 of the Civil Code states that the provisions of the first paragraph are to remain in force for 20 years. (The full text of this provision is reproduced above). 62/ However, it was stipulated that the President of the Philippines could, by proclamation, make any of the provisions of the Civil Code applicable to the Mohammedan and non-Christian inhabitants of any of the non-Christian provinces.

177. In some States miscegenation has been practised from the time of the first contacts between different population groups. This process has varied in importance and frequency at different times and in different regions, but it appears to be becoming more common in some regions.

178. In some Latin American countries there has been an intensive and uninterrupted process of interbreeding, from the sixteenth century to the present time between all the groups of people living in these countries. Unfortunately there are no accurate statistics which might give a clear idea of the actual situation regarding marriages or unions between indigenous and non-indigenous groups. In most countries of the region, persons marrying are not required to state the ethnic group to which they belong, and this information is not recorded in the marriage register. There is no separate mestizo class, and consequently the fact that an individual is descended from indigenous or non-indigenous parents is not recorded anywhere. All the experts agree that in these countries there has been continuous intermarrying between all groups of the population. A well-known expert on this subject has stated that in 1940 there were 34,362,981 mestizos in these countries, while in 1930 only 29,793,709 people were classified as such. 63/ Thus, the number of mestizos increased by five million in one decade. In conclusion, it may be mentioned that the term "mestizo America" has been coined to describe this region, and has been accepted as appropriate by many writers.

179. A somewhat similar situation seems to exist in New Zealand. In that country there is no restriction whatever on marriage or unions between Maori and non-Maori persons, either de jure or de facto. Intermarriage has occurred in New Zealand ever since the arrival of the first Europeans and in the last 15 years has become increasingly common. In a housing survey of 20,000 Maori families in the early 1960s, 12 per cent of the married couples interviewed included a non-Maori husband or wife. With the rapid migration of Maoris to the cities since that time, and the increasing contact between the races, intermarriage has become very common indeed. Seven or eight years ago Maori social workers in the Wellington urban area estimated that over 50 per cent of the Maoris who were marrying were marrying persons of European extraction. A study of mixed marriages undertaken by a lecturer (John Harre) on the Auckland University staff and published under the title "Maori and Pakeha" indicates that such mixed marriages are just as likely to succeed as any other marriage. The offspring of mixed marriages are subject to no disability because of the legal status of their parents' union. There is no separate class of "mixed bloods" or "mestizo" in New Zealand. In fact the great majority of the Maori population are of mixed ancestry. It is well known that the proportion of full blooded Maoris shown in the census is highly overstated as many Maoris of mixed ancestry describe themselves for census purposes as full Maori.

62/ See paragraph 140.

63/ Rosenblat, Angel, op. cit., p. 25.

180. There are however certain cases in which, although no direct legal obstacles, limitations or restrictions exist, other provisions may indirectly have restrictive effects.

181. The Canadian Government has stated that: "There are no direct restrictions on marriage or unions between indigenous and non-indigenous persons, but the loss of Indian status by an Indian woman marrying a white man ... is now seen as an obstruction by many native women. There is no difference in status between the offspring of such "mixed" marriages and the population at large." 64/

182. Similarly in Guyana, the Government has stated that marriages or unions between indigenous and non-indigenous persons are not prohibited or restricted de jure or de facto. The offspring of such unions do not have inferior status de jure or de facto. In this connection it should be recalled, however, that according to the State Land (Amerindian) Regulation, 65/ a female Amerindian who is married to, or living as the reputed wife of, any person other than an Amerindian shall forfeit all privileges of an Amerindian, as defined in those regulations. It is provided, though, that after the death of the husband this regulation shall not apply, nor shall it apply in the case of a reputed wife after cohabitation ceases. (Regulations, 3 (1)). Children of an Amerindian whose other parent is not an Amerindian are called half-castes, who forfeit all privileges of an Amerindian, save when the half-caste is born under the Indian Regulations 1890, in which case he is personally entitled during his lifetime to all privileges as an Amerindian, but his descendants are not considered Amerindians. 66/

8. Assistance to indigenous groups and persons from rural areas who have recently migrated to urban areas

183. It has been universally recognized for some time that the processes which produce contacts or collisions between cultures should occur in the least harmful manner possible for the most vulnerable groups. In these phenomena of cultural contact, apart from the problems associated with the introduction of elements of urban life or of the technology produced by urban society in regions hitherto removed from their influence, which are invariably disastrous, serious problems arise from the influx of rural population groups to urban centres with the consequent emergence of problems of adjustment to urban life, some of which have already been described in the chapter on housing, quod vide.

184. In the material available in connection with this study, there is very little information on these important aspects. There is only scanty information on the first phenomenon, the introduction of urban life or technology in indigenous

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64/ See chapter V, Definitions of indigenous populations, (E/CN.4/Sub.2/1982/2/Add.6), paras. 349 and 350.

65/ No reply has been received to a request for information included in the summary transmitted to the Government for comments and supplementary data on the reasons for introducing these measures, and their effects, whether unfavourable or not.

66/ These provisions are mentioned in chapter V, Definitions of indigenous populations, (E/CN.4/Sub.2/1982/2/Add.6), para. 276.

communities previously untouched by such influences. There is hardly any information on concerted or systematic efforts to avoid unnecessarily traumatic or disturbing effects resulting from the introduction of elements of urban life or urban technology in rural areas and populations. Mention should, however, be made of at least two examples which illustrate the harmful effects of such contacts when they occur without appropriate guidance or restrictions.

185. With regard to the arrival of urban elements of culture and technology in certain areas of India which were formerly devoid of such influences, it has been written that:

> "The tribal belt of Middle India is in the grip of industrial revolution and subject to rapid urbanization in a comparatively short span of time, which has been termed 'industry-based urban explosion'. In some cases it led to over-urbanization which was reflected in congestion, overcrowding and the formation of slums, particularly in industrial and mining towns, and non-availability of civic amenities such as drinking water, electricity, recreational and other facilities, as well as under or unemployment. The mining towns generally support large populations but lack urban facilities to a great extent. The majority of the forest towns are also deficient in urban amenities and urban services are reported to be in deplorable condition in most cases. Studies of the socio-cultural implication of industrialization carried out on the basis of the HEC complex, the Patratu industrial complex and the Bokaro industrial complex bring into relief the magnitude of industrial nomadism, slum culture and defective town planning; industrial administration needs to be tackled with all seriousness and sincerity.
>
> "In the present context, industrial urbanization in certain tribal belts of Bihar, Orissa and Madhya Pradesh has greatly affected the folk and primitive tribal population, which till recently led a homogenous, distinctive and folk style of life. The impact of industrial urbanization has been differently felt by the thousands of uprooted villagers, tribal migrants and villagers of the neighbouring areas. In general, however, as reflected in the study of Hatia and other industrial complexes, their traditional style of life has disintegrated and they continue to struggle hard to adjust to rapidly changing situations. The net result for the uprooted tribals in due course has been loss of traditional occupation, land, house, traditional way of life, exhaustion of cash received by way of compensation and unemployment, keen and unfair competition with the migrants in the labour market, high aspirations and great frustration. All these find reflection in different types of periodic unrest and agitation in industrially dominated tribal areas.
>
> "While it is not possible or desirable to halt the process of industrialization, the planners must contemplate built-in safeguards for the interests of the scheduled tribes in these areas." 67/

67/ Dr. L.P. Vidyarthi. A Survey of Research in Anthropology. FCSSR, New Delhi, Popular Prakasham. Bombay, 1972. (Typed copy), pp. 3-4.

186. An author has written the following on the effects of the arrival of elements of urban life and technological innovation from the urban areas to formerly isolated indigenous communities in Brazil:

> "Pacification is ... the first step in the destruction of tribal self-sufficiency. It can have quick and curious results. The first exchange can sometimes be understood not so much as one of gifts as of trophies won in a bloodless battle, as the SPI recognized when dealing with the Parintintin. It is certainly true that pacification teams acquire many such trophies from Indians, to such a degree that, for instance, the Parakana hardly had a bow or arrow left when we came to visit them, the few bows still in use being rude affairs made from unshaped branches. In exchange, nearly every Indian had acquired a gun. This makes them dependent on a supply of ammunition and could produce a crisis as among the Kikrin. Similarly the French trio we met amongst the Surui told us of visiting a Nambikuara camp where everyone was going hungry; they had guns but no bullets, and made bows and arrows not for use but for barter.
>
> "These three also told us that the Surui no longer made fire with firesticks since the introduction of matches, even when they had run out of matches; nor would they make resin torches, even when the batteries of their electric torches went dead. The same fatality has overcome other Indians. As a result Orlando Villas Boas avoids bringing fish hooks or small-meshed nets into the Xingu Park except before festivals. He wants to encourage Indians to continue their practice of fishing with bows and arrows and not to deplete their rivers. As might be expected, many Indians complain of this prohibition and go to trade beyond the boundaries of the Park for what they want.
>
> "Pacification thus tends to deplete the Indian technical repertory. We saw this amongst the Canela, whose arrows were improvized affairs of a kind used in the past mainly by children." 68/

187. Although it is agreed that action should be taken to ensure that changes and scientific and technological innovations are introduced into the indigenous communities in such a way as to avoid unnecessarily disturbing or traumatic effects, as stated above, no information was available on efforts that may have been made to that end in any country. There is, on the contrary, somewhat more information on assistance arrangements for the benefit of rural persons or groups that have arrived in urban areas, as the following paragraphs show.

188. As is well known, the flow of people from the countryside to the cities has intensified in many parts of the world in recent decades. This has affected many sectors of the rural populations, including indigenous groups. In some areas this phenomenon has assumed particular importance.

68/ E. Brooks, R. Fuerst, J. Hemming, F. Huxby, Tribes of the Amazon Basin in Brazil. London and Cambridge, Charles Knight and Co., 1972, p. 120.

189. Most of the rural groups moving into the towns do so because they are attracted by the concentration of services and facilities available in urban centres and because they believe there is a better future for them there. In the main this involves groups that already have a considerable degree of acculturation or have decided to adapt to other ways of life in an endeavour to share in the benefits they have come to believe they will find in urban centres. Some indigenous groups go to the cities because they have been deprived of their land or they have nowhere else to go as a result of the continuous pressures of the predominant population sectors on their land and resources and they seek a last refuge in the cities because there are no more areas for them to occupy in the countryside.

190. The change from rural to urban living is never an easy one, but it is particularly hard in the case of indigenous populations with linguistic problems and cultural differences, whose adaptation to urban life is compounded by these cultural complexities and obstacles. The language, the culture and the way of life are different and there is a difficult process of adaptation to an environment that is completely new even in the physical sense.

191. These indigenous persons or groups need assistance in adapting to the substantial changes in their environment. They need help in solving the difficult problems they face in connection with housing, training and employment and in the process of social and psychological adaptation to a new way of life in the urban area, through the provision, for example, of special training, services and facilities to equip them to cope successfully with urban life.

192. There is very little concrete information on these matters and it deals with only five countries. 69/ The information relating to Australia merely makes it possible to state that special programmes have been initiated to assist Aboriginals moving to urban areas. Aboriginal organizations in urban areas are funded to provide advisory and welfare services to persons migrating from rural areas.

193. The information relating to Canada is somewhat more explicit. The Canadian Government has stated that:

> "The migration to urban centres of Indian people, and Eskimo people to a lesser degree, has created social problems. A number of programs have been designed by municipal government authorities and welfare agencies to assist these migrants to secure housing and employment and to put them in touch with urban facilities, as well as providing social centres to assist in the adjustment to urban life. In towns and cities across Canada these activities are co-ordinated in 45 Friendship Centres, funded by the Department of the Secretary of State. These Centres have played an important role over many years, and are increasingly staffed by native personnel."

69/ Australia, Canada, Norway, New Zealand and Sweden. In the case of Sweden, the available information merely mentions that the new Government Commission on Lapp Affairs will have as its main task to examine the various problems confronting the Lapps in Swedish society, particularly those Lapps who left reindeer husbandry and moved away from the reindeer breeding areas. The Norwegian Government simply states that "No special arrangements have been put into effect in respect of the Lapps from rural areas, who have migrated to urban areas."

194. As has been mentioned elsewhere, 70/ New Zealand is the only country in which indigenous populations have become predominantly urban. As a result of the mass urban migration in the recent past and the continuing flow of Maoris to the towns the situation in New Zealand is unusual. The State has accordingly adopted a number of programmes to help rural Maoris who have recently migrated to urban areas. As was mentioned earlier, there are several ways in which they can be assisted to find housing. Social welfare staff of the Maori and Island Affairs Department also assist in finding employment. 71/ Every year many school leavers in rural areas move to the towns to seek permanent employment or further education.

195. In co-operation with technical institutes, the Department has the following education programmes:

(a) Maori Affairs Trade Training Scheme: Before the end of the school year. Maori welfare officers visit every rural school with any significant number of Maori pupils and discuss the various avenues of employment open to those who intend to leave school at the end of the year. Applications are called annually for entry into the Maori Affairs Trade Training Scheme which provides special apprenticeship courses leading to full qualifications in skilled trades. These courses are held in Auckland, Hamilton and Wellington in the North Island, and Christchurch in the South Island. The total intake in 1973 was 274 Maori boys, and courses were provided in 11 skilled trades. The boys are provided with hostel accommodation and they spend either one or two full years at a technical institute, according to the trade, where they are given theoretical and practical instruction in the trade concerned and extra lessons in English and mathematics. At the end of the training period the boys are then apprenticed to employers under Government-supervised agreements where they are given on-the-job training and part-time training at the technical institute. They take the normal trade examinations and qualify, in three or four years, as skilled tradesmen. This programme was commenced because the proportion of Maoris to total population apprenticed in skilled trades was very low. The programme has been highly successful and has stimulated Maori parents to encourage their children to enter skilled trades, quite apart from the special Maori Affairs Scheme. Nine years ago only 2.8 per cent of apprentices were Maori. The present figure is about 7 per cent. As the Maoris constitute about 8 per cent of the total population, this proportion can be considered real progress.

(b) Maori pre-employment scheme: This is a programme operated by the Maori and Island Affairs Department in conjunction with the technical institutes. Rural Maori school leavers, both boys and girls, who intend to move to the cities are able to enter a pre-employment scheme in Auckland, Hamilton or Wellington, where they are given accommodation in hostels and during a period of three weeks, they receive instruction in such subjects as English, mathematics, income budgeting, the nature of city government and other subjects (including dress and make-up for the girls). They are taken to various types of employment and higher

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70/ See the chapter on Housing (at present in document E/CN.4/Sub.2/L.596).

71/ In 1973 the Government has stated that this poses "no particular difficulty" as "there is a very small ratio of unemployment".

educational institutions and at the end of the period they are assisted by Maori welfare officers and vocational guidance officers to find positions in the type of work or educational institution they have chosen. In both the Trade Training scheme and the pre-employment scheme the Maori and Island Affairs Department pays weekly wages to the young people concerned.

(c) "Life in the city" courses: These are courses organized by the Department of Education and the Maori and Island Affairs Department for Maori children in the higher forms at secondary school who will probably move to a city. Such courses are for boys and girls and occupy several days, during which time the young people stay together in a university hostel or in a secondary school. The courses are of the seminar type and various speakers discuss all aspects of life in the city and also vocational opportunities.

(d) Hostels: The Maori and Island Affairs Department owns, or helps to finance, hostels in the major towns and cities to provide accommodation for young Maoris moving from rural areas. In addition, the Department owns several apartment buildings to accommodate apprentices who have completed their full-time instruction at technical institutes and are apprenticed to employers. Such hostels and departmental buildings are provided in Auckland, Hamilton, Rotorua, Wellington and Christchurch.

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STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST INDIGENOUS POPULATIONS

Final Report (Supplementary Part) submitted by the Special Rapporteur, Mr. José R. Martínez Cobo

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Chapter XVI

OCCUPATION, EMPLOYMENT AND VOCATIONAL TRAINING

A. Introduction

1. In this chapter the Special Rapporteur will consider the major problems facing indigenous populations in the area of occupation and employment, and also some of the special measures which have been adopted by Governments in order to respond to these problems. He will describe relevant international standards, as developed by the United Nations and its specialized agencies; discrimination, both de jure and de facto, as seen in national legislation for the protection of indigenous populations and the level of its implementation; the conditions of employment, with emphasis on those coercive labour systems which still survive today; vocational training schemes, and other measures which have been taken to protect and promote indigenous artisan industries or other traditional modes of production.

2. The Special Rapporteur notes that the employment conditions of indigenous populations have to a large extent been determined by their degree of incorporation within the national or international economy. Examples of abuse have been most apparent, and in certain cases continue to be so, where employers have made use of cheap indigenous labour in commercial agriculture, or mineral and extractive industries. In particular, where such activities have developed in isolated areas, for example in forest regions, it has often proved difficult for national authorities to exercise effective implementation of labour legislation with regard to recruitment practices and protection of the minimum wage.

3. It is important to place these labour systems in their historical perspective. A brief historical overview is therefore necessary, in order to explain the evolution of the complex systems of personal services, compulsory or bonded labour, and coercive recruitment practices which still confront indigenous populations in certain parts of the world.

B. Indigenous labour systems: historical overview

4. The development of labour institutions varied greatly in those countries which came under European colonial domination. In Latin America, for example, the primary concern of the first colonists was to extract mineral resources, a concern which immediately led to the widespread exploitation of indigenous labour. When the colonists later shifted their attention to the control and use of agricultural resources, they continued to exact compulsory services from the indigenous populations for work on the haciendas.

5. In large parts of what are today the United States of America and Canada 1/ the main interest of the early colonists lay in the establishment of small-scale agricultural settlements, which they cultivated largely on the basis of their own labour. There was virtually no attempt to integrate the native populations within the colonial economy. When a plantation economy was later developed in North America, the labour input was provided by an imported slave population.

6. In the African and Asian countries which subsequently came under colonial domination, systems of compulsory and indentured labour were widely used on agricultural plantations.

1/ It must be remembered that vast areas of what is today the United States of America were conquered and colonized by Spain and therefore, those areas approximated at that time what prevailed in Latin American countries then.

7. In Latin America, the indigenous populations incorporated into the extractive activities were subjected to slavery during the first years of the colonial period, to provide a labour force in the mines. By the mid-sixteenth century, however, indigenous slavery was legally abolished by the Spanish Crown, on the grounds that it proved too destructive in terms of the labour force, and also on humanitarian grounds following pressure by religious missionaries. From then up to the abolition of slavery in the nineteenth century, African slaves were imported to work on sugar and other agricultural plantations. In replacement of Indian slavery, new Spanish legislation provided for forced labour and the exaction of tribute from the indigenous populations. Regulations were enacted making it obligatory for the Indians to work in mines, on haciendas and in work-shops, and to pay regular taxes. Under the compulsory labour system known as the mita, Indians were required to "contribute within certain stated intervals, in the form of personal services such as gathering grass and firewood, food production, herding, cultivating, tending vineyards, gardening and other duties". 2/

8. The Special Rapporteur does not wish to dwell at length on the various forms of exploitation of Indian labour during the colonial period, which have been described at length in reliable sources. 3/ It should be noted that colonial patterns have had their effect on labour systems throughout the post-independence period and, in certain cases, right up to the present day. Spanish colonial policy was apparently designed to protect indigenous communal lands and forms of social organization, in exchange for Indian labour and tribute. But it has been written that

> "However, in the second half of the eighteenth century agriculture became more intensive, and with it the demand for labour increased. New methods for squeezing workers from the Indian reservations and throwing the labour force onto the market began to be applied. At the same time, and as a consequence of successive shifts from mining to livestock-raising, and then to agriculture, interest in the ownership of land became greater and greater. For that reason it often happened that the Indians from several reservations would be transferred and be concentrated in a single one, and the lands that they had left vacant would be sold at auction.
>
> "At the same time two complementary processes were developing. The first was that the natives, who had been virtually deprived of their lands, sought to exchange their labour for the use of a piece of land on the large haciendas. The second process was the growing interest of the hacendados or large landholders in having at their disposal a minimum resident work force they could count on, or rather in obtaining part of what was produced by the entrepreneurial efforts of these inquilinos, colonos, huasipungueros, etc." 4/

2/ Solon Barraclough, Agrarian Structure in Latin America, Lexington Books, Massachusetts, 1973, p.6.

3/ For example, Aquiles R. Pérez, Las Mitas en la Real Audiencia de Quito, Quito, Ecuador, 1947: John Francis Bannon (ed), Indian Labour in the Spanish Indies, D.C. Heath and Company, Boston, 1966: Silvio Zavala, La Encomienda Indiana, Madrid, 1935.

4/ Barraclough, op.cit., p.8.

9. In the hundred years, approximately, which elapsed between the Latin American independence declarations of the early nineteenth century and the development of national labour standards in the early twentieth century, the Indians together with the non-Indian peasantry (campesinas) were largely at the mercy of landowners. Traditional haciendas were consolidated during this period at the expense of indigenous communities and their lands. The semi-feudal labour relations and personal services, which had their origins in colonial society, are reported by several authors to have affected an increasingly large proportion of the indigenous peasantry as they were dispossessed of their traditional lands by new laws favouring private property. In certain countries Indian tribute was maintained until well into the nineteenth century.

10. In certain areas a new concentration on export agriculture towards the end of the nineteenth century increased the need for a rural labour force, and led to coercive recruitment practices. An author has written that in El Salvador:

> "The abolition of tierras communales was followed by legislation that sought to control and recruit the people that had been dispossessed: 'agricultural judges' were appointed in each village and these officials had to keep lists of all day-workers, arrange for the capture of those who had left an estate before fulfilling their obligations, and visit private estates regularly to check the need for workers. In this task the local officials were supported by the army." 5/

11. Another author writes that in Guatemala

> "Repressive legislation was still needed to force the Indians to move to the estates. Landowners were encouraged to indebt the Indian population, advancing credit on the condition that they should contract to work for a fixed period of time on the estates. In 1877 a legal framework for debt-peonage was provided through the enactment of a notorious new law, the Ruling for Labourers (Reglamento de Jornaleros). This Ruling ordered the peasant to carry a work-book recording his debts, and enabled the local authorities to arrest any defaulters. Rural workers were classified in three separate categories: first the labourers (colonos) who would contract to work for four years at a time on an estate in exchange for the right to cultivate subsistence crops on a plot within the estate, but even after the expiry of the four years had to pay off all debts incurred before he was legally entitled to leave the estate: second those who had received no land, but had nevertheless incurred debts which they had to work off before leaving: and third those who had incurred no debts but signed short-term contracts which they were obliged to fulfil. While the new law had been passed to regulate the employment of workers by the various landowners, landowners, political bosses (Jefes Politicos) were installed in all areas of the country to control freedom of movement. Their powers included the issuance of passports to Indians who wished to travel from one part of the country to another." 6/.

12. Debt peonage remained widespread throughout the Central American and Andean regions, and has survived at least until very recent times. In Ecuador, for example, an author has written that he visited the province of Imbabura in 1960 and found that "debt-peonage had by no means disappeared". 7/

5/ David Browning, El Salvador: Landscape and Society, Oxford University Press, 1971, p.217.

6/ Roger Plant, Guatemala: Unnatural Disaster, London, 1978, pp.68-69.

7/ Andrew Pearse, The Latin American Peasant, Frank Cass, London, 1975, p.11.

13. With the penetration of the Amazon Basin in the early twentieth century, coercive methods were used by foreign companies to secure the labour of forest-dwelling Indians. Referring to Peru, it has been written that

> "Illustrations of 'frontier' institutions with a similar inhuman quality may be found much nearer, in the case of the Peruvian Amazon Company, a British firm operating during the first decade of the present century for the extraction of rubber from the Putumayo region of Peru. (Valcarcel, 1915). The Company recruited some hundreds of employees who were sent into the selve to organize the collection and portage of rubber to river stations by thousands of natives, men, women, and children, of the Borora, Witoto and other nations, under a system of force similar to self-ransom, only perhaps more destructive. The means of coercion used against them included the withholding of food by driving them from their subsistence plots and thus rendering them dependent upon food-stuffs imported by the Company; and whippings, torture and death for failing to deliver sufficient quantities of rubber or for running away, with the result that many hundreds and possibly thousands lost their lives from hunger and murder. The horrors of the Conquest are liable to be repeated on the thresholds of an acquisitive society as it expands, and for the same reasons, for the two cases share several features in common. In both, the exploiters are attracted by marketable produce of exceptional value which requires only to be gathered. In both, the potential labour force lies outside the bounds of society, and equally outside the accountability of resources: for a brief spell, while the bonanza lasts, labour may be had for the taking. In both, the lines of communication leading from the frontier to the institutionalized watchdogs of morality and legality are overgrown." 8/

14. One of the fundamental objectives of the labour legislation introduced throughout Latin America during the first half of the twentieth century was to outlaw compulsory personal services, to abolish or limit payment in kind, and to provide for safeguards against the coercive recruitment practices which had been used notably among the indigenous populations. As will be seen later in this chapter, however, coercive practices are reported to survive in certain areas, despite the safeguards provided by law.

15. The Special Rapporteur has devoted much attention to the past situation of indigenous workers in Latin America, both because the manner and extent of their incorporation within the over-all economy has led to varied and complex labour patterns, and because their past situation is closely related to the development of contemporary labour systems. He notes, however, that compulsory labour systems, the bondage of indigenous labourers, and the widespread exploitation of indigenous labour in the mining and plantation economies, have also been prevalent in other parts of the world.

16. In 1953 it was stated, for instance, that in India:

> "Among the other legal enactments which still permitted the use of forced labour on 31 December 1951 were the following: (1) the Bengal Regulations XI of 1806 and VI of 1825; (2) the Madras Compulsory Labour Act, 1858; (3) the Orissa Compulsory Labour Act, 1948; (4) the Angul Laws Regulation, 1936, and the Khondmal Laws Regulation, 1936". 9/

8/ Andrew Pearse, op.cit., p.9.

9/ Indigenous Peoples, Geneva, International Labour Office, 1953, p.391.

17. On plantation labour in India, it was reported, at that time, that approximately half of the labour force in the plantation estates of Assam was aboriginal, and that much of it came "from other states of central and southern India, by recruitment under the Tea Districts Emigrant Labour Act (XXII) of 1932". 10/

18. It was also noted that

> "Judging from various sources, both official and private, compulsory labour is also performed by aborigines for local authorities, landlords or contractors in India. According to a report prepared in 1951 by the Commissioner for Scheduled Castes and Scheduled Tribes, 'in spite of the vigorous efforts of the government, forced labour is still in existence and it is mostly the Scheduled Caste and also the Scheduled Tribe people who are suffering on account of this unlawful practice'". 11/

C. The development of international standards

19. The measures adopted by the United Nations and its specialized agencies have been discussed in more detail elsewhere in this Study. 12/ Here, the Special Rapporteur intends only to summarize those measures relating specifically to employment, with particular regard to the situation of indigenous peoples.

20. As is known, while the Universal Declaration of Human Rights and the two International Human Rights Covenants of the United Nations make no specific reference to indigenous populations, there are many provisions in these instruments which are relevant to their situation. Article 23 of the Universal Declaration states that "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work". Article 7 of the International Covenant on Economic, Social and Cultural Rights affirms that States Parties to the Covenant recognise the "right of everyone to the enjoyment of just and favourable conditions of work" including a remuneration which provides all workers, as a minimum, with "fair wages and equal remuneration for work of equal value without distinction of any kind". Article 8 of the International Covenant on Civil and Political Rights states that "No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude. No one shall be required to perform forced or compulsory labour".

21. The United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 13/ contains provisions against the continuation of semi-feudal forms of labour relations. Article I of the Convention states that

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10/ Ibid, p.279, see "Annual Report on the Working of the Tea Districts Emigrant Labour Act for the Year ending 30 September 1950".

11/ Ibid, p.390, see L.M.Shrikant, "Report of the Commissioner for Scheduled Castes and Scheduled Tribes, 31 December 1951". (p.26)...

12/ See chaps. I and II.

13/ See chap. I, paras. 25 and 26.

"Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article I of the Slavery Convention signed at Geneva on 25 September 1926: (a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined; (b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status".

22. The International Convention on the Elimination of All Forms of Racial Discrimination affirms in article 5 that the States Parties to the Covenant undertake to "prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law" in the enjoyment of rights including "The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration".

23. Under the reporting procedure, established by the International Convention on the Elimination of All Forms of Racial Discrimination the Committee on the Elimination of Racial Discrimination is required to consider reports submitted by States Parties to the Convention. These reports have at times considered the working and employment conditions of indigenous peoples. Regarding Canada, for example, the Committee stated in its report in 1979 that

"Some members of the Committee commended the efforts of the Canadian Government to ensure that the indigenous population was not cut off from the rest of the population. Further information was sought on the per capita income, literacy rate, infant mortality rate and unemployment rate among the indigenous groups as compared with the rest of the population as well as on measures taken to involve the indigenous groups in political activities, to open up employment opportunities for them and, in general, to ensure the improvement of their standard of living". 14/

24. On Australia, the Committee reports in the same year that

"The progress made in respect of the aboriginal population, particularly in the fields of housing, employment and land rights was welcomed by a number of members. At the same time, clarification was requested as to whether the measures adopted were sufficient to create the necessary social and economic conditions for the full integration of the aboriginal population into the economic and social life of Australia". 15/

14/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No.18 (A/34/18), p.39.

15/ Ibid.

25. Of the United Nations specialized agencies, the International Labour Organisation has concerned itself particularly with the employment conditions of indigenous populations. Studies of the situation were first undertaken in 1921, and in 1926 the ILO Governing Body set up a Committee of Experts on Native Labour to frame international standards for the protection of indigenous workers. A Committee of Experts on Indigenous Labour met in 1951 and 1954. At its first session held in La Paz in 1951, the Committee of Experts adopted resolutions concerning: vocational training, recruitment, social security, handicrafts, safety and health in mines, conditions of work and health of women workers among indigenous populations, the protection of indigenous children and young workers, the communication to indigenous peoples of labour and welfare laws in their own languages (among others). At its second session held in Geneva in 1954, the Committee passed further resolutions on items including: the raising of living standards, social protection and integration, land problems, and international technical assistance. A Panel of Consultants on Indigenous and Tribal Populations was later set up, and met in 1962. 16/

26. The ILO has adopted a number of Conventions dealing specifically with the problems of discrimination against indigenous workers, including those mentioned in chapter II, paragraph 36.

27. Convention 107 on Indigenous and Tribal Populations, 1957 may now be considered the basic policy document of ILO on indigenous populations. Among its provisions on recruitment and conditions of employment is the following call on ratifying member States:

"Article 15

"1. Each Member shall, within the framework of national laws and regulations, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to the populations concerned so long as they are not in a position to enjoy the protection granted by law to workers in general.

"2. Each Member shall do everything possible to prevent all discrimination between workers belonging to the populations concerned and other workers, in particular as regards -

"(a) admission to employment, including skilled employment;

"(b) equal remuneration for work of equal value;

"(c) medical and social assistance, the prevention of employment injuries, workmen's compensation, industrial hygiene and housing;

"(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organizations."

28. In articles 16 and 17, the Convention provides for vocational training. Article 18 contains provisions on handicrafts and rural industries. These articles will be quoted under the appropriate headings in Section F, parts 2 and 3, respectively.

16/ ILO Activity with regard to Indigenous and Tribal Populations (paper distributed to participants at the NGO Conference on Discrimination against the Indigenous Populations of the Americas, Geneva, September 1977).

D. Occupational categories and systems of employment

29. In its 1953 study, the International Labour Organisation classified the major occupational groups of indigenous populations in independent countries as follows:

"(1) Nomadic or semi-nomadic forest-dwelling tribes which live by hunting, fishing and food-gathering and sometimes also by primitive forms of shifting agriculture on land cleared by burning. In many cases the produce of hunting is the basis of a system of barter which constitutes the first contact with the productive sector of the nation; in some countries hunting has been organized for commercial purposes. There are also forest tribes whose main occupation is agriculture, with hunting and fishing as secondary activities.

"(2) Semi-nomadic tribes living in geographically and economically marginal areas, engaged in subsistence agriculture or grazing (or both) and in gathering vegetable raw materials for handicrafts.

"In some areas, these two groups maintain contact with the national or foreign labour market, since their members work as seasonable labourers in forest or mining undertakings, on coffee, sugar, rice or tea plantations, or as muleteers and the like.

"(3) Settled, independent farmers or stock-raisers, working on an individual or collective basis, and linked to a greater or less degree to the economy of their region or country and to the international labour market, since they also work as seasonable labourers on plantations. In many regions, handicrafts constitute an important subsidiary activity for these aborigines.

"(4) Tenant labourers, bound to the estates by a traditional semi-feudal system entailing a number of personal obligations to the landowner.

"(5) Wage earners, who constitute the main source of manpower for plantations, cattle ranches, mining, forestry, etc. This group is more or less integrated into the general and economic life of each country." 17/

30. In the years since this ILO study was published, there have been some significant changes in the main occupational categories. The rapid rise in industrialization during recent years has had its impact on indigenous life-styles, even in the most isolated areas. With the expansion of agro-industry, the search for strategic minerals and the settlement of colonists from overpopulated areas in hitherto isolated regions, the process of modernization has brought an increasing number of forest-dwelling Indians within the wage economy. In the meantime, indigenous groups have frequently been removed from their natural habitats in order to make way for national development projects.

31. In many countries the abolition of semi-feudal tenancy systems, together with the modernisation and commercialisation of agriculture, has led to a large-scale expulsion of Indian labour from traditional haciendas. Where these measures have not been accompanied by effective agrarian reform programmes, the former tenants have become part of a rising urban or rural proletariat, drifting into cities or seeking occasional and seasonal labour in the countryside. While some indigenous persons or groups may have found regular work, secured a regular contract and protection under the provisions of national labour legislation, there has in other instances been a marked rise in the number who have access neither to land nor to regular employment.

17/ International Labour Office, Indigenous Peoples, pp.201-202.

32. Poor social conditions on Indian reservations, or the continuing breakdown of reservations, have also led to disparately high levels of unemployment for indigenous populations of more industrialized countries, in both urban and rural areas. A number of government reports have highlighted this issue, focusing in particular on indigenous unemployment in urban areas.

33. In Australia, a parliamentary committee on aboriginal affairs reported in 1975 that the aboriginal unemployment rate was six to seven times greater than that of the country as a whole. 18/

34. In Canada, a government report published in 1979 noted that "in every province or territory, there exists a substantial gap between the place of Native people in the labour market and other ethnic groups". It cited statistics compiled for a recent study, revealing that the general unemployment rate on reserves was 48 per cent, reaching as high as 95 per cent in some Native communities. 19/

35. In New Zealand, relocation of the Maori population in urban areas has at times been pursued as deliberate government policy, in response to the problems of under-employment in rural areas. A government report published in 1967 contains information to the effect that

> "To reduce the severe under-employment in rural areas, the Department of Maori Affairs inaugurated in September 1960 a relocation programme to encourage rural families to move to towns by providing them there with accommodation and employment" 20/

36. The same report subsequently noted that

> "In the 1961 Census 2.3 per cent of Maori males in the working age group described themselves as unemployed compared with 0.6 per cent of Pakehas, and it is likely that this relative position would persist if unemployment increased. The Maori already has more difficulty in finding work than does the Pakeha; a survey of unemployed workers carried out by the Department of Labour in May 1963 showed that Maori workers (and those from the Pacific Islands) formed a high proportion of the group. Of the total of 1,053 males and females, 230 or 19 per cent were Maori workers" 21/

37. In the Latin American countries with substantial Indian populations, indigenous peasants have traditionally sold their surplus agricultural produce, textiles and handicrafts in urban markets. Until recently, Indians would walk for several hours from the countryside to sell or barter their produce in weekly markets. But with the improvement of communications, and also with the advent of cheaper bus transport, there are some signs that the nature of this rural-urban trade is now changing. In Guatemala, for example, one writer has noted that the Indian vendor has changed from a transporter of rurally produced goods to a middleman who trades the whole range of products in the marketplace. Indian vendors may maintain residence in rural communities even though the majority of their work days are spent in the city. "The Indian vendor is thus a bicultural individual who divorces his working life from his community involvement" 22/

18/ Parliament of Australia, Aboriginal unemployment: special work projects. Third report of the House of Representatives Standing Committee on Aboriginal Affairs, Australian Government Publishing House, Canberra, 1976, p.10.

19/ Department of Employment and Immigration, The Development of an Employment Policy for Indian, Inuit and Metis People, Canada, 1979, p.3.

20/ Department of Industries and Commerce, The Maori in the New Zealand Economy, January, 1967, p.38.

21/ Ibid., p.91.

22/ John J. Swetman, "Ambidextros Culturales: Vendedores Indígenas Urbanos", in América Indígena, Numero 1, Vol. XLI, Instituto Indigenista Interamericano, Mexico 1981, pág. 24.

E. Conditions of Employment. Discrimination and the elimination thereof

1. Discrimination in employment: Government views

38. The Special Rapporteur had no information concerning any de jure impediments or restrictions which might affect the right of indigenous populations to work, to the free choice of employment, to trade union rights, to working conditions and equitable and satisfactory remuneration, to protection against unemployment, or to equal pay for equal work. In their communications on this subject, most Governments limited themselves to citing relevant labour legislation, which guaranteed equal rights for all citizens. Where Governments provided additional information, it was to reaffirm the absence of de jure discrimination, as, for example, in the following statements.

39. The Government of Bangladesh has stated that:

> "In Bangladesh, work is considered to be a right, a duty and a matter of honour to every citizen who is capable of working. In this respect, no de jure or de facto discrimination which may affect the right of any group of people in the free choice of employment, working conditions, equitable and satisfactory remuneration, protection against unemployment and equal pay for equal work is allowed. Similarly the legislations relating to Factories, Workmen's Compensation, Minimum Wages etc. are equally applicable to all citizens."

40. According to information provided by the Government of Australia, for example:

> "The State of Queensland has specific laws relating to the employment of Aboriginals and Islanders. Although the Racial Discrimination Bill does not provide special protective measures in the employment area specifically for Aboriginals, the Bill makes it unlawful to discriminate by reason of race, colour, or national or ethnic origin or by reason that a person is an immigrant, in employment and the right to join trade unions."

41. The Government of the United States of America reports that:

> "Indians have the same protection as all other citizens in the matter of their employment and their rights to work. Like other citizens they can qualify for unemployment compensation should they be unemployed, and the lower limit to their pay is - like other citizens - set by minimum wage legislation."

42. Certain statutory provisions are also relevant in this connection as, for example, in Brazil, Article 14 of Act No. 6001 provides that:

> "There shall be no discrimination between native workers and other workers, and the same rights and guarantees of the labour laws and social security shall apply in either case."

43. It was recognized, on the other hand, that de facto impediments did exist. The Government of Canada states:

> "The rights of native people ... are not infringed by any distinctions, exclusions or preferences in law, nor in the defined and publicly defended policy of those in administrative authority; rather, any acts of discrimination result from instances of personal prejudice on the part of individuals in

the absence of adequate supervision. In practical relationships, limited contact with indigenous residents of remote areas result in unequal opportunity, and where the minority groups have been at the lowest socio-economic level the members of the group lack qualification for employment. Thus discrimination de facto but not de jure may be said to exist, and a large number of special measures are in progress to correct this inequity."

44. According to information furnished by the Government of Colombia:

"Thus not only does the speculator/businessman appropriate the wealth already created by the indigenous workers with his rudimentary methods; not only does the white settler appropriate his land; he also ends by appropriating his person, converting him into a wage-earner. And, moreover, the selling and hunting of indigenous persons organized by mining, agricultural and livestock enterprises is a matter of common knowledge."

45. The Government of Mexico declares that:

"From the legal standpoint there is no limitation that operates to the detriment of indigenous persons or populations so far as labour is concerned. This is laid down in the provisions of articles 1, 5 and 123 of the Constitution and in the relevant regulations of the Federal Labour Law which because of our legal-political structure is applicable throughout the Republic. The de facto position is otherwise: indigenous labour gives rise to much abuse owing to the weak and disadvantaged position of the indigenous population in economic relations. Failure on the part of the employers to comply with the provisions of the Federal Labour Law involves liability to penalties of numerous kinds, including criminal proceedings, as can be seen from title 16 of the Law in question."

2. The elimination of discrimination: Special measures

46. The Special Rapporteur was concerned to assess the extent to which Governments have adopted special measures to eliminate employment and recruitment practices which might discriminate against the labour rights of indigenous peoples. He notes that, even though de jure equality may exist, de facto inequality is often likely to occur if Governments do not take positive steps to protect their indigenous peoples who are frequently ill-acquainted with the provisions of national and international law, and may have little or no access to law enforcement agencies. He has already made mention of article 15 of ILO Convention 107, which calls upon ratifying member States to adopt special measures with regard to indigenous populations when "they are not in a position to enjoy the protection granted by law to workers in general". In his communications to the Governments of the 37 countries covered in this study, the Special Rapporteur accordingly requested information as to whether special measures had been taken to:

(a) Inform indigenous workers and their employers of the legal provisions governing labour contracts, remuneration, housing, benefits in the event of industrial accidents, transport and other conditions of work;

(b) Regulate or supervise procedures for the recruitment of indigenous workers and their conditions of employment, in particular to ensure that:

(i) Written or oral explanations are provided in the vernacular language concerning essential matters so that the workers recruited are aware of all the conditions of employment and accept them freely and with full knowledge;

(ii) Conditions of employment are offered which conform at least to minimum statutory provisions and regulations;

(iii) Health standards are met and seasonal restrictions and minimum age requirements are observed;

(iv) Appropriate transport which meets all the prescribed requirements is provided for the journey to recruitment centres or work sites and for the return journey to the workers' communities;

(v) It is possible for the indigenous workers to maintain adequate contact with their communities and appropriate communication with their families;

(c) Ensure that the remuneration of indigenous workers is protected and:

(i) Is paid only in legal tender, save for such portion as does not exceed the maximum legal percentage payable in kind or in services;

(ii) Is never paid in alcohol, other intoxicating beverages or drugs;

(iii) Is never paid in locations close to taverns or stores, except in the case of workers employed in such establishments;

(iv) Is never subject to deductions, withholding or adjustments in excess of the maximum limits set for:

(a) the part which may be paid in goods or services;

(b) the amount attachable to meet obligations incurred previously;

(c) money which is to be paid directly to the family of the worker, under Government supervision;

(d) recovery of salary advances;

(v) Is always paid in full, including the final payment in virtue of any contractual obligation upon termination of the work relationship.

(d) Guarantee and enforce the right of the indigenous worker to be returned to his community at the expense of the contractor or the employer in the event that:

(i) He is incapacitated, by illness or accident, during the journey to the place of employment or during the period of employment;

(ii) He is declared unfit for work after undergoing a medical examination;

(iii) He is not hired, for a reason for which he is not responsible, after being brought from his community for the purpose of being hired;

(iv) The competent authority establishes that the worker was recruited by error or fraud on the part of the contractor or employer;

(e) Ensure that no personal effects or tools regularly used by indigenous workers are appropriated or withheld for payment of debts or non-fulfilment of contract, unless such measures are taken with the prior approval of the competent administrative or judicial authority.

47. While the majority of Governments did not provide any information on these issues, several Government communications have stated that the measures for the protection of indigenous peoples are no different from those for the prevailing sectors of the national population.

48. The Government of Finland, for example, simply reports that:

"All the provisions and regulations concerning labour relations are the same to all without any discrimination. Announcements on these matters are made in Lappish on radio."

49. The Government of Australia gives more details, when it refers to the role of welfare and employment officers and of trade unions in this connection, as follows:

"Special services have not been created to inform Aboriginal workers and their employers of the legal provisions governing employment matters, but counselling on these matters will frequently be done by welfare officers. Employment officers of the Department of Labour, in counselling Aboriginals in remote areas about employment, try to ensure that the Aboriginals know as much as possible about the working conditions they will encounter and their rights under legislation and awards. Follow-up of placements in employment is carried out by the Department of Labour.

"Recruitment of Aboriginal workers and their conditions of employment are not especially regulated, but are covered by awards which apply to workers regardless of ethnic origin. Awards are created by arbitration authorities as a result of negotiations between trade unions and employers. Unions are assisted in the policy of awards by government departments. The only special government legislation regarding the employment of Aboriginals and Islanders exists in one State, Queensland, where legislation provides that where no award exists, employers shall pay all expenses of the employee's conveyance from the place of residence to place of employment and conversely. It also provides for a slow workers permit to be issued on request in order to allow the employment of Aboriginals and Islanders who are infirm or slow workers and unable to find work at normal rates of pay."

50. The Government of New Zealand also reports on the roles of industrial unions and official inspectors:

"The Department of Labour publishes all industrial awards setting out conditions of work and remuneration. The industrial unions play an important part in seeing that all of their members are aware of their rights and conditions. The Department of Labour has factory inspectors and safety inspectors whose function is to ensure that manufacturers are observing the requirements of the law.

"The organized recruitment of indigenous labour is not a feature of New Zealand life. Employers recruiting any type of labour are subject to statutory obligations regarding wages and conditions of employment. Health standards are laid down by statute and are enforced by medical officers of health and sanitary inspectors. Conditions of employment have been strictly controlled in New Zealand by law and by industrial awards for many years."

51. Furthermore, in New Zealand the Citizens' Association for Racial Equality states in this regard that:

"Although there are few special measures to ensure that Maori workers are aware of their legal privileges relating to contracts, accident compensation and so on, these would be held to be unnecessary, since Maoris are employed, for the most part, on the same basis as non-Maori employees. There is little contract labour (except in some hydro schemes) whereby Maori - or other - workers are detached from their families."

52. The Government of the United States communicates that:

"No special efforts are made to help the indigenous population in these matters other than those efforts made in terms of employment of all Americans. However, the Indian tribe must agree to businesses and industries locating on its land, and generally has means of seeing that the business continue to be a desirable tenant. Most business people who settle on Indian land realize that they must live at peace with their employees and with their customers, since neither can move readily; and some have imaginative ways in which they adapt methods to the native population. In some instances, such as in the recruitment of forest fire fighting crews from indigenous people by the Forest Service of the United States Department of Agriculture special effort is made to reoognize the needs of indigenous peoples when they are airlifted some distance away. The Forest Service has co-operated with the Bureau of Indian Affairs in this effort."

53. The Special Rapporteur had information on the existence of special measures with regard to these issues in certain Latin American countries. Some information was available on Argentina, where:

"The Directorate for the Protection of Indians is responsible for the enforcement in so far as they refer to the Indians, of Decrees No. 16163 (1946) and No. 23305 (1947) concerning work in the sugar industry; Act No. 12789 (1942) concerning the recruitment of workers; and Act No. 11278 (1925) concerning the payment of wages in national currency.

"The recruitment of groups of Indian workers must be organized under the supervision of the Directorate for the Protection of Indians. The inspectors of the Directorate accompany the groups of workers from the place of recruitment to the place of work and inspect their living and working conditions during the whole term of the contract concluded between the Directorate and each undertaking.

"Prior to the promulgation of Act No. 12789, the northern provinces of Salta and Jujuy, whose sugar plantations employ many Indian seasonal labourers from other provinces and from Bolivia, had already adopted similar protective legislation. In 1921 Act No. 1031 was adopted in Salta stipulating that the provincial labour department was responsible for supervising the recruitment of peons by means of written contracts signed by both parties." 23/

23/ International Labour Office, Indigenous Peoples, op. cit., pp. 462-463. In the absence of more recent information on Argentina, this information is quoted here despite the dates of the enactments mentioned in it, as it contains relevant data included in and quoted here from the summary of information relating to Argentina prepared in connection with and in support of the present study.

54. Brazil's Indian Statute (Act No. 6001, 1973) contains detailed legislative provisions for supervising the working conditions of indigenous peoples. Sections 14 to 16 of the Statute state that:

"Art. 14. There shall be no discrimination between native workers and other workers, and the same rights and guarantees of the labour laws and social security shall apply in either case.

"Sole paragraph. Adaptation of working conditions to the usages and customs of the community to which the Indian belongs shall be permitted.

"Art. 15. Any contract for work or hire of services entered into with Indians covered by the provisions of Article 4, Item 1, shall be declared null and void.

"Art. 16. Contracts for work or hire of services entered into with natives in process of integration or inhabitants of parks or farming settlements shall depend on prior approval of the Indian protection agency, and comply when necessary with special norms.

"§1. The conclusion of contracts for levies of workers or home workers under the orientation of the competent agency is to be encouraged so as to favour continuity of community life.

"§2. In any case of services rendered by non-integrated Indians, the Indian protection agency shall exert permanent control and supervision over the working conditions, denouncing abuses and taking steps to see that appropriate sanctions are applied."

55. Furthermore, in connection with points 2 (b) and (c) above, it should be noted that in accordance with article 58,III, of Brazil's Indian Statute, it is considered a crime against the Indians to facilitate by any means the acquisition, use and distribution of alcoholic beverages within tribal groups or between non-integrated Indians. The offence is punishable by six months to two years imprisonment.

56. In Paraguay, Chapter VII of the Labour Code of 1961 provides for special standards for the employment of indigenous workers from communities which are not integrated with the rest of the population. In 1973, the Government of Paraguay stated in this connection:

"With regard to work as a social function, the indigenous worker also enjoys the protection of the State and must not be regarded as a chattel. Consequently, he has a right to follow his vocation, to devote himself freely to the occupation, industry, job, craft or trade for which he is fitted, provided that its exercise is lawful. He likewise enjoys the freedom to change his employment. Law No. 729 'which sanctions the Labour Code' provides for his protection 'on an equal footing with an integrated worker'. For instance, chapter VII, entitled 'Indigenous Labour' proscribes, in articles 185 to 191, express labour hiring conditions that place the worker in a situation of dependency, while articles 132 and 237 respectively of the Code ensure protection of their wages. It should be noted that the minimum wages laid down by the Administrative Authority for Labour likewise apply to indigenous workers.

"Here we must stress the stipulations in article 192 of the Labour Code, which reads: 'The State, through the competent organs of the respective ministries, shall ensure the protection of non-integrated indigenous persons and shall safeguard their institutions, goods, person and labour with the following ends in view: (a) to promote their social, economic, and cultural development and the improvement of their standard of living with a view to their gradual integration into the national community; (b) to prevent their exploitation and extermination and (c) to ensure that protection is not used to bring about or prolong their segregated status.'

"At the present time, the Ministry of Justice and Labour, working through the Administrative Authority for Labour on a programme of co-operation and for the purpose of exercising better control as regards the monitoring of compliance with the labour laws in indigenous matters, is working jointly with the Department of Indigenous Affairs of the Ministry of National Defence and the Association of Indigenous People of Paraguay to obtain information and evidence concerning the general conditions under which indigenous persons are hired for all types of work, and in particular livestock breeding and agriculture, with a view to protecting their rights and advising them on the fulfilment of their obligations, and thus ensuring a better balance between the indigenous worker and his employer. The Directorate-General of Labour has now appointed an official whose task it is to obtain information, supervise compliance with the labour laws and monitor the general conditions of hygiene and safety available to the indigenous worker." 24/

57. With regard to the implementation of Law No. 729 in Paraguay, the Anti-Slavery Society has communicated in connection with this study:

"To our knowledge, no penalties, remedies or compensations were ever imposed in order to ensure the de facto realization of this law. Nor were any services to inform the Indians about this law provided by the Government."

3. Discrimination in employment: Non-governmental views

58. Little information was available to the Special Rapporteur concerning wage discrimination against indigenous peoples in specific enterprises, as compared with the remuneration given to other population groups. One such allegation, however, has been made with regard to Paraguay.

"In the oil factory of Filadelfia, the wage for the Indian labourers is G 25 an hour, and for those who ethnically are Mennonites, it is G 50. The same thing happens with the masons ... In the co-operative of the European Mennonites, this cotton is graded and paid for according to quality. In the Indians' co-operative (under Mennonite control) the cotton is not graded and is all paid for at the rate of the lowest quality of the Europeans ... Moreover, the Indians are never paid in toto, there is always a residue which is only paid when the product is marketed in Asuncion." 25/

24/ Report to ILO, quoted in the summary of information relating to Paraguay prepared in connection with and in support of the present study.

25/ Information provided by the Anti-Slavery Society.

59. Many allegations have been made with regard to discrimination in access to employment, in the training which is a prerequisite to such access, and in over-all conditions of labour. In the United States, for example, one source has made the following general statement:

> "Although Indians may legally be entitled to enjoy the same protection as all other citizens in the matter of their employment and their rights to work, de facto impediments do exist to their exercise of these rights. For, in order to qualify for even semi-skilled labour, some training is required which many of the unemployed people living on the reservations do not have. In order to acquire such skills, the individual must have access to programmes which will effectively impart prerequisite training. Yet the data available indicate that programme offerings for Indians are not highly accessible, nor practical in terms of the types of employment skills offered, nor highly successful in imparting the skills selected for course offerings." 26/

60. One author, summarizing the labour conditions of indigenous peoples in 10 Latin American countries, has written that:

> "Anthropologists, non-governmental organizations, church affiliated groups and news reporters have recently alleged that indigenous workers in most of these countries suffered employment abuses. These allegations, studied by international intergovernmental organizations, include remuneration below the legal minimum, recruitment and transport under extremely bad conditions, debt-bondage (the practice of inducing workers to incur financial obligations to the employer through the purchase of high-priced basic commodities in the employer's work store), and unpaid forced labour, including conditions of slavery. Such abuses are normally said to occur in areas where the governments have been unable to enforce national legislation, especially labour codes and regulations. It is difficult, however, to obtain reliable verification of such allegations. No country has laws which openly discriminate against these populations, but only a few have established special measures to protect indigenous workers." 27/

61. While some of these situations may be described as isolated cases of abuse in isolated areas where the Government has proved unable to exert its authority and implement national labour legislation, in other instances the abuses have apparently been very widespread throughout the country. In the following sections the Special Rapporteur, drawing his information from a wide range of non-governmental sources, will describe certain settlement, recruitment and employment procedures which discriminate against indigenous peoples, and which frequently constitute violations of accepted international standards.

4. Forced changes in traditional occupations

62. Development projects in areas inhabited by indigenous populations are frequently conceived not for their benefit, but for that of the prevailing sectors of the national population. Examples are dams and hydro-electric projects, logging enterprises, and petroleum or mineral extraction. Furthermore, rural settlement

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26/ American Indian Law Newsletter, vol. 7, No. 11.

27/ Lee Swepston, "The Indian in Latin America: Approaches to Administration, Integration and Protection", in Buffalo Law Review, vol. 27, No. 4, pp. 748-749.

programmes may be designed to benefit non-indigenous populations at the expense of the indigenous communities. Colonization programmes may be controlled by the Government, aiming to provide extra land for the urban and rural poor. Or they may be spontaneous programmes, often carried out by entrepreneurs seeking to establish new plantations and agro-industrial enterprises.

63. In cases where the traditional use of land and resources conflicts with the aims of national development planning, government agencies may at times have taken steps to alter traditional occupations without adequate consultation of the indigenous peoples themselves. In Bangladesh, for example, a source states that a land use survey has been published for the Chittagong Hill Tracts, where the Chittagong Hill Tracts Development Board has put into effect a large number of projects with development assistance from the Asian Development Bank. The indigenous peoples were reportedly to become "wage earners in the forest or other development industries, giving up their jhum farming and nomadic way of life". 28/

64. In other instances the combination of large-scale development projects and encroachment by non-tribals may have seriously adverse consequences for traditional occupations. In India a writer has commented that:

> "However, it is not just that the tribals do not benefit financially from the exploitation of their areas. Account must also be taken of the deleterious effects that the huge industry, mining, urban-industrial and hydro-electric dam schemes are having on adivasis' ability to continue their traditional methods of production. In addition to the lack of investment in tribal agriculture and alienation of agricultural land by encroaching non-tribals, tribals are being forced by a combination of land alienation for dams and industrial developments, and prohibition of the use of forest resources to give up their largely autonomous and self-sufficient methods of production. Instead they become badly paid landless labourers, either harvesting their traditional forests and working in mines for the benefit of the non-tribal areas, or migrating seasonally or permanently to distant brickfields, plantations and other areas of high agricultural potential in search of work." 29/

65. In yet other instances, the penetration of hitherto isolated areas by spontaneous settlers dedicated to commercial agriculture may create a large demand for both permanent and seasonal labour, with the input provided by indigenous workers who are compelled to abandon their traditional way of life.

66. In Bolivia, a number of sources have described the adverse effect on traditional life-styles of the recent boom in sugar and cotton production in the east of the country, as well as the rudimentary methods of rubber extraction practised in forest regions. 30/ It has been alleged that the methods used to coerce the Chiquitano and other Indians into working on the commercial estates have included induced indebtedness and also forced labour. 31/

28/ International Work Group for Indigenous Affairs "Bangladesh: Tribal fight for land in Chittagong Hill Tracts", in IWGIA newsletter, June 1981.

29/ Steve Jones, "Tribal Underdevelopment in India", in Development and Change, Institute of Social Studies, The Hague, Vol. 9, No. 1, January 1978, pp. 50-51.

30/ I sold myself: I was bought. Report on the situation of sugar-cane harvesters in Santa Cruz, Bolivia, IWGIA, Copenhagen 1980, passim.

31/ Idem. Also see Anti-Slavery Society, Bolivia: Report on a visit to investigate allegations of slavery, London, 1977, pp. 20-25.

67. In Brazil, there have been many reports of the disruptive effects on Indian life-styles caused by the intensive development projects of recent years in the Amazon Basin. 32/ In this region, Indians have rarely been seen as a source of labour, for the labour supply is usually provided by non-Indians brought in from outside the development areas. But indigenous and tribal groups have been subject to forced relocation, from areas where the Government and private contractors have wished to exploit timber, mineral, agricultural and other resources. One source has stated that Indian land rights have been sacrificed by FUNAI for the larger economic interests of State highway programmes, large-scale mining projects and agri-business: and that this has led to the uprooting of scores of Indian tribes. A similar fate is predicted for other Indian tribes in Brazil, notably in the far northern part of the Amazon Basin where highway and mining development projects at present threaten the territorial integrity of the large Yanomami and Waimiri-Atroari tribes. 33/

5. Coercive labour systems

68. Mention was made earlier in this chapter of various coercive systems of employment, to which indigenous peoples have been subjected at least until recently in several parts of the world. By law, such exploitative labour systems as serfdom, debt bondage, and the numerous types of compulsory personal service have generally been abolished. Despite legal provisions, however, there is evidence that such practices still continue today, and that the victims are very frequently tribal and indigenous peoples. Information was available to the Special Rapporteur concerning "unfree labour", provoked or forced migrations, inadequate recruitment systems, and working conditions incompatible with human dignity.

69. The action taken by the United Nations Working Group on Slavery has already been described earlier in this Study. 34/ It has been noted that members of the Working Group recognized that a "special problem exists in countries with indigenous populations who might be vulnerable to exploitation, such as debt bondage and other slavery-like practices". In particular, the Working Group has dealt with debt bondage or bonded labour, forced labour, abusive and exploitative labour practices, and non-enforcement of minimum wage provisions.

70. The Special Rapporteur summarizes here the information received by the Working Group on the situation of indigenous peoples in several countries covered by this Study.

71. A representative of the Minority Rights Group gave information to the Working Group concerning the situation of Aborigines on remote pastoral stations in Australia. He stated that slavery-like practices against Aborigines still existed in these regions. Although new legislation affecting Aborigines had been introduced in 1967, they were still forced to work for little or no wages in these remote areas, and women were forced to prostitute themselves to the European landowners. 35/

72. The Anti-Slavery Society has provided information concerning debt-bondage practices against indigenous groups of Eastern Bolivia and forced labour of indigenous workers on rubber plantations. The Society's report to the Working Group

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32/ See, Anti-Slavery Society, Tribes of the Amazon Basin, 1972.

33/ Shelton David, Victims of the Miracle, Cambridge University Press, 1977, pp. 160-161.

34/ See chap. I, on Measures adopted by the United Nations, paras. 54-62.

35/ E/CN.4/Sub.2/434, para. 17.

cites cases where workers in the department of Santa Cruz were reportedly still locked up at night in the enclosed sheds of the rubber gathering areas around the river Piragua. It also describes instances where Amerindians are induced by anticipos (advance payments) into debt from which they can never escape:

> "Once they have commenced work they can only buy articles in company stores at grossly inflated prices, often as much as 500 per cent above the normal commercial value. A bar of soap, which would cost approximately 5 pesos in a normal store, will be sold for 25 pesos; and there was one account of a girl who received no more than a pair of trousers for her 12 months work in 1974-75. All articles, be they clothing or such essential foodstuffs as rice, oils and margerine are sold in the same way. In 1976, according to a report from another source, approximately 25 people escaped from a 'siringa' (rubber plantation) but were recaptured after the owner had reported the incident to the local police ... The report of the National Agrarian Reform Service also provides extensive details of land and labour relationships in the remainder of Santa Cruz Department, particularly on the cattle ranches. Many of the apatronados (peons under the patron's protection) have been compelled to accept this status in order to pay off prior debts, while others have sought it voluntarily in order to escape from the exploitation of the rubber plantations. After a few years service the peons in many cases find themselves in more debt than before, largely thanks to the consumption of alcohol bought at inflated prices from the landowner himself. At other times, contractors in the service of landowners have taken such commodities as alcohol and cigarettes to Indian villages." 36/

73. The Anti-Slavery Society report also described some of the recruitment methods used by commercial farmers in order to secure a seasonal labour force at harvest time from among the Indian peasants of the Bolivian altiplano.

> "Landowners have relied on contratistas (contractors) who have used indebtedness as a means to secure their own labour force. On the estates themselves, landowners and their capataces (foremen) have used various methods including threats and physical force (in isolated instances), withdrawal or delayed payment of wages, in order to keep the labour force on their estates throughout the harvest season. And the contractors, although in theory they should represent the interests of their own work force, are more often than not in the pay of individual landowners and therefore inevitably represent the interests of the patron. When abuses have occurred - over payment or treatment in violation of contractual conditions - the migrant workers have traditionally had little means of protection ... The contractors themselves may be independent or may be on the payroll of one or more landowners. As an example of the first category, a group of contractors in 1974 brought 4,000 peasants from Potosi, and put them "on the market" at 160 Bolivian pesos each. In such cases the peasants have signed no contract at the time of their recruitment, while the contractor is more concerned with his "sale price"

36/ Anti-Slavery Society, Bolivia: Report on a visit to investigate allegations of slavery, London, 1977, pp. 21-22. Presented to the Working Group on Slavery at its third session, and summarized in E/CN.4/Sub.2/389.

than with any guarantees of adequate labour conditions. The second category, of contractors in the service of individual landowners, appears to be more common. In these cases the contractors will have requested large advances of money from the landowners in order to make anticipos to the peasant farmers in times of scarcity. Though the anticipo will normally be between 50 and 100 Bolivian pesos, there were reports of anticipos of far higher sums, of up to 1,000 pesos. The higher and anticipo the greater the control exercised by the contractor, and there are reports of cases where peasants are kept in debt for several years." 37/

74. The Anti-Slavery Society has provided information to the Working Group in 1976, 1978 and 1980 concerning the situation of indigenous labourers in Guatemala. The Society's reports concentrate largely on the recruitment and employment conditions of the several hundred thousand indigenous peasants who engage on annual seasonal labour on coffee, cotton and sugar estates. As in the Bolivian case, it is noted that much seasonal labour is recruited through anticipos (advance payments) offered by contractors acting on behalf of landowners:

"The number of 'contratistas', or 'habilitadores' (as they are also frequently called) is on the increase ... Studies carried out in the department of Huehuetenango (from where the greatest migration flow comes) show that the debt motivation followed by compulsory labour is still extremely strong. A series of interviews showed that, whereas over half of the Indians contracted tended to go voluntarily to the 'contratista' in order to offer their services, well over 30 per cent were contracted by the 'contratista' who attended the local markets at strategic moments. Although some attempts have been made by government to control the activities of the 'contratistas', these have been inadequate to date." 38/

75. The Anti-Slavery Society also reports that:

"Although individual labour contracts are in many cases signed by the migrant workers, they specifically leave open the amount of time in which the anticipo can be worked off. Copies of such contracts have recently been seen by members of the Society. The contracts mention the amount of the anticipo received by the worker, and then state that if for any reason justified in the opinion of the respective authority he cannot complete within this harvest period the number of days to which he has committed himself, then he must do so in the next harvest period. Presumably, if the migrant worker incurs further debts on the estate, or contracts a high-interest loan as well as the anticipo, he may easily find himself caught in a situation of spiralling debt." 39/

37/ Ibid., pp. 16-17.

38/ Anti-Slavery Society, Report for 1976 to the Working Group on Slavery, Supplementary Information for the Working Party on Slavery, 30 July 1976.

39/ Ibid., Report for 1978 to the Working Group on Slavery, Incidents of slavery and abuses against rural workers in Guatemala, 1976-1978.

76. With regard to the transport, living and working conditions of indigenous migrant workers in Guatemala, the Anti-Slavery Society refers to a report of the International Labour Organisation, which emphasized the following significant shortcomings in the system of seasonal labour recruitment and working conditions:

"(a) Inappropriate recruitment systems;

"(b) Low salaries out of proportion to the sacrifice that the workers and their families have to endure;

"(c) Sub-human conditions in transport from the place of origin to workplace, and vice-versa;

"(d) Lodging and life conditions of the migrant workers and their families within the workplaces, which are totally unacceptable as regards hygiene, health education and morality;

"(e) Sicknesses easily contracted by workers and their families, due to the difference of climate and the almost total absence of hygiene measures;

"(f) Leaving in penury the families in their place of origin, who do not follow the heads of family, with all the consequences that are derived from this situation;

"(g) The fact that it is impossible for those children who accompany the heads of family to continue the studies that they have commenced in their place of origin." 40/

77. The United Nations Working Group on Slavery has also received reports of abusive labour practices against forest-dwelling Indians in South America. At its third session held in 1977, the Minority Rights Group presented written and oral allegations on forced labour and debt bondage of Amerindians, especially in the Amazon area. Debt bondage, it was stated, was created mainly by selling manufactured goods at high prices to the Indians, in exchange for the Indians' services or products. 41/

78. In 1978 and 1979, the Anti-Slavery Society presented information concerning debt-bondage affecting tribal populations in India to the Working Group at its fourth and fifth sessions. The Society stated that debt-bondage was a country-wide phenomenon affecting as many as 5 million to 7 million people, mostly "untouchables" and "tribals". The report emphasized the link between debt-bondage and other slavery-like practices, such as child labour and the sale of women and children for the purposes of prostitution. 42/ A representative of the Society subsequently expressed his appreciation of the Indian Government's efforts to put an end to the problem of bonded labour. He pointed out, however, that according to a recent survey carried out by the Gandhi Peace Foundation and the National Labour Institute, 84 per cent of bonded labourers were from scheduled castes and tribes, who were also the most impoverished and traditionally those who suffered the most discrimination in society. As shown by the same survey, the problem was a continuing one, since many labourers had become bonded even after the passage of the Bonded Labour System (Abolition) Ordinance of 1975. 43/

40/ Ibid., Report for 1976, op. cit., see ILO Technical Assistance Report, Colonization, Agrarian Transformation, Rural Development and Agricultural Labour (OIT/TAP/Guatemala/R.18).

41/ E/CN.4/Sub.2/389, 30 August 1977, p. 4.

42/ E/CN.4/Sub.2/410, 30 August 1978, p. 8.

43/ E/CN.4/Sub.2/434, 24 August 1979, p. 3.

F. Vocational training and the creation of employment

1. Preliminary remarks

79. It has been seen that the rapidly changing situation of indigenous peoples in the economy of several countries has called for new directions in vocational training and employment guidance. As pointed out elsewhere in this study, 44/ New Zealand is at present the only country in which the indigenous populations have for the most part become urban people. Nevertheless, in many other countries, it has been seen that an increasingly large percentage of Indian peoples are now facing problems of unemployment or underemployment. While these problems may be most acute in situations of large-scale rural-urban migration, they also exist in rural indigenous communities among small farmers, tenant farmers and landless labourers and on Indian reservations.

80. The International Convention on the Elimination of All Forms of Racial Discrimination calls upon member States to take special and concrete measures on behalf of those racial groups which are at a disadvantage with regard to the remainder of society. Article 2 (2) provides that:

> "States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms".

81. The Indigenous and Tribal Peoples Convention - 107 (1957) - of the International Labour Organisation provides:

> "Article 16
>
> "Persons belonging to the populations concerned shall enjoy the same opportunities as other citizens in respect of vocational training facilities.
>
> "Article 17
>
> "1. Whenever programmes of vocational training of general application do not meet the special needs of persons belonging to the populations concerned governments shall provide special training facilities for such persons.
>
> "2. These special training facilities shall be based on a careful study of the economic environment, stage of cultural development and practical needs of the various occupational groups among the said populations: they shall, in particular, enable the persons concerned to receive the training necessary for occupations for which these populations have traditionally shown aptitude.
>
> "3. These special training facilities shall be provided only so long as the stage of cultural development of the populations concerned requires them: with the advance of the process of integration they shall be replaced by the facilities provided for other citizens."

44/ See the chapter on Housing.

82. The Director-General of the International Labour Organisation recently outlined some of the factors which prevent disadvantaged groups of society from having full and equal access to training facilities:

> "Nevertheless, inequities still persist and are difficult to eliminate because they are often part of inherited values, result from political, social and economic circumstances or are disguised under the cover of administrative and organizational regulations. Thus, barriers are created which prevent certain groups of the population from having a fair chance of receiving training corresponding to their personal needs and to those of society.
>
> "The task ahead is to remove these barriers. In the first place a fresh look needs to be taken at entry requirements. These are sometimes high and even prohibitive. True, such high entry requirements are set, in particular in developing countries, as selection criteria because of the large number of young people and adults competing for the limited number of training places. Hence, those who have obtained higher educational qualifications stand a better chance of being accepted. In such cases the question is never asked whether the high entry requirements are always technically and socially justified. A close look at many of these requirements reveals that they are not always technically feasible or indispensable and that they are economically and socially unjustified.
>
> "Second, there is the question of the location of training facilities. All too often these facilities are located too far from trainees' homes, and all too often it is the poor who are the most badly affected because they live in remote areas and cannot afford to pay the travel expenses. This implies that we must either bring the service closer to the clientele, through better geographic distribution of training facilities, or provide improved access, i.e. by means of adequate transportation, provision of meals and possibilities of boarding.
>
> "Third, language barriers have to be removed. In some developing countries where the majority of people communicate in a local language, training is still offered in the official language of the country, which is mastered by only a few. This tends to discriminate against the majority and to eliminate illiterates, school drop-outs and low achievers from training opportunities. Such barriers can also prevent migrant workers from enrolling in training courses." 45/

83. The above statements tend to be of particular relevance for indigenous populations. On the one hand, it is imperative that their members should have access to the technology and training which is sought by them and can be used for their benefit and the benefit of their communities. On the other hand, it is not sufficient for selected members of indigenous groups to have such access, if the training programmes are not adapted to the needs of their own communities. In particular, when internship programmes are provided, with the instruction taking place in a distant place and different environment within an alien culture, and perhaps also in an alien language, there is an obvious danger that the training will not be very successful and, on the other hand, will be conducive to cultural alienation of the individual from his traditional way of life. 46/

45/ Training: Challenge of the 1980 s, Report of the Director-General, International Labour Conference, sixty-sixth session, 1980, pp. 25-26.

46/ See what is said in the Chapter on Education in connection with education in residences away from the community.

84. In his communications to the Governments of the countries covered in this study, the Special Rapporteur requested information as to whether programmes of vocational training for the indigenous populations were designed specifically for that purpose and were based on the appropriate ethnological and anthropological studies, whether provision was made for the training of persons belonging to the indigenous populations as instructors and for conducting the programmes in the vicinity of the place where such persons lived and worked, whether the language of instruction was, to the extent necessary, the vernacular and whether the programmes were co-ordinated with programmes and methods of basic education supplemented by assistance measures, thereby enabling independent workers to acquire the necessary materials and equipment and helping wage-earners to find employment compatible with their abilities and aspirations.

85. The Special Rapporteur also requested information concerning any administrative provisions made to provide the indigenous populations, either free of charge or at reduced cost, with special courses or apprenticeships in public or private commercial and agricultural establishments, placements, grants and aid programmes.

2. Vocational training: General survey

86. In certain countries, there are legal provisions stipulating either that it is a duty of the State to promote vocational training, or a right of its citizens to receive it. In Bolivia, for example, the Constitution provides that:

> "The State shall promote vocational training and professional technical courses, which shall be directed towards economic development and national sovereignty."

87. And in Mexico, the latest amendment to the Constitution declares that training for employable skills is a basic social right. In Brazil, the Indian Statute of 1973 (Act 6001) refers more specifically to the right of indigenous peoples to receive vocational training, stating that "The Indian shall be provided with adequate professional training in accordance with his degree of acculturation". Such provisions, however, contain no directive that the training should be in accordance with the needs and expressed interests of the indigenous populations.

88. In a number of countries, information was provided concerning training programmes which were specifically directed at indigenous peoples. The Government of Australia reports that training in institutions, as opposed to on-the-job training, is provided under grants administered by the Department of Education, with which the Department of Labour works very closely in selection of students, advice as to courses and placement after training. The Commonwealth Department of Aboriginal Affairs supplements the Department of Labour's efforts in a number of ways. Substantial funds are provided from the Aboriginal Advancement Trust Account to the States each year for the development of employment opportunities and vocational training programmes for Aboriginals. A total of $500,000 has been provided this financial year to the States for Aboriginal employment programmes.

89. Aboriginal movement to areas where employment or vocational training is more readily available is encouraged by the provision of funds to voluntary bodies to enable the establishment of hostels for Aboriginal workers and young people undertaking training.

90. Special vocational training courses for Aboriginals are operating or planned in each State and the Northern Territory. Most of these courses are designed to reconcile the Aboriginals' cultural background with living, learning and working in the general community, and by compensating for educational disadvantages which may

have developed during early schooling, to enable the student to continue with post-school training. For example, in an attempt to increase the numbers of qualified Aboriginals available for employment in the public service and for work in their own communities, the Social Studies School of the South Australian Institute of Technology, in conjunction with the Department of Community Welfare in that State, is offering a special 2 year full-time training programme in community development and other aspects of community work with their own people. The Department of Community Development is offering 10 cadetships to Aboriginals who, on completion of the course, will become members of an Aboriginal Task Force in the Department. Other students are expected to be sponsored by private organizations or by other State or Commonwealth government departments. The Commonwealth Government is supporting the course financially.

91. Other special training centres are located near major centres of Aboriginal population. For example, a vocational training complex has recently been established at Port Hedland at a cost in excess of $1 million to serve the northern areas of Western Australia, where it is hoped to develop the potential of the Aboriginal workforce. Education and training in a variety of skills is also normally available on settlements and missions.

92. Special vocational courses for Aboriginals are usually provided free of charge (a training wage may even be provided). Financial assistance is available to Aboriginals undertaking a variety of general or special courses of study (see Section 3, Education, Study Grants).

93. With regard to commercial and agricultural training, the Australian Government also states that:

> "Aboriginals who wish to attend public or private commercial agricultural training and eligible for assistance under the Aboriginal Study Grants Scheme, which is administered by the Australian Department of Education in consultation with the Department of Aboriginal Affairs. Special courses in business management have been arranged for borrowers from the Capital Funds for Aboriginal Enterprise."

94. In Canada the Government provides information to the effect that:

> "Under the Post-School Division of the Education Branch of the Department of Indian Affairs and Northern Development a total of 11,789 Indians received vocational training in the education year 1972-73. This total is distinct from the 32,555 Indians who took adult education classes in various subjects, including basic literacy in English or French. Location in new employment was assisted for 15,133 Indians, including some families. Under a Saskatchewan programme Métis and Indians are assisted in moving to new employment with grants which provide transportation, meals and accommodation en route, board and room for a month, suitable clothing, tools and equipment up to $100 and furniture up to $200.
>
> "Under the Band Management Division of the Department of Indian Affairs and Northern Development, which controls the transfer of responsibility for many reserve activities to the Council instead of the Regional Superintendent or Agent, a number of practical courses are offered in agricultural development, administration, small business practices and similar subjects.
>
> "The federal Post-School Division also conducts a training-on-the-job programme in co-operation with private industry, sharing the wage cost on a 50-50 basis. Where the training employer is a federal, provincial or municipal government office or a private non-profit organization, the Department of Indian Affairs will contribute up to 100 per cent of the training wages for a training period of up to 52 weeks.

"There have been for example, over 40 natives trained in the Department of the Solicitor-General and a number are now employed as custodial and assistant parole officers. An agreement was made with KAINAI Industries Ltd., to provide on-the-job training for 240 Indians of the Blood reserve in Alberta, in the manufacture of trailers and sectional houses. An industrial-environmental training centre is being opened at Rivers, Manitoba. Indians are being trained at a pulp mill in Meadow Lake, Saskatchewan. For some time the Canadian Forces School of Military Engineering at Chilliwack, B.C., has provided training for Eskimos in the operation and maintenance of heavy-duty equipment. Other experimental courses are designed to train natives for such varied employment as teachers of basic literacy (in English), and as mine workers.

"It is hoped that such training programmes will lead to employment in the industries involved. In addition, agreements are in effect to promote the employment of native people in resource development industries operating in the North, under the Employment Liaison Programme of the Department of Indian Affairs and Northern Development. A major oil company in the Arctic has undertaken to recruit and transport native workers from their homes to the work sites on a rotation basis. Several provinces have also established liaison with employers to increase the employment of native people."

95. On India, an author has written that:

"In the matter of vocational training, scheduled castes and scheduled tribes are not only entitled to the opportunities available to the general population but also get additional facilities to enable them to catch up with the rest. The Ministry of Education has requested all the ministries of the Government of India, the State governments and the union territory administrations and also the universities throughout India to make the following concessions in respect of students from scheduled castes and scheduled tribes in all technical and other educational institutions controlled by them:

"(1) Twenty per cent of the seats should be reserved for them.

"(2) Where admissions are restricted to candidates who obtain at least a prescribed percentage of marks, there may be a 5 per cent reduction for them, provided that the lower percentage does not fall below the minimum required to pass the qualifying examination.

"(3) The maximum age limit for the admission of students belonging to these communities should be raised by three years.

"(4) Students belonging to these communities should be eligible for admission for reserved seats if they attain minimum prescribed standards without any reference to the gap between their marks and those of the last person admitted to the open seats.

"The Ministry of Irrigation and Power has made a reservation for scheduled tribes of 5 per cent of the seats in its two technical training centres situated at Poona and Kotah.

"The Ministry of Labour and Employment has made a similar reservation of 5 per cent of the places in its 357 industrial training institutes and centres established throughout the country. The upper age limit for admission to these institutes and centres is 25, but this condition is relaxed in the case of candidates from scheduled tribes, provided they are otherwise suitable.

"The Ministry of Mines and Fuel has made a combined reservation of 12½ per cent for candidates belonging to scheduled castes and scheduled tribes for admission to its five mining training institutes." 47/

96. The same writer adds that the Government is aware that training programmes without proper follow-up may not serve much purpose, and trainees may revert to their old, less satisfactory, occupations. The Scheduled Areas and Scheduled Tribes Commission, which submitted its report in 1961, also observed that "satisfactory records have not been maintained of the follow-up efforts made to rehabilitate the trainees on completion of their courses". The Commission's observation was brought to the notice of the State governments for necessary action. In some States, like Madhya Pradesh and Maharashtra, co-operatives are formed at the end of the training period and financial assistance is given for the purpose of buying tools, equipment and construction of godowns. In certain other cases where it is not possible to form such societies, the Adivasis are given individual financial assistance up to 500 rupees, partly in the form of a subsidy and partly as an interest-free loan repayable by instalments. 48/

97. The New Zealand Government has provided information on the Maori Affairs Trade Training Schemes, which provide annual apprenticeship courses leading to full qualifications in skilled trades. The courses are held in the four centres of Auckland, Hamilton and Wellington in the North Island, and Christchurch in the South Island. The Government has communicated that the Maori Affairs Trade Training Schemes are specifically designed for Maori and other Polynesian students. Some of the young men trained under this programme are now employed by technical institutes as instructors. As already mentioned, these courses of instruction are held at four places in New Zealand. As they cater particularly for rural boys, the boys have to be brought to places where technical institutes are in existence. They are also centred in places where the boys may more easily be placed in proper employment at the conclusion of their training. All instruction is given in English as all of the boys speak English and, in fact, many of them do not speak Maori.

98. The Government adds that the training schemes are co-ordinated with basic education and the trainees are given every assistance in finding employment compatible with their abilities and aspirations. Finance is available by way of loan from the Department to assist a qualified Maori tradesman to set up his own business.

99. During his official visit to New Zealand in June 1973, the Special Rapporteur visited the Maori apprenticeship arrangements at Seaview, and was much impressed by the good work being done by the trainees in carpentry, masonry and homebuilding. He notes, however, the opinion of the New Zealand Citizens' Association for Racial Equality that such schemes "do not yet provide for more than a small proportion of Maori school leavers, most of whom take unskilled or semi-skilled manual employment".

47/ P.M. Henon, "Towards Equality of Opportunity in India", in International Labour Review, October 1966, pp. 373-374.

48/ Ibid., p. 374.

100. The Government of Norway has communicated that:

"As an element in labour market policy, special vocational training courses are arranged every year for unemployed and underemployed people who need training in order to secure suitable and stable employment. The courses are held at ordinary vocational schools or at special centres.

"In Alta a permanent course has been established for the particular purpose of providing training for the Lapp population in Inner Nord-Troms and Inner Finmark. The training largely follows the same programme as in the rest of the country. However the courses are extended to include teaching in theoretical and general subjects. Teaching is in Norwegian. Some of the teachers usually have a knowledge of Lappish, but there has been no deliberate policy of recruiting Lapp teachers.

"Owing to the great distances, scattered pattern of settlement and relatively few participants, there are practical difficulties in arranging courses near the participants' homes. The labour market authorities have instead generally chosen to concentrate the course activities at one place. However, courses in building construction have been held in other localities. The extra expenses for living away from home are refunded to the participants".

101. The Government of the United States reports that:

"Vocational training efforts have been many. One such effort was called a 'whole family training' method. The entire indigenous family was moved to one of three deactivated military bases where the wife was given help in managing the family's affairs as they would be managed in an urban setting while the husband was given an entry-level skill. Another more recent effort which takes place on the reservation is one which Indian men with an interest in construction work are recruited and put into teams, where they learn business practices, construction industry skills, and good work habits. At the request of Indian tribes, vocational training and placement efforts now take place closer to the reservation or actually on it".

3. The protection of handicrafts

102. After agriculture, handicrafts is probably the most important source of livelihood, subsistence and sometimes income for indigenous populations. For the most part, handicrafts have traditionally been directed at providing for their own needs, whether the tools of hunting and fishing and agriculture, or textiles for clothing and utensils for domestic use. In some instances, however, indigenous groups have developed a relatively large handicrafts industry for domestic or even foreign trade. The straw-hat industry in Ecuador and Peru, or the colourful textiles produced by the Otavalo Indians of Ecuador, or by the Mayan and Quiche Indians of Guatemala, are but a few examples.

103. The Convention on Indigenous and Tribal Populations, 107 (1957), cited above, provides in this connection:

"Article 18

"1. Handicrafts and rural industries shall be encouraged as factors in the economic development of the populations concerned in a manner which will enable these populations to raise their standard of living and adjust themselves to modern methods of production and marketing.

"2. Handicrafts and rural industries shall be developed in a manner which preserves the cultural heritage of these populations and improves their artistic values and particular modes of cultural expression."

104. The Special Rapporteur requested information from Governments and non-governmental organizations as to whether they have established programmes: (a) to protect the traditional handicrafts and industries of the indigenous populations with a view to improving techniques and methods of work, production and marketing, and working conditions, taking care not to disturb any fair labour arrangements for the organization of such activities which are essential to the indigenous tradition; (b) to obtain equitable and satisfactory prices; (c) to protect designs and artistic characteristics against unfair competition from mass-produced reproductions; and (d) to promote the establishment of the more effective operation of co-operative organizations so that they may more successfully meet the challenge presented by modern manufactured products.

105. Responses to this request, as well as information otherwise available to the Special Rapporteur for the study touch upon some aspects of these points only. Available data merely allow references to legal provisions and to public policy purposes as stated by Governments. This information is set out in the following paragraphs.

106. The protection and encouragement of indigenous handicrafts as well as rural or popular industries may be provided for by the Constitution or by a fundamental law.

107. In Brazil, for example, article 53 of the Indian Statute of 1973 stipulates that:

> "Handicrafts and rural industries are to be encouraged with a view to raising the Indians' standard of living by suitable adaptation to modern technical conditions".

108. In other countries, though there may not be a specific reference to indigenous forms of production, constitutional law may provide for State protection of popular arts and crafts. Article 192 of the Constitution of Bolivia states that:

> "Examples of popular arts and crafts are factors of the national culture and enjoy special protection by the State, with the aim of preserving their authenticity and increasing their production and dissemination".

109. References may be made in those provisions to the preservation of the authenticity, the protection and the promotion through credit facilities of these handicrafts and popular industries. Thus, for example, article 109 of the Constitution of Guatemala, makes the following provision:

> "Handicrafts and typical national industries of the people shall enjoy the special protection of the State with a view to preserving their authenticity and shall enjoy credit facilities for promoting their production and marketing. National art and folklore in all their manifestations shall enjoy the same protection and shall be cultivated in private and public educational centres."

110. The protection, promotion and encouragement of handicrafts and similar industries may not be provided for in any fundamental law but constitute important aspects of official government policy, as stated above. Some of the data available describe these industries and stress efforts to improve the production and marketing aspects thereof as is seen from the information concerning Canada, Costa Rica, the United States of America and India.

111. According to information received from the Government of Canada:

"The encouragement of native art and crafts and assisted marketing has been particularly successful in the North among Eskimo people. Co-operatives have been organized among native artists, and soapstone carving and print making have developed under the aegis of a quality-control and marketing agency, bringing good returns to the native people.

"Sales of Indian arts and crafts have rapidly expanded through promotional efforts in recent years, and the wholesale marketing agency established by the federal government is to be transferred to Indian corporate ownership by 1975. At present, it operates with an all-Indian advisory committee with representation from all regions of the country.

"The value of products from the Indian-Eskimo Arts and Crafts programme is between $4 million and $5 million annually."

112. The Government of Costa Rica states that:

"So far the Government has established isolated programmes for the protection of indigenous crafts. To date there has been no large-scale production. There are plans to develop such production and to exploit the local crafts in an organized way, with special reference to consumption by the people."

113. The Government of the United States communicates that:

"The United States Department of the Interior has under it the Arts and Crafts Board, through which it can protect the use of 'Made by American Indians' and other such statements to the use of the indigenous population. This same unit of government helps advise native craftsmen on the production and marketing of their work so that it can compete in the open market against other products of a similar nature. The Arts and Crafts Board publishes a flyer in which it advertises craftsmen whom it regularly deals with and this is an inducement for some Americans to deal with these craftsmen."

114. An author has written that in India:

"The importance of developing cottage industries and promoting handicrafts in order to improve the social and economic condition of people in rural areas generally, and of scheduled castes and scheduled tribes in particular, has been recognized by the public authorities in India, especially as a means of creating employment opportunities for landless labour and unemployed cultivators. In the first three five-year plans increasing allocations were made under these heads. The responsibility for carrying out these programmes is that of respective state governments. The forms this promotional work takes are, in particular, aid to cottage industries; establishment of training-cum-production centres, craft centres, industrial training centres and occupational institutes for girls and women; loans and subsidies to artesans; stipends for training in sericulture, pisiculture and weaving; and supply of 'ambar charka' (hand spinning wheels) and sewing machines.

"The Khadi and Village Industries Commission has been doing work in the sphere of hand spinning and handloom weaving, and processing of cereals, pulses and fibres, bee-keeping and village pottery and the production of vegetable oils, leather, palm-gur, non-edible oils and soaps and handmade paper. The All India Handicrafts Board has been running centres for the development of handicrafts using cane and bamboo, Toda embroidery and woodwork". 49/

115. Other information available to the Special Rapporteur for this study refers to the traditional character of these handicrafts and stresses aspects of their authenticity and better marketing practices, as some data available on Australia, New Zealand and Norway.

116. Information on government policy for the protection of handicrafts was provided from several countries. The Government of Australia communicates that:

"For many isolated Aboriginal communities, the production of traditional arts and crafts is a major activity and an important source of income. Ways of ensuring the protection and survival of these arts and crafts, and of promoting their development are being examined. A Crafts Advisor has been appointed to work throughout Australia with Aboriginal people encouraging the development of crafts which utilize traditional techniques, culture and designs in contemporary art and craft forms. This craft development work is aided by the short-term visits of artists and craftsmen who provide expert assistance on specific projects. In several States the Aboriginal affairs authorities operate Aboriginal arts and crafts wholesale and retail outlets which have provided a sympathetic, fair and consistent economic return to the Aboriginal artists and craftsmen".

117. In New Zealand, according to official information the Government established a Maori Arts and Crafts Institute in Rotorua in 1962. The Institute is financially self-supporting from revenue received from tourists visiting the thermal area which has been vested in the Institute. Every year seven or eight Maori youths enter the Institute on leaving school and undertake a three year course in traditional Maori woodcarving. On the completion of their training the woodcarvers may be employed by the Institute itself or by commercial firms producing Maori souvenirs, or may enter business on their own account. The Government subsidizes the wages of the apprentices during their training as part of the Maori Affairs Trade Training Scheme. The Institute also provides, free of charge, courses in women's crafts, such as weaving and plaiting. Women who are nominated for these courses by a Maori organization or a school also receive an allowance to provide for their accommodation while they are at the Institute. These courses normally occupy about three weeks.

118. During his official visit to New Zealand in June 1973, the Special Rapporteur had occasion to visit this Maori arts and crafts institute in Rotorua. He was impressed by the high quality of carving produced and with the organization of the training conducted there. He understood that efforts were being made to preserve traditional designs and to use old techniques. The Citizens' Association for Racial Equality states in this regard that apart from establishing this Institute in 1926 "the Government has done little to protect and encourage traditional handicrafts and industries".

119. The Government of Norway provides information concerning the Lapp Vocational and Home Crafts School in Kautokeino:

49/ Ibid., p. 373.

"This school was founded in 1954, being entirely owned and operated by the State. The school has its own board nominated by the Ministry of Church and Education, with representatives from, inter alia, the Norwegian Lapps' National Association and the Norwegian Association of Reindeer Breeding Lapps. The school offers accommodation facililties, and the pupils have free board. The teaching curriculum at the Lapp Vocational and Home Craft School in Kautokeino comprises the former syllabus covering techniques particularly associated with the Lapp tradition, for example woodwork and bonework, sledge-construction and boat-building etc. Recent years, however, have seen great changes in the pattern of teaching, and today it mainly follows the curricula organized for corresponding classes in vocational schools in the rest of Norway".

120. In its information the Government of Norway also mentions the conflict of interest between the need to preserve and develop Lapp cultural traditions in the area of home crafts and the need to qualify young Lapps to compete effectively for jobs with the rest of the Norwegian population:

"This double objective contains an inherent clash of interests which further complicates the collision of cultures in which all Lapps are involved. The cultural collision is especially demonstrable at the vocational school in Kautokeino in the declining interest for time-honoured Lapp techniques and traditions, a declining interest which is partly due to the breakthrough of modern techniques and motorized transport in reindeer herding, but which must also be attributed in part to lack of motivation among the younger age groups. Nevertheless, some voices in the area have shown an interest in bringing the syllabus provided at the school more into line with Lapp economic activities. The Ministry has thus been requested to introduce a study stream covering agricultural activities, including the study sectors relating to uncultivated land and reindeer husbandry. The board of the school has been requested by the Ministry to report on the provision of such a study stream".

121. In Malaysia, one of the principles guiding official policy in connection with the Orang Asli population reads as follows:

"As a means of furthering their economic development, handicrafts and rural industries would be encouraged, but should be developed in a manner which preserves their cultural heritage, improves their artistic values and particular modes of cultural expression".

122. Information provided by the Government of Colombia deals with the handicaps confronting indigenous peoples in the marketing and exchange of their artesan goods.

"There are many working tools and implements which are not produced in the community and hence have to be acquired in trade with the outside world. This trade thus becomes one of the means by which the outside world is causing the break-up of such communities. The Indians do not have a market production system and have not assimilated the laws that govern them. Hence they carry on unequal trading that is highly detrimental to their economy, while the trader pockets an exorbitant profit. Such wide gaps in profit-making encourage the traders to become specialists in trading with the indigenous people and to monopolize the whole of their trade. For instance, they exchange indigenous products (handicrafts, skins, etc.) for which good prices are paid in their home society, against articles which the self-same society produces at low cost, while at the same time they encourage wholesale consumption of these articles within the tribe owing to their great selective usefulness as compared with indigenous products. Thus, in addition to a trade profit, there is a growth in consumption which redounds to the benefit of the monopolist trader. The physical isolation of the tribes and their cultural unity are factors that militate against them and in favour of the trader, since the laws of competition have no place there."

123. One very important aspect in this area of activity is the lack of correlation between the prices paid for the handicrafts or indigenous art products which are sold by the indigenous populations and the prices of different articles and goods (like fertilizers, tools, machinery) that are bought by these populations.

124. In general, the produce of the indigenous populations commands very low prices in spite of its excellent quality and unique characteristics while, at the same time, the articles they have to buy are transferred to them at very high prices, regardless of their quality which is not always very high.

125. This has been well known for a long time. It has unfortunately been an accepted, actively promoted and even forcefully maintained practice, sometimes even constituting an important element of public policy in this connection. It has, on the other hand, been repeatedly denounced by the indigenous populations themselves or on their behalf by solidarity groups as a form of domination by exploitation. In this respect the following paragraphs of the Barbados II Declaration should be borne in mind:

> "Physical domination means economic domination. [... Non-Indians] also exploit us commercially, because they buy up our goods cheaply (crops, handicraft products) and sell to us at high prices.
>
> "This domination is not only local or national but international as well. The big transnational corporations are seeking our land, our resources, our labour, our products, and are supported in their efforts by powerful and privileged groups in non-Indian society.
>
> "Physical domination relies on force and violence and uses them against us".

126. Indigenous handicrafts often suffer from unfair competition by unscrupulous merchants who produce and/or sell cheap imitations of the indigenous handicrafts. These merchants thus deceive the uninformed buyer (in many cases a visitor or a tourist) who gets merchandise of an inferior quality. They also divert sales away from the legitimate producers of the authentic handicrafts. This seriously affects a market that provides at least a supplementary source of income for people who badly need it, to the benefit of swindlers who, not infrequently, have international connections. Although such occurrences are common and on the increase, the Special Rapporteur did not have any information on any official action designed to prevent and eliminate such practices and has only obtained indications of informal action in this respect.

127. Also important are the contents of training programmes that would tend rather to confine indigenous peoples to the role of handicraft producing agents than to allow them to seek some other type of higher education that they may freely choose for themselves. These occupational or professional preferences freely exercised by indigenous populations, being suitable in view of the specific circumstances under which they live, must not be discouraged or even denied, as sometimes happens through the abusive intervention of educational tutors or advisory personnel. 50/

50/ See, e.g. what has been said in the chapter on Education regarding certain practices by student advisers.

4. Alternatives in employment policy: Comments and considerations

128. In this summary of action taken by Governments in the area of vocational training and employment, it has been seen that much of the training has in the past taken place away from the indigenous communities, and has been aimed at finding employment for them elsewhere. Though traditional skills have at times been imparted, and the instructors have at times been indigenous peoples themselves, the tendency has been to concentrate on teaching them new skills and techniques which might enable the indigenous peoples to compete for employment at the national level.

129. There may be strong resistance by indigenous groups to employment strategies which are inconsistent with traditional values, and are premised upon the need for migration to major economic growth areas. If pursued to the exclusion of indigenous social and cultural values, such policies are tantamount to ethnocide (cultural genocide). This point has been made in a recent report published by the Department of Immigration and Employment in Canada:

> "Notwithstanding their desire and readiness for employment, Native citizens do not wish to disappear as a people. Past Native employment strategies have not given enough importance to the establishment of cohesive Native cultural communities in those centres to which Native people move in search of employment. Any new Native employment policy will need to rely heavily on the Native migration policy of the Secretary of State with its network of Friendship Centres to provide a cultural continuum from reserves to urban areas to those who choose to settle in predominantly white communities. The absence of a strong cultural support system could turn an otherwise effective employment programme into a form of cultural genocide". 51/

130. The same report recognizes the essential policy dilemma, between one view which "behaves as if it were possible in any Native community to create sufficient jobs to achieve full employment" and the other which sees the principal source of new jobs in non-native growth areas, and therefore encourages migration. 52/

131. It must be recognized, moreover, that training programmes in themselves can in no way compensate for the provision of adequate resources and facilities which guarantee either wage employment or a subsistence livelihood. As the Director-General of the ILO has noted,

> "Let there be no misunderstanding: training does not, as is often asserted, create new employment opportunities. Nor is the completion of a training course always a guarantee of employment. Training can only improve the chances of individuals to find wage employment or, if properly conceived and designed, lead to self-employment". 53/

51/ Department of Employment and Immigration, Canada "The Development of an Employment Policy for Indian, Inuit and Metis People", p. 8.

52/ Ibid., p. 15.

53/ Training: Challenge of the 1980s, (ILO), op. cit., p. 26.

132. In the same vein, it can be said that there is no real point in providing indigenous peasant farmers with information on new agricultural techniques, or the advantages of intensive farming, unless they have security of tenure over their land, equal access to agricultural credit with other sectors of the population, adequate marketing facilities as well as good communications for the marketing of their surplus produce. Training schemes in rural areas should best be considered as part of integrated rural development schemes planned in consultation with the local indigenous population.

133. If this does not occur, and if training programmes are planned without adequate knowledge of local circumstances and with no indigenous input, then they may well prove counter-productive. This is especially true of in-school training, in cases where a special syllabus is planned to cater to the needs of the rural population. If the majority of the rural population are compelled by economic circumstances to seek labour elsewhere, they might easily resent the special measures which are seen to discriminate against them by lowering their educational standard compared to that of the remainder of the national population.

134. When a large percentage of the indigenous population is engaged in permanent or seasonal wage labour, then knowledge of their legal rights as regards remuneration and job protection may prove to be the best way of furthering their interests. In several countries, such information often tends to be disseminated by non-governmental organizations rather than by Governments themselves.

135. In all projects that are planned or introduced for implementation in areas occupied by indigenous populations, indigenous participation is essential in the decision-making processes as well as in the provision of the labour force that they themselves may freely decide to contribute.

136. In this connection, tourist centres or tourist promotion developments located in indigenous areas deeply affect the indigenous communities and the lives of their populations who are often not consulted or allowed to participate in the planning processes. This exclusion is further aggravated by the communities' failure to share in the occupational and labour advantages that might have emerged (all personnel being brought in from outside, mostly from non-indigenous areas) and the absence of training opportunities for the members of the communities. Such opportunities should at least be available in certain occupations that are acceptable to the indigenous community members because of their acquired or traditional skills, or their willingness to acquire the necessary skills. These are, of course, only some aspects of the very complex and serious problems that tourism and its associated industries usually inflict upon indigenous communities who often suffer the full impact of the unfavourable effects of such industries, without sharing in the development accompanying them, which the indigenous communities themselves might consider desirable. The impact of tourism on indigenous communities should be the subject of serious and thorough study.

137. Consultation and participation are essential in areas of employment and vocational training and in respect of handicraft production, marketing and protection, as well as in other important aspects of life and work in present day societies owing to the increase in international links or contacts.