

**INTERNATIONAL NGO CONFERENCE ON DISCRIMINATION AGAINST INDIGENOUS POPULATIONS
CONFÉRENCE INTERNATIONALE DES ONG SUR LA DISCRIMINATION A L'ÉGARD
DES POPULATIONS INDIGÈNES**

IN THE AMERICAS — 1977 — DANS LES AMÉRIQUES

20—23 September 1977, Palais des Nations, Genève Suisse

organised by the / organisée par le

**SPECIAL NGO COMMITTEE ON HUMAN RIGHTS (GENEVA) - SUB-COMMITTEE ON RACISM
RACIAL DISCRIMINATION, APARTHEID AND DECOLONISATION**

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Document 1

**INDIGENOUS POPULATIONS AND
INTERNATIONAL FORUMS**

submitted by

the International Indian Treaty Council



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"Savages are dangerous neighbors and unprofitable customers, and if they remain as degraded denizens of our colonies they become a burden upon the States." 1837 report of the Select Committee on Aboriginal Tribes to the British House of Commons. (1)

The observation above expresses the general recognition among national governments, then and now, that the existence of indigenous populations in a country represents a significant problem. Theoretically, two broad solutions are possible: the raising of the "savage" to full social, economic and political equality with the "civilized" citizens of the nation, or the complete eradication of the indigenous population groups. Historically, the practice of nations has tended toward the latter policy, either through indifference or neglect, or through deliberate effort at liquidation.

Those who would protest that the wars against the Indians (Eskimos, Aborigines, etc.) have ended need only look at the current (Fall, 1974 issue of Indigena (2) to find objective reports of abuses against the Indian populations in Columbia, Bolivia, Honduras, Paraguay, Chile, Panama, Canada and the United States. One particularly well-documented situation, (3) that of the Aché (Guayaki) Indians in eastern Paraguay, includes such inhumanities as the sale of adults and children for slavery and prostitution, massacres through systematic "manhunts by hunters and slave traders, withholding of food and medicine from the reservation Indians resulting in death by starvation and disease, the denial and destruction of their cultural inheritance (use of their language, religious rituals, and traditional music), and discouragement of the Indians from seeking education. The German anthropologist, Dr. Mark Münzel, who investigated this situation at first-hand in Paraguay, alleges that these crimes "would not have been possible without at least the tolerance of the Native Affairs Department" (4) and finds evidence for even the active complicity of Government officials. Dr. Munzel notes that the Director of the Native Affairs Department agrees with the philosophy of a group who recommend that the example of South Africa be followed in dealing with the Achés. (5)

Indigenous populations do not constitute just a handful of "lost tribes" in a few countries of the world. An estimated seven million Indians live on the Altiplano of the Andes in South America, spread over a territory including parts of six countries. Argentina alone may have almost thirteen million Indians, half the population of the country. The Montagnards of South Vietnam number approximately 500,000. India reports some thirty-eight million members of tribal populations within her borders. In terms of the distribution of indigenous populations, the Special Rapporteur of the United Nations study in progress on the subject estimates that at least thirty countries contain indigenous populations. (6)

To be fair, the continuing flagrant injustices done to indigenous populations cannot be blamed entirely, or it would seem, even mainly on government malevolence or callousness in failing to protect the indigenous populations under their jurisdiction. Indigenous populations are caught in the wider dilemma of rapid, uncontrolled technological development of resources, with resulting commercial penetration into their lands, exploitation of their labor, and a general clash of cultures unevenly matched in terms of asserting their respective rights. Acute and wide-spread poverty and underdevelopment in many countries with indigenous populations accentuates these tensions.

Nevertheless, these are not sufficient reasons for ignoring the human rights and needs of the indigenous populations concerned. In view of the failures, in varying degrees, of the States of the world to institute progressive, comprehensive measures to safeguard and advance the indigenous populations within their boundaries, this paper proposes to focus on the efforts of the international community and international law in the area of protection of indigenous populations. As a foundation for the study, indigenous populations will first be defined, and their particular problems and the issues involved will be briefly outlined. Next, the practices and policies of governments and other groups in the colonial period will be sketched, for these provide the basis for whatever duties of States toward indigenous populations are recognized in international law today. Twentieth century concern with the problem, expressed through international governmental and non-governmental organizations, regional organizations, and ad hoc committees, forms the main material of this study, together with an evaluation of the use to which present international human rights conventions could be put in protecting indigenous populations. Finally, there will be some scrutiny of the limitations on international action in this area.

DEFINITION OF "INDIGENOUS POPULATIONS"

Two agencies on the international level have recently formulated characterizations of indigenous populations. The International Labour Organisation adopted an Indigenous and Tribal Populations Convention at their Fourtieth Session in Geneva, 1957, and Article 1 of the Convention declared that the provisions applied to:

- "(a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
 - (b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong.
2. For the purposes of this Convention, the term "semi-tribal" includes groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community."(7)

Building on this ILO definition, the Special Rapporteur for the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities special study on indigenous populations proposed the following "working definition":

"(Indigenous populations are) those descended from peoples who inhabited a land when outsiders came and reduced them to a non-dominant condition, and who now conform more to their own customs and traditions than to those of the country where they live, in a State structure incorporating the characteristics of the predominant segments of the population." (8)

The Special Rapporteur goes on in this preliminary report to point out that there is no unanimity at the national level regarding what kinds of groups are to be regarded as indigenous. Each country approaches such a definition from the point of view of its own history, traditions, social organization and policies. Moreover, different criteria tend to be used by different groups within a country, such as sociologists, lawyers, and administrators.

Both of the above definitions, however, emphasize more or less that indigenous populations: (1) constituted the original inhabitants of a region, (2) experienced conquest or colonization by an outside culture, (3) now live in a special type of non-dominant relationship with that culture, and (4) continue to conform to their own customs and institutions rather than to those of the dominant culture. The ILO definition in addition alludes to the fact that these populations are apt to be in a less advanced, or less developed stage of social and economic organization than that of the national community, and their legal status may be different from that of other citizens in the country.

PROBLEMS OF INDIGENOUS POPULATIONS AND THE ISSUES INVOLVED

Their position of non-dominance, their different culture, and their primitive economic organization place indigenous populations at a great disadvantage in the modern world, both by themselves and in relation to the dominant population. Aside from fundamental threats to their life and physical liberty, as exemplified by the massacres and enslavement of the Aché Indians, indigenous populations struggle with a wide range of economic, political, social and cultural problems. The following presents a by no means complete list of those problem areas:

1. ECONOMIC INSECURITY

- a. LAND: restrictions on right of ownership of land, removal to reservations with inferior land and resources, no modern agricultural training or equipment, disruption of environment by commercial interests, government leasing of land without the indigenous population's consent.
- b. EMPLOYMENT AND VOCATIONAL TRAINING: lack of opportunity in rural areas, lack of skills to compete in urban job market, lack of available vocational training, no government encouragement of local industry, exploitation in working conditions, discrimination against indigenous populations in employment.
- c. SOCIAL SECURITY: indigenous workers and their families are not covered.

2. SOCIAL AND CULTURAL INADEQUACIES

- a. HEALTH AND MEDICAL CARE: lack of and poor distribution of doctors, health benefits not available, ignorance of available services, no control of epidemics, no preventative medicine and sanitation, alcoholism and drug addiction, isolation from medical facilities, problems of recruiting and training indigenous medical staff, different cultural standards of health and illness.
- b. EDUCATION: illiteracy, unequal opportunity to acquire education, use of non-Indian teachers in schools, lack of native study programs along with teaching of the dominant culture.

- c. CULTURAL INSTITUTIONS: preservation of cultural heritage forbidden or hampered, religious freedom and observation denied.
- d. LANGUAGE: communication problems with other populations, no promotion of learning national language, denied opportunity to learn native tongue.
- e. HOUSING: inadequate nature of indigenous housing, limitations on ownership, rental, or occupation of housing by law, contractual arrangements, or practice, government priority to programs in urban areas, no government housing project.
- f. DISCRIMINATION: treated as a marginal or inferior group, no mutual respect and understanding between indigenous population and dominant population, government makes no effort to eliminate such prejudices among dominant population.

3. POLITICAL DISADVANTAGES

- a. JUSTICE SYSTEM: victimization by police and jailers, ignorance of the law and their rights, lack of indigenous lawyers, non-use or lack of legal aid societies, unequal protection of the laws, norms of indigenous law not recognized by dominant legal system.
- b. ADMINISTRATION OF INDIGENOUS POPULATIONS: abuses of power by officials, lack of regard for indigenous customs, lack of government money for programs, lack of relevant training for officials concerned with indigenous populations.
- c. POLITICAL PROCESS: disenfranchisement of indigenous populations - denial of participation and representation in political office and parties.
- d. RIGHTS OF CITIZENSHIP: denial of equal rights with the rest of the population (i.e. restrictions on movement), no effective legislation to make rights in the Constitution of the country a reality.

Needless to say, one handicap reinforces another in the indigenous population's clash with industrial society and a dominant, alien culture.

Central to all of these problems is the overall policy which a government chooses to pursue toward the indigenous populations within its borders. Are the indigenous people to be kept in a state of segregation? Or will the government adopt measures to "modernize" the primitive population? If the policy is advancement of the indigenous population to the level of the rest of the national community, does this entail integration into the domination culture? To what extent will the indigenous population be allowed to preserve and nurture their ethnic identity in this process? Or will the government insist on total assimilation of the indigenous population, with no allowance for cultural pluralism? Finally, to what extent will the indigenous population be granted a voice in determining the solutions to their problems? (9)

PRACTICES AND POLICIES IN THE COLONIAL PERIOD

Two all-important principles made up the foundation of national States' policies and practices toward indigenous populations under their control during the colonial period of territorial expansion. The first, the claim to absolute sovereignty over those primitive peoples in their territories, achieved the status of unquestioned acceptance among the "civilized" (self-named) nations

of that period. Regardless of the internal legal relationship between an indigenous population and a colonizing nation, the indigenous population was considered in international law the dependent subjects of the sovereign nation asserting jurisdiction over them. Consequently, the fate of indigenous populations was decided in the domestic councils of their mentors. Had the weight of authority swung in the other direction, to that of according indigenous tribes an international legal status as independent, sovereign units, they undoubtedly would have been much better equipped to resist legally the encroachments of their colonizers.

While this doctrine of absolute sovereignty originated in the loss of sovereignty which occurs by reason of conquest, it gained reinforcement by the superior attitude adopted by the colonizers toward the indigenous populations. The primitive tribes concerned fell subject to a sort of "institutionalized paternalism" (10) under which the sovereign government enjoyed nearly all of the benefits of the relationship. Justice Marshall in 1833 described the Indian tribes of the United States as "wards" to their "guardian", the United States. (11) One of the most dire consequences of this kind of judicial ruling was that Indians and other indigenous populations lost any right to ownership of the lands they occupied; the States assumed the exclusive right to dispose of Indian or indigenous territory. Granted, this guardianship was postulated on an obligation of solicitous treatment and tutorship of the "children" under the government's care. Their wards were entitled to "kind paternal treatment, to justice in all our dealings with them, to education in the useful arts and sciences, and in the principles and duties of our religion." (12) In return, the indigenous population found itself reduced to a dependent position, without the privileges of self-government and without title to their lands (and sometimes without even occupation of the lands, when the government deemed it best that the tribes be removed to reservations.)

As early as 1835, at least one independent, non-governmental group began to recognise the need to prevent abuses of the power of States over indigenous populations within their jurisdiction. In that year, the British and Foreign Aborigines Protection Society was formed in Great Britain as an offshoot of the Anti-Slavery Society. Their influence shows in an 1837 report by the Select Committee on Aboriginal Tribes to the British House of Commons. The Committee declared as a preamble that the vulnerability of indigenous peoples under the sovereignty of Great Britain strongly argued for a reciprocal duty of government protection:

"...we are bound by two considerations with regard to the uncivilized; First, that of the ability we possess to confer upon them the most important benefits; and secondly, that of their inability to resist any encroachments, however unjust, however mischievous, which we may be disposed to make. The disparity of the parties, the strength of the one and the incapacity of the other to enforce the observance of their rights, constitutes a new and irresistible appeal to our compassionate protection." (13)

The question of the treatment of indigenous populations, the report went on, is one common to all "colonizing nations," the implication at least being that other colonizing nations should be concerned with the evils arising out of the colonial relationship.

The Select Committee suggested nine general principles to govern Great Britain's "intercourse" with "uncivilized tribes." Basic to the regulations was the underlying assumption that the executive government owed a duty of protection toward indigenous populations. To that end, the colonial administrators were directed to ensure that:

- 1) settlers in a colony ought not to be a judge in disputes or claims with indigenous peoples;
- 2) all aboriginal contracts for service should be expressly limited in their duration to twelve months;
- 3) acquisition of lands from the aborigines by Crown subjects should be declared illegal and void;
- 4) British administration of justice in the colonies should show indulgence toward the "ignorance" and "prejudices" (i.e. customs) of the aborigines;
- 5) relations between an ~~uncivilized race~~ and their more cultivated neighbors should be diminished for the safety and welfare of the aborigine;
- 6) the social and political improvement of the tribes should be advanced to prevent any possibly injurious sudden changes to their health. (14)

While these recommendations remained firmly premised on the blessing that the propagation of Christianity would bestow on the aborigines, they also showed a genuine concern for the exploitation of the aborigines and the physical and psychic harm which could flow from contact with European civilization. The proposals may have never got past the recommendation stage, but they did serve as an early model for international standards in the area of protecting indigenous populations.

Some international treaties during this period dealt with the relationship between a State and its indigenous populations, and the duties of that State in the relationship. These treaty provisions usually arose out of condemnation of the slave trade in Africa. One such convention, the product of the Berlin African Conference of 1884-1885 to set up the Independent State of the Congo, contained a binding obligation upon the signatories to observe in good faith their role of "official guardians" of the aborigines in the territory:

"All the powers exercising sovereign rights or influence in the aforesaid territories bind themselves to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being, and to help in abolishing slavery and especially the slave trade." (15)

This act also contained an interesting new attitude toward the aborigines' "moral" development; it expressly guaranteed freedom of conscience and religious toleration to the natives. (16)

The follow-up Brussels African Conference of 1889-1890, convened by seventeen States in response to "world-wide demand for international protection of African aborigines," (17) adopted the general principles of the abolition of the slave trade as an obligation of States, the prohibition or regulation of trade in intoxicating liquors, and the prohibition of the importation of firearms. These provisions were recommended for the purposes of efficiently protecting the aborigine population of Africa and of "securing for that vast continent the benefits of peace and civilization." The signatories' mixed motives appear rather obvious.

Unfortunately, the attempt to establish surveillance of this international zone and execution of the Brussels African Act never achieved success. (18) And while some reference was made to a collective responsibility for the aborigines in the territory ("wards of the society of nations," as Snow puts it (19)), the acts and the committee comments on them reaffirmed that the aborigine tribes were not to be regarded as "free States," and thus international legal personalities. The principle of national sovereignty over the aboriginal populations within their sphere of influence remained cardinal among the nations concerned.

One other nineteenth century development in this area should be mentioned because of its parallels with the activities of certain international organizations today. In 1900, an "international congress of colonial sociology" (a deliberately de-politicized title) met in Paris to discuss the duties of civilized States to aboriginal peoples under their sovereignty. The conclusions of the participating experts in colonial administration on this "international" problem (20) represent a model for the government of indigenous peoples rather than a reflection of actual practices by nations. With a few exceptions, (21) the resolutions of the congress showed respect for the dignity and human rights of the aborigine, and the right of these populations to maintain their own culture as far as possible received approval. A few of the principles in the resolutions will give the flavor of this first attempt to set international standards for a government's treatment of the indigenous populations under its control:

Colonial policy should tend, in principle, toward the maintenance of the aboriginal administrative organisms.

The aboriginal population should be provided with the means of defending their rights and of securing redress of their grievances at the hands of the authorities.

Colonial policy should leave to the aborigines the benefit of their own customs as respects the organization of their family life and the use of property.

A code of criminal procedure should be made, to insure the necessary guaranties but rapid action as well; the practice of incessant questioning and torture ought to be and remain rigorously prohibited.

Measures should be taken to prevent the dangers which result from penury or famine (i.e. epidemics and abnormal mortality) through a comprehensive program of health, medical and sanitation services.

Use of "corvée" (forced labor) should be suppressed because, for one reason, measures to prevent its abuses are ineffective.

At the beginning of the twentieth century, therefore, the law of nations seemed to recognize a general guardianship duty of a colonial State towards its "wards," the indigenous populations within its sovereignty. Moreover, this guardian role was understood to imply a duty of positive protection of and tutorship of those less "civilized" peoples. These principles hardly achieved the status of international law, though, in the sense that another nation could legally challenge a sovereign's discretion in governing its indigenous nationals. Nor could the indigenous populations within a country obtain locus standi before international courts to protest any abuses perpetrated by the government. Indeed, admirable principles notwithstanding, there had been little break-down of the maxim that "under customary law no rule was clearer than that a state's treatment of its own nationals is a matter exclusively within the domestic jurisdiction of that state, i.e. is not controlled or regulated by international law." (22)

TWENTIETH CENTURY CONCERN FOR AND PROTECTION OF INDIGENOUS POPULATIONS

INTERNATIONAL AND REGIONAL GOVERNMENTAL ORGANIZATIONS

THE INTERNATIONAL LABOUR ORGANISATION

Among international organizations, the ILO stands out as the pioneer in initiating action to protect indigenous populations. As early as 1936, the ILO adopted a convention regulating the recruiting of indigenous workers. Four more conventions followed on specific labor problems of indigenous workers. (discussed below) and finally in 1957 the ILO Conference adopted the Indigenous and Tribal Populations Convention No. 107 which laid down far-reaching principles and detailed standards for the protection of indigenous populations and their progressive integration into the life of their countries. In addition, ILO activities on behalf of indigenous populations include programs of technical assistance to governments with indigenous populations, participation in multi-lateral projects like the Andean Indian Programme, and studies and conferences on indigenous populations. Before considering these projects in greater depth, something must be said about the impetus in the ILO which led to the promotion of such concern for indigenous populations.

The ILO originated in 1919 as an official intergovernmental organization, an autonomous associate of the League of Nations. Today it functions as one of the Specialized Agencies of the United Nations. While the ILO has always concentrated on certain basic freedoms connected with labor conditions -- freedom of association, freedom from forced labor, freedom from discrimination in employment and occupation, the guarantee of employment (23) -- its principles embrace a much wider range of economic, social, political and cultural rights. Moreover, the ILO firmly recognizes these rights to be the concern and obligation of the international community:

- "II. (a) All human beings, irrespective of race, creed or sex, have the rights to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.
 - (b) The attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy.
- V. The Conference affirms that the principles set forth in this Declaration are fully applicable to all peoples everywhere and that, while the manner of their application must be determined with due regard to the stage of social and economic development reached by each people, their progressive application to peoples who are still dependent, as well as to those who have already achieved self-government is a matter of concern to the whole civilized world." Philadelphia Charter, May 10, 1944. (24)

The ILO position on the interdependence of the countries of the world as regards labor conditions emphatically confirms the universality of their concern:

"Whereas universal and lasting peace can be established only if it is based upon social justice;
And whereas conditions of labor exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; ...
Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;..Preamble to the Constitution of the ILO, Oct. 9, 1946. (25)

The first effort of the ILO to improve the labor conditions of dependent indigenous populations focused on the injustice of the forced labor system. Convention No. 50, Recruiting of Indigenous Workers (26) adopted in 1936, in force in 1939) proclaimed as its policy the progressive elimination of recruiting of labor and the development of spontaneous offers of labor from indigenous workers. Ratifying countries were to avoid pressure being put on indigenous workers to sign up for work and ensure that the indigenous political and social organization, as well as their powers of adjustment to changed economic conditions, would not be endangered by the demand for labor. To this end, the convention forbade the recruitment of non-adults, recommended limits on the number of adult males to be withdrawn from the social life of the population, and specified that families were to be encouraged to accompany the indigenous workers. The employer was required to provide medical examinations and pay the costs of transport both ways. The Convention laid down strict regulations on the licensing of recruiters and forbade recruitment by misrepresentation or mistake.

ILO Convention No. 64, Contracts of Employment (Indigenous Workers), 1939 (27) provided that employment contracts for durations of over six months had to be in writing, specify the full details of the employment, and be attested to by a public officer to establish that the contract was entered into with the free consent of the indigenous worker. Rights of termination by both employer and worker were spelled out in detail. Convention No. 86, Contracts of Employment (Indigenous Workers), 1947, strengthened these measures.

A third category of convention dealt with the use of penal sanctions for breaches of contracts of employment by indigenous workers. Convention No. 65, Penal Sanctions (Indigenous Workers), 1939 (28) called for the progressive abolition of this practice, and Convention No. 104, Abolition of Penal Sanctions (Indigenous Workers), 1955 declared that no remnants of that punishment should still exist.

The enforcement procedures for these conventions will be explained below.

The 1950's saw a great surge of action by the ILO in the area of protection of indigenous populations. In response to suggestions made at American Regional Conferences in 1946 and 1949, the ILO set up a Committee of Experts on Indigenous Labour, meeting first at La Paz in 1951. The Committee evaluated the problems of indigenous groups not as those "peculiar to particular racial groups" but rather as problems affecting sectors of the population "which for historical reasons have not as yet been fully integrated into the social and economic life of the country and which must be protected."

of the communities surrounding them." (29) The Committee considered that economic underdevelopment and deficient education were two main factors preventing such integration. Recommendations of measures to improve these conditions provided the framework of Convention No. 107 in 1957.

Also a major source of policy was the comprehensive empirical study published in 1953 by the ILO entitled Indigenous Peoples: Living and Working Conditions of Aboriginal Populations in Independent Countries.

The work of a joint field working party, set up by the ILO Governing Body in 1952, resulted in a very ambitious project, the Andean Indian Programme, (30) designed to help the governments of Bolivia, Ecuador, Peru and Columbia to raise the standard of living of the isolated, impoverished and primitive Andean Indians and to integrate them into their national communities. The Committee appointed a survey mission in 1951. After the mission of experts from various United Nations agencies and Latin American nations submitted its report and proposed a series of projects, the Andean Programme was launched in 1953 and began operating in 1954 under the leadership of the ILO.

The programme progressed in three main stages -- the pilot establishment of the first action bases, then emphasis on training national personnel and community leaders to take over eventual responsibility, and thirdly a consolidation and extension of activities and the integration of programmes into national development plans. By 1966, twenty centres existed in six countries of the Andean region (Chile and Argentina had subsequently joined the project). A meeting of the ILO Panel of Consultants on Indigenous and Tribal Populations in 1963 analysed the successes of the undertaking and concluded that the experience gained by this program should be put at the disposal of other countries, both in Latin America and the Middle East, Asia and Africa. (31)

From the international point of view, this program represents the first concerted attempt at co-ordinated international action, working in co-operation with national authorities, to attack the root cause of many millions of indigenous peoples' social and economic problems. Many international agencies collaborated in the project; the ILO acted as a co-ordinating agency and provided vocational training instructors, and handicrafts, co-operative, and organizing experts; the World Health Organization supplied doctors and medical teams to give instruction on hygiene and health care; Food and Agriculture Organization experts taught modern methods of agriculture and animal breeding; the United Nations supplied social welfare assistants; and the United Nations Educational, Scientific and Cultural Organization sent anthropologists and teachers, and designed schools. The governments of the countries receiving this assistance contributed money, labor and materials. Furthermore, many other governments (Denmark, France, Mexico, the United States, the Federal Republic of Germany, and the United Kingdom) have donated cash or equipment, as have the trade union movements and employers' associations of various non-Andean countries. Private societies like CARE and the American Friends Service Committee have given materials such as food, medicine and teaching aids. The ILO-sponsored Andean Indian Programme exemplifies what kind of international response is possible when such a carefully planned and administered project to benefit indigenous populations is initiated. The international administration of the Programme ended in the late 1960's as it was gradually turned over to national governments.

The ILO continues to become involved in co-operative technical assistance projects, for instance a rural development program of zonal organization in Ecuador from 1971-1973 and a multinational project (Bolivia, Ecuador and Peru) for community development from 1971-1974. In these projects, the ILO acted as executing agency, providing mostly consultant services, and the United Nations Development Programme funded the projects. (32) These types of programs generally focus on practical areas like rural education, health, social organization of rural inhabitants, organization of a co-operative movement, agriculture and animal husbandry, marketing of agricultural products, small processing industries and road infrastructure. The aim of these activities is to assist the government concerned with planning and co-ordination of rural development strategies. Studies relating to the socio-economic conditions of the indigenous population of a region may be carried out in order to give direction and priorities to a regional development program.

ILO interest has launched several studies and conferences on specific aspects of the living conditions of indigenous populations. An ILO committee on nomadism and sedentarisation formulated in 1964 a program of research and operations to secure improvement of the living and working conditions of nomadic peoples, particularly in Africa and the Middle East. (33) In a study tour and seminar in 1966, sixteen concerned countries participated in an examination of policies and methods relating to sedentarisation of nomadic populations in the Central Asian U.S.S.R. republics. A 1968 meeting of experts appointed by seven African countries (Chad, Ethiopia, Mali, Mauritania, Niger, Somalia and Sudan) considered problems of nomadism in their region and the appropriate action for the ILO and other agencies to take. (34)

The Governing Body of the ILO decided in 1972 to convene a Symposium on Equality of Opportunity in Employment in the American Region. The Symposium (35) held in Panama City in October, 1973, investigated the problems and policies relating to equality of opportunity and treatment in employment, and methods for the promotion of the same. Included among the topics discussed was the problem of indigenous populations and the governmental neglect, land deprivation, unequal employment conditions, and lack of educational and training facilities in their own language from which the Indian population in several American countries still suffered. The Symposium summarized the situation and made recommendations along these lines:

"Among disadvantaged groups, the problems of indigenous populations were felt to require special attention. The approach to these problems would of course vary according to whether the objective was to integrate them into national economic and social life or to maintain their separate identity and traditional way of life. It was suggested in particular that there should be adequate protection against expropriation of their land. Governments should recognize and finally support organizations of indigenous peoples and, whenever possible, native languages should be used as the vehicle for primary education, and adult literacy programmes, with the official language taught as a second language. It was also felt that employment training opportunities should be brought to the areas of the indigenous people, and adapted to their specific attitudes, rather than being made available in the urban environment, to which these peoples were generally poorly adapted. However, those who wished to take up employment in towns, with their families, should be given assistance to find suitable employment and to adapt themselves to urban life. (36)

The discussion above touches upon several of the fundamental principles which underlie the provisions of ILO Convention No. 107, Indigenous and Tribal Populations Convention, 1957.(37) Still the only international instrument concerned specifically with indigenous populations and their multi-faceted problems, the Convention assumes as its aim the integration of indigenous populations into the respective national communities in conjunction with the retention, as far as possible, of their own cultural characteristics. The overall objective of the Convention is the improvement of the living and working conditions of these peoples. As a consequence, the Convention provides for a wide range of measures, many falling outside of the traditional field of competence of the ILO. The Convention is reproduced in full in Annex I.

National governments are charged with the primary responsibility for working toward the goals of the Convention (art.2). To that end, they are called upon to develop "co-ordinated and systematic action" for the protection of the populations concerned and their progressive integration into the national community. Such action must include measures to ensure equality before the law, promote development in all respects, and create possibilities of national integration. Measures tending toward the artificial assimilation of indigenous populations, as well as recourse to force or coercion as a means of promoting integration, must be excluded.

So long as the social, economic or cultural conditions of the indigenous populations hinder or prevent them from benefiting fully from the rights and advantages by law enjoyed by other elements of the population, special measures of protection must be adopted, so far as circumstances require, by national governments. At the same time, care must be taken to ensure that such special measures "are not used as a means of creating or prolonging a state of segregation" or prejudice in any way the "enjoyment of the general rights of citizenship, without discrimination." (Art.3)

In promoting such integration, governments must take into account the desirability of avoiding the danger of disruption of the existing values, institutions, and customs of such populations, and adopt policies to mitigate the difficulties of adjustment. (Art.4)

Moreover, signatory governments in applying the provisions of the Convention are obligated to seek the collaboration of the indigenous populations concerned and stimulate their participation in the political process. (Art.5)

The Convention, after setting out these basic guidelines for its application, goes on to list some twenty specific provisions embodying these policies and dealing with:

- 1) application of the national legal system: regard to be given and use made of indigenous customary laws, prohibition of compulsory personal services, due process rights guaranteed, restrictions on imposition of penalties, rehabilitation to be given emphasis in prison. (Arts. 7-10)
- 2) land policy: recognition of the right of ownership by indigenous populations or persons, circumstances in which the population may be removed from their habitual territories and full compensation to be paid therefor, respect for indigenous customs as to land, protection from exploitation by non-indigenous people, national agrarian programmes to meet land needs of indigenous population. (Arts. 11-14)

3. Recruitment and conditions of employment: special measures of protection against exploitation and discrimination in all aspects of employment (wages, benefits, trade union activities, vocational training), encouragement of handicrafts and rural industries. (Arts. 15-18)
4. social security and health: extension of existing social security schemes to indigenous wage earners and other persons, provision of adequate health services. (Arts. 19-20)
5. education and means of communication: equal opportunity for education at all levels, adoption of special methods and techniques in indigenous education programmes, study in the indigenous tongue and the national language, teaching of general knowledge and skills furthering integration, educational measures to eliminate prejudices among other sections of national community, education in rights and duties (especially in regard to labor and social welfare), if necessary by use of translations and media in the language of the indigenous population. (Arts. 21-26)
6. administration: creation or development of governmental agencies to administer and supervise the application of measures in the convention and to propose other measures to the national authorities. (Art. 27)

As of August 1977, twenty-seven countries had ratified Convention No. 107 including fourteen countries belonging to the American Continent (Argentina, Bolivia, Brazil, Columbia, Ecuador, Mexico, Paraguay and Peru, among others, but not the U.S. or Canada. (38)

The implementation procedures for conventions, established in the ILO Constitution of 1946, constitute a remarkable feature of the organisation itself.

In the first place, since 1948 even if an instrument (a convention or a recommendation) is not ratified by a national government, the Member government has an obligation to report to the Director-General of the International Labour Office "the position of its law and practice in regard to the matter dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise, and stating the difficulties which prevent or delay the ratification of such Convention." (Art. 19(5)(e) of the ILO Constitution. Reports under this provision must be made when the Governing Body of the International Labour Office calls for them. (In practice it sets a subject for such a study each year, but has never called for one concerning indigenous populations.)

Reservations to ratified conventions are inadmissible by ILO rules. (39) Furthermore, by Art. 22 of the Constitution, each of the ILO Members agrees to make an annual report to the International Labour Office on the measures the Member Government has taken to give effect to the provisions of Conventions to which it is a party. Complaints that a Member has failed to secure in any respect the effective observance within its jurisdiction of a ratified Convention can come from industrial associations of employers or of workers (Art. 24) and from another Member party to the Convention (Art. 26(1)). The Governing Body goes through a process of communication with the government accused and request for a statement (Art. 24). If no statement is forthcoming, or it is deemed unsatisfactory, the Governing Body has the right to publish the complaint and reply, if any (Art. 25). Alternatively, the Governing Body may appoint a Commission of

inquiry to consider and report on complaint from another Member party to a Convention (Art. 26(3)). The Commission of Inquiry makes a report on their findings of fact on the issue and may make recommendations on steps which should be taken to meet the complaint (Art. 28). In the event a Member fails to carry out such recommendations (or decision of the I.C.J.) in the time specified, the Governing Body may recommend to the Conference "such action as it may deem wise and expedient to secure compliance therewith." (Art. 33) Any question of dispute relating to the interpretation of a Convention or the Constitution is to be referred for decision to the International Court of Justice. (Art. 37) No complaints have ever been filed in regard to the Conventions concerning indigenous populations, but the procedure remains available.

In practice, the ILO Committee of Experts on the Application of Conventions and Recommendations requests detailed reports from Member States at four year intervals, (40) except that more frequent reports are requested if serious problems had previously been noted in a Member's application of a Convention. The Committee in its yearly reports publishes lists of the reports received and those which are overdue (naming the countries). After examining the reports, the Committee makes no comment when a Member seems to be fulfilling its obligations. In cases where the Committee decides further action is needed to give effect to certain provisions of Conventions or want additional information on given points, comments in the form of "observations" appear in the Committee's Annual Report or "direct requests" are communicated to the governments concerned. (41) The Committee's "observations" bring up the issues in this kind of form:

"Convention No. 104: Abolition of Penal Sanctions (Indigenous Workers), 1955

Liberia (ratification: 1962)

In its previous observation, the Committee had noted that article 35(p) of the Revised Laws and Administrative Regulations for Governing the Hinterland, 1949, which remain operative within the tribal jurisdiction, lays down fines for any labourer supplied to persons engaged in farming who absconds in transit or who, after arrival at his destination, refuses to perform the services for which he has been engaged. The Committee observed that, by virtue of Article 1 to 4 of the Convention, the above-mentioned penal sanctions should have been abolished within a year of ratification of the Convention, i.e. some eleven years ago.

The Committee notes the statement made by a Government representative to the Conference Committee in 1973 that the Government had decided to repeal those sections of the penal legislation which did not conform to ILO standards. It also notes the statement in the Government's latest report that the new Labour Code, when adopted by the National Legislature, will abrogate all divergencies between national legislation and Conventions ratified by Liberia. The Committee accordingly hopes that repeal of the above-mentioned provisions relating to penal sanctions for failure to perform services will no longer be delayed.

In addition, requests regarding certain points are being addressed directly to the following States: Ecuador, Libyan Arab Republic, Nigeria, Western Samoa. Information supplied by Panama in answer to a direct request has been noted by the Committee." (42)

"Convention No. 107: Indigenous and Tribal Populations, 1957

Brazil (ratification:1965)

The Committee has noted the information contained in the Government's report and particularly the information on proposals to extend the activities of the National Foundation of Indians (FUNAI) to new geographic areas, and on new projects to be initiated in such fields as education and health.

The Committee notes, however, that only 70,000 Indians are at present assisted through the FUNAI, out of a total which is estimated by the Government to be between 120,000 and 180,000. It hopes that the Government will take the necessary measures to speed up the extension of the protective services of the responsible body to all Indians, particularly in view of the schemes now being actively pursued for the economic development of areas traditionally occupied by Indians.

The Committee notes also that the information supplied is insufficient to permit, for example, an assessment of the number of Indians benefiting from health services (including immunisation against diseases introduced from the exterior). The Committee hopes therefore that the next report will supply full information on the present situation regarding the protection of Indians, in accordance with the direct request and the report form on this Convention.

Columbia (ratification:1969)

The Committee was informed that a communication signed by the National Agrarian Federation (FANAL-UTC) and another forwarded by the Latin American Federation of Farm Workers (Federacion Campesina Latinoamericana) were received by the International Labour Office in August and September 1970 expressing deep concern about the alleged ill treatment of the indigenous population of the region of Planas (Meta) in Columbia, and that the text thereof was communicated to the Government for comment.

The Committee notes with interest that, in a reply sent in December 1970 the Director-General of Community Integration and Development (Ministry of Interior), indicated that as a result of the events which occurred in Planas, the programmes and policies relating to indigenous populations were being analysed and that the problem of Planas was symptomatic of the situation facing a large part of the indigenous population. The Committee also notes from the Government's reply that the measures being envisaged to remedy the situation include the following: a revision of the present indigenous policy with the assistance of the Anthropology Department of the National University; the reorganisation of the General Directorate for Community Integration and Development; the creation in 1971 of six new regional commissions for the assistance and protection of the indigenous populations; the training of indigenous leaders and of officials; the training of "promoters of social change" to act as intermediaries; the reinforcement of the Indigenous Affairs Division; and the study of new legislative measures for the protection of the indigenous populations.

The Committee notes that the Government's first report (for the period ending 15 October 1971) on the present Convention does not show to what extent the measures outlined in the above communication are being implemented. It trusts therefore that full information will be supplied on these matters and on the other points set out in the direct request on this Convention, so as to ensure that urgent measures for the protection of the indigenous populations concerned are taken, as envisaged by the Government and required by the Convention. (43)

In addition, requests regarding certain points are being addressed directly to the following States: Bolivia, Brazil, Columbia, Costa Rica, Egypt, India, Mexico, Pakistan, Portugal. (43)

In spite of the Committee's diplomatic language, the discrepancies between a States's laws and/or practice and the ILO Convention standards receive direct expression in these reports, and the tone of the reports indicates that a clear obligation exists on the part of the Member States to bring its Constitution, legislation, and administrative practices into line with the ILO Convention to which it is a party.

What in fact is the response of delinquent governments to this type of ILO pressure? The 1977 Report of the Committee of Experts declared that they could point to more than 1,100 cases in the fourteen years preceding where progress in the law or practice of a government had been noted following comments by the Committee. (44) Commissions of Inquiry were devices used much less often; only three had been established between 1961 and 1973. Of course, these figures correspond to supervision of all of the ILO's Conventions in force; no general evaluation has come out for the success of the Conventions concerned specifically with indigenous populations.

However, a November 1974 Report of the Director-General of the ILO on the ratification and implementation of the Indigenous and Tribal Populations Convention No. 107 (45) discusses some of the problems of supervising the application of this Convention. The Director-General reports that, "certain countries that have ratified it have in fact declared the instrument to be inapplicable to them owing either to the reported absence of the populations to which it refers or to the fact that there was full equality under the law for all citizens." (46) The former case arises from the wide variety of definitions as regards the populations the Convention is intended to cover (i.e. Brazil considers the Convention to be applicable only to forest-dwelling tribes). The latter case raises the problem of the differences between de jure equality and de facto equality. The Committee of Experts responds to this line of reasoning by repeatedly pointing out to governments that the Convention calls for special measures of protection in order to ensure indigenous populations the benefit of equal rights and opportunities.

The Director-General also isolates, as perhaps the main obstacle to the implementation of the measures in Convention No. 107, the limited resources of developing countries in meeting their many social and economic needs. Not every country agrees that raising the standards of living of indigenous populations deserves a high priority on the scale of competing needs. This difficulty may be exacerbated by problems of a local nature, such as isolation and wide dispersal of the indigenous population in a country, or indigenous resistance to government efforts at integration, or malfunctioning of the institutions responsible for the welfare of indigenous populations. (47)

ILO Convention No. 107, despite implementation problems, remains a ground-breaking instrument, the first authoritative statement of international standards for the protection and advancement of indigenous populations. At least partially because of its influence, other international governmental organizations have begun to show interest in championing the cause of indigenous populations.

THE UNITED NATIONS

From its inception in 1945, the United Nations has fostered and stimulated the development of a great many conventions relating to human rights questions. The Charter of the United Nations states as one of its purposes:

- "3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;" (48)

The extensive involvement of the United Nations and its specialized agencies in economic and social development projects like the Andean Indian Programme has contributed to the solution of indigenous population problems in many regions of the world. Moreover, a number of United Nations sponsored international human rights conventions possess some potential usefulness as instruments to protect indigenous populations (discussed below). But until 1971, the United Nations had never seriously addressed itself to the particular problems of indigenous populations as a separate group. Such concern has now been initiated in the form of a study by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, under ECOSOC's Commission on Human Rights. The progress on this "Study of the Problem of Discrimination Against Indigenous Populations" will undoubtedly be slow (1978 is one estimate for the completion of the report), and as with many other similar studies, action on the report may be delayed indefinitely. However, one of the fundamental goals of the study is an eventual formulation of a "Declaration of Principles on the Rights of Indigenous Populations," which may ultimately be embodied in a convention. (49) From another point of view, the fact-finding procedures for the study and the progress reports to the Sub-Commission could have some beneficial repercussions in themselves. Therefore, it is worth examining in some depth this recent United Nations focus on indigenous populations.

The suggestion to make such a study first appeared in a "Special Study on Racial Discrimination in the Political, Economic, Social and Cultural Spheres," prepared by the Sub-Commission, in which the Special Rapporteur noted that little information existed in the area of discrimination against indigenous peoples. He recommended that a complete and comprehensive study of the nature and extent of this problem, and of the national and international measures needed to eliminate it, be made by the competent organs of the United Nations in co-operation with the specialized agencies and national and regional institutions. (50)

This recommendation achieved substance in ECOSOC resolution 1589 (L), draft III, unanimously adopted on 21 May, 1971:

"The problem of indigenous populations

The Economic and Social Council,

Noting that indigenous populations often encounter racial prejudice and discrimination and that sometimes the "special measures" taken by the authorities to protect their unique culture and identity - which they themselves earnestly wish to maintain - may, with the passage of time,

become unnecessary or excessive and therefore may also be discriminatory in character,

Considering that the international community must therefore devote particular attention to the problems of indigenous populations if it is to succeed in its endeavour to eliminate all forms of discrimination,

Convinced that the policy of integration of indigenous populations in the national community - and not segregation or assimilation - is the most appropriate means of eliminating discrimination against these populations,

Convinced further that no integration policy for indigenous populations, whether they represent minority groups or a majority of a country's population, can proceed unless it is accompanied by a policy of economic, social and educational development aimed at achieving a rapid and substantial rise in the living standards of those populations,

Further convinced that every precaution must be taken to ensure that the process of integration is not carried out to the detriment of the institutions and traditions of the indigenous population and that its cultural and historical values are respected,

1. Recommends that the Governments of all States having indigenous populations take into account, in their policies of economic and social development, the special problems of indigenous populations with a view to eliminating prejudice and discrimination against such populations;
2. Appeals to the States concerned, if they have not yet done so, to take the appropriate legislative, administrative and other measures to protect the indigenous population and to prevent any discrimination against it;
3. Invites all competent organs of the United Nations and, especially, the regional economic commissions and specialized agencies concerned to co-operate with Governments in any actions which they may undertake in compliance with the present resolution;
4. Recommends to all States having legislation for the protection of indigenous populations that they review that legislation with a view to determining whether in practice it has not already resulted, or might not result, in discrimination, or whether its effect has been to place unjust and unnecessary restrictions on certain civil and political rights;
5. Notes with interest the efforts that have been made in this connexion within the inter-American system, and invites the Organization of American States, and particularly its specialized organs and bodies, such as the Inter-American Commission on Human Rights and the Inter-American Indian Institute, to assist in the eradication of any kind of discrimination against indigenous populations;
6. Invites, similarly, the specialized organs and bodies of the United Nations and the other regional bodies to take the necessary steps for the same purpose of assisting in the eradication of any discrimination against indigenous populations;
7. Authorizes the Sub-Commission on Prevention of Discrimination and Protection of Minorities to make a complete and comprehensive study of

the problem of discrimination against indigenous populations, and to suggest the necessary national and international measures for eliminating such discrimination, in co-operation with the other organs and bodies of the United Nations and with the competent international organizations. (51)

In resolution 8 (XXIV) of 18 August 1971, the Sub-Commission appointed a Special Rapporteur, Mr. José Martínez Cobo, to carry out the report according to operative paragraph 7 of resolution 1589 (L).

The Special Rapporteur submitted a preliminary report (52) to the Sub-Commission at its 26th session on 29 June 1972. This first report set out the objective of the study as the precise identification of "those of the present situations in which there are injustices against indigenous populations and which must therefore be eliminated, and the type of measures to be adopted to that end." (53) The first stage of the study will involve the collection, analysis and verification of material, then a report will be produced, and finally recommendations for action will be made on the basis of the report.

The problems involved in working out a definition of "indigenous population," and the definition adopted provisionally by Mr. Martínez Cobo have been mentioned on page 3 of this paper. Mr. Martínez Cobo states in his preliminary report that he intends to make a comparative study of all the definitions in the country monographs in order to arrive at a definition of indigenous populations from the international point of view. (54)

Mr. Martínez Cobo includes in this report his general outline of subjects to be covered in the study. The entire text of the outline has been reproduced in Annex II because it in effect establishes a rather detailed standard for national treatment of indigenous populations. This is done by taking equality as the yardstick for the study. Mr. Martínez Cobo explains this approach when he states that in the study, it will be necessary to examine as forms of discrimination any "institutions or practices which do not conform to a broad concept of equality guaranteeing indigenous populations that:

- "(a) they are not discriminated against in any way, either by commission of omission, particularly in so far as any of the rights and freedoms set forth in the Universal Declaration of Human Rights is concerned; and
- (b) special measures are taken to place them on an equal footing with other persons or groups in the real and effective enjoyment of such rights and freedoms, over and above any formal equality they may have achieved already.

Section (b) echoes the "special measures of protection" of the ILO policy; apparently there is something approaching general recognition that the protection of indigenous populations, because of their disadvantaged position, involved the "need to institute protective measures in their favor:"

"It is the State's duty to take special measures, grant special rights or provide special services for the benefit of the indigenous populations in the territory under its jurisdiction, in fulfillment of its obligation to try to make up for the disadvantages from which they suffer." (56)

Mr. Martinez Cobo further points out that some of these measures are more like the measures taken for the protection of minorities than those aimed at preventing discrimination. This throws an interesting side-light on the study, for the Sub-Commission (and the United Nations in general) have done very little work on minorities. In fact, the General Assembly itself refused to include any article on minorities in the Universal Declaration of Human Rights of 1948, although such an article appeared in a draft of the document.

The substantive content of the outline resembles for the most part ILO Convention No. 107, except that the outline goes into a great deal more detail.

This study by the Sub-Commission may lead to some bonuses quite aside from the projection of an eventual convention on discrimination against indigenous populations. In the first place, the Special Rapporteur has requested information from all the States Members of the United Nations and Members of the specialized agencies, from which individual country monographs will be prepared on those countries which have indigenous populations (Martinez Cobo estimates thirty countries at least). Information provided is to be in accordance with the questions raised in the Special Rapporteur's outline. Such "Country monographs" give the governments concerned an opportunity to rectify unsatisfactory conditions during the course of a study. (57) This tendency may be reinforced by the Special Rapporteur's planned field trips to countries with indigenous populations in order for him to observe first-hand the problems of indigenous populations and to make direct contact with the representatives of indigenous populations and concerned domestic non-governmental organisations. He had already visited Australia, Malaysia, and New Zealand in June of 1973, and visits to Bolivia, Brazil, Paraguay and Peru were made in June of 1974. (58) Canada and USA were visited in 1976 and Guatemala and Mexico in 1977 (58a).

The study will also contribute, of course, up-to-date information on many aspects of discrimination against indigenous populations. Global in nature, the final report will focus on the factors leading to such discrimination, "identifying those factors which are of an economic, social, political or historical character and those stemming from a policy that is clearly designed to produce, maintain or aggravate them." (59) General trends in the development of legislation and practice in the matter of discrimination will be noted, and the various special measures already put into force to eliminate existing inadequacies will be evaluated for their efficacy. The Special Rapporteur intends to achieve a balance of information by using as sources not only Member States but also the Secretary-General, the specialized agencies and competent organs of the United Nations, related organs of regional intergovernmental organizations, non-governmental organizations recognized by ECOSOC as being in consultative status and having a special interest in the study, non-governmental bodies active in the scientific, anthropological, sociological and ethnological fields, and the works of scientists and recognized authorities in the subject. (60)

In his progress report (61) on the study, Mr. Martinez Cobo presented a summary of the main features of action taken by the United Nations and four specialized agencies of the United Nations (FAO, ILO, WHO and UNESCO). His progress report of 19 June 1974 (62) supplemented this material with more recent measures taken by those agencies, presented information on action taken by the Organisation of American States, and gave a preliminary consideration of three substantive aspects of the problem -- housing, political rights, and religious rights and practices.

(Note: In 1975 a further report prepared in connection with the study was submitted to the Sub-Commission at its 28th Session. It deals with questions of substance, discussing a definition of indigenous populations, composition of the population (statistical data), education and cultural, social and legal institutions. As the bulk of this document was prepared before the submission of that report, no analysis or comment upon its content has been made.)

A third and potentially very important outcome of this study is its tendency to increase awareness of the problems of indigenous populations. National governments, when they reply to the Special Rapporteur's request for information will certainly be reminded of the areas in which indigenous populations suffer disadvantages and discrimination; Furthermore, question being raised in the Sub-Commission in response to Mr. Martinez Cobo's reports show that the Sub-Commission is becoming an international forum for discussion of basic issues relating to the treatment of indigenous populations by national governments and the national community. For example, these issues have come up in Sub-Commission members' comments on Mr. Martinez Cobo's reports thus far:

- 1) the choice of government measures - promotion of assimilation of indigenous populations into socially higher groups at a higher level, or fostering their freedom of expression so that they would not lose their self-awareness and inherent creativity; (63)
- 2) the general problem of cultural extinction and protection of the cultural identity of the indigenous group;
- 3) the isolation of indigenous populations leading to more than discrimination, leading to being regarded not as minorities but as "marginal groups;"(64)
- 4) the idea that indigenous populations are not in a position to fight for their right to self-determination until they advance to the status of an active minority;(65)
- 5) de facto v. de jure equality.

As positive as these contributions may turn out to be, it can still be hoped that the study does not assume a purely academic nature and become an end in itself, but that it remains firmly action-oriented. With the experience of the ILO and its Convention No. 107 as a guide, an international convention on discrimination against indigenous populations should not be an impossible task - given the necessary political will to bring it about.

THE ORGANIZATION OF AMERICAN STATES

The O.A.S.'s Charter contains social justice and human rights principles similar to those of the United Nations:

- "Art. 28. The Member States agree to cooperate with one another to achieve just and decent living conditions for their entire populations.
- Art. 29. The Member States agree upon the desirability as to race, nationality, sex, creed or social condition, have the right to attain material well-being and spiritual growth under circumstances of liberty, dignity, equality of opportunity, and economic security." (66)

Special concern for the indigenous populations in the American Republics, however, inspired the O.A.S. to establish organs within the Inter-American system to study the "Indian problem." At the First Inter-American Indian Conference, held at Patzcuaro, Mexico in 1940, delegates passed a resolution creating the Inter-American Indian Institute and recommended the conclusion of a Convention to end. This Convention Providing for Creation of the Inter-American Indian Institute(67)

declared the common interest of the Governments of the American Republics in solutions to the "Indian problem:"

"The Governments of the American Republics, inspired by the desire to create efficient instruments for collaboration in the solution of their common problems, and recognizing the fact that the Indian problem is a question of interest to all America; that it is desirable clearly to state and solve said problem; that in many of the American nations it offers similar and comparable aspects; the Governments of said republics further recognize the fact that it is highly desirable to clarify, stimulate and co-ordinate the Indian policies of the various nations, said policies being construed as the aggregation of desiderata, standards and measures that should be applied for integral improvement of the living standards of the Indian groups of the Americas;"

Accordingly, the contracting Governments agreed to "elucidate the problems affecting the Indian groups within their respective jurisdictions, and to co-operate with one another, on a basis of mutual respect for the inherent rights of each to exercise absolute liberty in solving the 'Indian Problem' in America" (i.e. national sovereignty affirmed) by setting up an Inter-American Indian Institute and National Indian Institutes and by holding periodic Inter-American Indian Conferences. As of April 1972, seventeen countries in the region had ratified this agreement. In 1953, the Institute was formally recognized as a specialized organization of the O.A.S.

Since the first Conference in 1940, six more Inter-American Indian Conferences have been held, (68) and more than three hundred and forty resolutions on a diversity of subjects have been adopted by these Conferences. The substantive texts guide the activities of the Institute and shape its policy to a large degree. (69)

The Institute's functions cannot, by the terms of the Convention, be "of a political character;" instead, the Institute initiates, directs and co-ordinates action in the areas of education, collection and distribution of information on all aspects of Indian life, and general cooperation with other agencies concerned with Indian problems. At the request of a Government, the Institute renders advisory services and technical assistance. Recent activities of the Institute include the following: (70)

- 1) publication of two periodicals, the quarterly América Indígena and the yearly Anuario Indigenista; a series of compilations on Legislación Indigenista, and several series of books including one on Legado Cultural de la América Indígena and La Antropología Social en América Latina;
- 2) several courses on an international scale dealing with Indian culture, anthropology and development in 1973 - Course on Professional Training in Anthropology and Indian Culture at Chiapas, Mexico; Course on Observation and Experimentation in Mexico; and a Second Seminar on the Problems of Indian Women in Guatemala;
- 3) initial steps in creation of an Inter-American Center of Indian Information and Documentation.

Another organ of the O.A.S., the Inter-American Commission on Human Rights, responded at its 26th session, October-November 1971, to the ECOSOC resolution 1589(L), which invited the O.A.S. and, particularly, its specialized organs and bodies, to "assist in the eradication of any kind of discrimination against indigenous populations." The Commission decided on the production of a report on the subject and a specific document on communications regarding violations of human rights committed against indigenous populations. The minutes of the Commission session stated their intention:

- "1. To instruct the Secretariat to prepare a document compiling all claims received by the Commission denouncing acts that violate the human rights of indigenous populations;
2. To request the members to make known to the rapporteur their observations or comments, as well as legislation on indigenous populations in their respective countries, and
3. To appoint Dr. Fraga as rapporteur for this topic, so that, with the cooperation of the Inter-American Indian Institute, located in Mexico, and taking into consideration the document prepared by the Secretariat and the information provided by the members, he might present a report with conclusions and recommendations on this topic and thus enable the Commission to continue its study of the matter at future sessions." (72)

The document citing claims of human rights violations against indigenous populations, with the procedural actions taken on the cases, was prepared and considered at the 29th session of the Commission. The results were not reported.

Dr. Fraga's study was still in progress at the time of the Commission's 32nd session (April 1974).

At its 29th session (October 1972), the Commission took another positive action in approving a resolution on the problem of special protection for indigenous populations. While this resolution has no kind of binding force, it is interesting for its focus on abuses of power committed by government officials responsible for administering indigenous programs:

"THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONSIDERING:

That for historical reasons and because of moral and humanitarian principles, special protection for indigenous populations constitutes a sacred commitment of the states;

That on various occasions this Commission has had to take cognizance of cases in which it has been verified that abuses of power committed by government officials responsible for administrative work in connection with indigenous communities have caused very serious injury to the human rights of their members;

That these offenses against human rights are all the more reprehensible considering that they are committed by agents of the public power and have as their victims persons or groups for whom the effective exercise of the means of defense established by the laws of the respective states is particularly difficult; and

That Article 9 of the Statute of this Commission empowers it to make recommendations for the purpose of attaining higher levels of protection of human rights; and that, without prejudice to the commendations made at earlier

sessions and to the supplementation of the work it is carrying out with respect to protection of indigenous populations, it is considered essential to do so now.

RECOMMENDS:

1. That all the states pay very special attention to the suitable training of the officials who are to perform their work in contact with the aforementioned populations, awakening in those officials an awareness of their duty to act with the greatest zeal in defense of the human rights of indigenous persons, who should not be the object of discrimination of any kind.

2. That the actions of such officials be adequately controlled and, in cases in which the commission of abuse of power to the detriment of the indigenous population are verified, that the necessary corrective measures be applied to prevent repetition of such acts." (72)

In all of these actions, the O.A.S. through its specialized organs does not seem ready to go beyond the stages of research and recommendations (however sternly worded) on the question of indigenous populations. Many countries in this regional organization have indigenous populations within their jurisdictions, and consequently their expressed concern for the human rights of the indigenous populations may be outranked by considerations of national interest in development and growth of the economy.

NON-GOVERNMENTAL ORGANIZATIONS

Since the formation of the British and Foreign Aborigines Protection Society in 1835, special interest groups on the national and international level have contributed to the protection of indigenous populations. Recently, this contribution has significantly increased, perhaps as a result of better worldwide communication and growing interest in human rights issues in general. Just as an illustration of this trend, at least eight groups around the world have organized in support of the rights of the indigenous peoples of the Amazon region of South America. (73) These groups may consist of ad hoc committees, religious federations, trade unions, human rights organizations, and professional associations, to name only some of the kinds of groups who have rallied to the cause of indigenous populations. Independent of national government policy, and uncommitted to a specific political line, they enjoy the ability to be flexible and outspoken on an issue.

Non-governmental organizations have supported international movements to protect indigenous populations from injustice in three main ways. The first is as a source of information on all aspects of indigenous life and of documentation on violations of the rights of indigenous populations and individuals. These groups can either initiate their own social research and empirical study or sponsor that of others. For example, the Aborigines Protection Society (as it is now called) reported on the situation of the aborigines in Australia in 1971 and put out Tribes of the Amazon Basin in 1972. Publications of this sort of objective reporting (as opposed to glorified official statements) performs a valuable service in bringing the truth (or at least another version) to the international community. The publication of Mark Münzel's field work on the Aché Indians by the International Work Group for Indigenous Affairs represents such a contribution. News distribution and coordination, of the kind done by Indigena, also further the goal of protecting indigenous populations through education and publicity. Another approach is the sponsorship of forums for the exchange of views and planning on strategies, such as the 1973 Wingspread Conference on "Protection of Human Rights for Indians and Inuits" convened by the Johnson Foundation. All these activities help to convince the international community

that the rights and sometimes very existence of indigenous populations are being threatened in a number of countries.

NGO's can play the role of "experts" and recommend policies and courses of action to national governments and international organizations. The Sub-Committee on Prevention of Discrimination and Protection of Minorities has listened to the views of at least two NGO's in consultative status with ECOSOC -- the International Federation of Women Lawyers, proposing a model land policy (74) and the Anti-Slavery Society, referring the Sub-Commission to the conclusions of their work on the Amazon tribes. (75)

A third, vitally important way in which NGO's stand up for indigenous populations on an international level is as "complainants." This function, of course, overlaps with that of gathering and disseminating information. Commissions of Inquiry into situations involving violations of the human rights of indigenous populations can announce their findings to the international community through the media. The better respected the organization, the more publicity (usually) the situation is apt to get. Moreover, if an organization has consultative status with an international organization, testimony may be sent or presented directly to the agencies concerned with human rights violations.

One such campaign, pertaining to the situation among the Aché Indians of Paraguay, ably illustrates this approach. The University of Bern released an open letter to the Paraguayan Government on 4 June 1973, charging the Government with complicity in massacres and inhuman detention in reservations of the Aché Indians to an extent reaching genocidal proportions. (76) These practices have been denounced by the Roman Catholic Church in Paraguay and the World Council of Churches. The British Secretary of the Anti-Slavery Society presented substantially identical allegations before the United Nations Commission on Human Rights in March 1973 (77). Richard Arens, Professor of Law at Temple University, prepared for the International League for the Rights of Man and the Inter-American Association for Democracy and Freedom a formal complaint to the United Nations, which charges the Government of Paraguay with violations of the United Nations Charter, the Genocide Convention, and the Universal Declaration of Human Rights. (78) The complaint was also sent to the O.A.S.

In conclusion, NGOs can (and have) expose(d) and pressure(d) those governments who fail to protect the indigenous populations within their jurisdiction. However, an accusation gains a great deal of force if it is grounded in the violation of an international law, whether customary or conventional. Until new explicit international treaties on the treatment of indigenous populations are created and come into force, the protectors of indigenous populations will have to depend on the existing human rights conventions. The prospects for their use in this respect is the subject of the next section of this paper.

USE OF EXISTING INTERNATIONAL HUMAN RIGHTS CONVENTIONS

Indigenous populations seem to be somewhere between individuals and states on the legal spectrum, but the trend appears to be away from the League of Nations Mandate approach of protecting group rights by a system of international guarantees. Instead, guarantees are developing for the protection of the individuals who comprise those groups. (79) In the international community recently there has been a surge of recognition that an individual may claim substantive rights, even against his own state, at the international level. This evolution in international law has been strengthened by more explicit definition of the fundamental rights of individuals in international covenants and by the development of some embryonic machinery to ensure the observance of those human rights.

Before one becomes too optimistic about the favorable consequences of this trend in the area of protecting indigenous populations, it must be emphasized that in invoking human rights law, indigenous populations will encounter all of its problems as well. Many treaties have been written on the obstacles to international enforcement of human rights law. Very briefly, these problems center around the jealous retention of their sovereign jurisdiction by the States that make up the international community. Until such time as respect for human rights becomes a universally accepted norm, States will continue to argue the Art. 2(7) (of the United Nations Charter) line that treatment of their own nationals falls "essentially within the domestic jurisdiction" of that State and precludes international intervention. As one consequence of this nationalistic attitude, States will continue to be very reluctant to write sanctions into international human rights instruments. The tentative complaint machinery already in effect (30) seems destined to remain plagued by cumbersome procedures and hair-splitting on forms and on the interpretation of provisions, although the initiation of a case against a State may serve as a cautionary warning to that State.

When pressing a claim on behalf of the human rights of many individuals in a group, as the case would be for indigenous populations, another tension may arise -- the incompatibility of full individual human rights and freedoms with national policy objectives, usually of an economic or political nature. Indigenous populations in underdeveloped countries are particularly prone, through external circumstances, to be caught in this dilemma.

Despite these given problems of enforcement, many of the existing human rights instruments have a potential application to the particular abuses of treatment suffered by indigenous populations. Some of these conventions possess more possibilities of serviceability than others, for various reasons.

The most advantageous conventions would logically seem to be those embodying customary international norms in the human rights area. Three main international treaties incorporate this feature of universal acceptance -- the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956 (81) (and its predecessor, the Slavery Convention, 1926, amended by Protocol, 1953 (82), the Convention on the Prevention and Punishment of the Crime of Genocide, 1948 (83), and the International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (84).

Slavery and genocide without doubt constitute crimes under international law, and racial discrimination is fast achieving that same status under the influence of the Third World countries. All three describe features of the maltreatment of indigenous populations.

The two Slavery conventions undertake to prohibit not only slavery in its traditionally understood form of "ownership of human beings" but also institutions and practices similar to slavery. The 1926 Convention specifies that compulsory or forced labor may only be exacted for public purposes (Art.5(1)) and the responsibility for any recourse to such practices shall rest with the competent central authorities (Art.5 (3)), not with private parties. The 1956 Supplementary Convention further extends the definition of "institutions and practices similar to slavery" to include debt bondage (Art.1(a)), serfdom (Art. 1(b)), and the sale or involuntary transfer of women and children under 18 years (Art.1(c)). Article 6 of that convention makes a conspiracy for the purpose of enslaving or inducing another person into slavery a criminal offence, as is being an accessory to such acts. No reservations may be made to the 1956 Convention (Art. 9). However, these two conventions provide for no enforcement machinery.

As of 1971, over fifty-five States have become parties to the 1926 Convention and over seventy-five States to the 1956 Convention. Nevertheless, in spite of the recommendations of two reports on slavery by experts commissioned by the United Nations and successive exhortations from the General Assembly, no government has yet allowed its delegation to call for implementation.(85)

The Genocide Convention of 1948, ratified by at least seventy-three countries, would appear particularly appropriate in application to the flagrant violations of human rights endured by some indigenous populations. Article II of the Convention defines "genocide" as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group."

Article III makes punishable not only (a) the act of genocide but also (b) conspiracy to commit it, (c) direct and public incitement to commit it, (d) attempt to commit it, and (e) complicity in it. Article IV declares that constitutionally responsible rulers, public officials, and private individuals are liable for punishment for committing genocide or any of the other Article III acts.

On-their-face tough sanctions are written into this Convention:

"Art.VIII. Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the acts enumerated in Art. III.

Art. IX. Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Art. III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

The silence of the States of the world during the large scale genocide in Burundi and Rwanda from 1968 to 1972 would seem an indication of a State's willingness to accuse another State of the crime of genocide. In fact, given the present extreme sensitivity of States to their diplomatic relations with other States (and their probable self-interest in not setting precedents along these lines), indigenous populations should not hope to have States invoke either the Slavery or the Genocide Conventions on their behalf.

Racial discrimination, on the other hand, may represent a more plausible rally-point for the protection of indigenous populations. The theme of equality strikes very responsive chords among the Third World countries. The active United Nations campaign against racial discrimination in southern Africa, in spite of Art. 2(7) policy, suggests that a political will to take action against violations of the right to racial equality can be tapped to aid indigenous populations.

Certainly the International Convention on the Elimination of All Forms of Racial Discrimination, 1966, applies to indigenous populations and to the kind of discrimination practiced against them:

"In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."
(Part I., Art. 1(1))

Moreover, the Convention adopts the "special measures" approach of the ILO Convention No. 107:

"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. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved." (Art. 2(2))

The Convention enumerates in detail the civil, political, economic, social and cultural rights which are to be enjoyed in equality before the law and in practice; these rights reflect the provisions of ILO Convention No. 107, supplemented by some more abstract freedoms covered by such instruments as the Universal Declaration of Human Rights.

Article 8 attempts to inject teeth into the Convention by the establishment of a Committee on the Elimination of Racial Discrimination, empowered to supervise the States Parties' application of the provisions of the Convention (Art. 9(1))

and report suggestions and "general" recommendations to the General Assembly. (Art.9 (2)) A State Party may complain of another State Party's observance of the Convention through a process of communication to the Committee (Art. 11). Failing satisfactory adjustment of the dispute, the Chairman of the Committee is to appoint an ad hoc Conciliation Commission (note: members to be appointed "with the unanimous consent of the parties to the dispute, or after three months of disagreement on this issue, by secret ballot (Art.12 (1)(b)) and the good offices of the Conciliation Commission be made available to the States concerned for solution of the matter (Art.12, (1)(a)).

Article 14 provides for another kind of complaint, communications from individuals or groups of individuals within a State Party's jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in the Convention. However, those communications are admissible only by virtue of the State Party's declaration that it recognizes the Committee's competence to receive and consider such communications.

Another new wrinkle appears in Art. 20 whereby a reservation "incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed."

These provisions for creating implementation machinery have been explained at length because of the fact that they go much farther than any similar provisions in other international human rights conventions; they represent the outer limits of the present state of human rights enforcement. Yet the State Party accused of violations of the Convention receives much of the same kind of deference traditionally accorded to States when human rights questions are involved. Looking to the accomplishments of this Convention to date, the Sub-Committee has been useful in bringing about reforms in the laws and practices of a number of states in respect to minor violations but has not been effective in the case of gross violations (i.e. Bangladesh). (86) As of 1971, only twenty-nine States were parties to the Convention, although forty-two others had signed it. The provision for State complaints has not yet been utilized, and the provision for private complaints does not come into force until ten States have accepted the option.

Other more specific conventions relating to discrimination are also in force; the ILO Discrimination (Employment and Occupation) Convention, 1958, (87) ratified by not less than seventy-two States, and the UNESCO Convention Against Discrimination in Education, 1960 (88) ratified by at least fifty-three States. The enforcement procedures described for ILO Convention No. 107 would be used for this ILO Discrimination in Employment and Occupation Convention. In the event that such discrimination against members of an indigenous populations occurred in a State not party to ILO Convention No. 107 but a party to this Convention, the ILO Committee of Experts would have grounds to bring the discrimination to the attention of the Government concerned. Aside from periodic reports from Member States to UNESCO on action taken for the application of the Discrimination in Education Convention (Art.7), this Convention contains no express implementation machinery.

One more kind of convention assumes potential importance for the protection of indigenous populations, especially in countries not parties to ILO Conventions on indigenous workers - the abolition of forced or compulsory labour. The ILO

has adopted two such instruments, the Convention Concerning Forced or Compulsory Labour, 1930 (89) and the Convention Concerning the Abolition of Forced Labour, 1957. (90) The advantages of using these conventions are two-fold; first, each has received a high number of ratifications (at least one hundred and five for the former and eighty-eight for the latter), and second, the conventions elaborate in some depth on what is to be considered forced labor and place stringent restrictions on its use. The definition of forced labor produces many technical distinctions beyond just the criteria that the work or service is exacted "under the menace of any penalty" and for which the laborer "has not offered himself voluntarily." The ILO Conventions on the subject help establish international standards on the use of forced or compulsory labor and as such supplement other ILO instruments on labor conditions, the Slavery conventions, and general human rights documents.

So far this last category of human rights law has received scant mention for the reason that while the Universal Declaration of Human Rights, 1948 (91) the American Declaration of the Rights and Duties of Man, 1948, (92) and relevant provisions of the United Nations Charter (Articles 1(3), 55(c), 56, 62(2), 68, and 76(c))(93) may possess great moral force in the international community, controversy still rages as to their mandatory quality. This is not the place to delve into such intricacies as the question of whether the rights (at least the civil and political ones) of the Universal Declaration of Human Rights have become international customary law and thus obligatory upon States. These issues are being tested by means of procedures like ECOSOC resolution 1503.(94) For instance, the Aché Indian case prepared by Richard Arens charges the Government of Paraguay with enslavement and genocide in violation of the United Nations Charter, the Genocide Convention, and the Universal Declaration of Human Rights. Response to this communication in the Sub-Commission may contribute to a determination of such issues as what is the juridical definition of "genocide," what human rights in particular have become customary international law, and whether, in the context of human rights, attempts to impose a policy of assimilation on indigenous populations can amount to genocide. The answers to these questions could help immensely in setting up international legal strategies on behalf of indigenous populations.

The human rights conventions of two regional groups, the OAS and the Council of Europe, have considerable interest in view of their enforcement organs. Again, without going into too many details, the American Convention on Human Rights, 1969 (95) provides for an Inter-American Commission on Human Rights (Chap.VII) to review communications (including those from individuals) on human rights violations, make recommendations to governments of Member States, request information from Member States, and report on human rights matters. An Inter-American Court of Human Rights is set up (Chap.VIII) to handle human rights cases submitted by a State Party or the Commission. The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (96) had established a European Commission of Human Rights and a European Court of Human Rights (Art. 19). Both regional systems, with established institutional bases for the protection of individual human rights, offer indigenous populations in the Member States at least in theory a definite forum for the vindication of their human rights. In the past, the prospect of a human rights case being brought has apparently caused the offending government to alter its policies or amend its legislation. Also, decisions in national courts in Europe have been based on the European Convention.(97)

Finally, two major human rights conventions, the International Covenant on Civil and Political Rights, 1966(98) and the International Covenant on Economic, Social, and Cultural Rights, 1966 (99) loom in the future as human rights treaties with undoubted legal force for the parties to them. The covenants have attracted far too few ratifications as yet to go into force, but when they do the cause of protecting indigenous populations should receive a significant boost. Both covenants incorporate some supervision measures. The International Covenant on Economic, Social and Cultural Rights provides in Articles 16-22 for a State Party reporting procedure (like that of the ILO) on the observance of the rights in the covenant. ECOSOC, the executing agency, is to circulate such reports to the relevant specialized agencies of the United Nations (including the Commission on Human Rights) and the reports may become the basis of agency reports or general recommendations on implementation. By virtue of the greater international recognition of such rights, the International Covenant on Civil and Political Rights sets up stricter implementation machinery, including a Human Rights Committee (Part IV) to evaluate the application reports submitted by States Parties to the Covenant. A State may declare that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims another State Party, is not fulfilling its obligations under the Covenant (Art. 41). Continued dispute may eventually lead to (with the prior consent of the Parties) the appointment of an ad hoc Conciliation Commission (Art. 42). An Optional Protocol to the Covenant would add to the implementation machinery by allowing communications from victims of a violation by a State Party of any of the rights set forth in the Covenant.

One substantive provision of these two Covenants may also enure to the benefit of indigenous populations. Article 1 of both Covenants expressly recognizes the right of "all peoples" to self-determination; "by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Furthermore, by Article 1(2), "in no case may a people be deprived of its own means of subsistence." While this principle of self-determination originated in a concern for the liberation of colonial territories, there is some suggestion that Article 1(2) could be extended to the case of indigenous "people" living among a dominant national community.(100)

LIMITATIONS OF INTERNATIONAL ACTION

The discussion above did not exhaust the channels potentially available for protection of indigenous populations (i.e. General Assembly discussion of the question, creation of an Ad Hoc Working Group of Experts, etc.) When all the possibilities are evaluated, though, a fairly dismal picture emerges of continuing dependence on appeals to the compassion of the sovereign States. Protection of indigenous populations may have evolved from a "sacred trust" into a customary international law to the extent other human rights have achieved that status (a still-disputed conclusion). Moreover, "special measures of protection" seem to be an accepted concomitant to the "duty" to guarantee equality to indigenous populations. But the established international procedures to defend these rights remain bogged down in politics and diplomacy, in requirements such as the exhaustion of domestic remedies, the consent of States to investigations, the confidentiality of complaints, and in circumstances like the conflicts of interest felt by the members of the committees who examine human rights communications. Meanwhile no action is taken on an often critical situation.

One aspect of the problems faced by indigenous populations might offer hope -- the fact that the Third World countries stress the themes of economic and social justice, and these areas represent the primary needs of indigenous populations at present. Until such time as the Third World States can be enlisted to aid the indigenous populations still living under the vestiges of colonialism, NGO's will have to carry the burden of insisting on the observance of the basic human rights of indigenous populations. Publicity campaigns exposing the failings of States in this regard may convince the delinquent States that political expediency requires the improvement of the condition of the indigenous populations within their borders. On the other hand, the dynamics of the world economy probably will militate against this policy.

* * *

FOOTNOTES

1. Alpheus Henry Snow, The Question of Aborigines in the Law and Practice of Nations, G.P. Putnam's Sons, New York, 1921, p. 11.
2. Indigena, Vol.1, No. 2 (Fall, 1974). This is the publication of the documentation center of the same name in Berkeley, California. Its purpose is exchange of information on and education about the legal, economic, political and cultural conditions of indigenous peoples of the Western Hemisphere.
3. Mark Munzel, "The Aché Indians: Genocide in Paraguay," 1973 and "The Aché: Genocide Continues in Paraguay," 1974. Published by the International Work Group for Indigenous Affairs, Copenhagen. Munzel, currently at the Museum for Ethnography in Frankfurt, carried out field work in Paraguay from 1971 to 1972.
4. Ibid. (1973 report), p. 56.
5. Ibid., p. 57.
6. Preliminary report on the "Study of the Problem of Discrimination Against Indigenous Populations," (E/CN.4/Sub.2/L.566), p. 15.
7. I.L.O. Convention No. 107, Indigenous and Tribal Populations, 1957, 328 United Nations Treaty Series (U.N.T.S.), 248.
8. (E/CN.4/Sub.2/L.566, Annex), p. 1.
9. Summary of these issues came from material in: Galey, Rapporteur, Wingspread Conference, "North American Conference on the Protection of Human Rights for Indians and Inuits," convened by the Johnson Foundation, Racine, Wisconsin, 1973; ILO Convention No. 107, op cit.; and (E/CN.4/Sub.2/L.566).
10. Gordon Bennett, "Aboriginal Peoples and International Law," Survival International, no. 7, London, July 1974, p. 10.
11. Cherokee Nation v. State of Georgia, 5 Peters 1 (1833).
12. Snow, op. cit., p. 31. Quoted from report of the Rev. Jedediah Morse (special commissioner for Indian Affairs) in 1821.
13. Snow, op.cit., p.9.
14. Ibid., pp.14-16.
15. Ibid., p. 246.
16. Ibid., p. 246.
17. Ibid., p. 294.
18. Ibid., p. 296.
19. Ibid., p. 28.
20. Ibid., p. 177.
21. Ibid., p. 182. One example: "It may be necessary to enact particular rules to assure the execution of obligations undertaken by the aborigines, and especially to authorize, as regards them, execution by bodily restraint."
22. J.L. Brierly, The Law Of Nations, 6th edition, Oxford University Press, New York and Oxford, 1963, p. 291.
23. "Human Rights and the ILO," ILO Fact Sheet No. 6, Geneva, 1973, p. 3.
24. Philadelphia Charter, 1944, 62 Stat. 3554, 15 U.N.T.S. 104.

25. Constitution of the International Labour Organisation, Montreal, 1946, 62 Stat. 3485, T.I.A.S. 1868, 15 U.N.T.S. 35.
26. ILO Convention No. 50, International Legislation, Vol. VII, p. 326.
27. ILO Convention No. 64, International Legislation, Vol. VIII, p. 359.
28. ILO Convention No. 65, Ibid., p. 377.
29. G.A. Johnson, The International Labour Organisation, Its Work for Social and Economic Progress, Europea Publications, 1970, p. 258.
30. Information about the Andean Indian Programme came from Johnson, op.cit., pp. 259-260, and "The Andean Programme," ILO. pamphlet, Geneva, 1964.
31. "Meeting of the Panel of Consultants on Indigenous and Tribal Populations," Official Bulletin of the ILO, Vol. XLVI, No. 1, January 1963, p. 44.
32. Further progress report on the "Study of the Problem of Discrimination Against Indigenous Populations," (E/CN.4/Sub.2/L.596), pp. 10-11.
33. Johnson, op.cit., p. 260.
34. Ibid., p. 260.
35. Further progress report on the "Study of the Problem of Discrimination Against Indigenous Populations," op.cit., p. 12. Representatives from twelve countries took part (Barbados, Canada, Chile, Columbia, Jamaica, Mexico, Panama, Peru, Trinidad and Tobago, the United States, Uruguay and Venezuela), as well as representatives of the United Nations, UNESCO, and a Panamanian expert.
36. Ibid., p. 13.
37. ILO Convention No. 107, op.cit.
38. "Indigenous Populations," Report of the Director-General, Tenth Conference of American States Members of the ILO, Mexico City, Nov.-Dec. 1974, p. 50.; ILO: Official Bulletin, Vol. LIX, 1976, Series A, No. 2, p. 76; and information from the International Labour Office.
39. Brierly, op.cit., p. 124.
40. ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, 1977, p. 16.
41. Report of the Committee of Experts..., " 59th Sess., Geneva, 1974, p. 19
42. Report of the Committee of Experts..., " 59th Sess., Geneva 1974, 170-171.
43. Report of the Committee of Experts..., 57th Session, Geneva, 1972, pp. 201-202.
44. ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, 1977, (pp.32-34)
45. "Indigenous Populations," Report of the Director-General, op.cit., pp.49-53.
46. Ibid., p. 51
47. Ibid., pp. 52-53.
48. Charter of the United Nations, Art.1(3), 1945, 1970 Yearbook of the UN 1001.
49. Wingspread Conference, op.cit., Cesar A. Willemssen Diaz, p. 18
50. (E/CN.4/Sub.2/L.566), p. 3
51. (E/5032), p. 11, 12, 13.
52. (E/CN.4/Sub.2/L.566)
53. Ibid., p. 6.
54. Ibid., p. 8.

55. Ibid., p. 6-7.
56. Ibid., p.15.
57. John P. Humphrey, "The United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities," 62 American Journal of International Law and Politics 869 (Oct.1968), p. 881.
58. (E/CN.4/Sub.2/L.596), p. 4.
- 58a. Information available from Intl Indian Treaty Council.
59. (E/CN.4/Sub.2/L.566), p. 16.
60. Ibid., p. 14.
61. (E/CN.4/Sub.2/L.584 and Corr.4).
62. (E/CN.4/Sub.2/L.596).
63. (E/CN.4/Sub.2/SR.651), 29 Aug. 1972, p. 7.
64. (E/CN.4/Sub.2/SR.659), 5 Sept. 1972, p. 10.
65. Ibid., p.11.
66. Charter of the O.A.S., Bogota, April 30, 1948, 2 U.S.T. 2394, T.I.A.S. 2361, 119 U.N.T.S. 3.
67. Convention Providing for Creation of the Inter-American Indian Institute, 1940, 56 Stat. 1303, 3 U.S.T. 661.
68. (E/CN.4/Sub.2/L.596), p. 26. II. Cuzco, Peru (1949), III. La Paz, Bolivia (1954), IV. Guatemala City (1959), V. Quito, Ecuador (1964), VI. Patzcuaro, Mexico (1968), VII. Brasilia, Brazil (1972).
69. Ibid., p. 26.
70. Ibid., pp.24-25.
71. (OEA/Ser.L/V/II.26, doc. 37-26).
72. (OEA/Ser.L/V/II.29, doc. 38, rev.).
73. Indigena, op.cit., p. 7.
74. Press Release HR/886, 24 Aug. 1972.
75. (E/CN.4/Sub.2/NGO. 50).
76. Richard Arens, "Paraguayan Indian Hunt," The Nation, Sept. 24, 1973, p.266.
77. Ibid., p. 267.
78. Indigena, op.cit., p. 6.
79. Joseph B. Kelly, "National Minorities in International Law," 3 Denver Journal of International Law and Politics 253 (Fall, 1973), p. 268.
80. ECOSOC resolution 1503 (XLVIII) of May 27, 1970, U.N. ECOSOC Off.Rec., 48th Sess., Supp.No.1A, p. 8. This reverses the position of 23 years that the Human Rights Commission had no power to take any action in regard to human rights complaints. The procedure established by the Sub-Commission empowers a broad range of persons and groups to originate communications showing "consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms."
81. 266 U.N.T.S. 3.
82. 60 League of Nations Treaty Series 253.

83. 78 U.N.T.S. 277.
84. 660 U.N.T.S. 195.
85. Patrick Montgomery, "The Anti-Slavery Society 1973," Contemporary Review, Vol. 223, No. 1291, Aug. 1973.
86. John Salzberg, "The Struggle for Human Rights in the United Nations and Regional Groups," War/Peace Report, p. 18.
87. 362 U.N.T.S. 31.
88. 429 U.N.T.S. 93.
89. 39 U.N.T.S. 55.
90. 320 U.N.T.S. 291.
91. U.N. General Assembly Official Record, 3rd Session, Resolutions (A/810), p. 71.
92. Final Act of the Ninth International Conference of American States, Bogota, Columbia, held in 1948.
93. Charter of the United Nations, op.cit.
94. (E/CN.4/1128), (E/CN.4/Sub.2/343), p. 23.
95. OAS Official Records (OEA/Ser.K/XVI/I.I, Document 65, Rev.I, Corr.2, 7 Jan. 1970.
96. 213 U.N.T.S. 221.
97. Salzberg, op.cit., p. 20.
98. General Assembly Res. 2200, 21 U.N. GAOR, Supp. 16(A/6316), p. 52.
99. Brownlie, Basic Documents on Human Rights, Clarendon Press, Oxford, 1971, p. 199.
100. Bennett, op. cit., p. 11.

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9. Cherokee Nation v. State of Georgia, 5 Peters 1 (1833).

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ANNEX II.

OUTLINE FOR THE COLLECTION OF INFORMATION FOR THE "STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST INDIGENOUS POPULATIONS", by the Commission on Human Rights, Special Rapporteur, Mr. Jose R. Martinez-Cobo (E/CN.4/Sub.2/L.566)

A. GENERAL INFORMATION

I. Definition

1. Individuals, groups or communities considered indigenous under the legal system of the country. Other concepts which are generally prevalent in the country, whether legal or not. The criterion or criteria used to establish whether an individual, group or community is or is not indigenous.
2. Information on whether a person who has been considered "non-indigenous" may come to be considered "indigenous" and, if so, how. Conversely, whether an "indigenous" person may come to be considered "non-indigenous" and, if so, how.
3. Problems encountered in defining persons undergoing one of the processes of change referred to in the preceding paragraph.

II. Composition of the population

4. Present situation. Statistical and other data indicating the country's total population, the total size of the indigenous population and the proportion of the country's total population which it represents.
5. Statistical trends. Increase or decrease in the size of the country's indigenous populations in the past 200 years. Reasons for any decrease in the total size of the indigenous population or in the size of certain indigenous groups.

III. Historical background

6. The historical events, knowledge of which is essential to an understanding of the present situation of the country's indigenous populations, including information about any: (1) violent conflict between the indigenous and other populations; (2) forced removal of indigenous population groups from their ancestral lands and resettlement in other places; (3) concentration of indigenous populations groups in "reservations" or "preserves"; (4) migration within the country or emigration to other countries of indigenous population groups; (5) other similar events. Indication of the reasons, circumstances and results in each case.

B. BASIC PRINCIPLES

IV. Basic provisions

7. Basic provisions of the Constitution and other fundamental laws, administrative decisions, executive decrees and judicial rulings concerning indigenous populations in general.
8. Information concerning the fundamental status attributed by law to the indigenous populations. Such information should state, in particular, whether:

(1) A special legal status has been established to protect indigenous populations and exempt them from certain obligations, while at the same time limiting their exercise of certain rights until they reach a level of development enabling them to be on an equal footing with the rest of the population; or

(2) indigenous populations have been recognized as having all the rights and obligations of citizens and, in addition, benefit from certain special provisions established in their favour and considered necessary because of the fact that they have a relatively weak position in society, such provisions to remain in force as long as they continue to be in such a position.

.../...

V. Fundamental policy

9. What problems are considered in the formulation and development of this policy. Description of the State's officially declared policy on indigenous populations; reasons for choosing such a policy, and an indication of whether the desires and views of the groups involved are taken into account when the policy is formulated.
10. Indication of whether different policies have been adopted which can be applied according to the circumstances of the various groups and whether there are cases in which practice departs from the officially adopted policy, with a detailed account of any such departures.
11. Development of State policy towards indigenous populations.
12. Action taken to ensure the control, examination and revision, whenever necessary, of this policy and of the measures adopted under such policy, so that measures do not remain in force after they have ceased to be useful.
13. Review of the policy pursued by unofficial organizations (religious missions or missions, commissions or groups of a scientific, anthropological, ethnological, sociological or other nature that have undertaken action programmes among the indigenous populations.

VI. Administrative arrangements

14. Government bodies. Description of the bodies responsible for developing, applying, and giving effect to official policy on indigenous populations, including information on whether they are part of the central administration, or co-ordinated with it, as : (1) separate ministries; (2) bodies within ministries; (3) bodies operating under more than one ministry; (4) autonomous institutions, whether or not connected with one or more ministries; etc. Information on any existing regional or local bodies.
15. Private bodies. Information on whether : (1) they have been established by and are under control of one or more government ministries; (2) they have been recognized by the State; or (3) they receive a State subsidy.
16. Other arrangements. Mixed bodies or activities of a mixed governmental and non-governmental nature.
17. Functions. Brief description of the functions of the bodies in question, whether carried out by one or by several such bodies. Co-ordination of activities.
18. Staff. Qualifications and requirements for appointment to such bodies. Selection. Tenure, irremovability. Responsibilities. Training relevant to the problems of indigenous populations, whether in-service or prior to appointment to the post.
19. Funds. Sources from which the bodies in question receive funds. What authority controls them.

C. INFORMATION ON DISCRIMINATION AGAINST INDIGENOUS POPULATIONS AND THE ELIMINATION THEREOF

VII. Prohibition, prevention and elimination of Discrimination against indigenous population, in general

20. Information concerning general measures that have been adopted:
 - (1) to prohibit and put an end to any act of discrimination against indigenous populations;
 - (2) To ensure that all national, regional and local public authorities and institutions, individuals and private groups and organizations act in accordance with the principle of non-discrimination against indigenous persons, groups or communities, and that they do not : (i) engage in any discriminatory act or practice; (ii) sponsor, defend or support discriminatory acts; (iii) prevent the full and equal exercise by indigenous populations of their human rights and fundamental freedoms.
 - (3) to promote the elimination of barriers between the indigenous non-indigenous segments of the population and discourage anything that

.../...

might tend to strengthen division and rivalry between them.

VIII. Prohibition, prevention, and elimination of discrimination against indigenous populations, particularly :

a. In the enjoyment of certain human rights and fundamental freedoms

21. Information on measures adopted to guarantee the right of everyone, whether indigenous or non-indigenous, to equality before the law, in respect of the following rights :

(1) The right to equal treatment before the tribunals and all other organs administering justice;

(2) The right to security of person and protection by the State against any violence of bodily harm, whether inflicted by government officials or by any individual, group or institution;

(3) The right to freedom of movement and residence within the borders of the State, including the right to leave one's country and to return to it;

(4) The right of access to any place or service intended for use by the general public such as transport, hotels, restaurants, cafes, theatres and spectacles, parks, beaches and markets;

b. In the enjoyment of certain other human rights and fundamental freedoms

22. Information on the prevention and elimination of discrimination and on any additional measures taken to make up for existing disadvantages and to ensure full enjoyment of certain human rights and fundamental freedoms. Particular attention will be given to the 10 areas dealt with in the following sections;

(1) Health, medical care, social security and social services
Discrimination and elimination thereof

23. Information on whether the existing public and private services in those fields are available equally to the indigenous and non-indigenous segments of the population (mentioning, in addition, any problems relating to the geographical distribution of medical and hospital facilities and personnel, prices and availability of medicines, etc.).

24. Statistical data on health, dietary and nutritional patterns; morbidity and mortality rates of the indigenous and non-indigenous segments of the population. Reasons for any differences.

25. Prohibitions of restrictions on the possession or consumption by the indigenous populations of intoxicating beverages and other toxic substances that do not apply to the rest of the population.

Special measures

26. Development of effective health measures among the indigenous populations and utilization, where possible of their prevailing cultural and religious traditions and everyday medical and para-medical practices.

27. Encouragement of the organization by the indigenous populations of their own health bodies.

28. Training of indigenous persons as medical and para-medical personnel and medical aids; special training for non-indigenous health personnel working among indigenous populations, including the necessary anthropological and psychological training of such personnel; special institutions established for that purpose.

29. Nutritional surveys of existing dietary differences and dissemination or development of the means needed to overcome these deficiencies.

30. Preventive medicine measures. Immunization, sanitary measures. Prevention and control of epidemic diseases that pose a special threat to indigenous populations and of the zoonotic diseases that may affect their livestock.

31. Prevention of harm to the natural environment of forest-dwelling populations. Protection of the existing balance and of the flora and fauna on which such populations now exist.

.../...

32. Curative medicine and surgery.
33. Sanitary measures in markets and other places where indigenous populations assemble for commercial, communal, ceremonial or religious purposes.
34. Programmes and institutions to combat alcoholism, the consumption of coca leaves and other drugs and the forms of drug addiction found among indigenous populations. Importance of certain cultural and communal aspects in this connection.

2. Housing

Discrimination and the elimination thereof

35. Direct or indirect limitations, restrictions and obstacles, whether de jure or de facto, imposed on the access of indigenous persons, families or groups to ownership, rental or occupation of housing; on public or private loans for construction or for the purchase or acquisition of public or private land for that purpose; or on participation by such persons, families or groups in public, private or mixed housing development plans.

36. Legislative, administrative and judicial provisions and measures to combat such discrimination, and the results achieved.

37. 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.

38. Prevention of dangerous or harmful construction in or around areas now occupied by housing for indigenous persons, families or groups.

Special measures

39. Public and private measures taken to alleviate the problems of inadequate housing for indigenous populations in rural and urban areas, with particular reference to :

(1) Protection of ownership, rental or occupation of housing by indigenous persons, families or groups ;

(2) Special rights granted to indigenous persons, families or groups in respect of access to housing under public or private development plans;

(3) Material services to indigenous persons, families or groups :

(a) Construction of housing;

(b) Provision of housing - purchase or rental of existing buildings;

(c) Improvement and repair of buildings already occupied;

(d) Grants and loans to indigenous persons, families or groups.

3. Education

39.(e) see below

Discrimination and the elimination thereof

40. Information regarding any direct or indirect impediments, limitations, restrictions or obstacles (either de jure or, as a result of economic, social and cultural factors, de facto) affecting indigenous persons, groups or communities with regard to :

(1) Access to all types and levels of education: (a) regulations and conditions governing admission to public or private schools of any kind in all grades and at all levels; (b) forms of aid, such as scholarships and grants, or provision of lodging, food, transport or clothing, whether or not education is provided free of charge; (c) geographical distribution of schools and other educational establishments; (d) measures taken to guarantee assistance for school-age children, including information on parental attitudes in this regard, particularly in rural areas.

(2) Training, employment and remuneration of teachers : (a) access of indigenous students to the same institutions as those to which non-indigenous students are admitted; (b) types and levels of training provided; (c) procedures and conditions governing the selection, appointment, protection and dismissal of indigenous teachers and the remuneration and other benefits they receive as compared with those received by non-indigenous teachers.

41. Measures of protection against such impediments, limitations, restrictions or obstacles.

39.(e) Subsidies to bodies financing the construction, acquisition or improvement of housing for indigenous persons, families or groups.

Special measures

42. Information as to whether appropriate arrangements have been made to ensure that indigenous children :

- (a) Have school facilities in their communities or nearby, or at least in a general area within easy reach;
- (b) Receive instruction from teachers with a fluent command of the children's mother tongue, the vernacular most widely used in the community or the language which prevails in the area;
- (c) Learn to read and write that language or vernacular;
- (d) Receive instruction in the essential elements of the indigenous culture of the community to which they belong;
- (e) Gain an understanding of the essential elements of the country's dominant culture in such a way that they are not estranged from their own cultural background;
- (f) Receive instruction in speaking, reading and writing correctly the official language of the country;
- (g) Benefit from any plans covering the provision of assistance, scholarships, allowances, grants, lodging, food, transport or clothing which have been devised particularly for them by the Government, by the indigenous communities or by organizations of any kind.

43. Information as to whether the educational programmes and materials prepared for the indigenous populations:

- (a) Have been developed in the light of the appropriate ethnological studies so that the methods and techniques used in connexion with them are in harmony with the cultural environment and take into account the degree of the indigenous population's closeness to or remoteness from the dominant culture of the country;
- (b) Place sufficient emphasis on the culture, traditions, history, arts and handicrafts of the indigenous populations;
- (c) Have been prepared with a view to ensuring that the valuable elements of the indigenous oral culture are not destroyed in the process of being reduced to writing for transmission in the written vernacular;
- (d) Contain elements relevant to the social and cultural characteristics of the indigenous communities so that they may gain awareness of their rights and obligations as a group and as individuals;
- (e) Place emphasis on the value of friendship between the various segments of the population and promote understanding and appreciation of the non-indigenous cultures.

44. Information as to whether the educational programmes and materials prepared for the non-indigenous population :

- (a) Embody appropriate measures to combat and eliminate misconceptions or prejudices which the non-indigenous populations may have with respect to the indigenous communities of the country;
- (b) 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;
- (c) Stress the need to recognize the right of the indigenous populations to preserve and further develop their cultural characteristics;
- (d) Place emphasis on the value of friendship between the various segments of the population and promote understanding and appreciation of the indigenous culture.

Information on educational establishments and institutions, indicating:

45. (1) Whether the indigenous communities or their leaders, or indigenous persons, groups or organizations, have participated or collaborated in founding and operating official or non-official educational establishments and institutions in their communities, or are participating or co-operating in their work, and, if so, in what way and to what extent;

.../...

(2) Whether there are indigenous educational facilities or institutions functioning independently of the official or non-official institutions and facilities active in the community and, if so, the kinds and levels of instruction offered.

(3) Whether such establishments and institutions are intended to serve school-age children only, or whether they are also used to meet the educational needs of the adult population and those of the community as a whole;

(4) Whether teachers and instructors are recruited, in so far as possible, from among the members of the indigenous communities themselves and preferably by persons who are familiar with the vernacular language and customs of such communities and who work closely with the leaders of the community in carrying out their duties.

4. Language

Discrimination and the elimination thereof

46. Impediments, limitations, restrictions or obstacle of any kind whatsoever affecting indigenous populations in the exercise of their right to use their own language in their private relations.

47. Measures of protection against such impediments, limitations, restrictions or obstacles. Penalties, remedies, recourse.

Special measures

48. Information on the following matters :

(1) Recognition given to the indigenous languages by the State and private institutions whether in the publication of legal texts; in statements made by public officials concerning government policy or in versions of such statements; in didactic and general literature; in newspapers and periodicals; in radio and television programmes. Libraries, whether for books, newspapers and periodicals, or sound recordings on disc or tape, and other repositories where materials in the vernacular languages are kept. Provision of facilities for the indigenous populations to use their own language, either orally or in writing, in legislative, judicial and administrative bodies;

(2) Instruction in the indigenous languages: (a) For indigenous persons - primary, secondary or higher education provided by the State or by public or private groups for indigenous persons or groups in their own language and cultural traditions. Establishment of separate schools for this purpose, or the institution of special programmes of this nature in general schools. Pre-school training of indigenous children in the language used in the schools they will attend; (b) For non-indigenous persons - instruction in the indigenous languages in institutions of primary, secondary and higher education, whether by means of optional courses or as part of the general curriculum;

(3) Study of the indigenous languages. State, public or private institutions involved in the study and development of the indigenous languages, whether in the form of special academics of institutes, of special linguistic departments or courses in educational institutions, or otherwise. Officially recognized alphabets of the indigenous languages; grammatical and philological studies, dictionaries of the indigenous languages, bilingual or multilingual dictionaries and texts. Translation of important texts into the vernacular languages and from these languages into others. Efforts to "modernize" certain indigenous languages.

(4) Teaching of the official language to indigenous persons at all and in educational institutions of every kind, and access of such persons to all information media utilizing that language.

(5) Culture and cultural, social and legal institutions

Discrimination and elimination thereof

49. Information concerning impediments to the exercise of or restrictions on the right of indigenous populations to equality with other segments of the country's population in access to cultural institutions and activities.

.../...

50. Information as to whether : (1) Marriages or unions between indigenous and non-indigenous persons are prohibited or restricted de jure or de facto (2) Legal or social limitations or restrictions are imposed on "mixed" unions or families; (3) The offspring of such unions have inferior status, de jure or de facto, merely because of the legal status of their parents' union; (4) Indigenous persons or groups are subjected to de jure or de facto limitations or restrictions with respect to certain civil and commercial acts involving the acquisition, mortgage, transmission or alienation of property and, if so, for what reasons.

51. Measures of protection, recourses and remedies against such impediments or restrictions.

Special measures

52. Information concerning action taken: (1) to establish measures for protection against the use of force or intimidation to compel or induce indigenous persons, groups or communities to take part in certain cultural activities or attend certain cultural institutions against their will; (2) to safeguard the maintenance and further development of the indigenous culture by persons, groups or communities which so desire through the establishment and operation of schools, libraries, museum and other special cultural and educational institutions, and to give due official recognition and protection to the important norms of such traditional law of the indigenous populations as may obtain in the indigenous communities with regard to: (a) marriage, informal or de facto unions, indicating whether such unions are regarded as comparable to or on an equal footing with other forms of civil or religious marriage, or with marriages of de facto unions which may have been recognized by the State; (b) family relationships and other aspects of family law; (c) divorce and the dissolution of formal or informal marital unions; (d) laws and practices in respect of succession; (e) acquisition, assignment, tenancy, use, transmission and alienation land, water or other important possessions; (f) corporate and co-operative forms of ownership and exploitation of land and other goods; (4) to protect successful commercial establishments and operation of the indigenous communities and their traditional industrial enterprises; (5) to take into account, in any reform programmes which may affect the indigenous populations, their particular views and basic perspective with regard to communal, familial and labour organization, and their views concerning the distribution, tenancy and use of land, water and other important possessions in the daily life of the indigenous communities; (6) to ensure that such changes and scientific and technological innovations as may be required are introduced into the indigenous communities in such a way as to avoid unnecessarily disturbing or traumatic effects; (7) to assist indigenous groups and persons from rural areas who have recently migrated to urban areas in adapting to the change in their environment and solving the problems which they may face in connexion with employment, housing and the social and psychological aspects of their new environment by providing them, for example, with special training, services and facilities to equip them to cope successfully with urban life.

6. Employment and vocational training

Discrimination and the elimination thereof

53. Direct or indirect de jure or de facto impediments or restrictions which may affect the right of the indigenous populations to work, the free choice of employment, trade union rights, working conditions and equitable and satisfactory remuneration, protection against unemployment and equal pay for equal work.

54. Measures of protection against and other measures to combat such impediments and restrictions. Penalties, remedies, compensation.

Special measures

55. Information as to whether the Government has established service to:

.../...

(1) 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;

(2) Regulate and supervise procedures for the recruitment of indigenous workers and their conditions of employment, in particular to ensure that:

(a) 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;

(b) Conditions of employment are offered which conform at least to minimum statutory provisions and regulations;

(c) Health standards are met and seasonal restrictions and minimum age requirements are observed;

(d) 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;

(e) It is possible for the indigenous workers to maintain adequate contact with their communities and appropriate communication with their families;

(3) Ensure that the remuneration of indigenous workers is protected and :

(a) Is paid only in legal tender, save for such portion as does not exceed the maximum legal percentage payable in kind or in services;

(b) Is never paid in alcohol, other intoxicating beverages or drugs;

(c) Is never paid in locations close to taverns or stores, except in the case of workers employed in such establishments;

(d) Is never subject to deductions, withholding or adjustments in excess of the maximum limits set for :

(i) the part which may be paid in goods or services;

(ii) the amount attachable to meet obligations incurred previously;

(iii) money which is to be paid directly to the family of the worker, under Government supervision;

(iv) recovery of salary advances;

(e) Is always paid in full, including the final payment in virtue of any contractual obligation upon termination of the work relationship.

(4) 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:

(a) He is incapacitated, by illness or accident, during the journey to the place of employment or during the period of employment;

(b) He is declared unfit for work after undergoing a medical examination;

(c) 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.

(d) The competent authority establishes that the worker was recruited by error or fraud on the part of the contractor or employer;

(5) 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.

56. Information as to whether the Government has established programmes 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

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disturb any fair labour arrangements for the organization of such activities which are essential to the indigenous tradition; programmes to obtain equitable and satisfactory prices and to protect designs and artistic characteristics against unfair competition from mass-produced reproductions; and programmes 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.

57. Information as to whether programmes of vocational training for the indigenous populations:

- (a) Are designed specifically for this purpose and are based on the appropriate ethnological and anthropological studies;
- (b) Make provision for the training of persons belonging to the indigenous populations as instructors;
- (c) Are conducted in the vicinity of the place where such persons live and work;
- (d) Insure that instruction is given, to the extent necessary, in the vernacular language;
- (e) Are co-ordinated with programmes and methods of basic education and with assistance measures enabling independent workers to acquire the necessary equipment and materials and enabling wage earners to find employment compatible with their abilities and aspirations.

58. Commercial training and agricultural training. 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.

7. The right of ownership, with particular reference to land
Discrimination and the elimination thereof in respect of ownership

59. De jure and de facto denials of or restrictions on the rights of persons, groups and communities to own property, individually or collectively.

60 Measures of protection against such denials or restrictions. Penalties, remedies, recourse.

Special measures

61. Legislative, executive, administrative and judicial measures adopted to protect the lawful property rights of indigenous persons, groups or communities., established by indigenous custom for the transmission by members of the indigenous communities of the right of land use; (2) prevent advantage being taken of such customs or of lack of understanding of non-indigenous laws and regulations to obtain the ownership of, or other rights to the use of, lands belonging to the indigenous populations or lawfully used by them.

64. Special provisions concerning the sale, mortgaging or otherwise encumbering, rental, attachment, etc., of lands belonging to indigenous persons, groups or communities, to, or for the benefit of, non-indigenous persons, groups or organizations, including-in certain cases- the requirement or prior authorization or subsequent approval by communal bodies or by the competent administrative or judicial authorities.

64. Special provisions concerning the investigation, establishment and registration of titles to land and to waterresources acquired by consuetudinary legal procedures and the registration of all land and all water resources to which they hold title, or the right of ownership of possession or in which they have shares.

65. Provisions to strengthen and further develop successful and appropriate co-operative procedures applied by the indigenous populations in connexion with systems of production, supply, marketing and credit with respect to land use, and other related factors.

66. Special measures to prevent and combat harmful practices with respect to mineral or other resources of the subsoil of land belonging to indigenous

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persons, groups or communities, applied at the time when such resources are discovered or thereafter.

67. Special measures to protect isolated indigenous populations and their fauna and flora against expanding non-indigenous settlements or enterprises.

68. Recognition of the authorities within the indigenous communities which control the distribution of land among their members, and support of such authorities.

69. Due consideration for the satisfaction of the needs of the indigenous populations with respect to land and the means to exploit it successfully, and the necessary legal provisions in this regard.

70. The major aspects of any agrarian reform programmes designed particularly to obtain land for the indigenous populations and to distribute to them means for working both the land which they already own and land which they are to receive under such programmes.

8. Political rights

Discrimination and the elimination thereof

71. De jure and de facto denials of or restrictions on the following rights of the indigenous populations, whether imposed directly or indirectly;

(1) The right to participate in elections and other operations conducted for the purpose of ascertaining the will of the public;

(2) The right of access to elective or non-elective public office, whether legislative, executive, administrative or judicial;

(3) The rights of peaceful assembly and association for political purposes, including the formation of and membership in political parties, and the right of freedom of expression for such purposes.

72. Measures of protection against such denials or restrictions.

Special measures

73. Information as to whether separate representation of the indigenous and non-indigenous populations has been established at any level and, if so, details as to the special conditions governing the separate electorates and separate administrative or judicial, and an indication as to whether such conditions work to the advantage or disadvantage of the indigenous populations of the country.

74. Information as to whether the indigenous organizations and communities have been recognized as local or regional political entities, indicating the manner in which such recognition has been granted.

75. Information, where appropriate, as to whether the indigenous communities concerned have been granted the necessary measure of autonomy or self-government in political or administrative matters or in the establishment of their own courts, or in all of these spheres.

9. Religious rights and practices

Discrimination and the elimination thereof

76. Information as to denials, limitations or restrictions existing de jure or in practice with regard to the right and freedom of the indigenous population:

(1) to profess its creed or religion, to practice or not to practice any particular religion, and to change or to retain any religion or creed;

(2) To express its creed or religion and to worship in accordance with its beliefs and customs;

(3) To comply with the tenets of religious practice and observance regarding, for example, the form of marriage and its dissolution, burial of the dead, religious celebrations and festivals, dietary practices, religious vestments, fasting, mortification, use of symbols and images, processions and other rites;

(4) To refrain from performing acts incompatible with the prescriptions of its religion or creed;

(5) To provide instruction in its religion or creed to co-religionists to train religious leaders, and to assemble in groups for the purpose of religious education;

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(6) To seek, receive and freely disseminate information and to propagate ideas concerning religion or creed, without thereby subject to persecution or coercion.

77. Measures of protection against such denials or restrictions.

Special measures

78. Information concerning special provisions and measures of protection, administrative, civil and penal, to prevent and combat any interference with acts of worship and religious practices and observances of the indigenous populations and to protect all altars, chapels and other sacred places and objects and ancestral burial grounds.

10. Legal assistance

Discrimination and the elimination thereof

79. Information as to whether programmes of legal assistance are applied equally to the indigenous and non-indigenous segments of the population or whether, on the contrary, distinctions are made to the detriment of the indigenous populations with regard to : spheres of application, services offered, organizations providing services, selection of legal counsel, requirements and conditions for granting aid, the authorities responsible for taking decisions in this connexion and the financial aspects of the matter.

Special measures

80. Information as to whether programmes of legal assistance have been set up within the country to serve indigenous populations in particular and, if so, indications as to the following :

(a) The spheres of application. Political and administrative matters; administration of justice. Legislative procedures regarding matters of interest to the indigenous communities;

(b) Services offered. Advice and oral or written opinions; preparation and drafting of legal documents; investigation; seeking and obtaining evidence; negotiations; preparation of cases; representation in trials of and appeals. Other services.

(c) Organizations providing services and status of legal counsel. Legal counsel employed by the Government for these purposes on a full-time bases and paid by the Government. Appointment of special legal counsel not in the Government's employ for these purposes, to provide representation in particular cases. Services provided by bar associations, public societies, legal aid societies, trade unions or peasants' associations; by indigenous communal organizations and other bodies, with or without financial support from the Government. Other provisions. Scope for the exercise of free choice of legal counsel under such programmes.

(d) Requirements and conditions. Information, in particular, as to whether the person seeking legal assistance must adduce : (1) lack or insufficiency of funds; (2) "reasonable grounds" for the legal action contemplated; (3) imminent abuse or violation of rights.

(e) Authorities responsible for deciding whether legal assistance should be granted and for ensuring and supervising the operation of the established services. Exemption from taxes in respect of such services.

(f) Financial aspects. Legal services free of charge or at a reduced fee. Exemption from taxes in respect of such services. Exemption from or reduction of charges, fees and costs. Assistance in providing financial guarantees as a condition for provisional release in criminal cases. Waiver, reduction or payment of the costs of obtaining evidence and of such expert services, translations and interpretations as are necessary. Loans and advances to cover necessary expenditures.