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COMMISSION ON HUMAN RIGHTS  
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Discrimination and Protection  
of Minorities  
Thirty-fifth session  
Item 12 of the provisional agenda

STUDY OF THE PROBLEM OF DISCRIMINATION  
AGAINST INDIGENOUS POPULATIONS

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

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#### EXPLANATORY NOTE

In the early 1940s, the organization of American States officially translated "Instituto indigenista interamericano" "Congresos indigenistas interamericanos" and "política indigenista" into English as "Inter-American Indian Institute", "Inter-American Indian Conferences" and "Indianist policy", respectively. For this reason this official OAS terminology has been kept here in the English version of this part of the report. Attention is drawn to the fact that today Spanish speaking indigenous representatives and organizations, as well as support organizations and groups, are using the words "indianista", "indianismo" and "indio" in contrast to and to repudiate the terms "indigenista", "indigenismo" and "indígena", which they reject as being associated with indiscriminate assimilationist policies and attitudes that have prevailed in the American countries from 1940 to 1980.

Although this causes very serious terminological difficulties in reflecting these differences when rendering these terms into the English language in the light of what has been explained above, this problem does not seem to pose any difficulties in the French language, as may be gathered from the article by Marie Chantal Barre "De l'indigenisme a l'indianisme" in Le Monde Diplomatique, March 1982.

### Chapter III

#### ACTION TAKEN BY THE ORGANIZATION OF AMERICAN STATES

##### A. Preliminary Remarks

1. This chapter contains references to the principal documents of the OAS which are pertinent to this study and describes the measures taken by the organs of the OAS whose functions are most directly related to indigenous affairs: the Inter-American Commission on Human Rights, the Inter-American Indian Institute, and the Inter-American Indian Conferences. Emphasis is placed on action by these bodies and of these Conferences during the period 1970 to 1981. The General Secretariat of the OAS was invited to submit a summary of the Organization's activities or to provide the necessary documentation. 1/ Unfortunately that information had not been received at the time this chapter was prepared; consequently, the Special Rapporteur has provided the following summary on the basis of those sources otherwise available to him.

##### B. Basic Provisions

2. The Charter of the Organization of American States of 1948, as amended by the Protocol of Buenos Aires in 1967, contains several provisions of particular relevance for the indigenous populations of the American countries: 2/ 3/

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1/ The most recent invitation to the Secretary-General of the OAS in this respect was made in a Note Verbale of 7 April 1981. Similar invitations were sent to the Director of the Inter-American Indian Institute most recently in a Note of 27 March 1981. The Executive Secretary of the Inter-American Commission on Human Rights, also received a similar invitation contained in a cablegram of 20 November 1981.

2/ Pan American Union, General Secretariat, Organization of American States. Charter of the Organization of American States, as amended by the Protocol of Buenos Aires in 1967. Treaty Series No. 1-C OAS Official Records OEA/SER.A/2 (English) Rev., pp. 3 et seq.

The Charter of the Organization of American States was adopted in 1948 at the Ninth International Conference of American States held in Bogotá 58 years after the American regional organization was established, for the purpose of giving that organization a permanent legal structure.

In 1964 the American governments resolved to hold a special conference in accordance with the Charter of Bogotá in order to strengthen the Inter-American system. To that end the Second Special Inter-American Conference was held in Rio de Janeiro in 1965. This conference declared in the "Act of Rio de Janeiro" that it was "essential to forge a new dynamism for the Inter-American system" and that, for such purposes, it was "essential to modify the working structure of the Organization of American States as defined in the Charter".

To achieve those objectives, the Second Special Inter-American Conference decided to convoke the Third Special Inter-American Conference and named the city of Buenos Aires as the site of that meeting.

After some preparatory work in Panama City (25 February-1 April 1966) carried out by a special committee, the Council of the Organization, made its observations and

- (a) Among the provisions included under "Principles":

"Article 3

"The American States reaffirm the following principles:

"...

- "h) Social justice and social security are bases of lasting peace;
- "i) Economic cooperation is essential to the common welfare and prosperity of the peoples of the continent;
- "j) The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex;
- "k) The spiritual unity of the continent is based on respect for the cultural values of the American countries and requires their close cooperation for the high purposes of civilization;
- "l) The education of peoples should be directed toward justice, freedom, and peace."

- (b) Provisions under "Fundamental Rights and Duties of States" include:

"Article 16

"Each State has the right to develop its cultural, political, and economic life freely and naturally. In this free development, the State shall respect the rights of the individual and the principles of universal morality."

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also acted upon a revision by the Inter-American Economical Social Council at special meeting in Washington D.C. (6-18 July 1966) of a text of draft amendments prepared by the Special Committee at Panama City, which dealt with Inter-American Co-operation in the Economic and Social Fields.

The Third Special Inter-American Conference met in Buenos Aires 15 to 27 February 1967 and, on the basis of the aforementioned proposals, approved a "Protocol of Amendment to the Charter of the Organization of American States", which it agreed to designate as the "Protocol of Buenos Aires". This Protocol was signed on 27 February 1967.

3/ The following countries have ratified the Charter of OAS as amended by the Protocol of Buenos Aires: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Commonwealth of Dominica, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenade, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Suriname, Trinidad and Tobago, United States, Uruguay and Venezuela.

(c) Provisions under "Economic Standards" include:

"Article 31

"To accelerate their economic and social development, in accordance with their own methods and procedures and within the framework of the democratic principles and the institutions of the inter-American system, the member States agree to dedicate every effort to achieve the following basic goals:

"...

"c) Adequate and equitable systems of taxation;

"d) Modernization of rural life and reforms leading to equitable and efficient land-tenure systems, increased agricultural productivity, expanded use of undeveloped land, diversification of production, and improved processing and marketing systems for agricultural products, and the strengthening and expansion of facilities to attain these ends;

"e) Accelerated and diversified industrialization, especially of capital and intermediate goods;

"f) Stability in the domestic price levels, compatible with sustained economic development and the attainment of social justice;

"g) Fair wages, employment opportunities, and acceptable working conditions for all;

"h) Rapid eradication of illiteracy and expansion of educational opportunities for all;

"i) Protection of man's potential through the extension and application of modern medical science;

"j) Proper nutrition, especially through the acceleration of national efforts to increase the production and availability of food;

"k) Adequate housing for all sectors of the population;

"l) Urban conditions that offer the opportunity for a healthful, productive, and full life;

"m) Promotion of private initiative and investment in harmony with action in the public sector; and

"n) Expansion and diversification of exports."

(d) Provisions under "Economic Standards" include:

"Article 43

"The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms:

- "a) All human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security;
- "b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working;
- "c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strikes, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws;
- "d) Fair and efficient systems and procedures for consultation and collaboration among the sectors of production, with due regard for safeguarding the interests of the entire society;
- "e) The operation of systems of public administration, banking and credit, enterprise, and distribution and sales, in such a way, and harmony with the private sector, as to meet the requirements and interests of the community;
- "f) The incorporation and increasing participation of the marginal sectors of the population, in both rural and urban areas, in the economic, social, civic, cultural, and political life of the nation, in order to achieve the full integration of the national community, acceleration of the process of social mobility, and the consolidation of the democratic system. The encouragement of all efforts of popular promotion and cooperation that have as their purpose the development and progress of the community;
- "g) Recognition of the importance of the contribution of organizations such as labor unions, cooperatives, and cultural, professional, business, neighborhood, and community associations to the life of the society and to the development process;
- "h) Development of an efficient social security policy; and
- "i) Adequate provision for all persons to have due legal aid in order to secure their rights."

"Article 44

"The Member States recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries, especially in the labor and social security fields, so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal."

(e) Among the Inter-American Organs foreseen in Article 51 and the corresponding articles of the Charter quoted below, are the Economic and Social Council, the Council for Education, Science and Culture, the Juridical Committee and the Commission on Human Rights. The Charter provides, inter alia:

i. On the Inter-American Economic and Social Council:

"Article 93

"The Inter-American Economic and Social Council is composed of one principal representative, of the highest rank, of each Member State, especially appointed by the respective Government.

"Article 94

"The purpose of the Inter-American Economic and Social Council is to promote cooperation among the American countries in order to attain accelerated economic and social development, in accordance with the standards set forth in Chapters VII and VIII."

ii. On the American Council for Education, Science and Culture:

"Article 99

"The Inter-American Council for Education, Science, and Culture is composed of one principal representative, of the highest rank, of each Member State, especially appointed by the respective Government.

"Article 100

"The purpose of the Inter-American Council for Education, Science, and Culture is to promote friendly relations and mutual understanding between the peoples of the Americas through educational, scientific, and cultural cooperation and exchange between Member States, in order to raise the cultural level of the peoples, reaffirm their dignity as individuals, prepare them fully for the tasks of progress, and strengthen the devotion to peace, democracy, and social justice that has characterized their evolution.

"Article 101

"To accomplish its purpose the Inter-American Council for Education, Science, and Culture shall:

- "a) Promote and coordinate the educational, scientific, and cultural activities of the Organization;
- "b) Adopt or recommend pertinent measures to give effect to the standards contained in Chapter IX of the Charter;
- "c) Support individual or collective efforts of the Member States to improve and extend education at all levels, giving special attention to efforts directed toward community development;
- "d) Recommend and encourage the adoption of special educational programs directed toward integrating all sectors of the population into their respective national cultures;

"...

- "g) Promote the education of the American peoples with a view to harmonious international relations and a better understanding of the historical and cultural origins of the Americas, in order to stress and preserve their common values and destiny;
- "h) Systematically encourage intellectual and artistic creativity, the exchange of cultural works and folklore, as well as the interrelationships of the different cultural regions of the Americas;
- "i) Foster cooperation and technical assistance for protecting, preserving, and increasing the cultural heritage of the Hemisphere;

"...

- "l) Strengthen the civic conscience of the American peoples, as one of the bases for the effective exercise of democracy and for the observance of the rights and duties of man;
- "m) Recommend appropriate procedures for intensifying integration of the developing countries of the Hemisphere by means of efforts and programs in the fields of education, science, and culture; and
- "n) Study and evaluate periodically the efforts made by the Member States in the fields of education, science, and culture."

iii. On the Inter-American Juridical Committee:

"Article 105

"The purpose of the Inter-American Juridical Committee is to serve the Organization as an advisory body on juridical matters; to promote the progressive development and the codification of international law; and to study juridical problems related to the integration of the developing countries of the Hemisphere and, insofar as may appear desirable, the possibility of attaining uniformity in their legislation."

iv. On the Inter-American Commission on Human Rights:

"Article 112

"There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.

"An inter-American convention on human rights shall determine the structure, competence, and procedure of this Commission, as well as those of other organs responsible for these matters."



C. International Declarations, Recommendations or Conventions  
Adopted under OAS Auspices

3. The American Declaration of the Rights and Duties of Man, adopted as resolution XXX of the Ninth International Conference of American States (Bogotá, 30 March - 2 May 1948), sets forth the principles of equality before the law and non-discrimination:

"Article 11. All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

"...

"Article XVII. Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights." 4/

4. Specific reference to the duties of States with regard to indigenous populations is made in The Inter-American Charter of Social Guarantees which was adopted as resolution XXIX at the Bogotá Conference:

"Article 39. In countries where the problem of an indigenous population exists, the necessary measures shall be adopted to give protection and assistance to the Indians, safeguarding their life, liberty and property, preventing their extermination, shielding them from oppression and exploitation, protecting them from want and furnishing them an adequate education.

"The State shall exercise its guardianship in order to preserve, maintain and develop the patrimony of the Indians or their tribes; and it shall foster the exploitation of the natural, industrial or extractive resources or any other sources of income proceeding from or related to the aforesaid patrimony, in order to ensure in due time the economic emancipation of the indigenous groups.

"Institutions or agencies shall be created for the protection of Indians, particularly in order to ensure respect for their lands, to legalize their possession thereof, and to prevent encroachment upon such lands by outsiders." 5/

5. The Tenth Inter-American Conference (Caracas, 1-28 March, 1954) recommended that the member States of OAS take measures to abolish racial discrimination (Resolution XCIV):

Whereas:

The danger to the security of our countries and to continental solidarity represented by the action communism demands that the authorities of each State adopt a series of measures designed to enforce the principles of the American Declaration of the Rights and Duties of Man and eliminate the causes that may be favourably exploited in attacking democracy;

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4/ The International Conferences of American States, op. cit., Second Supplement (1942-1954), pp. 263-270.

5/ The International Conferences of American States, op. cit., Second Supplement (1942-1954), pp. 254-263. Article 39 appears on page 262.

The existence of discriminatory practices by reason of race not only weakens the most basic norms supporting democratic doctrine, but also promotes the continuation of a favourable climate for the action of communist propaganda; and

Racial discrimination is contrary to what is declared and stipulated in the Charter of the United Nations, the Charter of the Organization of American States, the Universal Declaration of Human Rights, and the American Declaration of the Rights and Duties of Man.

The Tenth Inter-American Conference

Recommends:

That the American States adopt or strengthen, wherever it is deemed necessary, legal and educational measures to make effective the abolition of racial discrimination, thus fulfilling the American concept of the rights of man and as one of the ways to fight international communism. 6/

6. The American Convention on Human Rights, which entered into force on 18 July 1978, and which has been ratified by 16 member States of the OAS, 7/ imposes on States parties the duty to respect the principles of non-discrimination and equality before the law: 8/

Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, "person" means every human being.

Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

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6/ The International Conferences of American States, op. cit., Second Supplement, (1942-1954), p. 435.

7/ The following member States of the OAS are States parties to the American Convention on Human Rights: Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru and Venezuela.

8/ The full text of the declaration is to be found in: General Secretariat of the Organization of American States. Inter-American Specialized Conference on Human Rights. San José, Costa Rica, 7-22 November 1966, Acts and Documents, reprinted in 1978, pp. 480-506.

D. Action by the Inter-American Commission on Human Rights

7. The Inter-American Commission on Human Rights (IACHR) is an organ of the Organization of American States which was established to promote the observance and defence of human rights and to serve as a consultative organ of OAS. <sup>9/</sup> For the purposes of the Commission's work, human rights are defined in its Statute as those set forth in the American Convention on Human Rights and those included in the American Declaration of the Rights and Duties of Man. In carrying out its functions, the Commission is empowered, inter alia, to make recommendations to the Governments of Member States of OAS, to prepare studies and reports, and to act upon petitions and other communications concerning alleged violations of human rights. <sup>10/</sup>

8. In response to United Nations Economic and Social Council resolution 1589 (L), inviting 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 (para. 5), the Commission adopted the following decisions at its twenty-sixth session (October-November 1971):

"1. To instruct the Secretariat to prepare a document compiling all claims received by the Commission denouncing events that violate the human rights of indigenous populations.

"2. To request State members to make known to the rapporteur their observations or comments, as well as legislation on indigenous populations in their respective countries.

"3. To appoint Dr. Gabino Fraga as rapporteur for this topic so that, with the co-operation of the Inter-American Indian Institute, located in Mexico and taking into consideration the document the Secretariat will prepare, and information provided by the members, he can present a report with conclusions and recommendations on this topic, and thus allow the Commission to continue its study of the topic on the 'special protection for indigenous populations and the struggle against racism and racial discrimination' in future sessions." <sup>11/</sup>

9. At its twenty-seventh session (February-March 1972) the Commission noted that the Secretariat had addressed a letter to the Director of the Inter-American Institute in relation to resolution 1589 (L) of the United Nations Economic and Social Council, in order to report the decision adopted in this matter. At that session, however, because of the absence of the Rapporteur owing to reasons beyond his control, the Commission decided to postpone consideration of this matter until its next regular session.

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<sup>9/</sup> See articles 51(e) and 112 of the Charter of the OAS as amended by the Protocol of Buenos Aires.

<sup>10/</sup> For a more complete description of the functions and powers of the IACHR, see articles 18-20 of its Statute, OEA/Ser.P. AG/doc. 1180, 30 October 1979.

<sup>11/</sup> Paragraphs 8-12 are based upon the Annual Report of the IACHR to the General Assembly, OAS Doc. No. OEA/Ser.P-AG/doc.305/73/Rev.1, 14 March 1973.

10. In accordance with paragraph 1 of the decision adopted at the twenty-sixth session, the Secretariat of the Commission prepared a document reporting on communications received regarding violations of human rights committed against indigenous populations (doc. 9-29) which compiles the pertinent denunciations and refers to the processing of such cases. The document is supplemented by appendices pertaining to each case, which are included in the respective dossiers.
11. The Commission considered this topic at its twenty-ninth session (October 1972) on the basis of the document prepared by the Secretariat. In addition, the Rapporteur of this topic, Dr. Gabino Fraga, reported that he was preparing an initial study of this subject, which he would submit to the Commission at its next session.
12. Taking into account the statement of the Rapporteur, the Commission decided to continue its study of the topic at its next regular session, after presentation of Dr. Gabino Fraga's preliminary report.
13. At its thirty-second regular session (April 1974) the Commission heard Mr. Fraga's report 12/ regarding his efforts in this matter and decided to continue its study of this topic.
14. At its twenty-ninth session, the Commission also considered a draft resolution<sup>13/</sup> on the Indian populations submitted as a contribution to the study of this topic (doc. 38-29) which was approved, with amendments, in the following terms:

"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 offences 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 defence established by the laws of the respective states is particularly difficult: and

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12/ Organization of American States. Inter-American Commission on Human Rights. Press Release No. 16, (19 April 1974), p. 2.

13/ Ibid., OEA/SER.L/V/II.29, doc. 38 of 27 October 1972, twenty-ninth session. Resolution approved by the Commission at its 10th meeting held on 27 October 1972.

"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 recommendations made at earlier sessions and to the supplementation of the works 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 defence of the human rights of indigenous persons, who should not be the object of discrimination of any kind.

"2. That the action 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.

15. At its thirty-second regular session the Commission decided to make preparations for a seminar that, in conjunction with the Inter-American Indian Institute would be held with the purpose of "contributing to the defence of the American aboriginal races and the eradication of racial discrimination in the hemisphere."

16. In its Annual Report for 1973, the Inter-American Commission informed the OAS General Assembly of the threat to the right to life of indigenous communities posed by the invasion of their lands and noted the failure of the laws of some countries to guarantee to the indigenous population equal benefits and protection in matters of health, education and housing. Consequently, the IACHR made the following recommendation:

"That efforts should be redoubled with a view to ensuring adequate protection of indigenous populations and, in general, of social groups which, by reason of their low cultural level are hardly capable of defending themselves, and guaranteeing them peaceful enjoyment of the fundamental human rights". 14/

17. In its Report on the Situation of Human Rights in Colombia (1981), the IACHR found that military operations against subversive elements, carried out in rural areas, had led to excesses committed against rural inhabitants and, to a lesser degree, against indigenous communities. It cited abuses of authority giving rise to mass detentions and the flight of citizens in rural areas. On the other hand, it was of the opinion that the Government had adopted measures that would tend to benefit indigenous communities. 15/ With regard to the need to protect rural inhabitants and indigenous communities from excesses associated with military operations, the Commission recommended the following:

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14/ IACHR. Annual Report for 1973 of the Inter-American Commission on Human Rights. OAS Doc. No. OEA/Ser.P. AG/doc. 109/74, 5 March 1974, (translated from original Spanish, pp. 27-30).

15/ IACHR. Report on the Situation of Human Rights in the Republic of Colombia, OAS Doc. No. OEA/Ser.L/V/II. 53, doc. 22, 30 June 1981, (translated from original Spanish, p. 220).

"(a) That, in carrying out the said operations, the necessary steps should be taken to protect all persons unconnected with the activities, especially the peasants and indigenous persons residing in the areas that are the subject of the operations;

(b) That, in the rural areas, special arrangements should be made for dealing with the claims of persons affected by such operations with a view to ensuring that they are effectively protected; and

(c) That special priority should be given to the Plan for Indigenous Development that is in the course of implementation; that the norms of Convention No. 107 of 1957 of the International Labour Organisation in the matter should be respected and that the approval of legislative measures designed to promote better living conditions and development for the indigenous communities, that are compatible with human dignity, should be expedited." 16/

18. The Commission's Report on the Situation of Human Rights in Guatemala (1981) contained the following observations with respect to the situation of the Indian population:

"2. Economically and socially, the poorer half of the Guatemalan population consists of indigenous persons. Guatemala's economy is sharply divided into a non-indigenous urban population and an indigenous rural population. The latter people are exceedingly poor and are socially and culturally isolated from the more modern urban centres. They live on the high plateaux as subsistence farmers on smallholdings. They are so remote from any cultural facilities that they do not even learn Spanish; they speak a dialect of one of the 17 Indian languages that have originated from Kelchí, Quiché, Mam or Cakchiquel. Life expectancy and literacy rates are disproportionately low, as are their land and income ratios. Since the high plateaux are not generally suitable for the intensive cultivation of corn, beans and other basic cereals that provide their main diet, most of the indigenous people eke out a living by emigrating seasonally to work on the large commercial holdings." 17/

19. On June 28, 1981, the Inter-American Commission held hearings at its seat in Washington in relation to allegations that the Government of Brazil is violating the rights of the Yanomani Indians. Inasmuch as the case is still under consideration, no comments are available from the Commission itself, but one source has made the following observations with regard to the hearings:

" ... Four representatives from the five complainant organizations presented testimony before the Commission: Dr. William Sturtevant, President of the American Anthropological Association; Joseph Ryan of the Indian Law Resource Center; Dr. Shelton Davis of the Anthropology Resource Center; and Dr. Ken Taylor of Survival International USA in Washington. The witnesses alleged violations of the Yanomami's rights in a number of areas: equality before the law; basic civil rights; residence; property ownership; preservation of health and well-being; life and liberty."

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16/ Ibid., p. 222.

17/ IACHR. Report on the Situation of Human Rights in Guatemala, CAS Doc. No. OEA/Ser.L/V/II. 59, doc. 12, 13 October 1981, (translated from original Spanish, p. 128).

"The Inter-American Commission responded very favorably to the testimony presented, declaring that the case of the Yanomami was one of the best-documented cases of human rights violations they had received ...

.... The Brazilian government is now expected to respond the rejoinder, and the interchange will continue in this way until the Commission has received all of the evidence it requires. At that time, it will write its report on the case and take the actions it considers appropriate." 18/

E. Action by the Inter-American Indian Institute (III)

20. Attention is focused here on the most recent activities (1971-1981) of this specialized organization of OAS located in Mexico City, as reported in the latest documents available to the Special Rapporteur.

21. Before doing so, it is deemed important to give a very brief indication of the Institute's legal basis and main functions, without prejudice to including a more adequate summary thereof in a future report in connection with the study.

22. The Institute was founded by and is based on the International Convention relating to the Inter-American Indian Conferences and the Inter-American Indian Institute, which was signed in December 1940. 19/ As of April 1972, this convention had been ratified by 17 countries. 20/ An agreement was signed with OAS in 1953 whereby the Institute was formally recognized as a specialized organization of OAS (fourth preambular paragraph). 21/

23. The Institute has acted as permanent committee of the Inter-American Indian conferences and has initiated, directed and co-ordinated action in this field. An Anthropological Investigation Department has been established for the study and evaluation of methods and techniques presently used in particular countries. The Programme for Training in Indian Community Development Techniques has established centres for this purpose. When requested by Governments to do so, the Institute renders advisory services and technical assistance. It has three periodical publications: the quarterly América Indígena, the yearly Anuario Indigenista and, since 1978, a bulletin entitled Noticios Indigenistas. The Institute is publishing a series of compilations on Legislación Indigenista and several series of books including one on La Antropología Social en América Latina and another on Legado Cultural de la América Indígena.

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18/ Human Rights Internet Reporter, 7:1, Sept.-Oct. 1981, pp. 24-25.

19/ Final Acts of the first three Inter-American Indian Congresses. Publications of the Organizing Committee of the Fourth Inter-American Indian Congress, Guatemala City, Guatemala, pp. 187-205.

20/ Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, United States and Venezuela.

21/ Final Acts of the first three Inter-American Indian Congresses, ... op. cit., pp. 181-186.

24. The holding of seminars for the purpose of training indigenous and non-indigenous professionals who work in indigenous affairs has been one of the most important activities of the Institute. In the period 1971-1975 it sponsored or co-sponsored 40 seminars, the duration of which varied from 15 to 60 days, on subjects relating to: Anthropology, Indigenismo and Development; Education, Indigenismo and Development; and Agrarian Reform, Anthropology and Indigenismo. These seminars were held in 10 different countries and involved more than 1,500 participants who received some form of fellowship or subsidy. 22/

25. Owing to a lack of funds, only a few fellowships for academic study were offered by the Institute itself. However, the Institute was active in encouraging other Institutions, governments and international organizations to grant fellowships in areas related to indigenous affairs. At the same time, it played an important role in providing orientation to numerous persons who were seeking financial support for specialized studies.

26. Plans were drawn up by the Institute for a Training Centre for Personnel who would work in Indian and rural development. According to the Director of the Institute, the Government of Ecuador had offered its full support for the establishment of the training centre in that country.

27. Some 40 research projects were planned and initiated or carried out in the period 1971-1980 with the support of the Institute and resulted in publications on indigenous medicine, internal migration, demography, interethnic relations, rural education and various anthropological topics.

28. The Institute has also maintained contact with and acted in an advisory capacity to the national Indian Institutes and government offices such as FUNAI (Brazil), OCAI (Venezuela), CONAI (Costa Rica) and SINAMOS (Perú).

29. With the support of Canada's International Center for Developmental Research, the Institute had carried out feasibility studies for the establishment of SEDIAL (Servicio de Documentación Indigenista para América Latina), 23/ an information network for the collection, classification and diffusion of information related to indigenous studies in the Americas.

30. In response to the Institute's call for concrete action on behalf of the indigenous communities of the Americas, the Seventh Regular General Assembly of the OAS (St. George's, Grenada, July 1977) approved resolution 270, "Inter-American Indian Action", which charged the Institute with preparing a Five Year Inter-American Indian Action Plan. This plan, which proposes some 22 programmes to be undertaken by the Member States of OAS, for the purpose of raising the standard of living of the Indian population and overcoming discrimination, was approved by the Eighth Regular General Assembly (Washington D.C., November 1980). The same resolution

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22/ Paragraphs 24 to 29 are based on information contained in the report submitted to the Institute by Gonzalo Rubio Orbe, who was its Director from June 1971 to June 1977. (See "Informe Final de Labores", Anuario Indigenista, Vol. XXXVII, December 1977, 165-262) and the report which Dr. Oscar Arze Quintanilla, Director of the Inter-American Indian Institute, submitted to the Inter-American Indian Conference No. VIII (Mérida, Yucatán), 17 to 21 November 1980, OAS Doc. No. OEA/Ser.K/XXV.1.8, CII/doc. 29, 16 November 1980.

23/ See para. 51, below, the reference to Forum III, VIII Inter-American Indian Congress (17-21 November 1980).



(AG/RES. 422) requests the Governments to take urgent action to carry out the plan and recommends that they make an annual report to the Institute, which will inform the OAS General Assembly of the progress made. In complementary resolutions the Eighth Regular General Assembly instructed the General Secretariat to convoke a meeting to co-ordinate international action in this area (AG/RES. 423) and recommended that III establish a multilateral fund to support the Plan (AG/RES. 424).

31. The co-ordinating meeting was held at the seat of the General Secretariat of the OAS on August 21-22, 1980. Representatives of the following entities offered their co-operation with the Plan: the Inter-American Commission of Women, ILO, the Inter-American Institute of Agricultural Sciences, AID, the Pan-American Development Foundation, IBRD, ECLA, UNESCO, IDB, the Canadian International Development Agency and International Development Research Center, PAHO, and FAO. The participants resolved to keep the Institute informed of their activities and programmes relevant to the Plan and requested the Institute to prepare an inventory of such activities and to continue its bilateral contacts with international organs as a basis for future joint action. 24/

#### F. Action by the Inter-American Indian Conferences

32. These Conferences are organs of the Organization of American States. 25/ The Inter-American Indian Conferences are contemplated in the third preambular paragraph and in articles I (1) and II of the International Convention relating to the Inter-American Indian Conferences and the Inter-American Indian Institute (1940), and in articles II, IV, V, and VI of the Agreement signed by the Organization of American States and the Inter-American Indian Institute (1953).

33. Up to 1981, eight of these Conferences had been held, as follows: I - at Patzcuaro, Mexico (1940); II - at Cuzco, Peru (1949); III - at La Paz, Bolivia (1954); IV - at Guatemala City (1959); V - at Quito, Ecuador (1964); VI - at Patzcuaro, Mexico (1968); VII - at Brasilia, Brazil (1972), and VIII - at Mérida, Yucatán, México (1980).

34. The resolutions taken at these conferences concern indianist policy, greater use of specialized or Indian personnel, law, the agrarian problem, public health, economy, education, applied anthropology, social services and the Indian family.

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24/ (Informe sobre la Reunión de Coordinación con Organismos Internacionales para Apoyo a las Actividades del Plan Quinquenal de Acción Indigenista Interamericana) (Report on the Co-ordinating Meeting with International Organizations for Support for Activities of the Five-Year Plan of Inter-American Indigenous Action), Inter-American Indian Conference No. VIII (Mérida, Yucatán, México), 17-21 November 1980, OAS Doc. No. OEA/Ser.K/XXV.1.8,CII/doc. 15, 12 November 1980, pp. 12-13.

25/ In accordance with the Charter of OAS as amended by the Protocol of Buenos Aires (1967), the Inter-American system includes the Specialized Conferences (article 51-g), which meet when purely technical matters are under discussion or when special aspects of Inter-American co-operation are to be dealt with. Specialized Conferences are held when the General Assembly or the Meeting of Consultation of Ministers of Foreign Affairs call for such meetings, or when treaties or agreements require them (articles 128 and 129).

35. In so far as indianist policy (política indigenista) these conferences have recommended the re-districting of political-administrative divisions in cases where Indian populations are arbitrarily divided; the establishment of offices of Indian Affairs as co-ordinating bodies for the better utilization of government resources; norms the colonization projects involving Indians; the election of local authorities by popular vote with the participation of illiterates; recognition of the juridical personality of Indian communities; recognition of the special health and economic conditions of the Indians in decisions regarding military service; provisions for universal suffrage; special attention and assistance to Indians in frontier areas and guarantees to Indian immigrants equal to those of nationals of the host country.

36. In the area of social change the recommendations include norms for the preservation and respect of indigenous culture and institutions, general guidelines for community development, economic programmes, and the work of the national indigenist institutes.

37. Several conferences have made recommendations that special training be given to government representatives who work with Indian communities and that more Indian personnel be utilized in those positions.

38. Legislation has been recommended which would allow judges to take Indian customs and circumstances into account, provide for equal civil rights for the Indian woman, guarantee Indian property rights - private as well as communal, assure equal social services, regulate the conditions of agricultural labour, recognize Indian marriages or common-law marriages, create free legal services and promote the formation of co-operatives.

39. Agrarian reform has been a special area of emphasis. The recommendations underline the importance of an agrarian reform which would not only distribute land to the Indian but would guarantee the necessary credit and assistance for its exploitation.

40. Measures proposed for the improvement of public health include special training in rural medicine, the establishment of rural health centres, research into the effects of alcohol and the use of toxic drugs among Indian communities, health education programmes and the utilization of indigenous personnel in health programmes.

41. Recommendations for economic measures refer to protection of folk art, agricultural credit, the opening of roads into isolated areas populated by indigenous peoples, the creation of organs to control salaries and contracts in rural areas, the improvement of communications, guidelines for developmental planning, particularly those which consider local characteristics.

42. In the area of education, proposals focus upon the need to preserve the Indian languages and culture, to involve the community, to give appropriate emphasis to practical training and to make education more readily available to Indians, both adults and children.

43. The following types of academic studies have been recommended: applied anthropology, traditional plants and medicine, indigenous pathology, statistical studies of the Indian reality, the effect of drugs and alcohol, dietary patterns, historical demography, internal migration, and social structures.

44. In the realm of social services, the establishment of "popular" restaurants and school breakfast programmes has been suggested, along with other measures to improve nutrition. In particular, the extension of social security and social services has been stressed.

45. In so far as Indian family life is concerned, the conferences have recommended that matrimony be promoted, that special care be provided to mothers and infants, and that the status of the Indian woman be improved.

46. Inter-American Indian Conference held its eighth session at Mérida, Yucatán, 17-21 November 1980. The Conference established four Committees to deal with specific aspects of its deliberations. Committee I - Current Indianist Policies; Evaluation and Perspectives; Committee II - Development in Indian Areas; Committee III - Five-Year Indian Action Plan; and Committee IV - Indian Groups in Frontier Areas.

47. Committee I recommended a new approach to the Indian question, based upon a recognition of ethnic identity and of the economic exploitation to which Indians had been subjected historically. This approach would require an abandonment of paternalism on the part of Governments and responsiveness to what Indians and their representatives are demanding. It also called for the defence of Indian lands through new legislation which would protect the various forms of indigenous ownership, the right of Indian organizations to participate in the formulation of public policy, the promotion of Indian languages through legislation, education and literacy programmes. And finally it asked the Governments to force the withdrawal of national or foreign entities that tend to destroy Indian cultures and to support the founding of an Indian University of the Americas. 26/

48. Two areas were the concern of Committee II - Indian participation in development and land titles. The best means of promoting progress among Indian groups was deemed to be the location of development projects in Indian areas but with the full participation of, and in consultation with, those groups affected. In so far as landholding was concerned, the Committee suggested a programme that would not only legalize tenuous possession in certain cases, but also provide for restitution of lands traditionally held by Indian communities or for additions to the holdings of Indian communities in order to allow for economic progress. These measures would be carried out as part of an integral land reform which would include programmes to guarantee minimum standards of well-being. In addition Committee II made a special recommendation to the plenary in favour of a motion requesting the investigation of the activities of the Summer Institute of Linguistics in various countries. 27/

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26/ Políticas approved by the Committee (Recomendaciones de la Comisión I "Políticas Indigenistas Actuales, Evaluación y Perspectivas" aprobadas por la Comisión de Iniciativas y Coordinación). Inter-American Indian Conference No. VIII (Mérida, Yucatán), 17-21 November 1981, OAS Doc. No. OEA/Ser.K/XXV.1.8, CII/doc.16/Rev.1, 20 November 1980.

27/ Informe y Recomendaciones presentadas por la Comisión 2 "Programas de Desarrollo en Areas Indígenas. Participación, Coordinación, Organización, Producción y Patrimonio Cultural". aprobadas por la Comisión de Iniciativas y Coordinación. Inter-American Indian Conference No. VIII (Mérida, Yucatán), 17-21 November 1980, OAS Doc. No. OEA/Ser.K/XXV.1.8, CII/doc. 48/Rev.1, 20 November 1980, pp. 1-4.

49. With regard to the Five-Year Indian Action Plan, Committee III recommended that each project should provide for the maximum of community control and participation and assure property rights, land use and access to natural resources of those communities affected. It also suggested that Indian administrators and lawyers be trained and utilized in the planning and administration of those projects. In response to the disastrous results of rapid expansion into the Amazon region, it expressed support for the establishment of an Amazon Commission (originally recommended by the Inter-American Indian Conference at its fifth session) which would protect the Indian communities by co-ordinating and regulating the development of that region. 28/

50. Committee IV expressed the concern that national frontiers are disruptive of the cultural, political and social unity of ethnic groups who live along those frontiers and who have particular problems related to national identity, education, the availability of social services, military service, religion, freedom of transit and trade. In two recommendations directed at this problem, the Committee made specific proposals based upon the concept of bilateral agreements between the frontier States which would take into account international human rights instruments. Specific cases of ethnic groups in frontier areas were mentioned. 29/

51. Concurrently with the activities of the VIII Inter-American Indian Congress, three discussion forums were held on topics related to the Five-Year Indian Action Plan. Forum I was devoted to the consideration of how indigenous technology and non-conventional means of transportation might be developed and better utilized. Forum II explored the future development of Indianist movements. Among the measures it suggested to the VIII Congress were (a) a resolution against the repression of Indianist groups; (b) a resolution which would provide for more recognition of Indianist movements at the national and international levels; (c) a request that Governments supporting genocide or ethnocide be expelled from the Inter-American Indian Institute; (d) a resolution in support of bilingual and bicultural education; (e) support for the training of Indian ethnolinguists; (f) the publication of proposals by Indian groups in the organ of the Inter-American Indian Institute; and (g) the expulsion of the Summer Institute of Linguistics from Indian areas where it is working. Forum III discussed the organization and objectives of the Servicio de Documentación Indigenista para América Latina (SEDIAL). 30/

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28/ Informe y Recomendaciones Presentadas por la Comisión 3 "El Plan Quinquenal de Acción Indigenista Interamericana Acciones para su Ejecución. Actividades de Apoyo Nacional e Internacional", aprobadas por la Comisión de Iniciativas y Coordinación. Inter-American Indian Conference No. VIII (Mérida, Yucatán), 17-21 November 1980, OAS Doc. No. OEA/Ser.K/XXV.1.8,CII/doc. 47/Rev.1., 20 November 1980, pp. 2-9.

29/ Recomendaciones de la Comisión 4 "Problemas de Grupos Indígenas en Areas Fronterizas", aprobadas por la Comisión de Iniciativa y Coordinación. Inter-American Indian Conference No. VIII (Mérida, Yucatán), 17-21 November 1980, OAS Doc. No. OEA/Ser.K/XXV.1.8,CII/doc. 49/Rev.1, 20 November 1980, pp. 1-7.

30/ For further information, see Foros Paralelos al VIII Congreso Indigenista Interamericano, Inter-American Indian Conference No. VIII (Mérida, Yucatán), 17-21 November 1980, OAS Doc. No. OEA/Ser.K/XXV.1.8,CII/doc. 36, 17 November 1980, pp. 1-4.