

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/Sub.2/476
30 July 1981

ENGLISH
Original: SPANISH/ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Thirty-fourth session
Item 10 of the provisional agenda

STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST
INDIGENOUS POPULATIONS

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

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INTRODUCTION

1. A formal introduction will be drafted later; but these lines have been written to introduce the first part of the Final Report which is being submitted to the Sub-Commission for consideration this year.
2. Work on the elaboration of the material which is to serve as the basis and foundation of the study has continued. In particular, preparation of the draft summaries of information on the countries to be covered in this study has been completed.
3. In the interval between last year's session and this session, all outstanding work on the preparation of drafts on certain countries has been completed, and the drafts have been sent to the Governments concerned. During the same period, only one of the Governments which received draft summaries in 1979 and 1980 has submitted comments and supplementary data.
4. Summaries on two countries which had been awaiting finalization have been sent to the Governments of those countries in the last few months. The members of the Sub-Commission will recall that, according to the relevant directives,^{1/} the summaries have to be forwarded to the Governments for their information, and Governments may, if they so wish send comments and supplementary data in relation to them. The minimum period for this is two months, which means that these two summaries which were forwarded only recently cannot be cited formally or fully until October or November of this year.
5. In the case of other summaries which were sent out earlier, replies from Governments are still being awaited; and although these texts could already be formally closed, the information that could be supplied by Governments would fill some major gaps in them and, consequently, nothing is lost by keeping them open. In other cases, the Special Rapporteur has been awaiting the receipt of information promised.
6. However, in preparing this part of the Final Report, use has been made of materials still not finally confirmed according to this process; but this was considered to be in order since it relates to matters not open to dispute, such as constitutional and legal provisions which are known to be still in force, or governmental or non-governmental statements which do not have to be changed on submission of supplementary data or comments.
7. Accordingly, all the material being submitted this year relates to the 37 countries covered by the study which are, in alphabetical order: 1. Argentina, 2. Australia, 3. Bangladesh, 4. Bolivia, 5. Brazil, 6. Burma, 7. Canada, 8. Chile, 9. Colombia, 10. Costa Rica, 11. Denmark (Greenland), 12. Ecuador, 13. El Salvador, 14. Finland, 15. France (French Guyana), 16. Guatemala, 17. Guyana, 18. Honduras, 19. India, 20. Indonesia, 21. Japan, 22. Laos, 23. Malaysia, 24. Mexico, 25. New Zealand, 26. Nicaragua, 27. Norway, 28. Pakistan, 29. Panama, 30. Paraguay, 31. Peru, 32. Philippines, 33. Sri Lanka, 34. Surinam, 35. Sweden, 36. United States of America and 37. Venezuela.

^{1/} E/CN.4/Sub.2/L.566, paras. 41 and 56.

8. The data used in preparing this report were the data available at the time of the drafting of each part. As has been stated above, in some cases information has been used exactly as it appeared in the draft summaries sent to the Governments concerned for their comments and supplementary data, since the period of two months prescribed in the relevant directives for awaiting the submission of comments and data has elapsed some time ago and the texts can now be considered as final. In the case of some countries, the Special Rapporteur has been awaiting comments and data that have been promised, but he has not yet received them.

9. The summaries relating to the countries covered by the study were prepared on the basis of information from governmental and non-governmental sources which were or were made available for this purpose. It is impossible to list the many non-governmental sources used, but a brief reference may be made to the data furnished by the Governments of several of these countries on the various occasions provided for in the directives for the preparation of the summaries. At the time when this introduction was drafted, the situation was as follows: several of the countries concerned had made initial contributions (of different kinds and in varying degrees of detail). Some had been visited in connection with the study. All had received the draft summary so that they could, if they wished, submit comments and data to supplement the text of the draft; and several of them had done so. Others had promised information but it had not been received at the time of drafting; or it had been received, but not in time to be taken into account in the drafting (see table).

10. Something more specific must be said about the summaries which were sent to the Governments concerned in 1979 and 1980 and have not yet been closed, pending the inclusion of comments and supplementary data which have been promised by the Governments but have not yet been received, or which have been received only recently. It should also be mentioned that one country submitted additional information after the summary relating to it had been closed. These indications will make it clear why it has not been possible to make full use of the data so contributed, and will thus explain the absence of data that have not yet been received.

10a. Cases in which comments and supplementary data have been promised but had not been received at the time when this introduction was drafted:

(a) Brazil.^{2/} The draft was sent to the Government for its comments on 2 September 1980. On 24 October 1980 a note was received from the Permanent Delegation of Brazil to the United Nations and other International Organizations in Geneva stating inter alia that the Brazilian delegation would appreciate it if the Division of Human Rights could inform the Special Rapporteur that the material transmitted with a request for comments and supplementary data was being carefully studied by the Government of Brazil and that any observations it might wish to present would be forwarded as promptly as possible. At the time when this introductory note was concluded, the comments referred to had not yet been received.

^{2/} Brazil submitted a contribution; it is among the countries visited in connection with the study and has indicated its intention of forwarding comments and supplementary data on the draft sent to it for that purpose.

No.	Country	Initial contribution	Country visited	Draft sent to Government	Reply promised	Two month interval not elapsed	Reply with comments and data received	Consolidated text	Monograph no.	Additional information sent
1	2	3	4	5	6	7	8	9	10	
1.	Argentina	X		.						
2.	Australia	* *	.	.			* *	.		.
3.	Bangladesh			.			*	.		
4.	Bolivia		.	.						
5.	Brazil	X	.	.						
6.	Burma			.						
7.	Canada	* *	.	.						
8.	Chile	*		.			* *	.		
9.	Colombia	*		.						
10.	Costa Rica	* *		.			* *	.		
11.	Denmark (Greenland)	[]		.			*	To be prepared		
12.	Ecuador			.						
13.	El Salvador			.						
14.	Finland	*		.			* *	.		
15.	France (French Guyana)	[]		.			[]			

1	2	3	4	5	6	7	8	9	10
16. Guatemala	*	.	.		.				
17. Guyana	*		.	.					
18. Honduras			.						
19. India			.						
20. Indonesia			.						
21. Japan	()		.			*	.		
22. Laos			.						
23. Malaysia	*	.	.			*	.		
24. Mexico	*	.	.			*	.		
25. New Zealand	*	.	.			*	.		
26. Nicaragua			.						
27. Norway			.			*	.		
28. Pakistan			.						
29. Panama	*		.						
30. Paraguay		.	.						
31. Peru	X	.	.						
32. Philippines			.						
33. Sri Lanka			.						
34. Surinam			.						

1	2	3	4	5	6	7	8	9	10
35. Sweden			.			* *	.		
36. United States of America	* *	.	.		.				
37. Venezuela			.						

Negative statement

X

General statement with few data

*

Data and information on various points in the outline

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Fuller information

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Applies to the country indicated

(b) Canada.3/ The summary was sent to the Government for its comments on 2 September 1980. At the end of 1980 an informal communication was received to the effect that more time was needed to forward comments and data. Subsequently note no. 91 dated 21 May 1981 was received from the Permanent Mission of Canada to the United Nations stating that the Government of Canada attached considerable importance to the summary and that every effort would be made to submit the information and comments requested by the Secretary-General before the thirty-fourth session of the Sub-Commission. At the time when this introduction was completed, they had not been received.

(c) Guyana.4/ The draft was sent to the Government for its comments on 29 April 1980. With his note no. CPH: 2/4/5 dated 23 August 1980, the Permanent Representative of Guyana to the United Nations transmitted note no. PA: 13/19 from the Ministry of Foreign Affairs of Guyana, stating in particular that:

"The Government of Guyana is examining the summary provided with a view to determining whether any comments or supplementary data relevant to Guyana are necessary. Unfortunately, the late arrival of the note and summary did not afford the Government of Guyana sufficient opportunity to complete such examination and to submit a response before 30th June 1980.

"For a number of reasons a further period to the end of September 1980 is required, much to the regret of the Government of Guyana, before examination of the summary would be complete. At an early time thereafter, the Government of Guyana would be in a position to offer any comment or supplementary data on the summary which appears to it to be necessary. Until that time, therefore, the Government of Guyana is not in a position to agree either that all the information contained in the summary can stand without comment or that there is no relevant supplementary data to be included in the summary."

On 24 March 1981 a further copy of this summary on Guyana was provided for a representative of the Government of Guyana, at his express request, for the purpose of the reply which was to contain the comments and supplementary data that the Government wished to submit. At the time when these introductory paragraphs were completed, no comments or data had been received.

11. The case of Denmark 5/ is similar to the others mentioned, although the reply has now been received. The draft summary on that country was sent to the Government for its comments on 26 October 1979. On 8 February 1980, a note was received from

3/ Canada submitted an initial contribution; it is among the countries visited in connection with the study and has indicated its intention of forwarding comments and supplementary data on the draft sent to it for that purpose.

4/ Guyana submitted an initial contribution and has, as indicated, stated its intention of forwarding comments and supplementary data on the draft sent to it for that purpose.

5/ Denmark did not submit any initial contribution. It indicated its intention of replying and has now forwarded a reply, with comments and supplementary data on the draft sent to it for that purpose.

the Permanent Mission of Denmark stating that, as the participation of several competent Danish authorities - including the local authorities in Greenland - was called for, it would not be possible to finalize the Danish reply until around 1 June 1980. An interesting reply, containing the comments and supplementary data provided by Denmark, was received with a note from the Permanent Mission of Denmark dated 26 May 1981. It was not therefore possible to take this information into account except in Addendum 1 (E/CN.4/Sub.2/476/Add.1) on the composition of the population, since the other addenda had already been prepared (Add.2, 3 and 6) or did not refer to national measures (Add.4 and 5).

12. The case of Australia is different. Its Government submitted an initial contribution; it is among the countries visited in connection with the study and in due course it forwarded comments and supplementary data on the draft sent to it for that purpose. Later, the Special Rapporteur received in addition a voluminous series of highly relevant documents which the Government of Australia made available to him in connection with the study, so that the information contained in the summary on Australia could be updated. The Special Rapporteur, in expressing his thanks for that co-operation, explained that in accordance with the relevant directives the summaries could not be re-opened once they had been finalized. However, he thought that, as an exceptional measure, an addendum could be issued containing the additional information submitted by the Government. At the same time, it was indicated that for this purpose, it would be necessary to receive, in addition to the above-mentioned documentation, a text containing specific paragraphs commensurate in length with that of the original paragraphs, for circulation as a formal addendum to that document. When this text is received, it will be issued as a formal addendum to the summary, and due account will be taken of it in preparing the paragraphs on Australia.

13. The present document describes in general terms the content of each of the documents which follow it as formal addenda, and which deal in detail with the various subjects referred to in the following paragraphs.

14. Addendum 1 to this document (E/CN.4/Sub.2/476/Add.1) contains information on the composition of the population in the countries concerned. After a few brief introductory paragraphs indicating some of the difficulties involved, the information is divided into two parts. In the first part, which refers to the present situation, an attempt is made to give some idea of the size of indigenous populations, both in absolute figures and as a percentage of the total population of the country in which they live. The statistics contained in the population table which now covers the 37 countries dealt with in this study have been supplemented considerably and updated where possible to the end of 1979 or at least to the end of 1978. The data on American countries are based on the study undertaken for the Inter-American Indian Institute by two experts ^{6/} and relating to 1978. In some cases more recent data are given where they are available.

15. The second part deals with discernible statistical trends, upward and downward trends having already been indicated in columns (8), (9), (10) and (11) of the table. Information has been added on a few countries in which there is clear evidence of a trend or concerning which statistical information in some detail is now available.

^{6/} Enrique Mayer and Elio Masferrer, "La Población indígena de América en 1978", in América Indígena, a publication of the Inter-American Indian Institute, vol. XXXIX, No. 2, April-May 1979, pp. 217-337.

16. In the light of these data it is now becoming clear that contrary to the insistently repeated theories, indigenous populations are not in the process of physical disappearance but are indeed now increasing in absolute figures in almost all the countries concerned. In two cases they are also increasing as a percentage of the population of the country in which they live. In other countries the trend is difficult to determine, either because the years for which statistics (absolute figures) are available for the total population of the country and the indigenous population respectively are not the same years, or because there is directly contradictory information. In those cases it has been decided to leave a blank (...), indicating that there is no information or that in the light of the information available no categorical statement can be made.

17. Addendum 2 (E/CN.4/Sub.2/476/Add.2) deals with basic principles and includes information on fundamental provisions concerning indigenous populations, on specific constitutional provisions relating to indigenous populations and on the basic legal status attributed to them in the respective legal systems. In all these sections references to countries which were not mentioned in the relevant parts of E/CN.4/Sub.2/L.707 have now been inserted.

18. There are, for instance, some further governmental statements on fundamental provisions and basic legal status, and in some cases it has been decided to reproduce them verbatim. In the part dealing with specific constitutional provisions, certain countries which were not mentioned before are now represented, and additions have been made to the information on the provisions of other countries.

19. Addendum 3 to this document (E/CN.4/Sub.2/476/Add.3) contains information - supplemented and updated - on general measures for the prohibition, prevention and elimination of discrimination, in particular as it affects indigenous populations.

20. Information on countries which were not previously mentioned in document E/CN.4/Sub.2/L.707 has now been included. New texts have also been included and information on the ratification of the international instruments mentioned has been updated to the extent that available data permit.

21. In some cases the precise date on which countries ratified certain instruments adopted outside the United Nations framework has not been available and a footnote has been added to that effect. These gaps can easily be filled later when the relevant data have been obtained.

22. It should be noted that in this addendum, paragraph 88 should be renumbered as paragraph 90 and should be placed after the paragraphs now numbered 89 and 90, which should then be numbered 88 and 89 respectively.

23. Addendum 4 (E/CN.4/Sub.2/467/Add.4) contains a supplemented and updated version of measures adopted by the United Nations, which had previously been presented as part of document E/CN.4/Sub.2/L.584.

24. Information has been included on the International Covenants on Human Rights and on the Optional Protocol to The International Covenant on Civil and Political Rights. Mention is made of the most important activities of the Commission on Human Rights of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and of some of its Special Rapporteurs and working groups, on questions relating to human rights and fundamental freedoms and indigenous populations.

25. Of the studies prepared by Special Rapporteurs of the Commission and the Sub-Commission, reference is made to those which are relevant in the present context and will have to be taken into account in some form or another in the preparation of this study.
26. Brief mention is made of the work of the Ad hoc Working Group to inquire into the situation of human rights in Chile and to the work of the Special Rapporteur on this question. In connection with the indigenous populations of Chile and in particular the Mapuches.
27. Brief reference is also made to the Working Group on Slavery and its work on slavery-like institutions and practices and other matters which fall within its terms of reference.
28. Reference is made also to proceedings of the Human Rights Committee and the Committee on Elimination of Racial Discrimination in the course of which consideration has been given to the situation of indigenous populations in countries whose reports have been examined.
29. Also, of the activities undertaken in the context of the Decade for Action to Combat Racism and Racial Discrimination, reference is made to decisions of the 1978 World Conference to Combat Racism and Racial Discrimination concerning indigenous populations, and to the relevant aspects of the discussions at the Geneva Seminar on particular aspects of the struggle against racism and racial discrimination.
30. On the other hand, it has not been possible this year to submit an up-to-date summary of information available on action taken by United Nations specialized agencies. One of them (UNESCO) submitted no information and the information submitted by the others arrived too late to be taken into account in the preparation of a document updating this material. Also, it has not been possible to submit information on action taken by the Organization of American States, since no information has been received on the Inter-American Indian Institute or on the Inter-American Commission on Human Rights and its principal activities in this regard.
31. Addendum 5 to this document (E/CN.4/Sub.2/476/Add.5) contains a supplemented and updated version of chapter IV of the study, on "Other international action". It includes accounts of important international conferences organized and directed by the indigenous organizations themselves or attended by large numbers of representatives of indigenous populations. These accounts reflect the opinions and desires expressed by indigenous peoples, communities, organizations and persons at the conferences in question, and are therefore of great importance in connection with the study. It has been considered essential to reproduce the main conclusions, recommendations and resolutions adopted on this subject at each of these conferences; and accordingly, when they have not been summarized in the body of the report, they have at least been included in annexes setting forth the principal points in the relevant documents.
32. In addition to the material of this kind contained in document E/CN.4/Sub.2/L684 and in the relevant parts of document E/CN.4/Sub.2/L.707, this addendum now includes, as new material, information on other conferences such as the First Congress of South American Indian Movements (1980), the Second Inuit Circumpolar Conference (1980), the Third General Assembly of the World Council of Indigenous Peoples (1981) and the International NGO Conference on Indigenous Peoples and Land (programmed for 1981).

33. Also, with regard to non-indigenous conferences and organizations which are nevertheless primarily concerned with indigenous populations or devote a large part of their work to those populations, the references to the International Congresses of Americanists which are already included in the document have been supplemented by references to the following: The Bogota Seminar on human rights in the rural areas of the Andes region (1979), the eighth Inter-American Indian Congress (1980) and the fourth Russell Tribunal on the Rights of the Indians of the Americas (1980), in which indigenous persons and organizations took an important part. In addition, a brief reference has been made to the Indigenous Populations Documentation Research and Information Centre (DOCIP), supplementing the information on other similar organizations which have already been mentioned. The annexes to this addendum include, in addition to those already reproduced as annexes to document E/CN.4/Sub.2/L.684, the conclusions, proposals, and recommendations of the above-mentioned conferences which have been held since 1977.

34. Addendum 6 (E/CN.4/Sub.2/476/Add.6) contains material on the question of language. This part has not been considered by the Sub-Commission in any form since document E/CN.4/Sub.2/L.732, which contained nearly all the material which appears in this addendum, was not available in all the languages necessary for the Sub-Commission to examine it at the thirty-third session last year. Some changes have been made in the text to make certain references to a number of countries more complete, since this addendum is now being included in the first part of the Final Report on the study.

35. The Special Rapporteur believes it may be useful to reproduce here the plan he has adopted for drafting the Final Report on the study, and which he wishes to submit to the Sub-Commission on the understanding that he will revise this plan only if necessary in view of the information available on the various subjects included in it. The plan contains the following main titles and subtitles (sub-headings are not given):

INTRODUCTION

PART ONE

I. ^{a/} Measures adopted by the United Nations

- A. Basic provisions
- B. Measures adopted in matters of concern to indigenous populations but not aimed specifically at such populations.
- C. Measures adopted in matters relating specifically to the indigenous populations of independent countries which are States Members of the United Nations

II. ^{b/} Action taken by the specialized agencies

- A. Food and Agricultural Organization of the United Nations (FAO)
- B. International Labour Organisation (ILO)
- C. World Health Organization (WHO)

^{a/} The internal sub-headings appear in document E/CN.4/Sub.2/476/Add.4

^{b/} The internal sub-headings appear in documents E/CN.4/Sub.2/L.584 and E/CN.4/Sub.2/L.596.

D. United Nations Educational, Scientific and Cultural Organization (UNESCO)

E. The Andean Indian programme

III.^{c/} Action taken by the Organization of American States

A. Action taken by the Inter-American Commission on Human Rights

B. Action taken by the Inter-American Indian Institute

C. Action taken by the Inter-American Indian Conferences

IV.^{d/} Other international action

PART TWO - National Measures

Section 1 - General

V.^{e/} Definition of indigenous populations

VI.^{f/} Composition of the population

Section 2 - Basic principles

VII.^{g/} Basic principles

VIII.^{h/} General measures for the prohibition, prevention and elimination of discrimination

IX. Basic policy

X. Administrative regulations

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- c/ The internal sub-headings appear in document E/CN.4/Sub.2/L.596
d/ The internal sub-headings appear in document E/CN.4/Sub.2/476/Add.5
e/ The internal sub-headings appear in document E/CN.4/Sub.2/L.622
f/ The internal sub-headings appear in document E/CN.4/Sub.2/476/Add.1
g/ The internal sub-headings appear in document E/CN.4/Sub.2/476/Add.2
h/ The internal sub-headings appear in document E/CN.4/Sub.2/476/Add.3

Section 3 - Specific areas of study

- XI. Health
- XII.^{c/} Housing
- XIII.^{e/} Education
- XIV.^{i/} Language
- XV.^{e/} Culture and cultural, social and legal institutions
- XVI. Occupation, employment and vocational training
- XVII. The right of ownership, with particular reference to land
- XVIII.^{e/} Political rights
- XIX.^{e/} Religious rights and practices
- XX. Equality in the administration of justice and legal assistance

PART THREE - Conclusions and recommendations

ANNEXES

- I.^{i/} Source and realization of the study
- II.^{i/} Criteria adopted for the preparation of the study
- III.^{j/} Outline used for the collection of information
- IV. et seq. All the annexes to the various chapters
- V. Other activities connected with the study (visits to countries, etc.)

^{i/} The internal sub-headings appear in document E/CN.4/Sub.2/476/Add.6
^{j/} The internal sub-headings appear in document E/CN.4/Sub.2/L.566

