



UNITED NATIONS
 ECONOMIC
 AND
 SOCIAL COUNCIL



Distr.
 GENERAL

E/CN.4/Sub.2/1983/21/Add.1
 10 June 1983

Original: ENGLISH/FRENCH/
 SPANISH

COMMISSION ON HUMAN RIGHTS
 Sub-Commission on Prevention of
 Discrimination and Protection
 of Minorities
 Thirty-sixth session
 Item 11 of the provisional agenda

STUDY OF THE PROBLEM OF DISCRIMINATION
 AGAINST INDIGENOUS POPULATIONS

Final Report (last part) submitted by the Special Rapporteur,
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IX. FUNDAMENTAL POLICY

A. Policy alternatives

1. Preliminary remarks

1. In discussing the policy alternatives available to States with multiethnic populations and in which indigenous populations live, it must be duly taken into account, at the outset, that the situation of the indigenous peoples in the countries covered by this Study is too diverse to allow for a rigid or uniform approach. The situation of indigenous communities which have long maintained contact with the dominant society but are nevertheless concerned with the enjoyment of self-determination, cannot easily be compared with that of threatened forest-dwelling indigenous groups in remote areas. The latter may only now be coming into contact with non-indigenous groups of population existing in the country in which they live and may, therefore, be in need of special measures by the State in order to protect them from the dangers of such contacts and even from possible extinction.

2. Policy measures must necessarily be based on a minutely detailed knowledge of indigenous customs and life-styles, as well as an understanding of the preferences and aspirations of the indigenous peoples themselves. An over-all uniform theoretical approach carries with it the risk of over-simplifying the issues, and failing to grasp the complexities of indigenous societies which, as all other societies, are, themselves, in constant evolution.

3. In one very important sense, however, indigenous peoples throughout the world do share a common experience. They have all suffered in the past the imposition of, and abuse from, dominant societies, which in dealing with them have generally shown scant respect for their traditional cultures and life-styles. Indigenous peoples, however, invariably have shown a firm determination to resist attempts at forced assimilation within the dominant society. Disadvantaged integration has naturally also been rejected as a modified form of assimilation, regardless of the official designation given to the policy adopted.

4. There are then several policy patterns which provide alternative ways of dealing with problems of group relations in multiracial societies. It is in the context of one or more of these policies, often a combination of several of them, that action is taken in the different countries concerned for the protection of the indigenous populations.

5. Understanding the policies applied by individual Governments poses several problems: policies frequently change with the passing of time; different policies are often applied to different groups by the same administrations; at times, administrators may apply the same over-all official policy differently in their respective jurisdictions. Under these circumstances, little is achieved by applying labels to policies, as the same terms may mean different things for different people charged with important aspects of policy implementation. These terminological difficulties make it necessary to analyse in detail the steps actually taken to arrive at a conclusion about a given situational policy, regardless of the label by which it is formally designated.

6. The lack of adequate substantial information on governmental measures taken did not permit a thorough analysis to determine with some precision the type of policy in effect with regard to indigenous peoples in different countries. It is possible, however, to assert that most countries seem to have adopted social integration policies with assimilationist characteristics in varying degrees. It is clear that in the recent past all had interventionist and protectionist measures in operation and that, in conformity with over-all policies they were instituting special measures with the avowed purpose of improving living conditions of indigenous peoples and their protection from different kinds of discrimination and its consequences. While the explicit aim of these policies and measures was that of affording important groups of indigenous peoples a real and effective opportunity to participate fully and dynamically in the life of the nation, it is, nevertheless, also clear that some aspects of these interventionist and protectionist measures have been callous towards their ethnic identity and characteristics which the groups concerned are obviously bent on preserving, developing further and transmitting to future generations. In addition, important international measures have been taken to that end. The following paragraphs contain a brief reference to some of these national and international measures.

7. In considering policy options towards indigenous populations, therefore, one of the first principles to be affirmed is the acceptance of their right to be and to be regarded as different from the remainder of the population. This principle has been enshrined in the Declaration on Race and Racial Prejudice, adopted by the General Conference of UNESCO at its twentieth session in 1978. The Declaration recognizes that

Article 1

"1. All human beings belong to a single species and are descended from a common stock. They are born equal in dignity and rights and all form an integral part of humanity.

2. All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such. However, the diversity of life styles and the right to be different may not, in any circumstances, serve as a pretext for racial prejudice; they may not justify either in law or in fact any discriminatory practice whatsoever, nor provide a ground for the policy of apartheid, which is the extreme form of racism.

3. Identity of origin in no way affects the fact that human beings can and may live differently, nor does it preclude the existence of differences based on cultural, environmental and historical diversity nor the right to maintain cultural identity. 1/

1/ UNESCO, Declaration on Race and Racial Prejudice, adopted by the General Conference at its twentieth session, Paris, on 27 November 1978 (Records of the General Conference, twentieth session, vol. I, p.61).

8. On the other hand, the right to be different is in no way inconsistent with the right to full participation in the development processes, on an equal footing with other members of society. Special measures may be required however, to give de facto equality of opportunity in this regard. Without detriment to the differentiating characteristics cherished by each group involved.

9. As noted by the participants in a United Nations Seminar on the Relations between Peace, Human Rights and Development:

"The Seminar affirms that at the national level individuals should be engaged as agents as well as beneficiaries in the development process. The realization of equality of opportunity requires that special measures be undertaken to facilitate the participation of vulnerable or disadvantaged groups, including migrants, migrant workers and indigenous peoples". 2/

10. Without such participation in both the planning and implementation of development programmes, there are severe dangers that development projects will not only fail to satisfy the manifest needs of indigenous peoples, but may also be initiated and developed at their expense. In their desire to develop strategic mineral and hydro-electric resources in general for the benefit of the non-indigenous populations, many Governments have tended to disregard the traditional land rights and cultures of native peoples who have been considered marginal to the national economy.

11. In recent years the adverse effect of these large-scale economic development projects on indigenous populations has reached acute proportions in many areas. It has been stated that:

"In a world increasingly hungry for raw materials and untapped natural resources, indigenous peoples who live mostly in remote areas now find that their lands are attracting the attention of powerful economic interests. In many cases the rational exploitation of such resources under the control of the local population could provide the basis for major economic advance and improvement of social conditions for the affected populations". 3/

12. In this regard the policies of international financial institutions, as well as national Governments, have also proved cause for concern. At its thirty-fourth session, the Subcommission on Prevention of Discrimination and Protection of Minorities expressed the view that in some countries, even currently so-called development projects funded by international funding agencies constituted a threat to the existence of indigenous populations. In particular, the responsibility and accountability of these agencies were not adequately defined. Furthermore they were not open to independent scrutiny. 4/

2/ ST/HR/SER.A/10, Seminar on the Relations between Human Rights, Peace and Development, United Nations Headquarters, New York, 3-14 August 1981, p.54.

3/ Statement of the Anti Slavery Society for the Protection of Human Rights to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, thirty-fourth session, 1981.

4/ E/CN.4/1512, p.45.

13. It is clear that while appreciating the need for rational exploitation of natural resources, development policies should reconcile the needs of indigenous peoples with the requirements of national economic development. In the following section some of the major theoretical policy alternatives which have been considered up to the present time will be discussed, as well as policy options which are increasingly being advocated by experts and by the indigenous peoples themselves. The latter place more emphasis on the need for self-reliance, self-management and self-determination, and particularly on concepts of ethno development in choosing the model of development as it affects their own interests, within the formulation of general development plans and efforts.

2. Theoretical aspects

14. The sources available in connection with the present study review several possible theoretical policy alternatives for indigenous populations. These alternatives include, inter alia: (a) Segregation, (b) Assimilation, (c) Integration, (d) Fusion (Pluralism), (f) Self-reliance, (g) Self-management and (h) Ethno development.

15. As regards segregation it has been noted that this policy

"is based on the belief in the superiority of the dominant culture and aims at keeping certain ethnic groups separate, unmixed and ranked in a hierarchical position. It is an unwanted separation imposed by a dominant group upon certain other ethnic groups in the society through its control of economic wealth and governmental functions. To this end, appropriate community authorities apply both formal and informal sanctions to limit contact and other social relations. Segregation operates under a variety of circumstances and it would be useful to remember here that it has assumed a multitude of forms; from "apartheid" through "caste systems", "reservations", and "ghettos", "Chinatowns", "barrios" and "Jim Crowism" to lesser forms, all meaning separation and zonification of some sort, although not necessarily with complete physical separation.

"With such a record, segregation seems hardly a policy to recommend itself for adoption in dealing with indigenous peoples, as the underlying reasons for such a policy are usually the preservation of the "racial purity" and the socio-economic predominance of the culturally dominant group, the better to exploit the other groups. 5/

"Nevertheless, it has sometimes been considered necessary to enforce some form of separation for the more effective protection of primitive and formerly isolated groups from disease, drastic changes in food supply and in customs, loss of land and the disorganizing impact of modern civilization ...". 6/

5/ Special Study of Racial Discrimination in the Political, Economic, Social and Cultural Spheres, (United Nations publication, Sales No.71.XIV.2.) paras. 366-367.

6/ Ibid, para. 368.

16. Indeed, there are inevitably cases where a degree of segregation in the form of a "buffer zone" is necessary in the short term to protect isolated forest-dwelling groups, mountain populations or north-of-the-tree-line peoples from encroachments and disease. Many other indigenous groups and peoples, who have long been subjected to a degree of incorporation within national society, have nevertheless maintained a cultural identity in the form of a separate language, a separate form of internal organization and local government, and a system of communal land rights different from that prevailing in the rest of national society. Their concern has generally been to maintain this level of social and cultural identity while participating in and benefiting from national development programmes on the basis of their own cultural patterns. To lose their identity altogether in the process of integration would be too high a price to pay. There are yet other cases where indigenous groups, while numerically constituting the majority of their national population, have come to be the most deprived sector of society in economic and social terms within present day conditions in the countries in which they live. Their concern has generally been that their economic, social and cultural conceptions, patterns and institutions should be adequately reflected and protected within multinational institutional frameworks and development policies as a whole. Finally there are also indigenous peoples with a high degree of awareness of their existence as socio-political entities, whether or not they celebrated treaties in the past with a colonial power or an independent country, by which their status of separate nationhood was recognized, which are now reiterating their demands for political self-determination in varying degrees.

17. Assimilation is said to be

"also firmly based on the idea of the superiority of the dominant culture, and aims at producing a homogeneous society by getting indigenous groups to discard their culture in favour of that of the dominant one. It spells the total absorption of persons and groups into the dominant culture as the established pattern into which the others are to fit. There is a willingness on the part of the dominant group to accept members of the other groups, but this is contingent - as a *conditio sine qua non* - upon their accepting its culture." 7/

18. Integration is described as

"a process by which diverse elements are combined into a unity while retaining their basic identity. There is no insistence upon uniformity or elimination of all differences, other than those differences of each component part which would disturb or inhibit the total unity.

"Integration, as differentiated from assimilation, is a two-way process which does not entail the disappearance of indigenous institutions and traditions. It implies consciously refraining from bringing pressure upon indigenous groups to abandon their culture. It can, nevertheless, become a process of assimilation, although it is likely to continue as a constantly adapting process of integration, or result in fusion.

"Integration seeks (1) to eliminate all purely ethnic lines of cleavage; (2) to guarantee the same rights, opportunities and responsibilities to all citizens, whatever their group membership." 8/

7/ Ibid, para. 370

8/ Ibid, paras. 373-375.

19. The ILO Convention No. 107, concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries, explicitly favours a policy of integration as its title clearly indicates. ^{9/} The principles of integration, as laid down in this Convention seek to reject measures "tending towards the artificial assimilation" of indigenous populations, and also to reject "recourse to force or coercion as a means of promoting the integration of these populations" (article 2). They do, however, allow for special measures to be adopted for the protection of indigenous populations, so long as they "are not used as a means of creating or prolonging a state of segregation" and "will be continued only so long as there is need for special protection and only to the extent that such protection is necessary" (article 3). In this Convention it is provided that, in applying the provisions of the Convention relating to the protection and integration of the populations concerned, Governments shall

"seek the collaboration of these populations and of their representatives; provide these populations with opportunities for the full development of their initiative; stimulate by all possible means the development among these populations of civil liberties and the establishment of or participation in elective institutions" (article 5).

20. In practice it is the concept of integration with assimilationist projections which has been given most emphasis by official policy. Most Governments now believe that their indigenous populations must eventually be integrated into the national community. This is, however, not necessarily the view of the indigenous peoples themselves, or of the organizations which represent them.

21. Reference has also been made to the concept of fusion, both as a process and as a result thereof. Fusion has been described as

"a process by which two or more cultures combine to produce another which is significantly different from each of its parent cultures, but includes elements from all of them, together with the new ones produced through the stimulation of contact and subsequent internal development. Fusion is complex and many-sided, while assimilation is essentially one-sided. Like assimilation, fusion can be held up if one of the groups involved is reluctant to lose its identity." ^{10/}

22. As a quite different concept which means the preservation of distinctiveness and diversity within an atmosphere of respect and positive valuation of all groups as essentially equal to each other in value to society as a whole, pluralism is also a process and a result thereof, and

"aims at uniting different ethnic groups in a relationship of mutual interdependence, respect and equality, while permitting them to maintain and cultivate their distinctive ways. It may involve physical separation but most often does not. Whatever separation exists is voluntarily chosen, not imposed. Whatever lines of cleavage there are, are vertical ones; ideally there should be no ranking of one group above another." ^{11/}

^{9/} Adopted on 26 June 1957, this Convention entered into force on 2 June 1959.

^{10/} Ibid, para. 380.

^{11/} Ibid, para. 379.

23. In recent times and in an increasing manner, a significant number of indigenous groups and peoples have been demanding the recognition of their identity, and demanding a degree of autonomy and self-determination.

24. This view was expressed by the participants at the International NGO Conference on Indigenous People and the Land, held in Geneva in September 1981. It was stated in the final declaration of the Conference that

"The Conference declares its solidarity with the indigenous peoples in their just struggle for self-determination and for the right to determine the development and use of their land and resources, and to live in accordance with their values and philosophy. In this time of crisis, indigenous peoples have much to contribute to the human and spiritual development of the world." 12/

25. Mention must also be made of the concept of self-reliance. Though most writers on self-reliance as a strategy for development tend to refer to relations between States, 13/ the concept is also important for understanding the attitudes of underprivileged groups within States who reject the emphasis placed by many development planners on economic growth per se, as too restricted, and place far more emphasis on the maintenance of traditional or human values within the development process

26. As one author has commented

"In the wake of the monetary and oil crises of the early seventies there has now emerged something like a worldwide consensus, not only on the need for development of the world as a whole, but also on self-reliance as a possible means of bringing about such development. Self-reliant development takes us far from the traditional western European concept of economic development, which is grounded on the belief that development is basically a matter of a consistent annual rise in the gross national product and the per capita income." 14/

27. There is virtually no recent document on indigenous affairs which omits, in one way or another, to invoke the concept of self-management as an important element in the policy favoured by indigenous peoples to make themselves masters of their own destiny, generally by means of participation in national power. One author has listed what he regards as "requirements for indigenous self-management" in the following terms:

"(1) The consolidation of communal power in order to guarantee justice and the survival of tribal institutions, of the ethos which is so necessary for the cohesion of the group. The growth of this communal power should enable some of the ground yielded to or occupied by outside elements to be won back.

12/ International NGO Conference on Indigenous Peoples and their Land, Geneva, September 1981.

13/ See, for example, Johan Galtung, Peter O'Brien and Roy Preiswerk (ed), Self-Reliance: A Strategy for Development, Institute for Development Studies, Geneva, 1980.

14/ Monica Weregah, "Self-reliance and the search for an alternative life-style in industrial countries", in Galtung et.al, op.cit. p.118.

"(2) The legalization of land ownership under global title deeds. The ownership of property signifies both security and economic power. Title to the land should be collective so as to avoid the corroding influence of individualism and the emergence of a social stratification liable to endanger the community spirit and deprive it of the power to withstand the colonial pressure of the interethnic system.

"(3) The federation of communities from the same ethnic group so as to promote their political unification.

"(4) The confederation at the regional level of the various organized ethnic groups, followed by their confederation at the national level.

"(5) The association of the various national confederations in an inter-American umbrella organization which will be able, by exerting pressure on public opinion in the continent and in the world, to compensate for the inequality between the opposing forces in cases of aggression against a particular group." 15/

28. In the words of the same author:

"Self-management leads on to an evolving self-development. This self-development, which cannot occur without borrowing from the West, should not be confused with what we have called acculturation. Indigenism will of course refrain from emphasizing the differences, since this would be to seal its own doom, but the differences are there all the same. Self-management presupposes reculturation, previous or contemporary, whereas acculturation cannot occur without deculturation, again previous or contemporary, which may be slow or rapid. Self-management is the banner under which indigenous peoples strive to enjoy a balanced relationship with the white man based on a degree of dialogue and symmetry. Acculturation as imposed by the white man from a position of dominance is essentially asymmetrical, although a veneer of mellifluous paternalism seeks to conceal its true nature. Self-management is able to achieve a measure of political and economic independence, whereas acculturation involves the integration of the detribalized indigenous population in the lowest strata of a society of highly subordinated classes, where it will lose all vestiges of power, once the nucleus which could have sustained it has been dissipated. Self-management is conducive to an optimum social equilibrium, acculturation to imbalance. In other words, the former ensures ethnic survival and the latter the swallowing up of the group in the national society. The corollary of self-management is Indian power, whereas acculturation involves the subjection of the ethnic group to the national administrative and political machine. The fruits of self-management are participation and self-government, those of acculturation are domination by political and other forms of control. In the process of self-management the contribution of the West provides a stimulus; in acculturation the irruption of Western culture is a centrifugal force in social life. With self-management political awareness will derive from a recognition of ethnic identity; with acculturation, on the other hand, political awareness, if any, will come about through a denial or repudiation of ethnic identity, associated

15/ Adolfo Colombres, "Hacia la autogestión indígena" in Siete Ensayos sobre Indigenismo, Instituto Nacional Indigenista, Mexico City, 1976, pp.29-49. The requirements are given on p.45.

with a retrograde and shameful past which is better buried. Lastly, in the self-management system it is the ethnic group which makes the rules and defines the elements to be incorporated in its social life, adapting them to meet its own special circumstances. With acculturation, on the other hand, it is the oppressor who decides which elements of the indigenous society are to be preserved for the time being, while imposing indiscriminately and by main force his entire culture and conception of the world. In other words, self-management enables the members of an indigenous population to act. In the acculturation process they are nothing but the passive objects of action taken by others, beings who are "acted on", divorced from fundamental elements of their own nature, victims who are given the illusion of acting, the illusion of making their own history." 16/

29. The San José Declaration (13 December 1981) 17/ affirmed that "ethnodevelopment is an inalienable right of Indian groups", ethnodevelopment being understood to mean "strengthening and consolidating a culturally distinct society's own culture, by increasing its independent decision-making capacity to govern its own development and the exercise of self-determination, at any level considered, and implying an equitable and just power structure. This means that the ethnic group forms a political and administrative entity, with authority over its own territory and decision-making powers in areas constituting its own development from within processes of expanding autonomy and self-management," 18/

30. Among the fundamental socio-cultural aspects of this ethnodevelopment policy the Declaration mentions the following:

"For the Indian peoples the land is not merely an object of possession and production. It is the whole basis of their physical and spiritual existence as an autonomous entity. Territorial space is the fundamental reason for their relationship with the universe and for the maintenance of their cosmic vision.

These Indian peoples have a natural and inalienable right to keep the territories they possess and to claim the lands which have been taken from them. In other words, they are entitled to the natural and cultural patrimony contained in the territory and to determine freely how to use it and benefit from it.

The philosophy of life of these peoples, their experience, their knowledge and their accumulated historical achievements in the cultural, social, political, juridical, scientific and technological fields are an essential part of their cultural patrimony. Hence they are entitled to enjoy access to, utilization, dissemination and transmission of this entire patrimony.

16/ Ibid., pp. 45-46.

17/ Text adopted by acclamation on Friday, 11 December 1981, as a result of the work of the Conference of Specialists on Ethnocide and Ethnodevelopment in Latin America, convened by UNESCO and the Latin American School of Social Sciences (FLACSO) and held at La Catalina, Santa Bárbara de Heredia, Costa Rica (6-13 December 1981). The full text of this Declaration was published as annex VI to document E/CN.4/Sub.2/1982/2/Add.1.

18/ Ibid.

Respect for the forms of autonomy required by these peoples is an essential pre-requisite for guaranteeing and implementing these rights.

Moreover, the specific forms of internal organization of these peoples are part of their cultural and juridical heritage, which has contributed to their cohesion and the maintenance of their socio-cultural tradition." 19/

31. Disregard of these principles constitutes a failure to respect the ethnic identity of these peoples, giving rise to the danger of ethnocide. In the words of the Declaration:

"Disregard for these principles constitutes a flagrant violation of the rights of all individuals and peoples to be different, and to consider themselves as different and to be considered as such, a right recognized in the Declaration on Race and Racial Prejudice adopted by the General Conference of UNESCO in 1978 and hence must be condemned, especially when it creates a risk of ethnocide.

Moreover, it creates a disequilibrium and a lack of harmony within society and may induce these people, as a last resort, to rebel against tyranny and oppression and thus endanger world peace and, consequently, is contrary to the Charter of the United Nations and the Constitution of UNESCO." 20/

32. To be sure, policy has to be kept flexible, the alternatives will have to vary in accordance with the social and economic conditions of the diverse groups within any one country, with their level of de facto incorporation within national society, and also with the level of political awareness and aspirations of the peoples themselves. This has been explicitly recognized as regards indigenous populations.

33. Very frequently, the diversity of groups and subgroups forming the indigenous population in most countries makes it questionable whether they can have one over-all policy concerning the different groups or whether reality calls for alternative policies, and for alternatives within policies that are designed to deal effectively with the problems of different groups. Conditions may even call for the successive adoption of different policies with regard to the same groups, as their positions change.

3. Socio-cultural aspects

34. Identity feelings may be equally strong among isolated communities which have lived without contact with other life-styles and basic concepts, and among indigenous communities whose ancestors were forced several centuries ago to live in close contact with non-indigenous populations. While in the first case the sense of being different and wishing to continue to be different may be a new realization, in the second hypothesis this sense and desire have been intensified and refined in a continuous process.

35. There are, of course, cultural differences between some indigenous groups or communities and other indigenous groups and communities. Indeed, there are neither absolute universally uniform cultural patterns nor are there cultures that may have remained unchanged for centuries. The mere existence of a basic occupation shapes important aspects of a people's attitude to life. Thus there

19/ Ibid.

20/ Ibid.

are clear differences between agriculturalists, pastoralists and hunters/gatherers. Indigenous urban dwellers have today their undeniably peculiar cultural patterns. The passage of time and the accumulation of experiences are also important factors altering cultures which evolve with time, in part to adapt to changing circumstances, even in isolation.

36. In cultural co-existence situations these processes are forcing these cultures in constant contact to react to each other in a constant process of give-and-take, in action and reaction and influence and counter-influence, in unrelenting examination and re-examination, interpretation and re-interpretation. If in an isolated cultural entity there is constant evolution, then the more there is in cultural-contact situations. Nowhere is there a stationary situation. All cultures and all societies are in constant evolution.

37. Policies that would not take these facts into account, are policies that would not be in conformity with basic realities in societal and cultural existence. In this respect, it is useful to mention here what an author has written:

"Indigenist policy applies measures of planned acculturation to the aboriginal peoples to facilitate their gradual and harmonious integration into the national system. It is assumed, in other words that native problems are essentially rooted in cultural differences, in the backwardness or inadequacy of the cultural norms of the natives in comparison with the dominant culture of the nation as a whole. People apparently prefer to shut their eyes to a whole series of obvious facts. In the first place, it is a fact that the cultures of many Indian groups have changed substantially in the course of four and a half centuries of subjection. Again, many native agricultural communities present greater similarities than differences in comparison with their non-Andean neighbours, and at the same time stand in marked contrast to tribal groups of the forest (selva), who after all are Indians, just as they are." 21/

38. Thus cultural patterns will vary greatly between forest-dwelling groups, who may be hunters and gatherers having little or no contact with the rest of society and enclave groups settled on reservations, who may or may not have retained separate languages, religion, dress, work customs and other forms of social organization, or indigenous rural workers who may form the majority of the country's population, and who may constitute indigenous communities which have been granted a distinct legal status by the national Government. These categories are by no means exhaustive. As has been shown elsewhere in this report (cf. chaps. VI and XII) in some countries there is a significant urban-dwelling indigenous population, while in other countries a widely scattered indigenous rural population may have no separate legal status, but may be easily distinguished by separate forms of language, dress etc.

21/ Guillermo Bonfil Batalla, "The Indian and the Colonial Situation: the Context of Indigenous Policy in Latin America" in The Situation of the Indian in South America, World Council of Churches, 1972, pp.21-30.

39. Several of the States considered in this report, either in their Constitutions or elsewhere, affirm that the preservation of indigenous cultures and forms of social organization is an integral part of national policy. The means and degree of implementation of such provisions, however, have in general not corresponded to these lofty ideas. In particular, in those countries where conventions have been signed with missionary organizations, which have been granted a great deal of independence in carrying out education and development programmes in isolated regions, these missionaries have effectively dictated policy, often without due regard to the cultural and religious values of the indigenous peoples themselves.

40. Serious concern was voiced in this connection by the participants in the Social and Cultural Commission of the International NGO Conference on Discrimination against Indigenous Populations in the Americas, held in Geneva in 1977. The Commission's final report asserted that

"The survival of indigenous cultures, and through it the physical integrity of indigenous communities, is threatened most especially by the direct imposition and promotion of foreign values, beliefs and ideals among the Indian peoples. Ample testimony has been received as to the forcible character of this cultural transposition, particularly in the vast backing given by private and public sources for the missionary activity of the various Christian denominations.

"...

"The content of both state and missionary education is the single most pernicious threat to the survival of indigenous culture". 22/

41. Indeed, while on the one hand it has been pointed out that missionary organizations have transcribed and preserved indigenous languages, and have provided the resources for intercultural contact and the dissemination of traditional values and customs, which might otherwise have been beyond the powers of many States, on the other hand they have also been found to have applied in the past clear policies of forced assimilation with intimidatory and outright punitive measures being applied in a consistent manner and having opened these communities to all kinds of destabilization and acculturative pressures.

42. It is clear that irrespective of statements or provisions for the respect of indigenous traditional socio-cultural values and patterns in many States, and whether directly by State authorities or by any kind of surrogate authority of a different nature, the policies actually in force have been those of assimilation and integration, rather than those of respect and protection of indigenous social and cultural values. Indigenous and non-indigenous experts are now clearly favouring policies of self-management and ethnodevelopment as the only suitable approach and appropriate policy to be followed in cases of indigenous populations wishing to maintain, further develop and transmit to future generations the peculiar socio-cultural manifestations of their ethnic specificity.

22/ Report of the International NGO Conference on Discrimination against Indigenous Populations - 1977 - in the Americas. 20-25 September 1977. Palais des Nations, Geneva, p.22.

4. Legal aspects

43. In discussing the alternatives available to States in legislative formulation and executive implementation of policy towards indigenous populations, consideration must be given to the diverse legal traditions in the countries covered by this study, and also to previous colonial legislation which has varied much from country to country.

44. The historical evolution of policy will be discussed in some detail later in this chapter. However, a distinction must be drawn between countries where legislation on indigenous policy has been enacted mainly in the comparatively recent past, and countries where the law has evolved over a protracted period of time.

45. In some areas, for example, indigenous people have in general remained deeply aware of the rights which were guaranteed to them by treaty during the colonial period or soon after declarations of national independence. In other areas indigenous communities may possess land titles which were granted to them during the colonial period by the colonial authorities. In forest areas around the Amazon basin, where there has been no contact with alien cultures until the comparatively recent past, indigenous communities may have no legal claims to "historical" rights issuing from colonial or "national" grants, agreements or enactments. The first legislation on indigenous matters may not have been enacted until well into the twentieth century.

46. All of these factors have their bearing on contemporary legal alternatives. While in a few cases, they may be contained in judicial decisions, more commonly fundamental policy provisions are contained in constitutional, statutory or treaty law. These provisions may be of a very general nature. In other cases a special Act or Statute may contain far more precise regulations, and also provide for a special legal status for all or part of the indigenous population. In the latter case, the implications of such a special legal status may vary substantially from one situation to another. At one end of the spectrum, indigenous peoples may be recognized as having the right to self-government, and to the management of their internal affairs in accordance with their own traditional legal customs. At the other end, indigenous peoples may be considered as having the legal status of minors, without the rights and duties of other citizens, but also without any effective control over their own affairs.

47. The question of basic legal status has been discussed at length elsewhere in this study. ^{23/} It should be noted here that according to many indigenous organizations their identity cannot be adequately preserved unless they are granted a status which recognizes them as equal to but different from the remainder of the population. However, if such a status equates their situation with that of minors under the tutelage of the State, although providing for eventual "emancipation" from this special status, this policy may not only discriminate against the basic rights of the indigenous population but will also tend to disparage indigenous cultures.

48. Special Acts and Statutes, while not discriminating against the civil and political rights of indigenous populations, may provide for separate systems of land tenure, education and other aspects of social and cultural life. They may provide for special indigenous courts to implement such statutory law, and may also allow for

^{23/} See E/CN.4/Sub.2/476/Add.2, chap.VII, Basic principles, paras. 90-160.

a degree of self-government distinct from that prevailing in other areas. In addition to distinct forms of local government, national legislation may also provide for a number of indigenous representatives in national parliamentary bodies. Rather than concentrate only on separate legislation towards indigenous groups, such a system may be designed to ensure that the interests of indigenous peoples are represented in over-all national legislation.

49. Without effective participation, and without some special measures, to compensate for imbalanced situations, the concept of equality before the law is likely to have adverse consequences for those indigenous populations which have limited access to law and its enforcement.

50. Indeed, formal equality in law has been found to result very often in marked inequality, in fact, adversely affecting the indigenous persons and groups living within societies ruled by non-indigenous institutions, economies and people. Among other evils, this "equality" has favoured massive exploitation of labour and the parcelling of ancestral and communal land which had previously been under co-operative exploitation.

51. With or without special measures and a legal framework for consultation with, and participation by, the indigenous persons and groups themselves in the formulation of policy, state policy has been aimed at the eventual integration of indigenous groups within the larger society within which they live. It has been noted above, however, that indigenous groups and experts are increasingly laying more emphasis on the need for autonomy and self-determination. The new policy adopted by the Inter-American Indian Conferences is also a case in point. Advocates of such an approach have referred to the international law of recent decades, including the Charter of the United Nations itself, the International Covenant on Civil and Political Rights, the International Commission on Economic, Social and Cultural Rights, and the Declaration on the Granting of Independence to Colonial Peoples and Countries. ^{24/} Reference should also be made to the Declaration on Race and Racial Prejudice adopted by State representatives gathered at UNESCO's General Conference in 1978, as well as to the San José Declaration of 1 December 1981, cited above.

52. Emphasis on the need for self-determination and self-government has been made by many indigenous nations and peoples in one way or another. This has been done with particular force and insistence by indigenous nations and peoples that have great relative numerical importance within the present populations of the countries within which they now find themselves and by most of those nations and peoples that have in the past entered into treaty agreements with the authorities of the colonial powers or those of the countries that emerged from the decolonization processes. Such treaties may have been celebrated not only between colonial powers and native populations during the period of settlement or conquest, but also between the

^{24/} See, for example, John Howard Clinebell and Jim Thomson, "Sovereignty and self-Determination: the Rights of Native Americans under International Law" in Buffalo Law Review, Vol.27, Fall 1978, pp.669-714; and "The Proper Status of Native Americans under International Law" (paper prepared by the National Lawyers Guild, United States of America, for the NGO Conference on the Indigenous Peoples of the Americas in 1977, Palais des Nations, Geneva, September 1977). Also the comments of Vine Deloria and Peter A. Cumming in "The Rights of Indigenous Peoples: A comparative Analysis" (reprinted from the Proceedings of the 63th. Annual Meeting of the American Society of International Law, April 1974).

independent nation-States that succeeded the colonial powers and the indigenous nations and peoples, long after this initial period. They may have involved the cession of native territories in exchange for a recognition of native sovereignty and the unrestricted use of reservation land. In contemporary jurisprudence there is controversy as to whether such treaty law should be considered as lying within the domestic jurisdiction of nation States, or as part of international law beyond the exclusive jurisdiction of nation States.

53. The decision to grant consultative status with the Economic and Social Council to a number of non-governmental organizations constituted by indigenous populations has now given through these organizations an increased opportunity to such populations to plead their cause before the international community. 25/

25/ See E/CN.4/Sub.2/1982/2/Add.4, chap. X "Administrative arrangements", para. 113.

B. Formulation and evolution of policy: organs, procedures, implementation

1. Historical development of policy

54. Before proceeding with an analysis of contemporary policy, it is useful to summarize briefly the major trends in the historical evolution of policy.

55. In the early period of colonization, a very extended tendency of the colonial powers was to establish a separate legal status for indigenous populations. The extent of de facto incorporation into the emerging society as already noted, varied in accordance with the economic interests of the early colonizers, and the extent of metropolitan control over the activities of the colonists themselves. In many places the colonists were keen to avail themselves of indigenous labour, in mining, cattle raising and agriculture. In Latin America the policy of the Spanish Crown was to permit the use of indigenous labour, first as slave labour and subsequently as forced wage labour under the mita and encomienda systems. 26/ Tribute was also exacted from the indigenous populations. The conditions of labour were in theory regulated by the Spanish Crown, while certain extensions of land were legally set aside for the use of the indigenous populations. Several authors have observed that the protective legislation of the colonial period was frequently ignored by the colonists themselves. 27/

56. Religious missionaries played a prominent role, frequently intervening to protect the indigenous populations from abuse, and lobbying for more effective protective measures. At the same time they saw their own role as one of "civilizing" the "primitive" and "evangelizing" the "infidel" and showed relatively little concern for the preservation of indigenous culture.

57. When the new nation-State were created from the late eighteenth century onwards on the American continent, there were marked contrasts between the policies adopted in the former British and Spanish colonies respectively, and even in different countries and regions within them. In Canada, even before independence, the Civilisation of Indian Tribes Act of 1857 extended citizenship to certain Indians; but enfranchisement was limited to those Indians of "sufficiently advanced education" and those who were "capable of managing their own affairs", and entailed the loss of certain special status otherwise accruing to those of Indian status. The Indian Act of Canada of 1876, as amended in 1951, specified that an enfranchised person was not entitled to be registered as an Indian. 28/ In the United States, Indians were granted a wholesale conferment of citizenship only in 1924, and it has been written that "Indian reactions to this supposed munificence were not entirely favourable - it was regarded by many as an attempt to undermine further their tribal identity and independence". 29/

26/ See, for example, Silvio A. Zavala, La Encomienda Indiana Madrid, 1935, and Juan Friede, El Indio en la Lucha por la Tierra, Ediciones Punta de Lanza, Bogotá, 1976.

27/ Ibid.

28/ Richard Bartlett, "The Indian Act of Canada", Buffalo Law Review, Volume 27, No. 4, Fall 1978, pp. 581-616.

29/ James Wilson, The Original Americans: US Indians, Minority Rights Group, Report No. 31, London, 1976.

58. In Latin America in general the adverse effects of formal equality before the law, solemnly granted immediately after the independence declarations of the 1820s, have already been mentioned above. Despite the provisions for legal equality, in several countries the exaction of Indian tribute survived well into the nineteenth century. ^{30/} Furthermore the Constitutions of many States disenfranchised illiterates and this massively affected indigenous populations which were almost wholly illiterate at that time. In the absence of protectionist legislation, and special measures of assistance, vast numbers of indigenous communities lost their communal lands and ended up as indebted workers on the proliferating haciendas.

59. Throughout the Americas in the course of the nineteenth century, whatever the "legal" policy, the over-all practical effect was one of efforts towards forced assimilation of the more acculturated groups, erosion of traditional landholdings everywhere, and an expansion of private property at the expense of the communal holdings of the indigenous populations.

60. The initial trend of indigenism, which lasted with few changes up to and beyond the first half of the present century, may be illustrated by the following quotation:

"The indigenist current of thought made its appearance in the second half of the nineteenth century during a period which saw the consolidation of the liberalism imported from Europe and its advocacy by the 'progressives' of that age, and was reflected in an increasing awareness of the Indian presence in the new nation States which came into being on the post-Napoleonic model.

Indigenism, in essence a non-Indian ideology, gave rise initially to a humanitarian attitude which was mainly reflected in literature. This approach, in the first place romantic and humanitarian, gradually acquired a new dimension; demands were presented and protests registered against the injustice to which the Indian was exposed. Indigenism was no longer a literary movement, but found a place in the social sciences with the appearance of pro-indigenous organisations, in reviews, etc. The 'indigenous question' became a central feature of discussion at the beginning of the twentieth century and fuelled the flames of controversy. Cultural indigenism ... gradually gave way to a more socially oriented movement, introducing the element of class also ... Although this shift of emphasis benefited the economic at the expense of the cultural and ethnic aspects of the problem, it had the advantage of breaking away from the purely romantic approach and thus posed a greater threat to the dominant classes. It also provided a counterweight to racist and culturalist theories which were very widespread at the beginning of the century.

Advocating the integration of Indians in non-Indian society, indigenism did not call in question the colonial relationship; it did, however, contribute to a better understanding of the problem and mitigated some of the abuses. Viewed initially with distrust, this current of opinion proved

^{30/} Juan Comas, La Realidad del Trato dado a los Indígenas de América entre los Siglos XV y XX, Mexico City, Instituto Indigenista Interamericano, 1951.

easy for Governments to exploit, since it was seen as a means of inducing the Indians to bear their colonial yoke more easily, the most typical case being the enlistment of indigenism in the service of nationalism. Once it became official doctrine, indigenism would lose its original function of claiming rights and become an instrument of power." 31/

61. By the early twentieth century, the colonial expansion throughout the world had greatly increased the number and diversity of indigenous populations under colonial rule. Concern about the abuses perpetrated against indigenous peoples led to the convening of an international Congress to discuss their basic rights. A writer summed up the proceedings as follows:

"In 1900 an international congress of colonial sociology met in Paris to discuss the duties of civilised States to aboriginal peoples under their sovereignty. The conclusions of the participating experts in colonial administration on this 'international' problem represent a model for the government of indigenous peoples rather than a reflection of actual practices by nations. With a few exceptions 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 ... At the beginning of the twentieth century, therefore, the law of nations seemed to recognise 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 'civilised' peoples". 32/

62. The guardianship duty implied a policy of segregation for certain tribal indigenous groups during the period of colonial administration. An example of this is British colonial policy in the hill tracts of what is now the State of Bangladesh. According to one writer:

"After attacks by outside tribes, the British colonial government recognised the separation of the hill tracts from the district and appointed a Superintendent of the hill tribes ... The Chittagong Hill Tracts Regulation of 1900 gave special status to the Hill Tracts and they were ruled under tribal jurisdiction by tribal chiefs and headmen. Their special status was honoured by Pakistan, until the introduction of Basic Democracies in 1960, which was applied in tribal areas also. The special status of the Chittagong Hill Tracts was abrogated in the 1972 Constitution of Bangladesh". 33/

63. As regards what is now the Indian State of Nagaland an author has commented that:

31/ Marie Chantal Barre, "De l'indigénisme à l'indianisme", in Le Monde Diplomatique, Paris, March 1982.

32/ International Indian Treaty Council, Indigenous populations and International Forums, paper presented to the International NGO Conference on Discrimination against Indigenous Populations in the Americas, Geneva, 1977.

33/ "Bangladesh Tribals fight for Land in Chittagong Hill Tracts", in International Work Group for Indigenous Affairs Newsletter, June 1981.

"Adapting their own administrative practice to the sensibilities of the administered, the British made it an unwritten rule, observed until the last years of the Raj, that no Indian official should be posted to the hill districts; and by regulation they made sure that traders and speculators from the plains would not be allowed to infiltrate and exploit the Naga areas... The British were not in that creating a gulf between the Nagas (and other hill-men) and the people of the plains, as was later so frequently to be alleged; they were recognising that a cultural gulf with a high content of antipathy and high potential for destruction of the hill cultures already existed, and seeing that it was not bridged to the cost of the hill-men". 34/

64. In Latin America, new trends emerged in the decades after the Mexican Revolution. In what has since been referred to by some as a policy on "new indigenismo" many States gave some attention to the importance of indigenous cultures and traditions in the development of their national heritage. Traditional and communal indigenous forms of land tenure, which had once been abolished by law, began once again to be legally recognized in certain countries. The First Inter-American India Conference, held in Mexico in 1940, issued a solemn declaration of principles on the rights of indigenous populations.

65. In the decolonization processes after the Second World War, some newly independent States encountered complex problems in the form of tribal and indigenous populations which had received separate administration during the colonial period, which had little contact or affinity with the new dominant culture and which, at times, made vigorous attempts to secede from the new State. Mention has already been made of some such cases in the Indian subcontinent. In certain instances these demands have been met with the granting of limited political autonomy after protracted periods of civil strife.

66. In 1957, the International Labour Organisation adopted its Convention 107 on Indigenous and Tribal Populations. Apologists of the Convention have pointed out that it provides for a very broad degree of participation by the indigenous peoples themselves within the process of integration. As noted before, however, this Convention has also been challenged by many critics including indigenous peoples' organizations for its emphasis on integration and protection.

67. In recent years there would appear to be two fundamental issues which have aroused most international attention and concern. The first is the widespread and open rejection by indigenous peoples of the concept of integration. At times this is coupled with demands that they should be treated as peoples entitled to autonomy and self-government and even as independent nations and as subjects of international law. In other instances there are demands for forms of less ample autonomy, for a development policy based on self-reliance and for their right to choose their own path of development within policies of ethnodevelopment.

34/ Neville Maxwell, India and the Nagas, Minority Rights Group Report No.17, 1973.

68. The second issue is the adverse effects of large-scale economic development programmes on those areas hitherto inhabited by tribal and indigenous populations. In all the regions and most of the countries covered by this study, indigenous populations have been removed from their traditional lands in order to make way for major hydroelectric, petroleum and other mineral or development projects. Reference has already been made at the beginning of this chapter to the concerns expressed by non-governmental organizations in this regard.

69. It appears, however, that the potentially adverse effect of such programmes on indigenous populations has now prompted some major multilateral financial institutions to consider special criteria for the appraisal of its projects in isolated areas.

70. It has been reported in the press in connection with the World Bank that:

"The World Bank has become the first international development agency to recognise that economic development places in jeopardy the survival of tribal peoples. Economic Development and Tribal Peoples, a remarkable document prepared by the Bank's Office of Environmental Affairs and released last week, proposes a bank policy for indigenous peoples which, if fully implemented, will support their rights to their land, resources, ethnic identity and cultural autonomy. Economic Development and Tribal Peoples proposes that bank tribal policy would be to assist projects within areas used or occupied by tribal people only if it is established that best efforts have been made to obtain the voluntary, full and conscionable agreement of the tribal people and that the project design and implementation strategy are appropriate to the tribe's special needs and wishes. In the case of uncontracted tribes within an area influenced by a project (such as a highway or rural development) proposed bank policy would be to ensure that the project contains measures to ensure their survival. Finally, in the case of tribes at a more advanced stage of interaction with the nation, bank policy would be to 'facilitate their development in a way which enhances their welfare and, to the extent desired by the beneficiaries and the nation, preserves their identity as well as their individual and collective rights'". 35/

2. Formulation of policy: organs, procedures, implementation

71. The administrative arrangements for the implementation of policy will be dealt with in more detail elsewhere. 36/ Here, the different approaches to the formulation of policy, and the different branches of government involved in policy issues will be mentioned. The procedures for involving representatives of the indigenous peoples themselves in the formulation and implementation of fundamental policy will also be briefly discussed.

72. To date most States have created a specialized agency of government, usually attached to a specific Ministry or Department, with over-all responsibility for Indian affairs. The extent to which such an agency actually formulates policy

35/ Guardian Newspaper, London, 12 August 1981.

36/ See chapt. X on Administrative arrangements, below.

will however depend on a number of factors within each State's legislative, judicial and political framework. In some States the specialized agency is directly responsible to the executive branch, and may have very broad discretion in formulating over-all policy. In other States the actual formulation of policy may be vested in the legislative branch. And particularly in those States where policy has gradually evolved over a long period of time, there may be some controversy as to the extent to which congressional or parliamentary Acts should in turn be subordinate to past judicial decisions within the common law or civil law tradition. Furthermore, in those State where a federal system of government exists, federal policy may, to a certain extent, be limited by the provisions of individual State law.

73. Most of the countries with significant indigenous populations are now independent States which at one stage of their history came under foreign, generally European, colonial domination. In the case of British colonization, the emphasis of the colonial power was on political, economic and social segregation, often with land rights and a degree of self-government articulated de jure through treaty arrangements or through British Crown rulings which clearly recognized the possessory rights and sovereignty of the native populations. In the case of Spanish colonization there was far more emphasis on political, economic and social incorporation into the colony. Often the Spanish Crown granted possessory rights over traditional communally owned lands, in exchange for tribute and regular periods of forced labour on the colonial haciendas and encomiendas. 37/

74. In the former British colonies it can be said that, despite subsequent policies which have at times been aimed at forced assimilation or the termination of a separate Indian status, there has been a considerable degree of continuity between the legal aspects of colonial policy and those present in the evolution of contemporary policy. In the United States, for example, Congressional law of the late nineteenth century once provided for the unilateral abrogation of many provisions of earlier treaty law, and for the wholesale abolition of communal reserve lands. 38/ The contemporary legal system has, however, also adopted much of the common law tradition inherited from the British colonial era. Supreme Court rulings of the early nineteenth century recognized many of the rights which accrued to the native populations through judicial decisions of the colonial period. 39/ Policy has undergone review of a judicial, legislative and executive character. It may be said that policy has evolved through a complex web of legal decisions and political acts, with the actions of the executive and congressional branch sometimes keenly contested by the judicial branch of government. 40/

37/ José María Ots Capdequi, Estudios de Historia del Derecho Español en las Indias, Bogotá, Colombia, 1980.

38/ The General Allotment Act of 1887, often referred to as the "Daves Act".

39/ For a detailed description see Howard R. Berman "The concept of Aboriginal Rights in the Early Legal History of the United States", in Buffalo Law Review, vol.27, Fall 1978, pp. 637-668.

40/ Notably the decisions of Chief Justice Marshall, who served as Chief Justice of the Supreme Court up to 1835.

75. In the United States the Government organ responsible for the implementation of policy since the Indian Reorganisation Act of 1934 has been the Bureau of Indian Affairs (BIA), organically part of the Department of the Interior. The policies of the Bureau are said to be

"ultimately decided not by the Commissioner but by the Congressional Committees on Interior and Insular Affairs and by the Indian section of the Bureau of the Budget, all of which have been traditionally unsympathetic to Indian demands for self-determination and have followed an unimaginative, conservative approach based on the assumption that the government knows best and that the native must assimilate". 41/

76. In Australia, where the British colonial experience was of shorter duration, and where the rights of the aboriginal populations were perhaps less articulated by law, there have been similar conflicts of jurisdiction between the executive, legislative and judicial branches and, at times, between federal and state Governments. Until recently, official federal policy was one of assimilation, while both state legislation and Supreme court rulings rejected the notion of separate aboriginal rights 42/ inherited from the British common law tradition. The Australian Government has stated that although new federal measures have now been taken to establish the nature of aboriginal land rights, they have been hampered by state legislation which conflicts with a federal policy aimed at granting security of tenure and effective self-government to the aboriginal population.

77. In Latin American countries, policy towards indigenous populations has often been marked by abrupt changes, rather than by constant gradual evolution. Upon independence in the early nineteenth century, the newly independent States tended to adopt constitutions and legislation granting equality before the law to indigenous peoples, aimed at terminating their special status. The Civil Codes adopted in different parts of the continent around the middle of the nineteenth century put emphasis on private title to land, and in theory paved the way for the abolition of communal forms of land tenure and social organization. With few exceptions, Indian reserved areas survived only amongst the more isolated communities, particularly in the case of forest-dwelling groups in the Amazon basin and elsewhere. A dual policy thus evolved in some countries. In frontier zones, agreements were often celebrated with missionary organizations, which were given the task of "protecting and acculturating tribal groups", though many groups remained completely isolated from national society. In other areas, where sedentary indigenous communities had been protected by colonial law and to some extent by colonial practice, the policy was one of assimilation without regard to indigenous cultural values. The extent to which such policies were in fact enforced has depended on many factors, including numerical importance of the indigenous populations concerned, the nature of the agricultural economy, the size of the available land areas, and the extent of the demand for seasonal or permanent labour on traditional haciendas or commercial plantations.

41/ James Wilson, The original Americans: US Indians. Minority Rights Groups, Report No. 31, 1976.

42/ A. Earrie Pittock, Australian Aborigines: the Common Struggle for Humanity. International Work Group for Indigenous Affairs, Copenhagen, 1979.

78. The trend was to some extent reversed in the first third of the twentieth century. In particular, the social provisions of the Mexican revolution sought to recognize former indigenous forms of land tenure and social organization, and to provide for the restoration to indigenous communities of lands which had been unlawfully expropriated from them during previous decades.

79. In some parts of Latin America, notably in the Andean countries, traditional indigenous forms of land tenure and social organization started to be recognized by law. The nature of these changes, and the historical evolution of this policy, is too broad a subject to be discussed in this report. It should be noted, though, that while some States limited themselves to affirming in their constitutions and social legislation that indigenous cultures would be protected and preserved, others went further and developed specific state organs for dealing with indigenous affairs.

80. International action taken by the Organization of American States and the relevant Inter-American institutions are covered elsewhere in this report (see chap. III above). It should be noted here, however, that the First Inter-American Indian Conference held at Pátzcuaro, Mexico, in 1940, did much to co-ordinate the initial framework of fundamental policy towards indigenous populations in the Latin American Republics within the general trends of what is known as indigenismo. In some of its resolutions, the Conference recommended specific types of action, among which was the creation in each country of specialized institutions to implement policies developed towards indigenous populations. 43/

81. The nature of the action taken and the characteristics of the special institutions created to deal with indigenous affairs in the implementation of those resolutions taken at a hemispheric conference, as well as the actual official policy developed in that connection have varied from country to country and with the passage of time. In cases where the historical rights of indigenous populations have been reaffirmed, new policies have been adapted to past and even to colonial legislation. In those cases where the indigenous groups are widely dispersed throughout the national territory, with their scattered lands adjoining non-indigenous properties, policy may be developed, not by a state organ with specific responsibility for indigenous affairs, but within the over-all framework of agrarian and community law. In those cases where the indigenous populations are predominantly non-aculturated groups, and where there is no past body of law on which current policy could be built, policy is more likely to be centralized in a specific government agency which has control over almost every aspect of indigenous affairs.

82. In Mexico, for example, the decentralized Instituto Indigenista Nacional (INI) was given direct responsibility for indigenous policy since its creation in 1948. 44/ However, due to the diverse nature of the indigenous populations, and because of the complex nature of post-revolutionary legislation on indigenous land rights and despite the fact that several ministries are represented in the Institute it came as no surprise that fundamental policy was formulated through the actions of a large number of separate government agencies and departments.

43/ See paras. 64 and 96.

44/ The INI was established as a result of an Inter-American recommendation. See para. 80, above.

83. The situation has been described as follows:

"In Mexico, indigenous action consists of a heterogeneous collection of measures, reflecting different criteria, sometimes contradictory and sometimes complementary: the different Secretaries of State, for Agriculture, Health and Public Assistance and Water Resources, apply their own particular indigenous policy, on occasion completely separate from that of the INI ...". 45/

84. It has been pointed out in connection with Mexico that one of the obstacles standing in the way of the formulation of a clear policy has been the "absence of an integrated body of principles, policies, objectives, programmes and goals, indicating clearly the area of direct responsibility of the Instituto Nacional Indigenista." By an Executive Decree of January 1977, a new administrative unit was established under the jurisdiction of the Presidency of the Republic, designed to give the executive branch closer control over the formulation and implementation of fundamental indigenous policy (see chapter X on Administrative Arrangements, below).

85. In Peru nineteenth century civil law abolishing communal lands was also overruled by early twentieth century law which recognized the legal personality of the comunidades indígenas. The Constitution of 1920 affirmed that it was an obligation of the State to protect the indigenous population and to promulgate special legislation for its economic and cultural advancement. 46/

86. A Department of Indian Affairs was set up in the Ministry of Development in Peru as long ago as 1921, for the purpose of studying the situation of the Indians, and proposing measures for their protection, education and economic advancement. A Superior Council for Indian Affairs was set up in 1936, as a consultative body responsible for giving an opinion on technical and legal questions concerning indigenous populations. There have been numerous procedural changes since then, together with new legislation which has altered the Government's fundamental attitude towards the status of its indigenous populations.

87. The recent changes, in particular those during the agrarian reform period of the late 1960s and early 1970s, are too varied and complex to be summarized adequately here. But they should be mentioned briefly as an example of a governmental policy which has on the one hand aimed at transforming rural society taking some account of indigenous cultural and economic patterns, and on the other hand, has withdrawn the special indigenous status which was previously granted to indigenous rural workers.

88. The main purpose of the agrarian reform programme was to grant land titles and further land areas to indigenous rural workers living in the mountain (sierra) regions, in what prior to 1969 had been legally recognized as Comunidades Indígenas (Indigenous Communities). But Decree Law 17716 of 24 June 1976 equated their status with that of the remainder of the rural population. In outline the situation was as follows:

45/ Alejandro Marroquín, Balance del Indigenismo, pp. 110-118.

46/ Indigenous Peoples, International Labour Organisation, Geneva 1953, op.cit. p. 512.

"In the non-forest areas, communities of indigenous populations formerly enjoyed recognition as Indigenous Communities; however, legislation adopted under the agrarian reform programme transformed the Indigenous Communities outside the forest regions into Rural Communities and no longer recognised that the more settled agricultural indigenous groups in these regions had any special status as indigenous peoples. The communities of indigenous populations in the non-forest regions have therefore been treated on the same basis as other population groups in respect to agrarian reform and redistribution of land, and the Government has reported that it cannot distinguish between the treatment afforded these populations and others in these regions". 47/

89. In the forest areas, new legislation of 1974 for the first time recognized in principle the full rights of ownership by tribal groups over their land. 48/

90. Brazil and Paraguay are examples of countries where a specialized state organ has a very wide mandate not only in the formulation but also in the execution of policy. In Paraguay the National Indian Institute (INDI) comes directly under the jurisdiction of the Ministry of Defence. It was created by Decree 18365 of 1975, which stipulated that its Council should be presided over by the Minister of Defence. It has been empowered to supervise, direct and co-ordinate all programmes undertaken in respect of indigenous populations by the Governments as well as by religious and private bodies. INDI may approve the commencement or continuation of programmes or mandate any changes it may deem necessary.

91. In Brazil, the National Indian Foundation (FUNAI) is attached to the Ministry of the Interior. It exercises tutelage over the Indians and has complete responsibility for them in law and control over all aspects of their lives. In addition to the usual role of such an agency, which includes programmes for development, health, education etc., of the indigenous populations, FUNAI also administers contracts of employment on their behalf. It takes legal proceedings in their name and manages the land they occupy. 49/

92. In both countries, separate advisory bodies exist to advise these state organs on policy issues. In Paraguay, this function has been served by the Asociación Indigenista de Paraguay, a semi-official organization which is often consulted on matters of indigenous policy. In Brazil Decree 68,377 of 19 March 1971, which revised the functions of FUNAI, stipulated that the President of FUNAI should be advised by a Conselho Indigenista composed of seven members nominated by the President of the Republic on the recommendation of the Interior Ministry. As discussed in another part of the present study, 50/ the Estatuto do Indio, or Law 6,001 of 19 March 1973, breaks the Indian population down into the three categories of: isolados (isolated), em via de integracao (on the way to integration) and integrados (integrated). By this law, Indians are empowered to petition the competent court of justice to be released from the

47/ Swepston, loc.cit.,

48/ Ley de Comunidades Nativas y de Promoción Agropecuaria de las Regiones de Selva y Ceja de Selva, Decreto-Ley No. 20653, Editorial Inti, 1974.

49/ See chap. X.

50/ See chaps. V and VII.

tutelage provided for in the law, so long as they can satisfy certain requirements including knowledge of the Portuguese language and a "reasonable comprehension of the usages and customs of the national community". By decree of the President of the Republic, emancipation of a native community and its members can also be declared when applied for by the majority of its members, and when proof has been provided by the competent federal agency of their full integration into the national community. It has been alleged that this law has at times been misused to emancipate Indian leaders from indigenous status against their will, on the basis of their "proven capacity of action within the larger society". 51/

93. In Colombia the Division of Indigenous Affairs (DAI), the agency within the Ministry of Government which has formal responsibility for policy matters, has exercised somewhat less control. This is partly because authority has been delegated to missionaries to deal with indigenous people in marginal zones; 52/ and partly because a body of nineteenth century law, which establishes a separate regime of traditional self-government and communal land rights in the provincial department inhabited by the largest number of acculturated Indians, is still considered to have validity today. The nature of these land rights, and the extent of the resguardo areas, has been the subject of controversy in recent years between the indigenous communities of the department of Cauca and the local landowners and authorities. When agrarian reform legislation was enacted in the 1960s, the agrarian reform agency INCORA was empowered to create new resguardos for indigenous peoples where necessary, after consultation with the Ministry of Government. 53/

94. In an apparent attempt to formalize and regularize its policy, the Government of Colombia has now prepared a draft Indian Statute. A version of this draft law was included in the Government of Colombia's report to the VIII Inter-American Indigenist Congress held in Mérida, in November 1980. It empowered the President of the Republic to set up a new state organ to deal with indigenous policy questions. It was also stipulated that:

"For the establishment of the Legal Regime for Indigenous Peoples, the National Government shall appoint an Advisory Commission, consisting of two members from each house of Congress, ministers appointed by the President of the Republic, representatives of the Colombian Association of Universities, the Colombian Academy of Jurisprudence, the indigenous communities and other bodies which, in the Government's judgement, should participate in the relevant studies." 54/

51/ Allegations made at the UNESCO-FLACSO gathering of Experts on Ethnocide and Ethnodevelopment in Latin America; December 1981.

52/ Victor Daniel Bonilla, Servants of God or Masters of Men. A critical account of the Capuchin missions in Colombian Amazonia. Penguin Books, London, 1972.

53/ Ley 135 of 1961, as modified by Ley 1 of 1963.

54/ Report of the Government of Colombia to the VIII Inter-American Indigenist Congress, Merida, Mexico, 17-21 November 1980.

95. In this brief survey it can be seen that - even in the one region of Latin America - the organs and procedures have varied greatly in accordance with the nature and conditions of the indigenous populations. It should also be noted that, in all the countries considered, there have been substantial modifications in recent years. And in all States there is growing concern by the indigenous peoples themselves that they should be consulted and should participate in the making of national policy as it affects their interests and livelihood. Although procedures for consultation often exist, it is clear that in several cases the members of consultative bodies are designated by the executive branch and may not adequately represent or even reflect the views of indigenous peoples, particularly those whose views and attitudes may be at variance with government policy.

96. Reviewing very briefly the evolution of inter-American indigenist policy, as proposed by the various Inter-American Indigenist Congresses, from the first to the eighth and most recent, one author has described the situation in the following terms:

"Inter-American indigenist policy hinges round two important dates, 1940 and 1980. In 1940 the first Inter-American Indigenist Congress was held at Patzcuaro (in Michoacán State, Mexico) in the presence of the then President of Mexico, Lazaro Cardenas. Resolutions on the following subjects were adopted by the Congress: a request for the establishment of indigenous affairs offices in various countries, demands that traditional institutions should be respected, allowing at the same time for development of the community with a view to its integration in the social life of each country, the drafting of protective legislation for the indigenous population and action to preserve indigenous culture, recognizing the importance of indigenous languages. Although this Congress was dominated by integrationist ideas, it has to be remembered that this was the first occasion on which the Indian problem had been raised at the continental level. Shortly after this the Instituto Nacional Indigenista was set up at Mexico City.

"Inter-American indigenist congresses have continued to be held regularly in Latin America. The Eighth Congress, held at Mérida (Mexico) in 1980, criticized the policy of 'indiscriminate integration of the indigenous population' pursued by traditional indigenism which 'systematically served the interests of the groups in power', making use of programmes which were frequently converted into 'mechanisms to reverse and strategies intended to check and repress the advancing levels of organization and struggle of indigenous populations'. This new indigenism, which preaches the participation of ethnic groups in the development of national society, has come into being at a time when a new ideology specific to the Indians alone is starting to spread, namely Indianism.

"Conceived by its ideological promoters as a philosophy based on the Indian's vision of the world, the concept of Indianism has in recent years enabled indigenist organizations to acquire their own ideological base on which to build continental solidarity, pan-Indianism or Indian internationalism." 55/

97. Indianism, which has become a substitute for indigenism at both the national and inter-American levels, has been formulated and put forward by the indigenist organizations themselves:

"At the first Congress of Indian movements in South America, held at Ollantaytambo (Peru) in March 1980, the majority of delegates and participants affirmed in a resolution, that Indianism provided an ideological basis for political action: 'We reaffirm that Indianism is the central tenet of our ideology, since its vitalist philosophy champions the self-determination, the self-sufficiency and the social, economic and political self-management of our peoples and constitutes the only alternative mode of life in a world which is currently in a state of absolute moral, economic, social and political crisis.'

"Indianism has arisen as an evolving ideology which is essential for the struggle of Indian peoples against the colonial system under which they live in the Americas, a means of confronting the extension and modernization of capitalism and the universalization of the development model of society. Ethnic groups have been organized at the communal, local, regional, national and international levels, their principal objectives being self-determination and the establishment of a new type of development based on the Indian communal spirit. This attitude finds fault with the shortcomings of non-Indian organizations, in particular political parties, which tend to give priority to the class struggle, neglecting the problems of indigenous peoples (which are to be solved 'later')." 56/

C. Description of policy adopted in the States covered by this study

1. Introductory remarks

98. This section will be devoted to discussing de jure and de facto aspects of the content and orientation of official policy reflecting the views of Governments and those of non-governmental organizations. Particular attention will be given to the views expressed by organizations of indigenous peoples themselves. The extent to which the desires and preferences of the indigenous peoples have been taken into account in fundamental policy issues, will also be briefly examined.

2. Government views

99. Many States did not provide any specific information on the content of their fundamental policy as regards indigenous populations. 57/ A few limited themselves to asserting that no special policy provisions had been made to date towards indigenous populations, but that this was now about to change. 58/

100. The Government of Costa Rica has stated that, whereas "problems arose in the past" in this regard,

"State policy has now evolved very much in favour of indigenous populations during the past two years. [1/]

"... the measures adopted by the State are reflected in the decrees and law ... [cited].

"Up to now there has been no change in the policies pursued by non-official organizations, although this is expected to occur in the near future as a result of current co-ordinating legislation, aimed at avoiding the confusion which has arisen up to now in regard to indigenous groups."

101. The Finnish Government has stated:

"So far there has been no particular coherent policy towards the Lapps as a separate group. The administrative measures taken in order to improve the living conditions in the northern part of the country have benefited the whole population in these regions.

"The special needs of the Lapps have now been perceived more clearly than before, and the formulation of a particular policy towards them is under preparation. Certain efforts have already been made to help the Lapps to preserve their language and culture.

57/ Argentina, Bangladesh, Bolivia, Burma, Ecuador, El Salvador, Guyana, French Guyana, Honduras, India, Indonesia, Japan, Laos, Nicaragua, Pakistan, Panama, Paraguay, Peru, Philippines, Sri Lanka, Suriname and Venezuela.

58/ Costa Rica, Finland, Guatemala and Sweden.

"It is the duty of the local administrative authorities, in particular the County Government of the Lapp county, to see to it that the interests of the Lapps are also taken into consideration".

102. The Government of Guatemala has reported that:

"No fundamental policy has been formulated in regard to the indigenous peoples of Guatemala. Although some legislation has been passed on isolated problems affecting the indigenous population - generally reflecting an ill-conceived paternalist attitude - the laws which have been adopted are not based on clearly defined criteria as to what constitutes indigenous culture, what are the values of that culture which have to be respected and what support they are to be given in national development plans.

"A positive change in the attitude of the State is apparent at present, however, in that cultural pluralism is now recognized as essential to the formation of genuine Guatemalan nationhood."

103. The Government of Sweden has reported that:

"The question of the situation of the Lapps has been handled ... [over a long period of time] as a question of economic policy, where the task of the public authorities has been to try to make it possible for the Lapps to keep their reindeer breeding even in the future. A general principle in the new Reindeer Husbandry Act (Official Gazette STS 1971:457) is that the Lapps will be granted a greater measure of self-determination. The opportunities to engage in reindeer breeding have been reduced. About 75 per cent of the people in Sweden identifying themselves with Lappish culture and speaking Lappish do not make their living from reindeer breeding. In view of these facts, the Government Commission on Lapp Affairs was set up in 1970 for the purpose of taking measures in favour of the language and the culture of the Lapps".

104. The Government also noted that in 1970 the Government Commission on Lapp Affairs was set up for the purpose of taking measures in favour of the language and culture of the Lapps, and that the Commission was to carry out its work in close contact with the representatives of the Lapps themselves. The Special Rapporteur did not have a report of the Commission at his disposal.

105. Several Governments 59/ submitted somewhat more explicit information on fundamental policy. In general, these Government reports lay emphasis on voluntary integration over time, with due regard for the cultural values and traditions of the indigenous peoples, and mention some of the procedures by means of which the indigenous peoples' organizations are enabled to play a role in decision-making.

59/. Australia, Brazil, Canada, Chile, Colombia, Denmark (Greenland), Malaysia, Mexico, New Zealand, Norway, and the United States.

106. The Government of Brazil stated:

"In the case of the indigenous population, the Brazilian Government has always taken care to elaborate special laws for their protection while they are living under primitive conditions. These laws are aimed at maintaining their lives and property, as well as progressively integrating them into the national community, by appropriate means, which is to say, without violence or any form of coercion. The basic legal text is Decree No. 5484 of 27 June 1928, which establishes a special code for the Indians, placing them under the guardianship of the State, and providing for a steady pace of progressive emancipation until such time as they are completely integrated into the life of the nations."

107. It should be noted that this basic legal text had been complemented by the Indian Statute (Act 6001 of 1973) in which the State's official policy is described as follows:

"Art. 1. This law regulates the juridical situation of the Indians or forest-dwellers and native communities for the purpose of preserving their culture and integrating them, progressively and harmoniously, in the national communion.

"Sole paragraph. The protection of the laws of the country is extended to the Indians and native communities in the same terms as it applies to other Brazilians, safeguarding native usages, customs and traditions, as well as the particular conditions recognized in this Law."

108. The Government of Australia has transmitted the following information:

"the fundamental objectives of Government policy in relation to Aboriginal Australians are that they should be assisted as individuals and if they wish as groups, at the local community level, to hold effective and respected places within one Australian society with equal access to the rights and opportunities it provides and acceptance of responsibilities towards it. At the same time, they should be encouraged and assisted to preserve and develop their own culture, languages, traditions and arts, so that these can become living elements in the diverse culture of Australian society ... We also believe that programmes to give effect to such a policy must evolve in accordance with the effects of action so far taken and the needs of the times. They must take into account the expressed wishes of Aboriginal Australians themselves." 60/

109. The Government of Canada notes the substantial changes in its policy since "an exhaustive study of the situation of the Indian people of Canada was commissioned in 1964 by the Canadian Government, and the two-volume Hawthorne Report was published in 1966". The report "did not propose that the Indians be assimilated, but that much improved assistance programmes be developed

60/ This statement was made by a former Prime Minister of Australia, in an official statement of Commonwealth policy on Aboriginal affairs issued on 26 January 1972 and reaffirmed on 12 July 1972.

as 'prerequisites of proper choice and decision' by the Indian people in regard to their own future. Thus the main recommendation of the Report was that Indians should be granted equal status but should become 'citizens plus' with a special claim on programmes of social and economic development to compensate for past disabilities".

110. The Government of Canada also notes that a new Indian policy was put forward in the form of a White Paper in 1969 which proposed to end a separate status, to replace the earlier Indian Act with an Indian Lands Act, and to turn over to the provinces the responsibility earlier held by the Federal Government for education, health and social services. It further proposed to turn over to the Indians the control and legal title to Indian lands, in effect ending the reserve system; and to set up an Indian Claims Commission to deal with outstanding obligations under treaties and other agreements. The Commissioner was appointed in 1969.

111. The Government of Chile, while also stressing the need for integration in the interests of national unity, lays considerably less emphasis on the preservation of indigenous culture and forms of social organization. It states that past special legislation, notably that specifying the inalienable nature of indigenous land tenure, has in its opinion resulted in "significantly retarding the economic and social development of this social group". It asserts furthermore that:

"In our opinion it is necessary to ensure acceptance, especially by Chilean civil servants, of the State's views: the indigenous peoples are Chilean and must be integrated with the rest of the nation as soon as possible; in turn, society in general must assimilate them as promptly and completely as possible.

"It might be regrettable if this process of assimilation involved the loss of indigenous languages and forms of culture typical of the indigenous groups, but this would in no way be an impediment to the final consolidation of the unity of Chilean society, which cannot be other than a single whole".

112. The Government of Colombia reports in connection with official policy that:

"The premise on which this policy is based is the impossibility of preventing the physical and cultural integration of these populations in the majority society, modernized and racially mixed. It is, however, the responsibility of the Government and of the country itself to ensure that this integration is carried out with minimum tension and maximum respect for the cultural values of indigenous groups."

113. The Government of Denmark, in its communication of 21 May 1981, gives information on recent changes in its policy and administrative arrangements towards Greenland. It explains, however, that "the special arrangements which the national authorities have introduced for Greenland apply to all Greenland rather than selected population groups". A policy of Home Rule for Greenlanders was passed into law by Act No. 577 of 29 November 1978. Since then the Home Rule administration has progressively assumed control over more and more aspects of indigenous Greenlanders' affairs, including: taxation, the public school system, social welfare, several cultural affairs, and church affairs.

114. The Government of Mexico writes that:

"Since 1977 the officially declared policy in relation to indigenous populations may be summarized as follows: strengthening their productive capacity and guaranteeing them the fruits of their labour, in what is deemed the most effective way of preserving their cultural values and hence of strengthening the distinctive features of the personality of Mexico ...

"Indigenous policy, which is regarded as a necessity, is based on the tenet that the strengthening of the national consciousness will be achieved by respecting ethnic pluralism."

115. The Government of New Zealand states that, whereas until recently "New Zealand tended to demonstrate, in culture and attitudes, a transplant of the culture and attitudes of the United Kingdom" and "the policy was ill-defined and perhaps unconsciously tended towards assimilation", current policy now recognizes a multiplicity of cultures with equal rights and opportunities.

"In recent years the policy of the Government has recognized the fact that New Zealand society embraces more than one culture in one citizenship. This means, first of all, that all citizens regardless of race have the same rights and liabilities and that every citizen is entitled to the same opportunities as others, but full recognition is given to the fact that New Zealand is a multiracial and multicultural country. This combined policy provides that, while being in every sense a full citizen of the State, the Maori is entitled to retain his social and cultural institutions and that all other citizens should be taught to know and respect those institutions".

116. The Government of Norway, in the information provided in 1975, stated that:

"The official Norwegian attitude on questions connected with policy towards the Lapps is based on the premise that the Norwegian Lapps are Norwegian citizens with the same rights and obligations as other Norwegians. In regard to suffrage and eligibility for election to public positions and offices and for appointment to public and private offices and posts, the Lapps have the same status as all other Norwegian citizens".

117. The Government, however, also noted that the policy now to be followed towards the Lapps would take account of such factors as their language, their scattered pattern of settlement and their economic livelihood, all of which made it difficult for them to take advantage of normal facilities. The Norwegian Government also affirmed that:

"Considerable financial support is granted to Lapp cultural projects. Lapp organizations receive financial aid and co-operate in dealing with questions of particular interest to the Lapps, as well as in matters which may be regarded as having special consequences for Lapp areas or which affect Lapp interests. The Norwegian Government has already appointed a special body 'The Norwegian Lapp Council' to be the advisory organ for the Government on Lapp questions."

118. On the changing characteristics of fundamental policy towards indigenous populations, present in so many States, the following information applies to the United States of America. An official report contains the following statement:

"Throughout the history of federal/Indian relations, there has never been a comprehensive or consistent approach by the Congress and the Executive that dealt effectively with Indian problems and, at the same time, efficiently fulfilled Indian needs." 61/

119. In a recent official statement on policy towards indigenous populations, it is stated that:

"In 1970, President Nixon announced a national policy of self-determination for Indian tribes. At the heart of the new policy was a commitment by the federal government to foster and encourage tribal self-government. That commitment was signed into law in 1975 as the Indian Self-Determination and Education Assistance Act.

"The principle of self-government set forth in this Act was a good starting point. However, since 1975, there has been more rhetoric than action. Instead of fostering and encouraging self-government, federal policies have by and large inhibited the political and economic development of the tribes. Excessive regulation and self-perpetuating bureaucracy have stifled local decision making, thwarted Indian control of Indian resources, and promoted dependency rather than self-sufficiency.

"This Administration intends to reverse this trend by removing the obstacles to self-government and by creating a more favourable environment for the development of healthy reservation economies. Tribal governments, the federal government, and the private sector will all have a role. This Administration will take a flexible approach which recognizes the diversity among tribes and the right of each tribe to set its own priorities and goals. Change will not happen overnight. Development will be charted by the tribes, not the federal government." 62/

5. Non-governmental and indigenous peoples' views

120. Almost without exception, information from non-governmental and indigenous sources has been deeply critical of official policy. The prevailing view is that, even though in theory a Government may advocate cultural pluralism and pledge to respect indigenous cultural values within the process of integration, in practice the indigenous legal, cultural, social and economic conceptions, patterns and institutions have suffered under what has been more akin to a process of assimilation. Such views, which have been expressed most forcefully by the representatives of the indigenous peoples themselves, have frequently been echoed by other non-governmental bodies and independent policy review commissions. While these or similar views may have been expressed for generations in certain countries, they have undoubtedly become more frequent in recent years with the growing number of organizations of indigenous peoples at the national, regional

61/ Interim Report of the American Indian Policy Review Commission,
July 1976, p. 3.

62/ "Indian Policy", statement by Mr. Ronald Reagan, President of the United States of America, on 24 January 1983. Office of the Press Secretary. The White House. Washington D.C., page. 1.

and international levels, as well as with the strengthening of international non-governmental organizations which endeavour to document the situation of indigenous peoples throughout the world.

121. The views of indigenous peoples are available only for some of the countries covered in this report. In order to reflect the different nature of their concerns, arising from diverse historical and political circumstances, countries will be chosen from each of the main geographical areas covered in the report. As already noted their concerns can cover a broad spectrum of issues, ranging from respect for native laws, languages, forms of social organization and land rights to appropriate participation in national communities and legislatures, and representation on consultative policy bodies. The issues of autonomy, self-determination or statehood have also been prominent among their expressed views.

122. In Australia, aboriginal groups have been critical of federal or State policy on mining and land rights, and of interference with their customary laws.

123. Although legislation has granted ownership of existing Aboriginal Reserves in certain States to traditional Aboriginal land-owning groups, with administration in the hands of Land Councils consisting of representatives of each Aboriginal community in their respective areas, such Land Councils have limited powers which may not reflect the interests of the Aboriginals themselves. The Land Councils "are also empowered to negotiate the terms and conditions of mining to go ahead, except for several important categories of mining ... These provisions have already been used to pressure the Northern Land Council into agreeing in 1978 to uranium mining on the Ranger prospect in Arnhem Land where it was strongly opposed by most Aboriginals. Indeed the Australian Government would appear to have deliberately set up an organization which appears to represent Aboriginal interests, but which in practice is constrained by white advice, complex legislation and powerful institutions to submit to the wishes of Government and the mining industry". 63/

124. On the issue of customary laws, Australia's leading Aboriginal organization has questioned the terms of reference of the Australian Law Reform Commission, which was set up in 1981 to enquire into the extent to which Australian law should accommodate Aboriginal customary law. The National Aboriginal Conference "set out its reaction to the inquiry by the Law Reform Commission in a motion put before the Third Assembly of the World Council of Indigenous Peoples in Canberra. The NAC demanded that Aboriginals have the right to define their customary laws, and warned that they would reject 'definitions arrived at by white legal commissions of inquiry or any other white legal institution in Australia ...'. We demand Aboriginal involvement and proper consultation of all the appropriate groups and at all levels. Fundamental to this is recognition of Aboriginal customary rights in land and Aboriginal equity transactions, as well as post-colonial Aboriginal land tenure, including historical occupation, rights of residence and land rights on the basis of need and compensation". 64/

63/ H. Barrie Pittock, Australian Aboriginals: The Common Struggle for Humanity. International Work Group for Indigenous Affairs. Document 39 Copenhagen, 1979, p. 23.

64/ International Work Group for Indigenous Affairs (IWGIA) Newsletter, June 1981.

125. In India and Bangladesh the demands of some tribal and indigenous populations have centred on political autonomy or statehood, and the maintenance of the separate system of land tenure which were formerly granted to them under British colonial administration. Tribal representation in policy-making in India, at the local or national level has been described as follows:

"They have special representation in the legislatures both in the States and at the centre, as well as in services. Thus the tribals are made to feel that they are sharing in the administration of the whole country. Tribal advisory councils have been set up where there are scheduled areas in the States, and special autonomous hill districts have been set up in Assam under the Sixth Schedule of the Constitution. These autonomous districts have been given powers to evolve in their own way and according to their own ideas the institutions for governing these districts". 65/

126. The Anti-Slavery Society has given a less favourable account:

"Everybody admits that the Government policies so far implemented to develop the tribals have failed ... Government programmes have almost totally failed to mobilize the people for their own development and in fact because of the kind of 'development' officers sent by State Governments have alienated the majority of the tribals. The very use of the term 'uplift' demonstrates the Government's philosophy of 'development'. Development is something done to tribals by Hindus, not a process which the tribals are actively involved in and control". 66/

127. In those parts of India where tribal peoples predominated after independence, the kind of autonomy sought is reflected in the agreement drawn up between the Nagas and the Governor of Assam in 1947. In the judicial field, it was stipulated that all cases whether civil or criminal arising between Nagas in the Naga Hills be disposed of by a duly constituted Naga Court according to Naga customary law, or such law as may be introduced with the consent of duly recognized representative organizations; save that where a sentence of transportation or death has been passed there will be a right of appeal to the Governor. In the legislative field it was stipulated that no laws passed by the Provincial or Central Legislature which would materially affect the terms of this agreement or the religious practices of the Nagas should have legal force in the Naga Hills without the consent of the Naga National Council. As regards land, it was further stipulated that land with all its resources in the Naga Hills should not be alienated to a non-Naga without the consent of the Naga National Council. However, from the moment it was concluded "the agreement was treated by the central government as a dead letter, a reaction which embittered the Naga leadership and confirmed their mistrust of the Indians". 67/ Nagaland was granted independent statehood in 1963.

65/ L.M. Shrikant, "The Integration of the Aboriginal Population of India", International Labour Review, vol. LXXIII, No. 3, March 1956, pp. 243-248.

66/ Anti-Slavery Society for the Protection of Human Rights; Information furnished on 21 March 1977.

67/ See Meville Maxwell, India and the Nagas, Minority Rights Group Report No. 17, 1973.

128. In Bangladesh there have been demands for regional autonomy and the preservation of their traditional land rights made by the tribal peoples of the Chittagong Hill Tracts, through their political organization, the Pahari Janasanghati Samity. Their present demands are: "(1) Stop Bengali intrusion into the hill tracts and vacate the present settlers (2) remove the leaders of the Tribal Convention, who represent the elite and not the majority of tribals (3) democratize the Chittagong Hill Tracts Act of 1900". 68/

129. In Chile, the Mapuche Indians have frequently expressed their opposition to Government policy, which is apparently aimed at the voluntary subdivision of indigenous reserves. The following information is taken from a report of the United Nations Ad Hoc Working Group on Chile, on the Situation of Indigenous the Populations:

"At a meeting held on 28 June 1978 in Temuco, the Council of Mapuche Peasants decided to send to President Pinochet a communication signed by the representatives of six Mapuche communities. The representatives refer to the existence of the draft plan 'which involves an attempt to divide up the indigenous reserves and to collect taxes' and express their concern and anxiety over the fact that to divide up the indigenous reserves would mean: (1) the disappearance of the Mapuche people; (2) the loss of Mapuche lands; (3) the loss of Mapuche customs and traditions; and (4) the loss of Mapuche lands which have been usurped. They go on to state that the division of the communities would lead to an even more serious lack of education and would increase emigration and poverty, and that it is inadmissible for the Mapuches to have to pay taxes in respect of their own land. The document concludes with a statement demanding respect for their land, customs, culture and religion". 69/

130. In Colombia there is at the moment a full scale reassessment of policy towards the indigenous communities going on, "a process that has been hastened by the propagating work of Bonilla and other ethnologists on their own account and within a pressure group called the Comite de Defensa del Indio". 70/

131. The most outspoken of the indigenous organizations has been the Regional Council of Cauca Indians (CRIC), whose members have encountered much repression in recent years from local and national authorities; CRIC has defined its own programme as follows:

"(1) Recovery of indigenous community lands, (2) increasing their area, (3) strengthening of indigenous councils, (4) non-payment of rent, (5) publicizing legislation affecting indigenous populations and ensuring its proper implementation, (6) upholding the history, language and customs of indigenous populations, (7) training indigenous teachers to provide education for indigenous populations in their own language, (8) promotion of community economic organizations." 71/

68/ IWGIA Newsletter, June 1981.

69/ A/33/331, para. 709.

70/ Hugh O'Shaugressy, What Future for the Indians of South America?, Minority Rights Group, London.

71/ Consejo Regional Indígena del Cauca, Unidad Indígena, Unidad, tierra y cultura, Bogotá and Popayán, December 1982, pp. 6-7.

132. Although the Government of the United States has affirmed that "The views of the indigenous groups affected by policy are actively sought in the formulation of such policy", the American Indian Policy Review Commission has stated the following in its interim report of July 1976:

"Throughout the history of federal/Indian relations, there has never been a comprehensive or consistent approach by the Congress and the Executive that dealt effectively with Indian problems and, at the same time, efficiently fulfilled Indian needs. Indian policy has led directly to a situation of deep despair and frustration among Indian people documented by countless alarming statistics reflecting all aspects of the living conditions of Indian people. This frustration has been physically manifested in events such as the occupation of the Bureau of Indian Affairs and the siege of Wounded Knee". 72/

133. As reported to the Special Rapporteur during his official visit to the United States of America, 1976, many United States Indians have explicitly rejected the policy of integration, and are actively seeking political autonomy or a return to the treaty relationships of earlier times.

134. According to a source:

"Many Indian people today think that a return to the treaty relationship, and the accompanying recognition of sovereignty, is the only way to keep non-Indian governments from interfering in the affairs of Indian governments. For example, in November 1972, the Trail of Broken Treaties Caravan presented a paper to the United States Government in which a call for the restoration of the treaty relationship was made". 73/

135. Another source states:

"Indians are not seeking a type of independence which would create a totally isolated community with no ties to the United States whatsoever. On the contrary, the movement of today seeks to establish clear and uncontroverted lines of political authority and responsibility for both the tribal governments and the United States so as to prevent the types of errors and maladministration which presently mark the Indian scene". 74/

136. Most countries have asserted that the desires and preferences of indigenous peoples are taken into account in the formulation of policy. Several of them have pointed to the existence of a specific consultative body through which these preferences are articulated. As has been seen above, however, the consultative body may be nominated by the executive without consulting representative

72/ Interim Report of the American Indian Policy Review Commission, on site, pp. 2, 39-40. Part of this statement has also been quoted in para. 118 above.

73/ Curtis Berkey, Indian Sovereignty, Washington D.C., Institute for the Development of Indian Law, 1976.

74/ Vine Deloria jr., Behind the Trail of Broken Treaties, New York, Dell Publishing Co., 1974.

organizations formed by the indigenous peoples themselves. In Brazil, for example, while the Conselho Indigenista is nominated by the President, legal personality has recently been denied to a new grouping of indigenous organizations, the União das Nações Indígenas. In Colombia, although the draft Indigenous Statute provides for an advisory commission comprising representatives of the indigenous communities, the Consejo Regional Indígena del Cauca (CRIC) has regularly been denounced by government spokesmen as a "subversive organization". In other States, it has at times been alleged that Governments have given recognition to tribal councils which do not represent the wishes of the majority of indigenous peoples. But the major complaint of indigenous peoples is that, although some form of consultation may take place, their own views will rarely affect decision-making over the use and control of land or mineral resources.

D. Control, examination and review of officially adopted policy

137. No information is available in these respects for many countries. 75/ For a few countries there is government information on some aspects of these questions. 76/ Non-governmental information is available only for a very few countries. 77/ From whatever information is available on some of the countries covered by the present study it seems clear that procedures for control, examination and review of policies officially adopted by the State as concerns indigenous populations vary considerably from country to country. Examples of the information at the Special Rapporteur's disposal are found in the following paragraphs.

138. The Government of Australia has reported that:

"Efforts are being made to increase effective consultation with Aboriginals at all levels. Aboriginal advisory bodies have been established in most States and in the Northern Territory, either by Statute or otherwise, to provide a formal means of consulting Aboriginal opinion in the development and review of policies and programs. A number of national Aboriginal conferences and meetings of representative consultative bodies have been convened."

139. The Government of Canada has stated that: 78/

"The most direct and effective action taken by the Canadian Government to ensure an examination and review of policy toward the native people, has been in assistance to the natives themselves to organize for this purpose.

"In 1966 the extensive review of the Indian position by H.B. Hawthorne noted the lack of a unified voice to speak for the Indians. Scattered across Canada in many tribes speaking many languages, the Indians had been unsuccessful in efforts at countrywide organization. This was even more true of the non-status Indians and Eskimos.

"The most remarkable development in recent years has been the rapid organization of all three groups, which now maintain three headquarters offices in Ottawa for direct contact with the government. In 1968 a meeting of Indian and Métis representatives from eight provinces decided to organize nationally in two separate bodies ...".

75/ Argentina, Bangladesh, Bolivia, Brazil, Chile, Costa Rica, Denmark (Greenland), Ecuador, El Salvador, Finland, France (Guyane), Guyana, Honduras, India, Indonesia, Japan, Laos, Nicaragua, Pakistan, Panama, Paraguay, Peru, Philippines, Sri Lanka and Venezuela.

76/ Australia, Canada, Guatemala, Mexico, New Zealand, Norway, Sweden and the United States of America.

77/ Colombia, India and the United States of America.

78/ The Government then provided information on the National Indian Brotherhood, the Native Council of Canada and the Inuit Tapirisat of Canada.

140. The New Zealand Government has communicated that the Maori and Island Affairs Department reviews legislation annually and the law is constantly being amended to keep up with the changing situation. The New Zealand Maori Council also makes representations to the Minister suggesting changes in legislation.

141. As far as the New Zealand Maori Council is concerned, the Government has stated that the Maori District Councils were organized in 1962 into the New Zealand Maori Council, created as a consultative body. The Council expresses its views on all proposed legislation affecting the Maori population, before the Maori Affairs Select Committee, and has frequent meetings with the Minister of Maori Affairs to discuss matters of policy.

142. The Government of Sweden has stated that a government Commission was set up in 1970, to consider what further measures could be taken to promote the language and the culture of the Sami people and that the Commission was to carry out its work in close consultation with Sami representatives.

143. A United States of America government source stated in 1978 that:

"The Select Committee on Indian Affairs of the Senate, established in the 95th Congress primarily to consider over 200 progressive legislative recommendations made by the American Indian Policy Review Commission, will continue to function in the 96th Congress." 79/

144. Mention has been made above of the American Indian Policy Review Commission established in 1975. 80/

145. The Government states:

"The Indian groups are sophisticated politically, and know how to work with the Congressmen and Senators and with the State and Federal agencies. In general, the Government tends to be responsive to their needs and very few measures remain in force after they have ceased to be useful. Not all would agree with this statement, but they are the ones who object to certain measures or procedures that are supported by a majority.

"Since Indian programs cost money, at any time a majority wishes to reduce government control of all services, the Congress and the Executive Branch of the Federal Government are likely to be only too willing to do so. This, in fact, is one of the main concerns of the Indian community - that Federal services will be terminated prematurely."

79/ Report prepared by the United States Commission on the Conference on Security and Co-operation in Europe for the European Review Conference in Madrid, November 1980, pp. 150-155.

80/ See para. 132, above.

146. According to a report: 81/

"Incidentally, one sentence in the US response bespeaks an attitude that is completely unworthy of the traditions of the United States. It is reproduced here in sorrow and without further comment: 'Not all would agree with this statement, but they are the ones who object to certain measures or procedures that are supported by a majority.'

"As any review of the termination era will attest, it is not true that no bill is passed by the Congress without hearing from those affected by the bill, mainly the Indian population. Although the record of Congress has been considerably better in recent years, particularly with the recent tendency of major parties to select their presidential candidates from the Congress, Indian tribal representatives are still not routinely invited to testify on general legislation which affects them, nor are they included in such legislation unless as an afterthought and often as a result of expensive lobbying efforts conducted by the tribes themselves."

147. The Government of Mexico has merely stated in its report that:

"The system of work of the Office for Over-all Co-ordination of the National Plan for Depressed Areas and Marginal Groups under the jurisdiction of Office of the President of the Republic, which covers the Instituto Nacional Indigenista, includes systems of evaluation."

148. Two Governments provided only negative information in this connection. 82/ The Government of Guatemala, after describing a change of attitude on the part of the State in recognizing cultural pluralism as "essential to the formation of genuine Guatemalan nationhood", states that:

"The new trend in State policy (promotion of co-operatives for indigenous rural workers and craftsmen, etc.) is still in the planning stage and, in consequence, no provision has yet been made for the examination and review of policy concerning these ethnic groups."

149. The Government of Norway states that "no special measures had been taken to control an examination of State policy towards the indigenous population", adding that it was felt that the "over-all review and any updating required are taken care of through the democratic organs and the regular functions of the various organizations including discussion of the budget and the reports on activities in different fields".

150. The view has been expressed that in Colombia a fundamental examination of the bases of the policy adopted toward indigenous populations was begun in the early 1970s. In the words of one author:

81/ American Indian Law Newsletter, loc. cit., pp. 19-20.

82/ Guatemala and Norway.

"At the moment there is a full scale reassessment of policy towards the indigenous communities going on a process that has been hastened by the propagating work of Bonilla and other ethnologists on their own account and within a pressure group called the Comité de Defensa del Indio. In November 1971 President Pastrana set up a Consejo Nacional de Política Indigenista (National Council on Policy towards the Indian) with a very wide brief to recommend future policy on the question." ^{83/}

151. As regards India, "there are at present 11 Tribal Research Institutes in the country. To co-ordinate their activities, a 30 member Central Research Advisory Council has been set up. The Council provides guidance on policy formulation and serves as a clearing house for the Institutes, Central and State Governments and other research organizations connected with tribal problems". ^{84/}

152. From information available to the Special Rapporteur, it would appear that in most other countries considered in the present report, no thorough co-ordinated examination of the questions involved has been undertaken in many years, if ever. It would further seem that no systematic arrangements have been made for consultation with, and the participation of, indigenous populations on the fundamental determination of attitudes regarding issues which affect their lives and which will form the basis of State policy concerning them.

153. It is, otherwise, a well established fact that indigenous peoples' organizations have become more and more active in recent times and that there may well not exist universal agreement among the indigenous populations themselves as to what constitutes the most authentic form of representation of their best interests, their desires and preferences. There can thus be no foolproof mechanism to ensure that policies in fact reflect the wishes of the majority of the relevant indigenous groups. There can be little doubt, however, that policies without any review or consultation procedures whatsoever will inescapably lead to disenchantment and conceivably to civil unrest.

154. It would thus appear that the most enlightened manner of proceeding with examination and review of policy is precisely to give government support to the existence of representative indigenous organizations, and then ensure indigenous representation in the major policy-making bodies, and to build into the policy formulation procedures the necessary consultation with, and participation of, the different indigenous groups involved. Should this not be the case, then there is a very serious danger that whatever special measures may have been taken will outlive their usefulness and fail to reflect the present-day needs, concerns, desires and preferences of the indigenous populations concerned.

^{83/} O'Shaughnessy, op. cit., p.20.

^{84/} India, A Reference Annual, 1974. Government of India, op. cit., pp. 97-99.

E. Review of policy adopted by non-governmental or unofficial organizations

155. In point 13 of the outline for the collection of information in connection with the study, an attempt was made to gather information concerning the review of the policy pursued by unofficial organizations, including: religious missions, missions, commissions or groups of a scientific, anthropological, ethnological, sociological or other nature that have undertaken action programmes among indigenous populations.

156. Many of the 37 countries covered in the present study did not provide any information whatsoever in this regard. 85/ Information is available, however, on a few countries, whether it was provided by the Governments concerned 86/ or by non-governmental sources. 87/

157. Some Governments have provided information on the review of the policy pursued by unofficial organizations as carried out by State authorities. Thus, the Government of New Zealand has reported that:

"So far as scientific bodies are concerned, the principal scientific organization in New Zealand is the Royal Society of New Zealand. This body, formerly known as the New Zealand Institute, quite early in the history of New Zealand, began publishing material on Maori society, traditions, arts and crafts, customs, and so forth. In 1892 the Polynesian Society of New Zealand was formed. This is a voluntary scientific body with a worldwide membership which had for the last 80 years continued to publish anthropological, ethnological and sociological material on the Maori peoples and kindred people of the Pacific. The Society's publications represent the principal body of Maori traditional law that has been published and had it not been for the work of the society the present day movement amongst the Maori people to revive their tribal customs would have, in many cases, been frustrated."

158. The Government of the United States replied referring to indigenous peoples interest groups, as follows:

"There are numerous Indian interest groups which at times have played an important part in formulating Indian policy. Currently there are three primary groups. The National Congress of American Indians which was established in 1946, the National Tribal Chairman's Association, established in 1971, and a more militant group called the American Indian Movement established in the last decade, led largely by non-reservation or acculturated persons with some degree of indigenous blood. There is no question but that these organizations have an impact both within the legislature and the Executive Branch of Government on the legislation about and the carrying out of Indian programs."

85/ Argentina, Bangladesh, Bolivia, Brazil, Burma, Chile, Colombia, Denmark (Greenland), Ecuador, El Salvador, France (Guyane), Guyana, Honduras, India, Indonesia, Japan, Laos, Malaysia, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Sri Lanka, Suriname, Sweden and Venezuela.

86/ Australia, Canada, Costa Rica, Finland, Guatemala, Mexico, New Zealand and the United States.

87/ Brazil, Colombia and Venezuela.

159. The Australian Government refers rather to the review of State policy by non-official organizations as well as the influence these organizations exert on policy towards indigenous peoples in general:

"Unofficial organizations of all kinds and individuals, both Aboriginal and non-Aboriginal, can and do review and influence the development of policy in a variety of ways, for example by petitioning the Government, making submissions to the Minister responsible for Aboriginal Affairs, developing specific proposals for which Government funds are requested, publishing reports, making submissions in respect of Aboriginal Affairs to Government committees of enquiry, and so on."

160. Something similar may be said of the information furnished by the Government of Canada, which has stated that:

"An active non-government white organization concerned with the needs and problems of native people has been the Indian-Eskimo Association. It conducts research and pursues a broad program of public education, giving practical assistance to native people. Its policy has altered as the native organizations came into being. In 1971 it changed its name to the Canadian Association in Support of the Native Peoples. While it maintains an independent point of view in regard to the selection and review of issues and policies, its general objective is to promote understanding and support among the white population in matters concerning the native people.

"Similarly, the active social agencies of leading churches of Canada, including the Anglican Church, the United Church, the Roman Catholic Church, and the Moravian Church, have undergone a change in policy. There is a conscious effort to abandon a 'paternalistic' attitude for a more co-operative and supportive role. The Churches have withdrawn from the administration of Indian residential schools, a role they traditionally occupied under the authority of the Federal Government. Schools are now conducted through varying arrangements with provincial governments."

161. Some Governments have provided information on this question, for example those of Costa Rica, Finland and Guatemala.

162. The Government of Costa Rica has reported:

"Up to now there has been no review of the policies pursued by unofficial organizations, although this is expected to occur in the near future as a result of current co-ordinating legislation, aimed at avoiding the confusion which now exists in regard to indigenous groups."

Similarly, the Government of Guatemala has reported:

"Nor has a review been conducted of the policy followed by unofficial organizations when implementing cultural action programmes among indigenous populations. The reorganization of the activities and functions of the Instituto Indigenista Nacional - at present under examination and preparation - will enable supervision to be exercised over these non-governmental activities in relation to indigenous populations."

163. The Finnish Government has stated that:

"The Government has not interfered in the policy pursued by unofficial organizations."

164. In a statement which appears to relate rather to Government bodies, covered in another part of its report, the Government of Mexico has indicated that:

"Programme IV.I.3 Bases for Action is aimed at improving the judicial and administrative instruments regulating the entities of these organizations, with a view to guaranteeing the rights of communities."

165. Non-governmental sources have reported on the considerable independence that had been traditionally given to religious missionaries for the conduct of their activities in some countries. Information dating from the late 1960s and early 1970s was available to the Special Rapporteur in this regard. It was reported, for instance, that in Venezuela, "As regards the activities of the Catholic missions working in Indian territory by virtue of delegation of functions from the national government, these are carried out in accordance with their own judgement and interest; the only stipulation being that they present a monthly statement of accounts regarding the grant made to them by the Ministry, and a report at the end of each year, as required by the present law of the Ministry, for inclusion in the balance-sheet and statement of accounts laid before the National Congress." 88/

166. As to the situation prevailing in Colombia under arrangements then obtaining in the early 1970s, there was a "total lack of official interest in recovering the function of acculturation which was handed over to Catholic missionaries, although their ineffectiveness and their frequent abuses have often been denounced. In fact, quite the contrary; there has been increased delegation of powers to private persons or associations who have shown an interest in assuming them. This explains the cases of ... an Eudist priest ... and ... an American Bruce Olson among the Bari, and, on the national scale, the formal legal delegation of the acculturation of the 'savages' to 219 Catholic mission posts and to 33 groups of research workers of the Summer Institute of Linguistics (SIL), while the State maintains only 8 small commissions in the whole national territory.

"...

"... Various factors have influenced the nascent movement towards change which has been apparent in the last few years in some Catholic missionary circles in Colombia. Some are external, for example the criticisms expressed against missionary activity and the expansion of Protestantism. Most are internal, first of all the repercussions of the world-wide crisis of the Church and the impact on the priests of the Golconda movement by the anticolonialist ideology and the determination of Camilo Torres, the guerilla priest.

"From this point of view the Vaupés proved fertile ground. Both because of the challenge of United States Protestantism and the SIL, which has 10 landing strips and 25 members in the area, and because it was the apostolic see of the visible head of the Golconda movement and also suffered the effects of colonialism." 89/

88/ Annual Report of the Comisión Indigenista de Venezuela (1964-1965), see Nelly Arvelo de Jiménez, "An Analysis of Official Venezuelan Policy in Regard to the Indians", The Situation of the Indians in South America, World Council of Churches, loc. cit., p. 34.

89/ Victor Daniel Bonilla, "The Destruction of the Colombian Indian Groups", The Situation of Indians in South America, World Council of Churches, loc. cit., pp. 61 and 71.

167. The Special Rapporteur has already noted above some of the historical reasons for the missionary presence in isolated indigenous areas, and has made mention of their past record as the protectors of Indians against abuse by encroachers. But in more recent times there has been widespread concern at the reported tendency of certain missionary groups to impose alien cultural patterns without regard for the views of the local population. Such accusations have been frequently made against the Summer Institute of Linguistics (SIL) itself, which has engaged in substantial missionary activity amongst indigenous populations in Africa, Asia and Latin America. And information available indicates that "co-ordination between government agencies and missions is not effective; laws and educational plans may not be observed by missions; and missions are rarely obliged to keep the governments informed of the details of educational activities ... Several governments have contracted with the SIL to produce teaching materials in indigenous languages, or even to undertake total responsibility for the education of the Indians. Recently, however, the SIL has been expelled from Brazil and Panama". 90/

168. It should be noted that contracts with SIL missionaries have also been terminated elsewhere. 91/ Such decisions can be prompted by hostile public opinion, which can itself be a reaction to an absence of national control over the activities of foreign missionaries. In countries with vast geographical areas, poor communications and often slender resources, adequate supervision may doubtless prove a very difficult task. However, in those cases where indigenous peoples are subject to effective administration by an external organization, whether official or unofficial, there is a need for ways and means by which they can report abuses or shortcomings at the local level to the competent national authorities.

90/ International Work Group on Indigenous Affairs and Survival International, 1981. "Is God an American? An anthropological Perspective on the Missionary Work of the Summer Institute of Linguistics."

91/ It should be noted that contracts with SIL missionaries have also been under criticism in other countries, for example, Ecuador and Mexico.