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STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST
INDIGENOUS POPULATIONS

Final Report (first part) submitted by the Special Rapporteur
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VIII. General measures for the prohibition, prevention and elimination of discrimination

A. Preliminary observations

It must be stated from the outset that in all countries, whether developed or developing, unitary or federal and wherever they may be located and whatever their background may be, there is discrimination in fact even when full equality may have been formally proclaimed in law. To be sure, there are varying degrees and different characteristics in the incidence of this phenomenon, but, everywhere the de facto situation is at variance with the de jure situation. Actual behaviour is often very far from what has been foreseen in juridical norms. Regardless of the best of intentions and of the most generous ideals that may have inspired the adoption of legal provisions, their actual workings may have ended up producing unwanted results. Unfavourable distinctions affecting indigenous populations are, of course, not seldom based on intentional and very realistic oppressive or repressive actions or practices specifically designed to bring about freely chosen effects to the detriment of indigenous populations. Existing discriminatory patterns have also, by way of reaction, produced defensive attitudes or conduct against them, or against proposed ways of preventing them or the enactment of provisions seeking their elimination. Everywhere legal norms have been elaborated to cope with existing discriminatory acts or practices by prohibiting them and declaring them to be punishable, establishing ways or procedures to avoid or overcome them, or else to punish those responsible for and remedy the effects of these actions or practices.

2. The available data on existing discrimination and ways of preventing or eliminating it will be studied for each of the areas covered by the main body of this study. The following paragraphs contain, for each area, an analysis of the special measures taken in the different fields to place indigenous groups on a footing of more effective equality with the rest of the population and to deal with the special circumstances in which they find themselves. It has been deemed useful, however, to outline the general provisions in force for prohibiting and eliminating discrimination based on race, colour, belief and ethnic or national origin, because, in those countries where such provisions exist, they can be invoked on behalf of the indigenous population. On the other hand, no analysis will be made here either of the provisions or of their effects, since the latter will be obvious from the study of how they operate in relation to each of the subjects in question. Both the specific and the general aspects of these provisions will be outlined with respect to each area, as well as in the chapter on conclusions, recommendations and proposals at the end of the study, and as a corollary thereto. It would be premature to try to describe them in this part, which aims simply to give an idea of the legal framework of this aspect of the study.

3. Today, the Constitutions and fundamental laws of all States contain provisions relating to human rights and fundamental freedoms that are observed in the respective territories subject to their jurisdiction, and legislative or other measures have been taken everywhere aiming at the attainment of equal rights for all the inhabitants or for all citizens without unacceptable distinctions. Equality of opportunity for all citizens is also sought through the basic policies of the State in all countries.

4. Thus, in most countries the laws provide for equality before the law and/or for the equal protection of the laws and in many systems these provisions may be invoked against acts or expressions of discrimination, although these enactments do not specifically refer to this question. In numerous countries these

provisions are coupled with others specifically aiming at prohibiting, preventing or eliminating discriminatory acts and practices. In some other States that have ratified certain international instruments containing provisions prohibiting discrimination, or that are wholly devoted to that purpose in certain aspects, systematic laws for the prohibition and elimination of discrimination have been enacted, while provisions or sections of existing laws have been repealed whenever they were regarded as discriminatory. Provisions to ensure access to all under conditions of equality to places and services intended for the public have also been inserted in fundamental or other laws. Provisions seeking to overcome barriers that either exist or could come into existence and to encourage harmony between the different groups coexisting in countries have also been inserted into fundamental laws or other enactments. In numerous States, concrete acts of discrimination or of instigation to discrimination in concrete forms have been made into criminal offences, with provisions for their punishment by fines and/or imprisonment, while providing much more serious penalties for acts of extermination or instigation to the extermination of groups. A very succinct analysis of these different matters follows, as far as the information available on them would permit.

B. General provisions establishing equality

5. Traditionally, all Constitutions and fundamental laws contain a recognition of equality before the law. Recognition of the right to equal protection under law then follows as a natural complement. Thus, in many of the countries considered in connection with this study equality before the law is explicitly recognized for all the country's inhabitants 1/ or all its nationals, 2/ while the right to equal protection under the law is recognized for all inhabitants 3/ or nationals. 4/

6. As will be seen later, the Constitutions of some countries combine these provisions with specific declarations prohibiting discrimination for stated reasons (see paragraph 26 below).

1/ Argentina ("inhabitants", Const. art.16); Brazil (Const. art.153); Canada ("individuals", Bill of Rights, part I (b)); Ecuador ("all persons", Const. art.19); El Salvador ("all persons", Const. art.150); Guatemala ("all persons", Const. art.43); Honduras ("Honduran nationals and resident aliens", Const. art.51); India ("every person", Const. art.14); Paraguay ("inhabitants", art.54); Surinam (Const. art.1 (1)).

2/ Bangladesh (Const. art.27); Burma (Const. art.13); Finland (Government Declaration); Indonesia (Constitution, chapter on citizenship); Japan ("All the people", meaning the Japanese people, Const. art.14); Laos ("les lao", Preamble to the Constitution); Malaysia (Const. art.8 (1)); Nicaragua ("los nicaraguenses", art.37); Norway (Government Declaration); Pakistan (Const. art.25); Panama (implicit art.); Sri Lanka (Const. art.18 (1-a)).

3/ Canada (Bill of Rights, Part I (b)); Guatemala (Const. art.144); India (art.14).

4/ Bangladesh (Const. art.27); Brazil (Act 6001-19 of December 1973); Laos ("les lao", Preamble to the Constitution); Malaysia (Const. art.8 (1)); Norway (Government Declaration); Pakistan (Const. art.25); Peru (Const. art.23); Philippines (Const. section III (1)); Sri Lanka (Const. art.18 (1-a)).

7. The Constitutions or fundamental laws of other countries contain different provisions for achieving similar ends, for they make no specific mention of discrimination or of prohibiting and punishing it. In addition to establishing general equality before the law or the right to equal protection under the law, the Constitutions of some countries stipulate that "prerogatives based on blood or birth" are not recognized in the country (Argentina, art.16, Paraguay, art.54) or that special laws may be enacted "if this is required by circumstances, but not by reason of differences between individuals" (Peru, art.23).

8. The Government of the United States has made a general reference to formal equality before the laws and the equal protection of the laws under the Constitutions when it states:

"The protection of individual rights under the Constitution of the United States is available to all indigenous citizens in the same manner as it is to all other citizens. This protection has been available to all indigenous persons since 1924. The specific explanation of individual civil rights was enacted into law by the Congress during the 1960s. The law applied to all American citizens, Indian and non-Indians alike."

9. In this connection it has been remarked that:

"In theory, the protection of individual rights under the Constitution of the United States is available to all indigenous citizens in the same manner as it is to all other citizens. Special laws have been enacted from time to time to ensure that the rights of all Americans are protected, and these laws were made necessary by the persistence of overt racial discrimination in many parts of the country. However, the enforcement of civil rights laws for the benefit of Indians has been sorely lacking. The administration of justice, particularly in border towns surrounding the reservations, is of very poor quality and often enforced discriminatorily with respect to Indians. The Federal Bureau of Investigation has a very bad reputation in investigating crimes committed against Indians on the reservation as well as civil rights violations against Indians off the reservation. This agency has historically had a bad reputation with respect to the protection and the hiring of minorities, and in the case of Indians particularly this reputation is well deserved." 5/

10. Regarding other measures taken in a general context, which may work to the direct or indirect benefit of the indigenous populations, mention should be made of stipulations imposing on the State the duty to make provisions endeavouring to ensure equality of opportunity to all citizens, or to remove social and economic inequalities between human beings. The attainment of this goal is sought through a number of provisions establishing the approach to the organization and conduct of the economic and social policies of the State and the many measures to be taken by the public authorities in this connection.

11. Provisions of this type are present in most Constitutions or fundamental laws and the underlying principles emerge from very numerous provisions in each case. The discussion of these stipulations and their impact and grasp would take much space, and as, in addition, some of these aspects will be covered when dealing with fundamental policy, it is thought inadvisable to embark upon their close examination here. In a few countries there are, however, in addition, specific

provisions dealing with equality of opportunity which should be mentioned here. It should be noted that given the different socio-economic context in which they will have to be operative, their impact and scope may be quite different despite very similar wording.

12. An example of this type of approach may be found in the Constitution of Bangladesh which contains the following among its fundamental provisions: ^{6/}

"19. (1) The State shall endeavour to ensure equality of opportunity to all citizens.

"(2) The State shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic."

13. Another example of this type of provision is the following taken from the Constitution of Sri Lanka:

"Art. 16.

"...

"(5) The State shall endeavour to eliminate economic and social privilege, disparity and exploitation and ensure equality of opportunity to all citizens."

14. The Indian Constitution adopts a similar approach when, in the Preamble, the People of India declare themselves solemnly resolved ... "to secure to all its citizens Justice, social, economic and political ... Equality of status and of opportunity ...".

15. Read together with other articles of the Constitution, in particular articles 14, 15, 16 and 17, this declaration conveys the determination of the Constituent Assembly to eliminate discrimination and to overcome in that country the caste system and "untouchability". Articles 14, 15 and 16 have been quoted elsewhere in the present report together with other articles of the Constitution which make special provisions for scheduled castes and scheduled tribes. Article 17 provides:

"17. Abolition of Untouchability. - 'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law."

16. Untouchability is a concept of "ceremonial purity" according to which the touch or the near approach of a person of certain "low castes" pollutes persons of a "higher class". ^{7/} In addition to article 17 of the Constitution, the Untouchability (Offences) Act, 1955, makes the offence of untouchability cognizable and punishable uniformly throughout the country. Together with the caste system, untouchability has a long tradition in India, extending through thousands of years and long held traditions die hard. The Constitution of 1949 makes many provisions in favour of the Scheduled Castes (which are the untouchables), and in the Directive Principles of State Policy contained in the Constitution, the State was directed to promote with special care the educational and economic

^{6/} The Constitution also provides for equality before the law and for the equal protection of the laws, and proscribes discrimination on the grounds that it specifies. See paragraphs 5 above and 26 below.

^{7/} P.M. Menon. "Towards Equality of Opportunity in India" in: International Labour Review, October 1966, pp. 350-355.

interests of the weaker sections of the people and, in particular, of the scheduled castes and scheduled tribes and to protect them from social injustice and all forms of exploitation (art.46). Although these Directive Principles are not enforceable by the Courts they are declared, nevertheless, to be "fundamental in the governance of the country" and it is the duty of the State to apply these principles in making laws (art.37).

17. This report will concentrate exclusively on the Scheduled Tribes; it is, however, deemed useful to place them in their social context and to differentiate them from the Scheduled Castes, as most relevant Constitutional provisions deal with both the Scheduled Castes and Scheduled Tribes. According to one writer: 8/

"The institution of caste which is peculiar to India, goes back to the earliest times in Indian history. A good deal has been written about the origin and nature of the Indian caste system; in essence it is a system of social stratification on a hereditary basis which, through the ages, has acquired extreme rigidity making vertical mobility in the social hierarchy almost impossible. It was the complete separation of the various social strata on the basis of birth which made the caste structure unique.

"As Jawaharlal Nehru said: 'The ultimate weakness and failing of the caste system and the Indian social structure were such that they degenerated a mass of human beings and gave them no opportunity to get out of that condition educationally, culturally or economically.' He added that, in the context of society today, 'the caste system and much that goes with it are wholly incompatible, reactionary, restrictive and barriers to progress. There can be no equality in status and opportunity within its framework, nor can there be political democracy and much less economic democracy.' (Jawaharlal Nehru: The Discovery of India (Calcutta, 1960) (3rd edition), p. 234).

"It is in this context that the significance of the articles of the Indian Constitution quoted earlier becomes clear. The Constitution directs the State to promote with special care the educational and economic interests of the weaker sections of the people and in particular of the 'scheduled castes and scheduled tribes' and to protect them from social injustice and all forms of exploitation.

"A word of explanation is necessary to clarify the terms 'scheduled castes' and 'scheduled tribes'. 'Scheduled castes' means the castes, tribes or groups deemed to be such under article 341 of the Constitution and 'scheduled tribes' means the tribes or tribal communities deemed to be such under article 342 of the Constitution. The scheduled caste population live along with the other sections of the population and participate in the general economic life of the country; but, owing to past discrimination, extreme poverty and lack of educational opportunities, the majority of them are confined to low-paid, unskilled and less attractive occupations; they are the people who under the caste system came at the bottom of the caste hierarchy. By and large the 'scheduled tribes', on the other hand, have developed in geographical isolation from the general population as they inhabit the more remote hill and forest areas; their economic and educational conditions are at a less advanced stage than that reached by other sections of the national community. The State has assumed the responsibility for co-ordinated and systematic action for the protection of the tribal population concerned and for their social and educational advancement and their progressive integration with the life of the country.

"Though the problems of development of the scheduled castes and scheduled tribes differ in detail because of these distinguishing factors, basically the problem is the same, namely providing facilities for economic betterment, education and the removal of social disabilities so that equality of opportunity to participate in the general life of the community becomes available to them in real terms. Even before the advent of political independence and the new Constitution, the development of the social reform movements in India, and particularly the teachings of Mahatma Gandhi, had helped powerfully to awaken the public conscience against the objectionable and discriminatory features of the caste system. But with the adoption of the Constitution the State (which, under article 12 of the Constitution, means the central and state Governments and Parliament and the state legislatures and local authorities) is required actively to promote equality of opportunity for all citizens and to remove discrimination in all forms.

"Even today, one comes across divergent views about the hold of the caste system on Indian society. It is still strong in many places. The optimistic view is that caste is gradually losing importance; and, while a 'casteless' society may still be far off, with the coming up of new generations and the strengthening of democratic forces the objectionable and discriminatory features of the system will be left behind."

- C. Measures to ensure that public authorities and individuals, groups or private organizations engage in no act or practice of discrimination against indigenous populations and do not sponsor, defend or support any such act or practice or prevent the full and equal enjoyment of human rights and fundamental freedoms by indigenous populations

18. In some countries the institution of ombudsman or its equivalent makes possible individual complaints against public officers which may or may not have a racial background. ^{9/} In Canada, six of the provinces have established the office of Ombudsman or Parliamentary Commissioner to receive and act on complaints by individuals against the public authority. These offices are of course designed to serve native people as well as other citizens and, among other things, safeguard them from discrimination.

19. The Canadian Government and the Governments of nearly all the provinces at one time or another have enacted positive anti-discrimination legislation aimed at the achievement of equal opportunity and equal treatment in employment, trade union membership, and public accommodation, regardless of race, colour, religion or ethnic origin. The administration of these statutes lies in the hands of specified Government agencies, and penalties for discriminatory practice are invoked after discussion, conciliation and persuasion have failed.

20. The provinces of Canada have established Human Rights Commissions charged with the responsibility of promoting public understanding of civil rights and assisting citizens in claiming restitution for infringement of their rights. These Commissions have intervened repeatedly on behalf of native people, especially in matters of housing accommodation refused on basis of race. They have required and obtained restitution for the native person. Less frequently there have been cases of discrimination against natives in regard to access to restaurants and other commercial establishments. The provincial Commissions have also intervened on behalf of the native people in these cases. ^{10/}

^{9/} For example in Canada, Guyana, New Zealand, Norway, Sweden.

^{10/} Similarly in Denmark, where the courts have dealt with these cases.

21. In Brazil, the Council for the Defence of Human Rights has been created to initiate formal inquiries, investigations and studies concerning the efficacy of the laws guaranteeing human rights as inscribed in the Federal Constitution, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights.

22. In New Zealand, the Race Relations Act, 1971 provides for the appointment of a Race Relations Conciliator and a Deputy Conciliator whose principal functions consist in investigating, either on complaints made to him by any person or of his own motion, any action or omission or any practice which is or appears to be a breach of the Act. The Act further provides for court proceedings to be taken against any person when recommended by the Conciliator and for damages and other relief to be awarded to injured parties. The Act provides also that every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$200 who resists the Conciliator in the exercise of his powers under this Act, or refuses to comply with any lawful requirement of the Conciliator.

23. In Australia a post of Commissioner for Community Relations was established under the Racial Discrimination Act, 1975. The functions of the Commissioner are to inquire into alleged infringements of the provisions of the Act and endeavour to effect a settlement of the matters alleged to constitute those infringements; to promote an understanding and acceptance of, and compliance with, this Act; and to develop, conduct and foster research and educational and other programmes designed to combat racial discrimination and prejudices that lead to such discrimination. Where a complaint in writing is made to the Commissioner that a person has done an act that is unlawful by reason of a provision of the Act, or where it appears to the Commissioner that a person has done such an act, he shall inquire into the act and endeavour to effect a settlement of the matter to which the act relates.

24. The Government of the United States has communicated:

(i) on certain de jure aspects:

"A special act, The Civil Rights Act of 1968, has a specific provision for protecting the civil rights of Indians on reservations. This law has been opposed by some Indian groups as a contravention of their traditional method of governing - particularly the Pueblos".

(ii) on certain de facto aspects:

"It can be said historically that prejudices and discrimination against indigenous persons varies with proximity to an Indian community. To a large extent, non-Indian communities have taken the initiative in striving for equality and personal dignity for Indian people. An example is the development and success of a community event sponsored by the town of Sheridan, Wyoming, called 'All American Indian Days'. In this celebration a young Indian woman is chosen 'Miss Indian America'. She then travels about the nation and abroad interpreting the Indian community to non-Indians.

"She is expected to have a costume of her tribe and a traditional skill which she can display. Indian tribal songs, dances, and chants are a part of the All American Indian Days festivities. The promoters of this event point out that the Indian in the frontier communities was not highly regarded, and this low image is one the celebration hopes to overcome".

25. It has also been reported: 11/

(i) As to the de jure situation:

"The United States Department of Justice ... [has] created an Office of Indian Rights which was ostensibly designed to secure greater enforcement of civil rights laws for the benefit of Indians. This office, however, has displayed a tendency to place a high priority on finding cases which would involve imposing non-Indian standards on the administration of tribal government. Despite the many border-town problems in the administration of justice and access to public services and accommodations, the Office of Indian Rights has not responded with sufficient effort to bring about major change.

"...

"The United States ... contrasts the ideal in the United States with an allegation of actual practice under the tribal jurisdiction. No Indian denies that tribal justice needs improvement. But Indians are 25 times more likely to be arrested than the average citizen in the United States yet all authorities agree that there is, if anything, less non-alcohol-related criminality among Indians than among the general population".

(ii) As regards the de facto situation:

"If non-Indian communities have taken the initiative in striving for equality and personal dignity for Indian people, who are they striving against? It is the very non-Indian communities near the reservations who deny Indians these same basic human rights. To be sure, some communities such as Sheridan, Wyoming and Gallup, New Mexico have created celebrations in which a caricature of Indian culture is prominently featured for the benefit of attracting the tourist trade. These festivals are obviously held for their commercial advantages to the non-Indian businessmen of the towns involved. The same towns are less than hospitable to Indians throughout the year, and provide little in the way of public accommodations to Indians who visit and shop in their towns when the celebrations are not being held. During the celebrations themselves, Indian dances and other cultural events are presented in a carnival-like atmosphere. It is interesting to note that a recent 'Miss Indian America' resigned to protest against this exploitation. One can imagine the outrage if a city in China caused its Christian minority to perform a caricature of the Mass for Chinese tourists who would then take pictures and buy souvenir priests' outfits for their children to wear. The tourist celebrations receive some Indian support, to be sure, but that can easily be explained as a function of the desperate economic conditions of the Indian people who are forced to such public performances in order to survive.

"A particularly repellent practice has come to public attention with the recent mass murders in northern New Mexico. It is a common custom of young people in border towns to harass Indian people by beating them up or running their cars off the road. This is often but by no means exclusively directed at Indians who happen to be in an intoxicated condition. Local law enforcement officials take little action against these rampaging local hoodlums, and the practice is evidently accepted as a normal part of life by the local non-Indian community. In some border towns local resident Indians are also subject to similar harassment. It is difficult to see where an annual tourist celebration is having any positive effect on this practice".

11/ American Indian Law Newsletter, loc. cit., pp. 21 and 23, and 21-22.

D. Measures to prohibit and bring to an end any act of discrimination against indigenous populations

26. As was mentioned earlier, there is a marked tendency to include in Constitutions clear provisions which not only guarantee equality before the law and equal protection under the law, but also expressly prohibit discrimination. The Constitutions of many countries contain provisions which prohibit discrimination against persons or groups on the following series of grounds: political or religious convictions or descent (Denmark, art.77 (1)); birth, social status or race (Nicaragua, art.54); origin, race or religion (French Guyana) (France, art.2); birth, religion or race (Burma, art.15); nationality, race, sex or religion (El Salvador, art.150); race, sex, creed or social status (Venezuela, art.6); religion, race, descent or place of birth (Malaysia, art.3 (2)); race, sex, religion, view of life or political persuasion (Surinam, art.1 (2)); race, creed, sex, social status or family origin (Japan, art.14 (1)); race, creed, political opinions, colour or creed (Guyana, art.15 (2)); race, birth, social class, sex, religion or political ideas (Panama, art.19); sex, race, occupation, religious creed or political convictions (Brazil, art.153 (1)); religion, race, caste, sex or place of birth (Bangladesh, art.23 (1), (2)); race, religion, caste, sex, residence or place of birth (Pakistan, arts.26 and 27); religion, race, caste, sex, descent, place of birth, residence (India, art.15 (1, 4) and 16 (2)); race, colour, sex, religion, birth, economic or social status or political convictions (Guatemala, art.43); sex, race, class or any other form of discrimination detrimental to human dignity (Honduras, art.95); race, sex, language, religion, political or other opinions, origin, economic or social status or any other circumstance (Bolivia, art.6); race, colour, sex, language, religion, descent, political or other opinions, social origin, economic status or birth (Ecuador, art.9).

27. The provisions prohibiting discrimination on the grounds referred to above apply to all persons 12/ or to nationals, 13/ depending on the text in question.

28. In other countries special enactments have addressed themselves in a systematic way to the prohibition of discrimination and to the provision of means of overcoming its incidence and effects. Some of these countries have signed and ratified or acceded to international instruments under which they assumed clear duties and obligations in this regard.

29. Regarding Australia, there is information on action to prohibit discrimination and/or the effects of discriminatory legislation.

30. On prohibition of discrimination the following paragraphs contain information furnished in 1974-1975 by the Government.

"In the past State and Commonwealth Governments had generally taken the view that the problems of racial discrimination were best dealt with otherwise than by legislating against discrimination, the exception being South Australia where the Prohibition of Discrimination Act was introduced in 1966. This Act

12/ Argentina, Australia, Brazil, Ecuador, El Salvador, Guatemala, Guyana, Panama, Paraguay, Venezuela.

13/ Bangladesh, Burma, Honduras, India, Japan, Malaysia, Nicaragua, Pakistan.

makes it an offence to discriminate in the provision of various specified services. The authorities concerned with its administration report that the existence of the legislation has served as an effective deterrent against discrimination, especially in service in hotels and restaurants.

"The Prime Minister has indicated that the new Government will legislate to prohibit discrimination on the grounds of race, and will ratify the United Nations Convention on the Elimination of All Forms of Racial Discrimination.

"The Convention on the Elimination of All Forms of Racial Discrimination has not yet been ratified by the Australian Government. A Bill was introduced into the Australian Parliament in November 1975 to give effect to the Convention and allow ratification. It was deferred and reintroduced in 1974 and is again before the Parliament in 1975. The Bill includes specific provisions to override sections of the Queensland laws affecting Aborigines and Islanders." 14/

31. On repeal of discriminatory legislation, in 1974-1975 the Government of Australia communicated that since the 1950s official policy in respect of Aborigines has evolved from one of protection and control (which often included restriction of personal rights and freedoms) and during this time legislation discriminating against Aborigines has been progressively eliminated.

"At the end of 1972 the only remaining provision in Commonwealth law that is regarded as discriminating against Aborigines was a provision in the Migration Act 1958-1966 - which imposes certain restrictions on overseas travel by some classes of Aborigines. This section of the Act has not been administered for several years and it is to be repealed at the next session of the Federal Parliament early in 1975. In 1975 the Government has communicated that the Migration Act 1958-1966 was amended by the Migration Act 1973 to remove the provision restricting the emigration of certain Aborigines.

"State legislation discriminating against Aborigines or on the basis of race has been repealed or amended. The only State statutes which still do not fully satisfy the requirements of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination are the Queensland Aborigines Act 1971 and Torres Strait Islanders Act 1971, with their regulations, which, inter alia, provide for official management of the property of certain Aborigines and Islanders to continue otherwise than at the request of the individual concerned. It is hoped that these difficulties can be resolved shortly." 15/

14/ Information furnished by the Government in 1975.

15/ See, however, what concerns the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Bill 1974 and recent partial amendments in the Queensland legislation in document E/CN.4/Sub.2/476/Add.2

32. The Commonwealth has acted to ensure that a wide range of human rights are recognized in laws in force in all levels of Government in Australia. In 1975, subsequent to the making of the Racial Discrimination Act, the Commonwealth Parliament passed the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act. This Act was designed to meet the situation created by certain specific provisions of Queensland legislation relating to Aboriginals and Torres Strait Islanders; its purposes are described as those of "preventing discrimination in certain respects against those peoples under the laws of Queensland".

33. Act No. 75 of 1975, assented to on 19 June 1975 contains provisions on management of property; residence and other acts on reserves; reasonable or not reasonable conduct observed on reserves; entry on premises situated on reserves; legal proceedings against an Aboriginal or Islander in courts established for a reserve; directions to perform work to be complied with only under specific circumstances and the terms and conditions of employment of Aboriginals or Islanders. All these provisions will be properly analysed in the respectively appropriate parts of this study later on.

34. Since 30 October 1975, when the International Convention on the Elimination of All Forms of Racial Discrimination entered into force in Australia, the Racial Discrimination Act 1975 has operated to prohibit legislatively in Australia and in Australian Territories all forms of racial discrimination.

35. The provisions of the Racial Discrimination Act 1975, implementing the obligations that Australia assumed under article 5 of the Convention are largely contained in Part II of the Act. Section 9 makes it unlawful to do an act involving a distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin thus applying the definition of "discrimination" in article 1 of the Convention.

36. Section 10 is designed to guarantee equality before the law in the enjoyment of rights (including rights referred to in article 5). By reason of section 109 of the Constitution this provision overrides all Commonwealth, State and Territory laws that may discriminate on a racial basis and avoids the need to make piecemeal amendments to such laws. In addition to laws which are patently discriminatory, this section applies to laws which discriminate in consequence of the manner in which they operate or are administered. Subsection 10 (3) is directed to ensuring equality of treatment of Aboriginals and Torres Strait Islanders in relation to the management of their property.

37. Section 11 makes it unlawful for a person to discriminate in relation to:

(a) access to or the use of any place or vehicle that members of the public are entitled to enter or use; and

(b) the use of facilities in a place or vehicle that are available to members of the public.

38. Section 12 makes it unlawful for a person (whether as principal or agent) to discriminate in a wide range of transactions concerning housing or other accommodation.

39. Section 13 proscribes discrimination in relation to the supply of goods and services to the public or to any section of the public.

40. Section 14 makes invalid any provision in rules of a trade union that prevents or hinders a person joining an organization, on the grounds of race, colour, national or ethnic origins. It also makes it unlawful to prevent or hinder a person from joining a trade union on similar grounds.

41. Section 15 prohibits discrimination in employment on racial grounds in the form of:

(a) failing to employ a person who is qualified for available work;

(b) failing to offer the same terms of employment and conditions of work and opportunities for training and promotion; and

(c) dismissing from employment.

42. The section additionally prescribes discriminatory practices related to the procuring of persons for employment or aimed at preventing a person from offering for employment or from continuing in employment. By subsection 15 (3), similar provisions are applied to organizations of employers or employees. Subsection 15 (4) recognizes the impracticability of applying these provisions to foreign vessels as regards persons engaged for employment outside Australia.

43. Section 16 makes unlawful the publishing of an advertisement that indicates an intention to do an act that is proscribed under Part II of the Act.

44. Section 17 provides that it is unlawful to incite, assist or promote, whether by financial assistance or otherwise, the doing of an act that is unlawful by reason of Part II of the Act. These provisions prohibit in large measure any overt acts by organizations directed at promoting racial discrimination.

45. One of the basic principles of the Act is that the prevention of discriminatory advertising is important in order to grant threshold equality of opportunity especially in employment and housing. An additional reason for such prevention is the great impact on attitudes in society that advertising of a discriminatory nature can produce.

46. In New Zealand the main substantive provisions of the Race Relations Act make it unlawful to discriminate against any person, on the grounds of the colour, race or ethnic or national origins of that person or of any relative or associate of that person, in respect of access to public places, vehicles and facilities, the provision of goods and services, employment, land, housing and other accommodation. Discriminatory advertisements are also made unlawful.

47. Sections 3 and 4 are discussed later on, in connection with the right of access to public places or services, quod vide.

48. Section 5 deals comprehensively with discrimination in the field of employment; it covers discrimination in the hiring, firing, terms of employment, conditions of work and opportunities for training and promotion, of any person.

49. Section 6 provides that discrimination in a wide range of transactions concerning land, housing and other accommodation shall be unlawful. This section needs to be read in conjunction with two provisions inserted in the Property Law Act 1952 by the Property Law Amendment Act 1965. One of these provisions, section 35A, makes void any restraints on the disposition of property on the grounds of colour, race or ethnic or national origins. The other, section 110 (1A), was an addition to a provision requiring that the consent of a landlord to the assignment, underletting, charging or parting with the possession of leased premises should not be unreasonably withheld. The new subsection added in 1965 provides that the withholding of consent on the grounds of colour, race or ethnic or national origin is to be treated, ipso facto, as unreasonable. These provisions are set out in annex II to this report.

50. Section 7 of the Act makes it unlawful for any person to publish or display any advertisement or notice indicating an intention to commit a breach of sections 5 to 6 of the Act.

51. Two ancillary provisions, which are relevant to the undertaking given under article 5 of the Convention to prohibit and eliminate racial discrimination, should also be mentioned. Section 23 deals with licences and registration. It provides that where any person is licensed or registered under any other legislation to carry on any occupation or activity or where any premises or vehicle are registered or licensed under any other legislation, then the licensing or registering authority may exercise a power to revoke or refuse to renew a licence or registration in a case where there has been a breach of sections 3 to 7 of the Race Relations Act.

52. Section 27 makes void any condition, whether written or oral, in a deed, will or other instrument which restrains marriage and which does so in a discriminatory manner.

53. Section 9 of the Act is a provision to which, in the words of the Government, Maori organizations attached considerable importance in the submissions made by them to the Committee of Parliament that considered the Bill. Section 9 reads as follows:

"Anything done or omitted which would otherwise constitute a breach of any of the provisions of sections 4 to 7 of this Act shall not constitute such a breach if

"(a) it is done or omitted in good faith for the purpose of assisting or advancing particular persons or groups of persons or persons of a particular colour, race, or ethnic or national origin; and

"(b) those groups or persons need or may reasonably be supposed to need assistance or advancement in order to achieve an equal place with other members of the community."

54. The Race Relations Act of New Zealand, cited above, has created two offences in sections 24 and 25. See what refers to section 24 in paragraph 65 below. Section 25 reads as follows:

"(1) Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$500 who with intent to excite hostility or ill-will against, or bring into contempt or ridicule, any group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons

"(a) Publishes or distributes written matter which is threatening, abusive, or insulting, or broadcasts by means of radio or television words which are threatening, abusive, or insulting, or

"(b) Uses in any public place (as defined in Section 40 of the Police Offences Act 1927), or within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive, or insulting, being matter or words likely to excite hostility or ill-will against, or bring into contempt or ridicule, any such group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons.

"(2) For the purposes of this section -

"publishes' or 'distributes' mean publishes or distributes to the public at large or to any member or members of the public;

"written matter' includes any writing, sign, visible representation, or sound recording."

55. This section was framed in such a way as not to impinge unnecessarily on the principles enumerated in the Universal Declaration of Human Rights and the rights set forth in article 5 of the 1965 Convention, in particular the right to freedom of opinion and expression.

56. When article 4 of the Convention was adopted by the Third Committee of the General Assembly at its 1318th meeting on 25 October 1965, the New Zealand representative stated her delegation's understanding of article 4 as a whole. She said that New Zealand had voted in favour of it, on the understanding that the insertion of the "due regard" clause at the end of the opening portion of article 4 would allow the application of its terms with proper regard to the rights set forth in article 5 of the Convention and in the Universal Declaration of Human Rights. The understanding stated then by the New Zealand representative was not challenged. Section 25 of the Race Relations Act gives effect, consistently with this understanding, to the undertaking contained in article 4 (b) of the Convention. Out of regard for the right to freedom of association, section 25 does not make racist organizations illegal. It does provide a means of attacking the activities of any such organizations and rendering them wholly ineffective. There has been no occasion, as yet, to bring a prosecution under section 25.

E. The right of equal access to public places and services

57. The Constitution of some countries expressly guarantees the right of access to any place or service intended for use by the general public to all persons, without distinction on grounds of race, colour or national or ethnic origin.

58. Thus under the Constitution of India "no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment: or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public". (article 15, (2, a and b)) Similarly the Constitution of Pakistan provides that in respect of access to places of public entertainment or resort, not intended for

religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth. It is also provided that nothing in the preceding provision shall prevent the State from making special provision for women and children (article 26, clauses (1) and (2)). Combining certain elements of the two preceding provisions, in Bangladesh the Constitution stipulates that no citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution (article 29 (5)).

59. In other countries, this right is guaranteed in the Constitution in general provisions relating to non-discrimination, equality before the law and equal protection under the law. This has been stated by the Governments of several countries. 16/

60. The Government of Guyana states that article 15 of the Constitution establishes protection against discrimination based on race, place of origin, political opinion, colour or belief, and adds that there are no other laws specifically prohibiting access to public places.

61. The Government of Mexico states that, in that country, this right is derived from the equality of Mexican citizens before the law. In practice, the indigenous peoples have unimpeded access to public places.

62. In Malaysia, in accordance with information provided by the Government, "the Orang Asli are equal (to everyone else) before the law in respect of the right of access to any places or services".

63. A general constitutional provision is, however, not in itself sufficient to guarantee effective protection against discrimination. Some countries have therefore introduced constitutional provisions designed to ensure equality of access to public places and services or, where there are no relevant constitutional provisions, have promulgated laws which aim to put those principles into practice.

64. Thus, in Canada, 17/ the Federation and nearly all the provinces have enacted anti-discrimination legislation aimed at the achievement of equal opportunity and treatment in public accommodation and in other fields regardless of race, colour, religion or ethnic origin. The administration of the relevant statutes lies in the hands of specified government agencies, and penalties for discriminatory practices

16/ Provisions pursuant to the Penal Code which lay down that nobody should be obliged to do anything not prescribed by law, nor prevented from doing anything which the law does not prohibit may also serve to uphold this right, as in Guatemala and Peru. Constitutional provisions which provide that "the statements, rights and guarantees set out in the Constitution shall not be interpreted as a negation of other rights and guarantees which are not stipulated but derive from the principle of the sovereignty of the people and the republican form of government" may also be invoked in this connection, as in Argentina, Guatemala and Honduras.

17/ See E/CN.4/Sub.2/476/Add.2.

are invoked after discussion, conciliation and persuasion have failed. Generally, anyone who feels that he has been discriminated against may make a written complaint to the government department (whether federal or provincial) and an inquiry is made. In most cases as well, a person making a complaint is protected by law from retaliatory action.

65. In New Zealand, the Race Relations Act of 1971 provides that it is unlawful for any person (a) to refuse to allow any other person access to or use of any place or vehicle which members of the public are entitled or allowed to enter or use, (b) to refuse any other person the use of any facilities in that place or vehicle which are available to members of the public, or (c) to require any other person to leave or to cease to use that place or vehicle or those facilities, by reason of the colour, race, or ethnic or national origin of that person or of any relative or associate of that person.

66. In Australia, the South Australian Prohibition of Discrimination Act (1966) seems to have served as an effective deterrent against discrimination, especially as regards service in hotels and restaurants.

67. The Australian Government states (1975):

"Aboriginals have the same rights of access to places and services intended for use by the general public as do other Australians. The Racial Discrimination Bill would guarantee these rights (Clause 10).

"The Racial Discrimination Bill will make racial discrimination in Australia unlawful. The Bill also makes special provision for discrimination relating to access to places and facilities and the provision of goods and facilities".

68. The Australian Racial Discrimination Act 1975 (sect. 11) now provides that it is unlawful for a person to refuse to allow another person access to or use of any place or vehicle that members of the public are entitled or allowed to enter or use, or to refuse to allow another person use of any facilities in any such place or vehicle that are available to members of the public, or to require another person to leave or cease to use any such place or vehicle or any such facilities, by reason of the race, colour or national or ethnic origin of that other person or of any relative or associate of that other person. 18/

69. In Brazilian law, Act No. 1390 of 3 July 1951, approved unanimously by the National Congress, establishes the penalty of imprisonment for from 15 days to three months and a fine of from 500 to 3,000 cruzeiros for whoever, "through racial or colour prejudice", refuses, on the part of a commercial or educational establishment of any kind, to house, serve, attend or receive a client, customer

or pupil; whoever refuses lodging in a hotel, boarding-house, inn or other establishment for similar purposes, or refuses to sell goods in stores or shops of any kind, or to serve customers in restaurants, bars, teashops or similar premises open to the public where food, drink and refreshments are normally served.

70. The Penal Code of Costa Rica provides that any person, administrator or manager of a public or private institution or director of an industrial or commercial establishment who applies any prejudicial discriminatory measure based on considerations of race, sex, age, religion, civil status, political opinion, social origin or economic status should be liable to imprisonment for from 20 to 60 days or a fine. In the case of repeated offences, the judge may also order, as an accessory penalty, suspension from public function or office for not less than 15 nor more than 60 days (article 371).

71. The Norwegian Government states that in Norway there are no special laws or administrative decisions prohibiting discrimination between different races as regards public transport and hotel and restaurant services. It is considered a matter of course, however, that everyone, regardless of race, has the same right to use public transport and hotel restaurant services. Refusal of transport, hotel or restaurant services on grounds of race, colour or nationality would be contrary to the normal regulations on boycott and would lead to criminal proceedings on that basis. It would also violate the obligation to provide transport which is a consequence of a licence granted for commercial transport, and would then lead to withdrawal of the licence. Section 349 of the Norwegian Penal Code, however, makes it an offence punishable by fine or imprisonment up to six months, to deny a person goods or services on the same terms as others in a professional or similar activity because of that person's belief, race, colour or national or ethnic origin, or for similar reasons to deny a person access to a public performance or exhibition or any other public gathering on the same terms as others.

72. In Sweden, new provisions have been added to the Penal Code concerning "unlawful discrimination" making it an offence for a businessman to discriminate against a customer because of his race, colour, national or ethnic origin or religious creed in his business, by not giving him the same service as they would give his other customers under ordinary business conditions. The same provisions can also be applied to the same actions committed by people arranging public gatherings or public meetings, who proceed in the same manner.

73. In accordance with article 6-b of the Penal Code of Finland, anyone engaged in an enterprise or being in the service of such a person or in a comparable position, or any public official who in such a capacity and under conditions generally applicable does not serve a customer because of his race, colour, national or ethnic origin, or religion, shall be sentenced for discrimination to a fine or imprisonment for up to six months. Similarly, anyone organizing a

public entertainment or a meeting or assisting at it who, under conditions generally applicable, refuses to admit a person because of his race, colour, national or ethnic origin, or religion, shall be sentenced for discrimination to imprisonment for up to two years or to a fine.

74. According to information provided by the Government of the United States, Indians

"have the right of access to any place or service intended for use by the general public, and they exercise such rights. Note: Non-Indians may not have as complete freedom as Indians in that an Indian tribe on a reservation has the authority to restrict activities on such reservation and has exercised this authority on occasion". 19/

75. In this connection it has, however, been also stated:

"The United States produces a puzzling 'Note'. An Indian tribe, as the governing body, has the authority to regulate behaviour and the use of Indian property on the reservations, just as the State has the same police power off the reservation. Such Indian regulations are applied to anyone who falls under the scope of the law, Indian or non-Indian. It is difficult to understand how the exercise of lawful police power by a tribe gives Indians greater freedom than non-Indians. The tribe also has the power both as a government and as a landowner to determine the use of tribally-owned property, and on occasion this power is used to prefer tribal members in the use of tribal property. Any non-Indian landowner has the same rights with respect to his own property unless he falls under a legitimate public accommodations law." 20/

76. Up to now there is little information available on machinery and procedures to put into practice these provisions, whether they are constitutional or legal provisions or administrative decisions. In this connection it has been reported that in Canada the Human Rights Commissions set up in the Canadian provinces have repeatedly intervened on behalf of native people in matters of housing accommodation refused on the basis of race. In these cases they have required and obtained restitution for the native persons. Less frequently these Commissions have intervened in favour of native people in cases of discrimination against natives in their access to restaurants and other commercial establishments.

77. The Finnish Government states that the Lapp population have access to any place or service intended for use by the general public such as transport, hotels, restaurants, cafes, theatres and spectacles, parks, beaches and markets.

19/ Information furnished to the Special Rapporteur in connection with the present study.

20/ American Indian Law Newsletter, loc.cit., p.25.

F. Measures to promote the elimination of barriers between the indigenous and non-indigenous segments of the population and to discourage anything which tends to exacerbate division and rivalry

78. Little information is available concerning measures taken to promote the elimination of barriers between the indigenous and non-indigenous segments of the population and to discourage anything which tends to exacerbate division and rivalry. No information whatsoever was provided by some countries. 21/

79. The Governments of some countries stated that, for reasons which they indicated, they had not introduced this type of measure. The Government of Norway, for example, simply stated that it had no information to offer on this subject. The Finnish Government states that there has been no need to take special measures in this connection. Similarly, the Mexican Government reported that the barriers between the indigenous and non-indigenous peoples were fundamentally of a linguistic and cultural nature and that there is no rivalry based on ethnic difference.

80. In providing information on this point, other Governments referred to certain aspects of their policy towards the indigenous populations.

81. Thus in Burma it has been stated that in the late 1960s the Government was training 425 students of 47 nationalities of Burma to be architects of the future for building up the edifice of unity and solidarity in the Union of Burma. It has been stated, in this connection, that among the goals pursued by the ethnic policy of the Revolutionary Government there are endeavours "to de-emphasize ethnic differences and to eliminate when possible the causes of ethnic friction and national disunity."

82. In Sri Lanka, the Constitution contains the following provision:

"Section 16.

"...

"(4) The State shall endeavour to strengthen National unity by promoting co-operation and mutual confidence between all sections of the people of Sri Lanka including the racial, religious and other groups."

83. In Pakistan there are indications of recognition that regional diversity of culture and language are not to be taken as signs of national weakness but as sources of national pride. The policy of the Government is to accelerate the pace of development activities in the tribal areas so as to bring them at par with the other development regions of the country.

84. At a mass open air meeting in 1968 the Prime Minister of Guyana declared: "I cannot emphasize enough our intention to create a new society completely orientated towards the people as a whole and based on the principle that man is the most precious of all resources ... The problem of racial cleavage has been considerably lessened since the PNC (People's National Congress) took over the administration in 1964 ... Nonetheless, we do now realize that much work remains to be done in the area of race relations." 22/

21/ Argentina, Bangladesh, Bolivia, Brazil, Colombia, Costa Rica, Chile, Denmark (Greenland), Ecuador, El Salvador, France (French Guyana), Guatemala, Honduras, India, Indonesia, Japan, Laos, Malaysia, Nicaragua, Panama, Paraguay, Peru and Sweden.

22/ Forbes Burnham, A Destiny to Mould, Africana Publishing Corporation, New York 1970, page 61.

85. Concrete measures have been taken in a few countries in this respect. Thus in Australia programmes are being developed and expanded to help educate the community generally to understand, respect and enjoy the contribution that Aboriginal culture can make to the national life. Increasing attention is given in the schools to general education programmes designed to promote racial understanding and eliminate prejudice. Teaching materials relating specifically to the Australian Aboriginals are being improved and the present Government has pledged that every Australian child shall be taught the history and culture of Aboriginal and Islander Australians as an integral part of the history of Australia.
86. In some areas special programmes of community education have been developed (In Western Australia, for example, a unit of the Department of Community Welfare staffed by Aboriginal educators visits schools with special programmes designed to promote racial harmony and an understanding of Aboriginal problems and aspirations.)
87. In Canada, the public education programmes of the Human Rights Commission seek to eliminate barriers between the indigenous and non-indigenous segments of the population. Courses in public schools also emphasize the common rights and privileges of all Canadians.
88. Provisions relating to certain offences not specifically enacted with a view to punishing discriminatory acts or practices may nevertheless be invoked in order to punish discrimination. Examples of this are the offences of insulting behaviour (involving acts injurious to the reputation or honour of a person or designed to have him held in contempt), coercion (obliging a person to do something not required by law or preventing him from doing something which the law does not prohibit) and grounds for criminal proceedings constituted by abuse of public authority not involving other offences (arbitrary or unlawful acts prejudicial to the interests and rights of individuals). In many systems, such provisions of the Penal Code may be invoked against persons who discriminate against others on any of the grounds prohibited by the Constitution and law. As will be seen below, however, many countries have made such acts a specific offence.
89. In the United States, in accordance with the information furnished by the Government:

"... the Civil Rights Commission has taken an interest in the degree of discrimination against Indian persons and has recently issued a report on the southwest in which Indians allege discrimination on the part of both Federal Government and the private sector. This conclusion is arrived at on a statistical basis, however, and may not give sufficient weight to the number of indigenous persons with qualifications for the jobs. The Congress, the Executive Branch, the States and the general public are predominantly in favour of elimination of barriers and discrimination. Great progress can already be seen. In fact, the President has said the country esteems a pluralistic culture and welcomes contributions from all segments of it with special emphasis on the contribution of the indigenous population."

90. The following comments have been made in this connection: 23/

"The United States argues that racial discrimination should not be supported on the grounds of the statistics presented in its own Civil Rights Commission. Its weak excuse misapprehends the importance of such statistics in Civil Rights matters as well as in the context of the present international inquiry. The lack of "qualified" Indians to fill federal jobs is of course an indication of the scope and duration of the persistent denials of rights and equal opportunity to Indians, and cannot be used by the United States as a justification for continued discrimination."

23/ American Indian Law Newsletter, loc.cit., pp. 22-23.

91. Many countries have enacted provisions making criminal offences of acts of discrimination and of incitement to hatred against persons or groups because of their race, colour, descent, national or ethnic origin or belief, or several of these grounds.

92. In Argentina, Act No. 16,648 of October 1964 incorporated in the Penal Code article 213 bis, under which persons participating in organizations or engaging in propaganda based on ideas or theories of superiority of any race or any group of persons of a particular religion, ethnic origin or colour, for the purpose of justifying or promoting any form of religious or racial discrimination (paragraph 2), and persons who incite others to violence for incitation's sake or commit acts of violence, either individually or as members of organizations, against any race or group of persons of another religion, ethnic origin or colour (paragraph 3), are liable to imprisonment for a term of one month to three years. The Government of Argentina states that Argentine law has thus taken into account the distinction made in the United Nations Declaration [on the Elimination of All Forms of Racial Discrimination] between the organized fostering of discrimination and creation of a climate conducive to violence or persecution, and the individual or collective act of inciting to or committing these offences.

93. In Norway sections 135-a and 349-a have been added to the Penal Code. 24/ Section 135-a makes it a crime punishable by fine or imprisonment up to two years to make a public statement or otherwise disseminate a statement among the public whereby a person or group of persons is threatened, insulted or subjected to hatred because of his or their religious belief, race, colour or national or ethnic origin. Section 349 has been mentioned already. 25/

24/ The Penal Code of 22 May 1902 provided already in section 135 that:

"Anyone who jeopardizes general law and order by publicly mocking or inciting to hatred against the Constitution or any public authority or by publicly inciting one section of the populace against another, or who is an accessory to this, shall be liable to punishment by fines, detention or imprisonment up to 1 year.

"The same punishment applies to anyone who publicly mocks or incites to hatred against or contempt for a section of the populace characterized by a specific religious faith, descent or origin or who threatens such a section of the populace or spreads false accusations against it. Any person being accessory to this shall be punished similarly."

Section 140, first paragraph, of the same Penal Code stipulates, moreover that:

"Anyone who publicly incites or encourages the carrying out of a criminal act or who exalts such an act, or who offers to carry out or to assist in the carrying out of such an act, or who is an accessory to the incitement, encouragement, exaltation or offer, is liable for punishment by fines, or by detention or imprisonment up to 8 years, however in no case with loss of liberty greater than two-thirds of the maximum penalty applicable to the criminal act itself."

25/ See section E above, the right of equal access to public places and services, para. 71.

94. In Sweden amendments were introduced into the Freedom of the Press Act by inserting a new paragraph to the effect that it shall constitute a press libel to make, in any means of communication intended for the public, printed statements to threaten or insult an ethnic group because of its race, colour, national or ethnic origin or religious creed. The Penal Code, which already contained provisions on agitation against ethnic groups, was amended to include newly phrased offences in Chapter 16, articles 8 and 9. Article 8 now provides that if a person publicly or otherwise in a statement or other communication which is spread among the public threatens or expresses contempt for a group of a certain race, skin colour, national or ethnic origin or religious creed, he shall be sentenced for agitation against an ethnic group to imprisonment for up to two years or, if the crime is petty, to pay a fine. The provisions of article 9 were referred to in paragraph 12 above.

95. In Finland articles 6-a and 6-b were added to the Penal Code. Article 6-a is couched in language which is very similar to that of the just quoted section 8 of the Swedish Penal Code. 26/ Section 6-b was discussed in paragraph 13 above.

96. The Penal Code of Denmark provides in section 266-b that any person who in public or with the deliberate aim of dissemination to wider circles makes any statement or other announcement by which a group or groups of persons are threatened, ridiculed or humiliated because of their race, colour, national extraction or ethnic origin or religion shall be liable to a fine or to imprisonment for up to two years.

97. In Malaysia the Sedition Act, 1948, as revised up to 1 December 1969, which entered into force on 14 April 1970, provides (article 3, paragraph 1 (c)) that there is a seditious tendency where the intention is "to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia". Any person doing such an act shall be guilty of an offence and shall be liable for a first offence to a fine not exceeding 5,000 dollars or to imprisonment for a term not exceeding three years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding five years.

98. The Penal Code of Costa Rica provides that any person, administrator or manager of a public or private institution or director of an industrial or commercial establishment who applies any prejudicial discriminatory measure based on considerations of race, sex, age, religion, civil status, political opinion, social origin or economic status shall be liable to imprisonment for from 20 days to 60 days or a fine. "In the case of repeated offences, the judge may also order, as an accessory penalty, suspension from public function or office for not less than 15 nor more than 60 days" (article 371).

99. The fundamental law of Guatemala, namely, the Civil Service Act of May 1968, 27/ forbids public servants from "discriminating on grounds of a political, social, religious or racial nature or on grounds of sex in favour of or against public

26/ Article 6-a provides that anyone who disseminates to the public any statement or other information in which a section of the population is threatened, slandered or insulted on account of being of a certain race, colour, national or ethnic origin or confession or faith shall be sentenced for discrimination against that section of the population, by imprisonment up to two years or by a fine.

27/ National Congress Decree No. 1748 of 2 May 1968, in force since 1 January 1969, Art. X of the transitory provisions.

servants or persons seeking to enter the Public Service" (article 65). Other provisions of this law prohibit "the authorization, initiation or exercise of pressure or discrimination against or in favour of an applicant for a post, a candidate already listed or any public servant, on the basis of his or her race, colour, sex, affiliation or political, social or religious opinion" (article 86 (3)). Acts or omissions which contravene any prohibitory provision of the kind mentioned above make the offender liable to a fine of 20-100 quetzals, suspension or, in serious cases, dismissal following a hearing by the National Civil Service Board (article 89 (1)).

100. As regards more serious offences, in several countries, generally as a consequence of having ratified the Convention on the Prevention and Punishment of the Crime of Genocide, provisions dealing with genocide have been included among crimes to be punished with very severe sanctions. 28/

101. In Mexico under the provisions of article 149 of the Penal Code, the deliberate destruction of national, ethnic or racial groups is punishable with penalties ranging to 20 years' imprisonment.

102. The Penal Code of Costa Rica includes the following provisions:

"Article 373. Any person who takes part with homicidal intent in the total or partial destruction of a particular group of human beings, because of their nationality, race, or religious or political belief shall be liable to imprisonment for a term of from 10 to 20 years. The same penalty shall be applicable in respect of any person who:

"(1) causes grave bodily or psychological harm to members of such groups;

"(2) places such groups in living conditions so precarious as to make possible the disappearance of all or part of the individuals who constitute them;

"(3) takes measures designed to prevent births within those groups;

"(4) transfers children by force or intimidation from any such group to other different groups."

103. The Penal Code of Guatemala makes genocide and instigation to genocide an offence in the following terms:

"Article 376. Any person who commits any of the following acts with intent to destroy wholly or in part a national, ethnic or religious group, shall be guilty of genocide:

"(1) causing the death of members of the group;

"(2) causing injuries which seriously affect the physical or mental integrity of members of the group;

28/ For example in Costa Rica, Guatemala, Mexico.

"(3) subjecting the group or members thereof to living conditions which may give rise to their total or partial physical destruction;

"(4) transferring children or adults by force from one group to another;

"(5) taking measures to sterilize members of the group or in any other way to prevent reproduction of the group.

"Persons found guilty of genocide shall be liable to imprisonment for a term of from 20 to 30 years.

"Article 377. Any person who publicly incites others to commit the offence of genocide shall be liable to imprisonment for a term of from 5 to 15 years.

"Any person who encourages others or conspires to commit acts of genocide shall be liable to the same penalty."

104. In Canada, the Criminal Code was amended in 1970, 29/ making it an indictable offence punishable by imprisonment for five years for an individual to advocate or promote genocide against any identifiable group. This legislation, aimed at preventing and curbing the wilful promotion of hatred and genocide, is for the protection of both majority and minority groups who can be distinguished by colour, race, religion or ethnic origin. There are certain defences open to a person charged under this section, namely;

(a) if he establishes that the statements communicated were true;

(b) if, in good faith, he expressed or attempted to establish by argument an opinion upon a religious subject;

(c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

(d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred towards an identifiable group in Canada.

105. Several countries have explained the reasons for having adopted measures providing penal sanctions for acts of discrimination, in the sense that it was rather to prepare ratification of the International Convention on the Elimination of All Forms of Racial Discrimination than to overcome discrimination, which does not really occur that often. Suffice it to quote the statements of the Governments of Finland and New Zealand in this regard.

106. The Finnish Government states 30/ that:

"The measures taken in connection with the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination were prompted by the provisions of the Convention (articles 3 and 4) rather than by

29/ United Nations Yearbook on Human Rights for 1970, p. 49.

30/ Similar statements were made by the Governments of Norway and Sweden.

practical needs. According to the constitutional system of Finland, international conventions do not become part of the national law merely through ratification. In order to bring the substantial provisions of a convention into legal force on national level, legislative measures are necessary."

107. Prior to New Zealand's ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, the New Zealand Parliament passed the Race Relations Act 1971, which entered into force on 1 April 1972. In its information furnished in connection with the present study, the Government has stated:

"The passage of this legislation in New Zealand did not reflect a belief that there were acute problems of discrimination in the various subject areas covered by the Act. Its principal purpose was to enable New Zealand to ratify the International Convention on the Elimination of All Forms of Racial Discrimination, which required that our law contain certain specific provisions which at the time were lacking."

G. Main international instruments binding on some of the States covered by this study

108. This section contains a very brief note on the ratification of various relevant international instruments by the States with which this study is concerned. Among the provisions with a bearing on this study to be found in some of those texts are anti-discrimination clauses (for example, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights). Other texts are exclusively concerned with combating discrimination in the areas they cover (for example, the International Convention on the Elimination of All Forms of Racial Discrimination and the UNESCO Convention Against Discrimination in Education (1960)). Information is also given, of course, on ratification of the Indigenous and Tribal Populations Convention, No. 107 (1957), of ILO 31/ and the International Convention relating to the Inter-American Indian Conferences and the Inter-American Indian Institute (1940) of the Organization of American States.

109. The relevant provisions of the instruments in question are to be found in the corresponding chapters and will be analysed and commented upon at the appropriate time with a view to determining their relevance, impact and significance for the human rights and fundamental freedoms of indigenous populations. 32/

110. For the time being, only the names of the States for which each of the instruments is binding will be given, and the lists will, of course, be limited to the 37 countries for which information has been collected in the context of the study of which this report forms part.

111. Each instrument will form the subject of a separate list giving only the names of the parties and the date of ratification, when the instrument became binding on the State in question.

31/ Recommendation 104, which bears the same title and date as the Convention, is not discussed because it is not subject to ratification and therefore not binding on States.

32/ Contained in the relevant chapters, as indicated in the text, and the chapter devoted to conclusions, recommendations and proposals.

1. UNITED NATIONS

(a) International Covenant on Economic, Social and Cultural Rights
(This Covenant entered into force on 3 January 1976)

<u>No.</u>	<u>State</u>	<u>Signature</u> (date)	<u>Ratification or</u> <u>Accession</u> (date)
1.	Argentina	19 February 1968	
2.	Australia	18 February 1972	10 December 1975
3.	Canada		19 May 1976 <u>a/</u>
4.	Chile	16 September 1969	10 February 1972
5.	Colombia	21 December 1966	29 October 1969
6.	Costa Rica	19 December 1966	29 November 1968
7.	Denmark	20 March 1968	6 January 1972
8.	Ecuador	29 September 1967	6 March 1969
9.	El Salvador	21 September 1967	
10.	Finland	11 October 1967	19 August 1975
11.	France (Guyane)		4 November 1980 <u>a/</u>
12.	Guyana	22 August 1968	15 February 1977
13.	Honduras	19 December 1966	
14.	India		10 April 1979 <u>a/</u>
15.	Japan	30 May 1978	21 June 1979
16.	New Zealand	12 November 1968	28 December 1978
17.	Nicaragua		12 March 1980 <u>a/</u>
18.	Norway	20 March 1968	15 September 1972
19.	Panama	27 July 1976	8 March 1977
20.	Peru	11 August 1977	28 April 1978
21.	Philippines	19 December 1966	7 June 1974
22.	Sri Lanka		11 June 1980 <u>a/</u>
23.	Surinam		28 December 1976
24.	Sweden	29 September 1967	6 December 1971
25.	United States of America	5 October 1977	
26.	Venezuela	24 June 1969	10 May 1978

a/ Accession.

(b) International Covenant on Civil and Political Rights
(This Covenant entered into force on 23 March 1976)

<u>No.</u>	<u>State</u>	<u>Signature</u> (date)	<u>Ratification or</u> <u>Accession</u> (date)
1.	Argentina	19 February 1968	
2.	Australia	18 December 1972	13 August 1980
3.	Canada		19 May 1976 <u>a/</u>
4.	Chile	16 September 1969	10 February 1972
5.	Colombia	21 December 1966	29 October 1969
6.	Costa Rica	19 December 1966	29 November 1968
7.	Denmark	20 March 1968	6 January 1972
8.	Ecuador	4 April 1968	6 March 1969
9.	El Salvador	21 September 1967	30 November 1979
10.	Finland	11 October 1967	19 August 1975
11.	France (Guyane)		4 November 1980 <u>a/</u>
12.	Guyana	22 August 1968	15 February 1977
13.	Honduras	19 December 1966	
14.	India		10 April 1979 <u>a/</u>
15.	Japan	30 May 1978	21 June 1979
16.	New Zealand	12 November 1968	28 December 1978 <u>a/</u>
17.	Nicaragua		12 March 1980 <u>a/</u>
18.	Norway	20 March 1968	13 September 1972
19.	Panama	27 July 1976	8 March 1977
20.	Peru	11 August 1977	28 April 1978
21.	Philippines	19 December 1966	
22.	Sri Lanka <u>b/</u>		11 June 1980 <u>a/</u>
23.	Surinam		28 December 1976
24.	Sweden	29 September 1967	6 December 1971
25.	United States of America	5 October 1977	
26.	Venezuela	24 June 1969	10 May 1978

a/ Accession.

b/ Made the declaration under article 41 of the Covenant.

(c) Optional Protocol to the International Covenant on Civil and
Political Rights

(The Optional Protocol entered into force on 23 March 1976)

<u>No.</u>	<u>State.</u>	<u>Signature</u> <u>(date)</u>	<u>Ratification or</u> <u>Accession</u> <u>(date)</u>
1.	Canada		19 May 1976 <u>a/</u>
2.	Colombia	21 December 1966	29 October 1969
3.	Costa Rica	19 December 1966	29 November 1968
4.	Denmark	20 March 1968	6 January 1972
5.	Ecuador	4 April 1968	6 March 1969
6.	El Salvador	21 September 1967	
7.	Finland	11 December 1967	19 August 1975
8.	Honduras	19 December 1966	
9.	Nicaragua		12 March 1980 <u>a/</u>
10.	Norway	20 March 1968	13 September 1972
11.	Panama	27 July 1976	8 March 1977
12.	Peru	11 August 1977	3 October 1980
13.	Philippines	10 December 1966	
14.	Surinam		28 December 1976 <u>a/</u>
15.	Sweden	29 September 1967	6 December 1971
16.	Venezuela	15 November 1976	10 May 1978

a/ Accession.

(d) International Convention on the Elimination of All Forms
of Racial Discrimination

(The Convention entered into force on 4 January 1969)

<u>No.</u>	<u>State</u> */	<u>Date of receipt of the instrument of ratification or accession</u>	<u>Entry into force</u>
1.	Argentina	2 October 1968	4 January 1969
2.	Australia	30 September 1975	30 October 1975
3.	Bangladesh	11 June 1979 a/	11 July 1979
4.	Bolivia	22 September 1970	22 October 1970
5.	Brazil	27 March 1968	4 January 1969
6.	Canada	14 October 1970	13 November 1970
7.	Chile	20 October 1971	19 November 1971
8.	Costa Rica b/	16 January 1967	4 January 1969
9.	Denmark	9 December 1971	8 January 1972
10.	Ecuador b/	22 September 1966 a/	4 January 1969
11.	El Salvador	30 November 1979 a/	30 December 1979
12.	Finland	14 July 1970	13 August 1970
13.	France (Guyane Française)	28 July 1971 a/	27 August 1971
14.	Guyana	15 February 1977	17 March 1977
15.	India	3 December 1968	4 January 1969
16.	Lao People's Democratic Republic	22 February 1974 a/	24 March 1974
17.	Mexico	20 February 1975	22 March 1975
18.	New Zealand	22 November 1972	22 December 1972
19.	Nicaragua	15 February 1978 a/	17 March 1978
20.	Norway b/	6 August 1970	5 September 1970
21.	Pakistan	21 September 1966	4 January 1969
22.	Panama	16 August 1967	4 January 1969
23.	Peru	29 September 1971	29 October 1971
24.	Philippines	15 September 1967	4 January 1969
25.	Sweden b/	6 December 1971	5 January 1972
26.	Venezuela	10 October 1967	4 January 1969

*/ (Up to December 1979, Colombia, Guatemala and the United States of America had signed, but not yet ratified this Convention).

a/ Accession.

b/ Made the declaration under article 14, para. 1, of the Convention.

(e) Convention on the Prevention and Punishment of the Crime of Genocide

(This Convention entered into force on 12 January 1951)

<u>No.</u>	<u>Country</u>	<u>Signature (date)</u>	<u>Ratification, accession (a) notification of succession (d) (Date)</u>
1.	Argentina		5 June 1956 a
2.	Australia	11 December 1948	8 July 1949
3.	Bolivia	11 December 1948	
4.	Brazil	11 December 1948	15 April 1952
5.	Burma	30 December 1949	14 March 1956
6.	Canada	28 November 1949	3 September 1952
7.	Chile	11 December 1948	3 June 1953
8.	Colombia	12 August 1949	27 October 1959
9.	Costa Rica		14 October 1950 a
10.	Denmark (Greenland)	28 September 1949	15 June 1951
11.	Ecuador	11 December 1948	21 December 1949
12.	El Salvador	27 April 1949	28 September 1950
13.	Finland		18 December 1959 a
14.	France (Guyana)	11 December 1948	14 October 1950
15.	Guatemala	22 June 1949	13 January 1950
16.	Honduras	22 April 1949	5 March 1952
17.	India	29 November 1949	27 August 1959
18.	Lao People's Democratic Republic		8 December 1950 a
19.	Mexico	14 December 1948	22 July 1952
20.	New Zealand	25 November 1949	
21.	Nicaragua		29 January 1952 a
22.	Norway	11 December 1948	22 July 1949
23.	Pakistan	11 December 1948	12 October 1957
24.	Panama	11 December 1948	11 January 1950
25.	Paraguay	11 December 1948	
26.	Peru	11 December 1948	24 February 1960
27.	Philippines	11 December 1948	7 July 1950
28.	Sri Lanka		12 October 1950 a
29.	Sweden	30 December 1949	27 May 1952
30.	United States of America	11 December 1948	
31.	Venezuela		12 July 1960 a

2. INTERNATIONAL LABOUR ORGANISATION

The Indigenous and Tribal Populations Convention No. 107 (1957)

	<u>Country</u>	<u>Date of Ratification</u>
1.	Argentina	18 January 1960
2.	Bangladesh	22 June 1972
3.	Bolivia	12 January 1965
4.	Brazil	18 June 1965
5.	Colombia	4 March 1969
6.	Costa Rica	4 May 1959
7.	Ecuador	3 October 1969
8.	El Salvador	18 November 1958
9.	India	29 September 1958
10.	Mexico	1 June 1959
11.	Pakistan	15 February 1960
12.	Panama	4 June 1971
13.	Paraguay	20 February 1969
14.	Peru	6 December 1960

3. UNESCO

Convention against Discrimination in Education

(14 December 1960)

	<u>Country</u>	<u>Date of Ratification</u>
1.	Argentina	30 October 1963
2.	Australia	29 November 1966
3.	Brazil	19 April 1968
4.	Chile	26 October 1971
5.	Costa Rica	10 September 1963
6.	Denmark	4 October 1963
7.	Finland	18 October 1971
8.	France (French Guyana)	11 September 1961
9.	Indonesia	10 January 1967
10.	New Zealand	12 February 1963
11.	Norway	8 January 1963
12.	Panama	10 August 1967
13.	Peru	19 December 1966
14.	Philippines	19 November 1964
15.	Sweden	21 March 1968
16.	Venezuela	16 December 1968

4. ORGANIZATION OF AMERICAN STATES

(a) American Convention on Human Rights*

(This Convention entered into force on 18 July 1978)

	<u>Country</u>	<u>Date of Ratification or Accession</u>
1.	Bolivia	No date available
2.	Chile	No date available
3.	Colombia	31 July 1973
4.	Costa Rica	8 April 1970
5.	Ecuador	28 December 1977
6.	El Salvador	23 June 1978
7.	Guatemala	25 May 1978
8.	Honduras	8 September 1977
9.	Nicaragua	No date available
10.	Panama	22 June 1978
11.	Paraguay	
12.	Peru	28 July 1978
13.	United States	
14.	Venezuela	9 August 1977

(b) International Convention relating to the Inter-American Indian Conferences and the Inter-American Indian Institute

(December 1940)

<u>No.</u>	<u>Country</u>	<u>Signature</u>	<u>Ratification</u>
1.	Argentina	X	1954
2.	Bolivia	X	X 1945
3.	Brazil	X	X 1954
4.	Canada		
5.	Chile	X	1968
6.	Colombia	X	X 1943
7.	Costa Rica		1951
8.	Ecuador	X	X 1942
9.	El Salvador	X	X 1942
10.	Guatemala	X	X 1946
11.	Honduras	X	X 1942
12.	Mexico	X	X 1941

* / Also called "Pact of San José", this Convention was signed at San José, Costa Rica on 22 November 1969 at the Inter-American Specialized Conference on Human Rights.

International Convention relating to the Inter-American
Indian Conferences and the Inter-American Indian Institute

(December 1940) (Cont'd)

<u>No.</u>	<u>Country</u>	<u>Signature</u>	<u>Ratification</u>
13.	Nicaragua	X	X 1942
14.	Panama	X	X 1943
15.	Paraguay	X	X 1942
16.	Peru	X	X 1943
17.	United States of America	X	X 1941
18.	Venezuela	X	X 1946

5. COUNCIL OF EUROPE

European Convention on Human Rights

(The Convention entered into force on 3 September 1953)

<u>No.</u>	<u>Country</u>	<u>Member</u>	<u>Ratification</u>
1.	Denmark	X	13 April 1953
2.	Norway	X	15 January 1952
3.	Sweden	X	4 February 1952