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STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST INDIGENOUS POPULATIONS

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

CONTENTS

XV. CULTURE AND CULTURAL, SOCIAL AND LEGAL INSTITUTIONS

A. International provisions

1. The International Bill of Human Rights contains, under various headings, provisions relating to the "right to culture". The Universal Declaration of Human Rights contains express references to culture in the following articles:

> "Article 22. Everyone, as a member of society, has the right to .... realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

> "Article 27. (1) Everyone has the right freely to participate in the cultural life of the community ..."

2. Article 27 of the Declaration also deals in paragraph (1) with the right to "share in scientific advancement and its benefits".

3. The International Covenant on Economic, Social and Cultural Rights likewise contains some express references to culture in the following terms:

> "Article 15. (1) The States Parties to the present Covenant recognise the right of everyone:
>
> (a) to take part in cultural life
>
> ...
>
> "(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
>
> "(3) The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
>
> "(4) The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields."

4. This provision includes, in paragraph (1) (b), the right of everyone to "enjoy the benefits of scientific progress and its applications".

5. The International Covenant on Civil and Political Rights contains the following provision:

> "Article 27. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion or to use their own language."

6. Other provisions concerning culture appear in the texts of international conventions, agreements, and declarations. The International Convention on the Elimination of All Forms of Racial Discrimination contain the following provision:

"Article 7. States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention."

7. The Indigenous and Tribal Populations Convention, 1957, adopted by the General Conference of the International Labour Organisation on 26 June 1957, provides: 1/

"Article 2. (1) Governments shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries.

"(2) Such action shall include measures for -

(a) enabling the said populations to benefit on an equal footing from the rights and opportunities which national laws or regulations grant to the other elements of the population;

(b) promoting the social, economic and cultural development of these populations and raising their standard of living;

(c) creating possibilities of national integration to the exclusion of measures tending towards the artificial assimilation of these populations.

"(3) The primary objective of all such action shall be the fostering of individual dignity, and the advancement of individual usefulness and initiative.

"(4) Recourse to force or coercion as a means of promoting the integration of these populations into the national community shall be excluded."

"Article 4. In applying the provisions of this Convention relating to the integration of the populations concerned -

(a) due account shall be taken of the cultural and religious values and of the forms of social control existing among these populations, and of the nature of the problems which face them both as groups and as individuals when they undergo social and economic change;

(b) the danger involved in disrupting the values and institutions of the said populations unless they can be replaced by appropriate substitutes which the groups concerned are willing to accept shall be recognised;

(c) policies aimed at mitigating the difficulties experienced by these populations in adjusting themselves to new conditions of life and work shall be adopted.

1/ ILO, Conventions and Recommendations adopted by the International Labour Conference, 1919-1966, Geneva, International Labour Office, pp. 901-908.

"Article 7. (1) In defining the rights and duties of the populations concerned regard shall be had to their customary laws.

"(2) These populations shall be allowed to retain their own customs and institutions where these are not incompatible with the national legal system or the objectives of integration programmes.

"(3) The application of the preceding paragraphs of this Article shall not prevent members of these populations from exercising, according to their individual capacity, the rights granted to all citizens and from assuming the corresponding duties.

"Article 8. To the extent consistent with the interests of the national community and with the national legal system -

(a) the methods of social control practised by the populations concerned shall be used as far as possible for dealing with crimes or offences committed by members of these populations;

(b) where use of such methods of social control is not feasible, the customs of these populations in regard to penal matters shall be borne in mind by the authorities and courts dealing with such cases."

"Article 10. ...

"(2) In imposing penalties laid down by general law on members of these populations account shall be taken of the degree of cultural development of the populations concerned.

"(3) Preference shall be given to methods of rehabilitation rather than confinement in prison."

8. The Declaration of the Principles of International Cultural Co-operation proclaimed by the General Conference of UNESCO in Paris on 4 November 1966 (fourteenth session), contains the following provisions: 2/

"Article I. (1) Each culture has a dignity and value which must be respected and preserved.

(2) Every people has the right and the duty to develop its culture.

(3) In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.

"Article II. Nations shall endeavour to develop the various branches of culture side by side and, as far as possible, simultaneously, so as to establish a harmonious balance between technical progress and the intellectual and moral advancement of mankind.

"Article III. International cultural co-operation shall cover all aspects of intellectual and creative activities relating to education, science and culture.

2/ UNESCO, Cultural Rights and Human Rights. Studies and Documents on Cultural Policies, No. 3, Paris, 1970, pp. 123-125.

"Article IV. The aims of international cultural co-operation in its various forms, bilateral or multilateral, regional or universal, shall be:

1. The spread knowledge, to stimulate talent and to enrich cultures;

2. To develop peaceful relations and friendship among the peoples and bring about a better understanding of each other's way of life;

...

5. To raise the level of the spiritual and material life of man in all parts of the world.

"...

"Article VI. International co-operation, while promoting the enrichment of all cultures through its beneficent action, shall respect the distinctive character of each.

"Article VII. (1) Broad dissemination of ideas and knowledge, based on the freest exchange and discussion, is essential to creative activity, the pursuit of truth and the development of the personality.

"(2) In cultural co-operation, stress shall be laid on ideas and values conducive to the creation of a climate of friendship and peace. Any mark of hostility in attitudes and in expression of opinion shall be avoided. Every effort shall be made, in presenting and disseminating information, to ensure its authenticity.

"Article VIII. Cultural co-operation shall be carried on for the mutual benefit of all the nations practising it. Exchange to which it gives rise shall be arranged in a spirit of broad reciprocity.

"Article IX. Cultural co-operation shall contribute to the establishment of stable, long-term relations between peoples, which should be subjected as little as possible to the strains which may arise in international life."

9. The Declaration on Race and Racial Prejudice 3/ adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 27 November 1978 provides:

"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.

3/ Text taken from the booklet "Declaration on Race and Racial Prejudice adopted by the General Conference at its twentieth session, Paris, 27 November 1978," UNESCO, Paris, 1979, pp.4-5.

"(4) All peoples of the world possess equal faculties for attaining the highest level in intellectual, technical, social, economic, cultural and political development.

"(5) The differences between the achievements of the different peoples are entirely attributable to geographical, historical, political, economic, social and cultural factors. Such differences can in no case serve as a pretext for any rank-ordered classification of nations or peoples.

"Article 2 (1) Any theory which involves the claim that racial or ethnic groups are inherently superior or inferior, thus implying that some would be entitled to dominate or eliminate others, presumed to be inferior, or which bases value judgements on racial differentiation, has no scientific foundation and is contrary to the moral and ethical principles of humanity.

"...

"Article 3 Any distinction, exclusion, restriction or preference based on race, colour, ethnic or national origin or religious intolerance motivated by racist considerations, which destroys or compromises the sovereign equality of States and the right of peoples to self-determination, or which limits in an arbitrary or discriminatory manner the right of every human being and group to full development is incompatible with the requirements of an international order which is just and guarantees respect for human rights; the right to full development implies equal access to the means of personal and collective advancement and fulfilment in a climate of respect for the values of civilizations and cultures, both national and world-wide.

"Article 4 (1) Any restriction on the complete self-fulfilment of human beings and free communication between them which is based on racial or ethnic considerations is contrary to the principle of equality in dignity and rights; it cannot be admitted.

"(2) One of the most serious violations of this principle is represented by apartheid, which, like genocide, is a crime against humanity, and gravely disturbs international peace and security.

"(3) Other policies and practices of racial segregation and discrimination constitute crimes against the conscience and dignity of mankind and may lead to political tensions and gravely endanger international peace and security.

"Article 5 (1) Culture, as a product of all human beings and a common heritage of mankind, and education in its broadest sense, offer men and women increasingly effective means of adaptation, enabling them not only to affirm that they are born equal in dignity and rights, but also to recognize that they should respect the right of all groups to their own cultural identity and the development of their distinctive cultural life within the national and international context, it being understood that it rests with each group to decide in complete freedom on the maintenance and, if appropriate, the adaptation or enrichment of the values which it regards as essential to its identity.

"..."

B. Initial remarks

10. To the extent possible this chapter includes a number of preliminary basic considerations concerning the meaning of the concepts "right to culture" and "cultural rights" in reference to the situation of indigenous peoples. 4/

11. It may be mentioned that in a series of interesting international meetings - mostly held on the initiative or under the auspices of UNESCO - attention has been directed to important aspects of the diffusion and development of the cultural policy of the State. Although not much attention seems to have been given at these meetings to situations in which groups of different cultures live together in a single country and may perhaps be in a state of conflict, mention may be made here of certain areas in which there seems at present to be general agreement concerning the participation of the State in the development and diffusion of culture, and also concerning the need to co-ordinate activities undertaken in this area with social and economic development measures.

12. The fact that the State has clear positive responsibilities in matters of cultural rights is generally recognized today. For a long time, cultural life was regarded as a preponderantly private matter. 5/ While of course, individuals, groups and communities have primary roles in the development of their own culture, it has been recognized that at least some form of financial assistance is needed from the local, regional and national authorities in order to maintain adequate improvement of economic and social conditions and the rate of technical developments which will make it possible for everyone, without discrimination, to take part in the cultural life of his community and that of the nation at large. 6/

13. It is realized that a country's administrative structures dealing with cultural affairs will necessarily reflect the general structures and mentality of that country's administration. 7/ The fundamental ideology, the socio-economic system and the technical development of the country concerned will necessarily shape its cultural policy and the degree and extent of direct government involvement in general cultural policy planning and its implementation. 8/ Even those countries that are cautious about centralization, and about the predominant role of the State in the direct management of cultural institutions "because of the danger of cultural action being reduced to uniformity and lest the controversial element in art be neutralized", agree that the State should at least give financial assistance to cultural action. 9/ It has become clear that cultural policy cannot be confined to "patronage" type of actions, even on a much larger scale, and that it should consist of a body of operational principles, administrative and budgetary practices and procedures which provide a basis for cultural action by the State, and be linked both with a policy of continuing education and a policy of decentralization and regional and

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4/ In this connection, see in particular paragraphs 18 to 23 and 29 to 33 below.

5/ UNESCO, Cultural Policy, a Preliminary Study. Studies and documents on cultural policies, No. 1, Paris, 1969, p. 35.

6/ Ibid., pp. 9 and 35.

7/ Ibid., p. 35.

8/ Ibid., p. 8.

9/ Ibid., p. 9.

local development. 10/ Cultural policy 11/ should be closely co-ordinated with the social and economic development of the nation. 12/

14. The need for socio-economic and cultural development to go hand in hand was stated as follows by the participants in the Round Table Meeting on Cultural Policies, organized by UNESCO in Monaco from 18 to 22 December 1967: 13/

> "It was recognized that economic and social development should go hand in hand with cultural development; culture has a beneficial effect on the means of production available and on man himself; every improvement in physical well-being helps to promote culture, by freeing man from enslavement to physical obligations, and by giving him leisure for the activities of the mind. The march of economic progress is generally reflected in the cultural sphere, and cultural activity stimulates economic life. Emphasis was placed on the need to integrate science in culture, and to study the way in which culture evolves under the influence of science and technology. Attention was also drawn to the fact that literacy programmes and cultural development form an indivisible whole: it is the cultural advancement of the whole people that imparts force to the literacy movement.
>
> "Over the last 20 years or so, and more especially since 1960, an increasing number of Governments have set up departments of cultural affairs distinct from their departments of education. This trend reflects, on the one hand, a new phenomenon - sometimes referred to as 'cultural development' connected with improvements in school enrolments, communication media, town planning and living standards and, on the other, the determination of governments to take deliberate measures, on a national scale, to meet this new demand."

15. Participants in the United Nations Seminar on the Promotion and Protection of the Human Rights of National, Ethnic and Other Minorities, held in 1974 in Ochrid, Yugoslavia, stressed the same general line of ideas, while recognizing some of the differences in this respect between "developed" and "developing" countries. It may be useful to quote the following paragraph: 14/

> "Several participants emphasized that economic and social development represented the essential basis on which the promotion and protection of the human rights of minorities were possible. The situation of a minority depended primarily on its members' standard of living as defined in article 25 of the Universal Declaration of Human Rights, according to which everyone had the right to a standard of living adequate for the health and well-being of himself and of his family, including food,

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10/ The participants in the Round Table on Cultural Policies took "cultural policy" to mean: "the sum total of the conscious and deliberate usages, action or lack of action in a society, aimed at meeting certain cultural needs through the optimum utilization of all the physical and human resources available to that society at a given time." (UNESCO, Cultural Policy ..., op.cit., p. 8).

11/ UNESCO, Cultural Policy ..., op.cit., p. 10.

12/ Ibid., p. 8.

13/ Ibid., p. 8.

14/ Report on the Seminar on the Promotion and Protection of the Human Rights of National, Ethnic and Other Minorities, held in Ochrid, Yugoslavia, 25 June - 8 July 1974 (ST/TAO/HR/49), para. 28.

clothing, housing and medical care, and on their enjoyment of the right to education as defined in article 26 of the Universal Declaration. The gap between the levels of economic development of various regions of the world constituted an essential element in the sharp differentiation between the situation of minorities in the advanced industrial States and that of minorities in the developing countries. The promotion and protection of the latter could not be realized so long as various groups, because of their economic, social and cultural underdevelopment, could not enjoy even elementary human rights, such as the right to work or the right to culture. It was pointed out that the highest priority had therefore to be given to the economic and social development of those countries. The achievement of the necessary progress in that direction was a prerequisite for the promotion of the rights of minorities in the developing countries. It was further stated that it would, therefore, be a mistake to apply general concepts with respect to the rights of minorities without specifically relating them to the over-all economic and social environment. One participant referred to the need for special economic aid to underdeveloped regions of a country where minorities lived, in order to build the economic foundation for the promotion and protection of their rights."

16. The need to strike a balance between the promotion of economic development and the preservation of the social cohesion of groups, which is an integral part of their cultural identity, is recognized wherever there is concern for such matters. In this connection, it is deemed useful to quote, from the material available for the study, some statements that are considered applicable wherever ethnic groups exist as differentiated entities within a larger society. The following information concerns India:

"The Indian administration recognizes in principle the danger of loss of tribal morale and social cohesion which could result from technological and political changes in the tribal areas. Since they do not wish to have a political vacuum or unrest on the borders of Burma, China, and Tibet, they hope to assimilate the tribes into the Indian nation, but they hope also to preserve tribal languages, their arts and games, and other traits that are important to their culture and could enrich the general Indian culture.

"The aims of the administration have been to improve communications, bring in water and electricity, increase literacy, record languages, promote local dances and handicrafts, and improve the subsistence level. As far as possible, and as far as their understanding points the way, they hope to let local organization deal with civil problems. There will be changes for most of the tribes, but they should be less disruptive than the changes for the Deccan plateau tribes under the British." 15/

17. In this connection it has been written:

"It is generally stressed in relation to the Scheduled Tribes in all discussions and recommendations about their welfare that, while every effort should be made to improve their economic conditions, equal attention should also be paid to preserving their culture. But in a sense these two objectives appear to be incompatible. Culture is not an absolute entity.

15/ Rinm-Sup Shinn and others, Area Handbook for India (Foreign Area Studies by the American University), Washington, D.C., 1970, p. 124.

It is related to the environment: social (including religious, economic, and political frameworks therein) and geographical. Economic development demands that the existing system of resource utilization, of production and the distribution of returns be changed. This cannot be done by opening up ways and means for interchange of men, roads and services. This in turn depends upon a communication and transport network. In the process of this interchange, communication of values, ideas and ideologies, and their interchange as well, do take place to some extent at least. This latter interchange or change is expressed in practice by adopting new goals, new standards of living, new vocations, new training and new tools, which necessitate new associations of men and environment. Broadly speaking culture does undergo change in order to adapt itself to the changing conditions and the converse is also true that without the change in goals or economic objectives voluntary efforts may not be made by the people. In any case economic development has to accept certain modification of the culture of the people concerned as inevitable.

"...

"The tribal culture should be left to shape and adapt itself to changing conditions. It need be neither stressed nor derided. Already Hindu-isation has taken place among them with no missionary work. In his attempt to be one with the larger society the tribal man alone is the best judge as to what elements of his culture are to be retained." 16/

18. In this connection, it is deemed useful also to recall here that the "right to culture" and "cultural rights" are relatively new concepts. It should be pointed out that concern for these rights responds to different motivations in different societies; emphasis is placed on the popularization and diffusion of culture and the utilization of leisure time in "developed" societies while, in "developing" societies which have emerged from colonial rule, self-determination and the recovery, protection and further development of cultural heritage is stressed. It is generally agreed that cultural interaction is necessary to cultural growth, but that evolving cultural processes must be shielded from the systematic onslaught of forces threatening their authenticity. It is taken for granted that the realization of "cultural rights" depends, perhaps even more than others, on the realization of other rights, among which the following are generally mentioned: the "right to an adequate standard of living"; the "right to self-determination"; the "right to education"; the "right to inform and be informed". The problems involved both in the preservation of traditional culture and in the co-existence of sub-cultures within the same society are known to be sharpened in multi-ethnic communities where "ethnicity" may or may not coincide with differing cultural values and cultural expressions. The significance of group rights is prominent in multi-ethnic societies where they should presuppose equal cultural rights for the different ethnic groups. The State has clear responsibilities to formulate and implement a cultural policy which, among other things, creates the necessary conditions for the harmonious co-existence and development of the various ethnic groups living on its territory, whether under pluralistic arrangements that guarantee the absence of impingement of one group on another or by virtue of integration-oriented programmes guaranteeing equal and effective opportunities for all.

16/ M.G. Kulkarni, Problems of Tribal Development, A Case Study, Harsul Blok, Nasik District (Maharashtra). Gokhale Institute of Politics and Economics Bombay, India, 1968, pp. 205 and 234.

19. It must be remembered that in most cases the situation of indigenous populations in matters of culture is in a very profound sense exceptional within the society of the countries where they live. The cultural divide between them and the dominant segments of the population does not comprise merely differences of language, of ethnic origin, of religion or a combination of all those elements. There are differences in techniques, in economy, in organization and in social institutions. The differences often relate to the material, social, psychological and spiritual aspects of the culture and they do not amount simply to the sum of these aspects. There is something more. There is a different way of understanding the world. Every human group seeks the satisfaction of a basic social interest which consists of the need to live in a comprehensible world; and its pattern of responses stems from the historical and environmental circumstances in which it has developed.

20. Indigenous groups have preserved their own basic concepts through years or centuries of co-existence with other segments of the population, or in isolation from these other segments, which are governed in their fundamental conceptions by other criteria and cultural values.

21. The dominant segments of the population and the indigenous peoples often differ in their conception of the world and of the things that exist, or the phenomena that occur, therein. As soon as man is born he comes into contact with the body of ideas and values that give shape to this view of the world (cosmovisión, imago mundi, Weltanschauung). The diametrical opposition between the impersonally and rationally ordered "modern" worldview of the scientific world, and the "traditional" worldview which is personal and steeped in concepts of magic or religion, is a useful reference point. It must be pointed out that these views do not present themselves in an absolute form in either case, since there are always "rational" elements in the "traditional" and even in the "primitive" views of the world, and the "scientific" views of the world always contain, to a greater degree than is generally supposed, elements of magic or religion.

22. The true picture is, however, more complex. Among the elements of the population which in theory include the "modern" sections of societies - and with them the dominant groups - there are also some sections which distort "rational" realities. They resort to an ideology which usually has its origin in a colonial situation and proclaims the need to "civilize" groups with a "primitive" worldview, on the basic assumption that "modern" culture is superior to the "primitive" culture and in accordance with the ideas of social Darwinism which justify the predominance of "Strong" groups over the "weak". This approach frequently forms part of the conceptual outlook of the dominant groups in areas of direct co-existence. Scientific hypotheses and interpretations are contradicted, and ad hoc frameworks are set up which differ from and are even opposed to them.

23. The cultural policy of the State should in such cases take due account of these different factors and should promote attitudes of understanding - in all groups - of the orthodox interpretations of the dominant "rational" culture; but it should do this in a climate in which the existence of the culture of indigenous groups is recognized, and in accordance with standards of behaviour that respect the expressions of the indigenous culture and the right of indigenous populations to maintain and develop their cultures and hand them on to their descendants, if they clearly express their wish to do so.

24. Consideration should be given at this juncture to the policies of indigenous self-management and ethnodevelopment that have been advocated as effective methods of assuring indigenous populations the preservation, development and transmission of their ethnic specificity to their descendants while taking part in the life of the country in which they live. Attention is drawn to what is said in this connection in chapter IX on basic policy and chapter XIII on education.

25. It may be useful to mention briefly the gist of the relevant provisions of the San José Declaration, proclaimed in December 1981 at San José, Costa Rica, by a group of Latin American experts. 17/ The Declaration affirms ethnodevelopment to be an inalienable right of Indian groups (paragraph 2), meaning by ethnodevelopment 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 within processes of expanding autonomy and self-management (paragraph 3).

26. It states that as creators, transmittors and disseminators of their own civilization, as unique and specific representatives of the heritage of mankind, the Indian peoples, nations and ethnic groups of the Americas are, collectively and individually, entitled to all the civil, political, economic, social and cultural rights which are today threatened and demands universal recognition for all these rights (paragraph 5), pointing out that 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 the cosmic vision of the Indian peoples; they 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 (paragraphs 6 and 7).

27. The Declaration states that 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 (paragraph 8).

28. Recognizing that respect for the forms of autonomy required by these peoples is an essential prerequisite for guaranteeing and implementing these rights, it also states that 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 (paragraphs 9 and 10).

29. It would be an extremely interesting undertaking to develop these ideas and refer to the subjective and objective elements of the concept of culture, as well as to the rights to be enjoyed in this respect by individuals, groups and nations from the point of view of the rights of indigenous populations, but it would obviously exceed the scope of this study.

30. It is sufficient to point out here that among the indigenous populations which are in contact with the dominant segments of the population of the States in which

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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 to 15 December 1981).

they live, there are various attitudes to cultural rights. There are some communities, groups or individuals who have little or no interest in the preservation of their special cultural heritage and prefer to embrace the culture of the dominant segments of the country's population. There are on the other hand communities, groups and individuals who are determined to preserve their own cultural heritage and style, and who resist the imposition of the cultural patterns and values of the dominant groups. They wish to continue to develop still further their distinctive cultures, and to hand them on to their descendants. Between these two extreme positions there is of course a whole range of intermediate attitudes. It is self-evident that where various cultures exist side by side they influence each other in a constant "give and take" process. The attitudes expressed must therefore be understood in the context of the situations in which they exist, and as a manifestation of subjective positions which have been expressed by these groups through their conduct within society as a whole. In short, the co-existence of various ethnic groups in one society involves a series of reciprocal influences, and calls for the establishment of conditions and the application of measures favourable to the development of a harmonious existence - perhaps not without some conflict and tension between groups but certainly without unwarranted attacks or attempts to impose a culture. The State should recognize the cultural diversity which exists and should formulate a suitable policy for the peaceful and dignified co-existence of the various cultural groups in the nation.

31. Indigenous groups which have little or no interest in preserving their own distinctive culture are mainly concerned that there should be no discrimination against them by the dominant groups, and that no obstacles should be placed in the way of their efforts at assimilation with the latter groups. Indigenous groups which are resolved to preserve their own distinctive culture will of course also not wish to be subject to any limitations or restrictions; but they will adopt the view that without the special rights and facilities required by their particular situation, the equality that might be established vis-à-vis the dominant group would only be a formal equality without any real significance for them. Thus situations arise in which certain groups should have rights in relation to the State and the State should have certain obligations in regard to these groups.

32. This situation is usually complicated by the fact that within the respective groups there may be dissenting individuals or families who reject both the efforts of the group and the efforts which the State may be making in response to the group's wishes. They may therefore oppose any efforts to induce or oblige them to maintain the traditions or characteristics of the group to which they belong and which has decided to preserve its culture; and vice versa the groups which have expressed a desire to be assimilated to the culture of the dominant groups may contain some individuals or families who reject that policy, who wish to maintain their distinctive cultural identity, and who will therefore refuse to support the efforts of their group and of the State towards assimilation. The rights of the individual in relation to his group will therefore have to be recognized, and his right not to participate in the culture of his community but rather in another group or community which has adopted a contrary policy, will have to be safeguarded.

33. Sometimes Governments welcome the attitude of those who abandon their distinctive culture, and at the same time permit or encourage discrimination against those who insist on retaining and developing still further their customs, habits and special traditions. In cases where such measures can be described as acts committed for the deliberate purpose of eliminating the culture of a group by systematically destructive and obstructive action, they could be deemed to constitute clear cases of ethnocide or "cultural genocide".

34. With regard to ethnocide, the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 should be borne in mind. The acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such listed in article II as acts constituting genocide within the meaning of the Convention include certain acts that correspond to the concept of ethnocide. They include causing serious bodily or mental harm to members of the group (subparagraph b); deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part (subparagraph c); imposing measures intended to prevent births within the group (subparagraph d) and forcibly transferring children of the group to another group (subparagraph e) (our underlining).

35. During the process of formulating the provisions of the Convention there were proposals for the inclusion of provisions on ethnocide or "cultural genocide" and counterproposals that sought to restrict genocide to forms of direct biological suppression. The arguments for and against the inclusion of provisions on ethnocide in the Convention, which are reflected in the documents of the Ad Hoc Committee on Genocide and the Sixth Committee, were mentioned by the Special Rapporteur, Mr. Nicodème Ruhashyankiko, in paragraphs 441 to 461 of his report to the Sub-Commission in 1978. 18/

36. Against inclusion, it was argued, inter alia, that the concept of ethnocide was too vague and that the looseness of the definition might lead to abuses and practical difficulties. It might also prevent some States from ratifying the Convention. 19/

37. In favour, it was argued, inter alia, that it would be impossible to separate cultural genocide from physical and biological genocide, as a group may be deprived of its existence not only through the mass destruction of its members, but also through the destruction of its specific traits, the loss of which leads to the dissolution of its unity, even though no attempt has been made on the life of its members and, for that reason, cultural genocide is an integral part of the general definition of genocide; if attacks against the culture of a group went unpunished for the want of appropriate provisions in the Convention, the perpetration of physical genocide, in which such acts normally culminate, would be facilitated; acts of cultural genocide have always been inspired by the same motives as those of physical genocide and have the same object, namely, the destruction of racial, national or religious groups. 20/

38. The Governments of Austria, Ecuador, Israel, Oman and Romania among others considered that the possibility of including cultural genocide among acts of genocide ought to be examined. 21/ It may be useful to quote the statement by the Holy See in this connection:

18/ E/CN.4/Sub.2/416.

19/ Ibid., paragraph 448.

20/ Ibid., paragraph 447.

21/ Ibid., paragraphs 450 and 451.

"Genocide is also a crime against the rights and dignity of a people. Each people has its own heritage. Although it is true that every people should be open to other cultures and grow in terms of union and exchange with other peoples, the fact remains that more or less natural groupings of persons exist in the form of peoples, each of which has a particular cultural heritage and is often of a particular racial type or a particular mixture of racial types. It is a people's cultural heritage that is the expression of that people and that is the true bond of the people's unity. A people's heritage with its traditional language, customs, beliefs, art, music, laws, social patterns, and ways of looking at reality, is not a static structure. It is a dynamic bond of unity, a matrix of human development, and a promise for the future of the people.

"All the individuals and social groups that make up a given peoples should be able to attain full cultural development in accord with their traditions. They should not be held back, nor have other cultures imposed on them.

"...

"In view of the above-stated principles, serious consideration should be given to the matter of those acts which might be called 'cultural genocide' or 'ethnocide' or 'ecocide'." 22/

39. The question whether ethnocide is or is not a form of genocide is important, but however it is decided the fact remains that ethnocide consists of a series of serious violations of human rights which resemble genocide and which must be forestalled and punished. This was recognized by the participants in the Conference of San José, Costa Rica, organized by UNESCO-FLACSO 23/ which in December 1981 formulated and issued the Declaration on ethnocide and ethnodevelopment already discussed in this chapter. 24/

40. In the terms of the San José Declaration, ethnocide means that an ethnic group, collectively or individually, is denied its right to enjoy, develop and disseminate its own culture and language. It represents an extreme form of massive violation of human rights, in particular that of the right of ethnic groups to respect for their cultural identity, as contained in numerous declarations, agreements and conventions of the United Nations and its specialized agencies, and as proclaimed by various regional intergovernmental organizations and non-governmental organizations. Consequently, the Declaration affirms that ethnocide, i.e. cultural genocide, is a crime against international law, on the same footing as the crime of genocide condemned by the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, 1948 (paragraph 1). It recalls that since the European invasion the history of the Indian peoples of America has been suppressed or distorted, in spite of their major contributions to the progress of mankind, which has amounted to a negation of their existence, and it rejects this unacceptable falsification (paragraph 4).

22/ Ibid., paragraph 450.

23/ See foot-note 17 above.

24/ See paragraphs 25 to 28 above.

41. After referring to the main aspects of a policy of ethnodevelopment, 25/ it points out that 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 (paragraph 11); this disregard creates a disequilibrium and a lack of harmony within society and may induce these peoples, 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 (paragraph 12).

42. It is not considered appropriate to include any further reflections on ethnocide in this chapter mainly because the revision and updating of the study on the question of the prevention and punishment of the crime of genocide will soon begin and special attention will certainly be given to these matters. At its thirty-ninth session, taking up the suggestion by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1982/2 of 7 September 1982, the Commission on Human Rights adopted resolution 1983/24 of 4 March 1983 in which, mindful of the Sub-Commission resolution and reflecting its deep concern and anxiety at the fact that acts of genocide are being committed in various regions of the world, it recommends that the Economic and Social Council should adopt a draft resolution in which the Council:

> "Mindful of resolution 1982/2 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and resolution 1983/24 of the Commission on Human Rights, related to the revision and updating of the study on the question of the prevention and punishment of the crime of genocide,
>
> 1. Requests the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint one of its members as Special Rapporteur with the mandate to revise, as a whole, and update the study on the question of the prevention and punishment of the crime of genocide taking into consideration the views expressed by the members of the Sub-Commission and the Commission on Human Rights, as well as replies of Governments, specialized agencies and other organizations of the United Nations system, regional organizations and non-governmental organizations to a questionnaire to be prepared by the Special Rapporteur;
>
> 2. Further requests the Sub-Commission to consider and to submit to the Commission on Human Rights at its fortieth session the aforementioned revised and updated study."

43. In this revised and updated study considerable attention will have to be given to ecocide, whether or not it is decided to suggest its inclusion in the new convention that may be proposed. The deliberate destruction or substantial modification of the natural environment to bring about changes which are not desired by the population of the region and which are detrimental to it may, in certain serious circumstances, be tantamount to ecocide which, with the consequent ethnocide, may ultimately result in a form of genocide. Preventing

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25/ See paragraphs 25 to 28 above.

an ethnic group from preserving its traditional forms of life and bringing about the destruction of its culture based on those forms of life and the disappearance of the group as such, are serious violations of the basic rights and fundamental freedoms of the populations in question.

44. Obviously, in order to respect the fundamental rights of indigenous populations who clearly express their wish to preserve, develop and transmit their culture to future generations and thus affirm their right to be different within the over-all society of the country in which they live, a pluralist policy needs to be adopted. To develop such a policy, a series of measures must be taken that are designed to make possible this different life, freely selected by the human groups concerned, while harmonizing it with that of other segments of society. Consequently, while in the case of groups desiring total assimilation in the dominant groups, the only problem is to arrange for them to participate without restrictions in the cultural life of the country, in the case of the others a series of other possible measures will have to be envisaged. This chapter accordingly concentrates on special measures going beyond the minimum requirement of non-discrimination that is always applicable.

C. Consideration of the information available

1. Introductory remarks

45. A survey may now be made of the information available on this subject. The first point to be stressed is that the information available is fairly limited. For some countries, 26/ only scant information has been obtained. For most other countries no details were available on certain aspects and on other aspects on which details were given, they were invariably fragmentary and insufficient. Only a few countries supplied fairly satisfactory data. It must be stated, however, that attention has from the outset been concentrated only on aspects of paramount importance, and that the corresponding chapter of the outline was drafted accordingly. The available information is presented within the framework of the basic ideas underlying this part of the outline. The available information is examined in relation to the specific topics selected, but it should be noted that because of the disparities in the data, the information available does not lend itself to comparisons. It may be felt that the chapter dwells too much on certain countries, but this is necessitated by the nature of the information available. It should also be noted with regard to the treatment of "culture" in relation to isolated groups (forest and mountain dwellers etc.) which have not been in contact with the dominant segments of the population, that the information on these groups is presented together with the rest of the information without differentiation, since there is insufficient information for a more systematic approach or to provide a basis for a considered decision.

46. The subject of culture and cultural, social and legal institutions is closely linked with that of the fundamental policy adopted with regard to indigenous populations, since in States which adopt - under whatever name - policies of assimilation such as those described in the relevant chapter, one is faced with a system that does not give the indigenous culture its true place and postulates as an ideal solution the abandonment of that culture in favour of the culture of the dominant non-indigenous groups. This may lead in extreme cases to measures which, by deliberately seeking that solution, involve the elimination of the indigenous culture in circumstances that will constitute a trend towards ethnocide. It is evident too that this subject is closely linked to educational policy and to the role educational policy assigns to indigenous cultures and languages in both general and vocational education and their representation in educational materials and among teachers.

47. The importance and recognition accorded to the indigenous language in the activities of the State authorities, and the facilities provided for the study and teaching of the various indigenous languages and cultures will be decisive factors in this respect.

48. It will also be highly important to bear in mind the relevant cultural and religious traditions and to take into account the wishes and opinions of the various groups both in formulating the fundamental policy and in developing and applying that policy in all areas of State activity that may affect the population

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26/ Argentina, Bangladesh, Bolivia, Colombia, Ecuador, El Salvador, Honduras, Japan, Laos, Nicaragua, Pakistan, Panama, Peru, Sri Lanka, Suriname and Venezuela.

groups concerned. The policies adopted by non-official organizations, such as religious missions and any scientific, anthropological, ethnological and sociological committees or groups which may have undertaken programmes of action among the indigenous populations, will also have to be reviewed.

49. It is clear that control, examination and review of State policy will be of crucial importance in order to ensure that the State itself and all non-State organizations involved act with due respect for indigenous culture, traditions and customs.

50. Of great importance also will be the measures taken to encourage the elimination of any barriers that may exist between the indigenous and the non-indigenous segments of the population and measures intended to discourage any action likely to accentuate divisions and rivalries that may prove detrimental to the indigenous populations, as well as measures to counter and eliminate misconceptions or prejudices which the non-indigenous populations may have with regard to the indigenous communities in the country, or which some indigenous groups may have with regard to some non-indigenous groups. Another important aspect will be the dissemination of better knowledge of the history, traditions, customs, culture or cultures, arts and handicrafts of the indigenous population, and of the latter's contributions to the cultural environment of the non-indigenous populations. Knowledge and recognition of the rights of indigenous populations and of the cultural, social and legal institutions which they value and have preserved up to the present is also vitally important. The non-indigenous populations must be made to realize and recognize the importance, for society in general, of the preservation and development by indigenous populations of their particular cultural characteristics.

51. Equally important are the aspects mentioned in the chapter on the religious rights and practices of the indigenous population, which play so large a part in their lives, and also measures taken to ensure some reflection of the indigenous culture in State political bodies by suitable methods which might include the representation of these population groups in legislative bodies, in public administration and in the judicial organs of the State as well as recognition of organs and bodies of this kind established by the indigenous groups themselves and of their internal control machinery, the necessary support being provided to enable them to function effectively without outside interference. In this connection it is important to recognize indigenous organizations and communities as local or regional political entities and to give indigenous communities the necessary degree of autonomy or self-government in political or administrative matters and in the establishment of their own courts. In conclusion, it is vitally important to recognize the communal forms of ownership of land and of the related resources required for working and developing the land, and also to recognize and support the authorities which exercise legitimate control within indigenous communities or groups according to tradition and custom, particularly in the assignment and distribution of land among the members of the groups or communities.

2. The right of indigenous populations to equality with other segments of the country's population in access to cultural institutions and activities

52. The information available does not reveal any cases of denial of, or legal restrictions on, the right of indigenous peoples to equality with other segments of the population of the country in access to cultural institutions and activities. The countries which have provided information on the subject merely

state that there are no problems in this respect. 27/ Some countries couch their replies in negative terms. For example, the Government of Sweden states that "no impediments or restrictions exist in [these] matters". 28/ Similarly, the Government of Norway says that in this respect "[there exist] no de jure or de facto restrictions". The Government of Guyana, for its part, states that "There are no impediments to the exercise of or restrictions on the right of indigenous populations to equality with other sections of the country's population in access to cultural institutions and activities." 29/ The Government of New Zealand also states: "There are absolutely no impediments to the exercise of or restrictions on the right of the Maori population to equality with other segments of the population in access to cultural institutions and activities. In fact, in some forms of cultural activities, such as amateur drama and opera, Maoris are playing a prominent part."

53. The Government of Australia states, in positive terms, that "Aboriginals have equal access to cultural institutions and activities with all other Australian citizens".

54. The Government of Chile states that "indigenous peoples have equality of access to cultural institutions and activities with the rest of the inhabitants of the Republic, and consequently there are no special legal provisions regulating such situations ... [Indigenous peoples] have equal opportunities and possibilities of being admitted to any performance or attending theatrical productions in any theatrical premises".

55. Article 19 of the Constitution of Ecuador specifies that "every person shall enjoy the following guarantees ... 15. The right to participate in the cultural life of the community".

56. These provisions and this information are in accordance with the relevant provisions of the Bill of Human Rights, which are referred to above. It is clearly important to ensure that no segment of the population is deprived of the right to take part freely in the cultural life of the community. However, it must be recognized that apart from the specific denial of this right and even denials and restrictions of other types which are not intended specifically for this purpose but which have the same result, there are circumstances which, while not involving actual deprivation of rights, result directly or indirectly in limitations or restrictions.

57. It is clear that both, in fact and indirectly, problems of an economic and geographical nature will arise in this respect.

58. The unequal distribution in the countryside and in cities of cultural institutions such as libraries, public newspaper and periodical reading rooms, libraries of records and tape recordings, museums, theatres, cinemas, concert

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27/ However, many of them provide additional information on other points relevant to this subject.

28/ The Governments of Finland and Mexico reply in the same manner.

29/ In a very similar manner, the Government of Canada has stated that "There are no impediments to the exercise of, or restrictions on the right of indigenous populations to equality with other segments of the population in access to cultural activities and institutions".

halls, etc., which tend to be unduly concentrated in urban centres, undoubtedly creates a situation in which the urban and rural sectors of the population have unequal access to such institutions. Even where the imbalance in the geographical distribution of cultural institutions and establishments is less extreme, the activities carried out or planned by such establishments are still oriented in favour of urban centres. Consequently, there are still considerable inequalities in this respect which affect rural population groups seeking access to such institutions.

59. The fact that access to these establishments is not always free and that payment is generally required is an additional cause of unequal access. Persons who do not have enough money to pay the charge, however small, in order to gain access to the institutions and the activities carried on there or who have to use a prohibitively high percentage of their income to cover the cost of admission will not have access to these establishments and performances in the same degree as persons in higher income groups.

60. As a result in part of technological advances, there has recently been a sharp reduction in costs and increasing popularization, which has made these institutions and cultural activities more accessible to low-income groups in all countries. In addition, undeniable efforts are being made in many countries to bring such activities to populations situated in areas remote from urban centres. However, even where no deliberate attempts are made to deny or restrict access, the actual opportunities for enjoyment and exercise of the right of access to these activities and institutions are still fewer in the rural communities in which the vast majority of indigenous populations live.

61. It is clear that, if the State merely takes steps to ensure that there are no direct or specific denials of, or restrictions on, the right of all population groups in the territory under its jurisdiction, it will not be fully discharging its obligations towards those groups which wish to have access to these activities and institutions. In order to discharge its obligations in this respect, the State should try to make all these activities and institutions accessible to low-income groups and should endeavour to bring such cultural activities and institutions to rural areas and to promote their expansion in these areas.

62. As indigenous populations at present live, almost always involuntarily, in the most remote areas of the countries concerned and are among the economically least advantaged groups in the money economy prevailing in these countries, States should fulfil their obligations primarily in regard to those indigenous populations which are already in contact with other segments of the population and freely express the wish for access to cultural activities and institutions. 30/

63. Another set of problems arises from the fact that all written materials (books, magazines, periodicals, texts of various kinds, etc.) are inaccessible to persons who do not know how to read or write. As has been mentioned in various

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30/ With regard to isolated groups which have not been in contact with other segments of the population, it will obviously be necessary to adopt an ad hoc policy, as will be pointed out below.

parts of this report, this situation, which is found more frequently among rural populations than among urban groups, is even more pronounced among the indigenous populations which invariably have the highest illiteracy rates. This is largely due to difficulties caused by lack of knowledge of the official language or languages or of those used by the State and to the lack or scarcity of written material in the indigenous languages.

64. It has frequently been pointed out that radio and television are overcoming some of these difficulties, particularly the uneven geographical distribution and illiteracy, since they are media through which cultural activities can be widely disseminated and understood even by persons who cannot read or write. Television, as an audio-visual means of direct perception, offers great possibilities as a means of cultural diffusion.

65. To some extent and for certain cultural activities, these two types of difficulties have been overcome with the introduction of transistor radios. The low cost and portability of small transistor radio receivers have partly reduced the economic difficulties and those due to uneven geographical distribution.

66. However, in spite of the reduction in cost, and in spite of the accessibility resulting from the advent of portable transistor radios and the increased and cheaper access to other cultural programmes and establishments, the latter will still be beyond the effective reach of large sectors of the indigenous population because of their extremely low income. These new facilities also suffer from additional disadvantages and defects, which affect other means of cultural dissemination as well. These other aspects are of great importance for indigenous populations of all types and in all areas, and relate not so much to the means of dissemination or the question of physical and economic accessibility, but rather to the content of the activities and of the programmes broadcast.

67. Frequently, programmes broadcast by radio and television are still beyond the reach of the indigenous populations since these means of communication, like the press, libraries, public newspaper and periodical reading rooms, libraries of records and tape recordings, theatres and cinemas, etc., have other disadvantages and raise other problems when the language used is a language that is not known at all or is imperfectly known by the indigenous population, which is thus placed at an additional disadvantage.

68. Thus, another example of inequality in access to cultural institutions and activities occurs in the case of persons or population groups who do not know, or have an inadequate knowledge of, the language used in these institutions and activities. For these groups, access to such institutions or establishments is limited or restricted de facto if the material used or the programmes shown are in the official language only, or primarily in this or other languages of the dominant segments, and if they are not available at all, or available only to a very small extent, in the indigenous languages concerned. No legal provisions or policemen will be required to prevent these population groups from having physical access to such establishments and activities; limitations or restrictions will exist simply as a result of the language used. In addition, where such activities are conducted or such establishments exist solely within the cultural framework of the dominant population groups, this may result not only in unequal access to such activities or establishments but also in the exertion of undesirable influences or the imposition of the culture of the dominant groups.

69. Radio, television and the press are effective cultural transmission media, but may be used to exert cultural influences and pressures which are not always desirable. Even where such media are not deliberately used for cultural penetration, they reflect the cultural framework and patterns of the dominant groups in forms which are perhaps not always suitable.

70. In countries which have adopted a policy of assimilating the indigenous groups to the culture of the dominant groups, these efforts will be deliberate. However, even where such a policy is not adopted, and even in the absence of any deliberate intent by the dominant segments of the population, there are often clear cases of cultural influence which is not always desired by the indigenous populations or which should perhaps be presented in a different form.

71. Furthermore, in many countries radio and television broadcasts, as well as the press, include advertisements and other means of exerting pressure on the consumer, which may be harmful for the other segments of the population but always have a particularly damaging effect on the indigenous populations. 31/

72. It is highly important that the existence of the indigenous culture (languages, traditions, history, customs, cultural contributions to other segments of the population, music, plastic arts, handicrafts) should be reflected in the State cultural diffusion media. This will not only help to make the non-indigenous populations aware of the existence and importance of the indigenous populations in the country concerned but will also contribute to the diffusion of the culture of the indigenous populations and make for a better understanding and wider diffusion of the cultures existing in the country. It will also widen the framework in which the cultures of the various communities in the nation are diffused and promoted and will thus give fuller significance to the right to take part in the country's cultural life.

73. This aspect clearly comes within the context of the special measures which the State should take so as not to encourage or permit the undesirable imposition of a culture or cultural penetration, and so as to ensure that the different languages and cultural groups may, if they so desire, preserve and develop all manifestations of their particular way of expressing themselves and of viewing the world.

31/ The following information from the Government of Colombia may be quoted as an example of the effects of cultural penetration on certain indigenous communities in that country and is valid mutatis mutandis for a large number of countries and situations. The Government states:

> "It is not just the demonstrable usefulness of the products of the national society that encourages people to consume them; the values of that society have been introduced through one of its media (evangelization) into the tribe as standards of what is good and evil, beautiful and ugly, attractive and undesirable, and so on, and they have been accepted as the genuine ideological condition for consumption. Thus, the Indian not only works for a month in order to be able to buy a kilo of salt but for three years to acquire a transistor which places him in a situation of passive communication, as a mere receiver of the stimuli of the national society; thus, the more products he consumes from the outside, the more exploited he becomes. One of the consequences of the major literacy and evangelization campaigns is that he becomes a member of the consumer society, since it provides the indigenous person with value systems that prepare him for the use of the merchandise produced by ... [the] cultural and economic sectors [of that society]".

3. Protection of indigenous persons, groups and communities against the use of force of intimidation to compel or induce them to abandon their own culture, to accept the culture of the dominant groups, to attend cultural institutions or to take part in cultural activities against their will

74. States commonly try by various means to stimulate feelings of national unity which are regarded as essential for establishing the idea of nationhood and for maintaining nationalistic feelings. These aspirations may, however, present themselves in many different forms and embody many different policies even within the same general trends, as is pointed out in the chapter on fundamental policy in regard to indigenous populations. 32/

75. Without repeating the ideas expressed in that chapter, it may be stated here that a policy of assimilation adopted by a State should never be imposed on any social group, and particularly not on groups which are opposed to such a policy.

76. With particular regard to the question of "involuntary minorities", 33/ it was stated at the Seminar on the Promotion and Protection of the Human Rights of National, Ethnic and Other Minorities, held at Ochrid in 1974 and mentioned earlier that: 34/

> "... assimilation, though desired by some minorities, should not be forced upon any minority, as it was a process that should depend exclusively on free will. One participant felt that the pursuance of a policy of forced assimilation for minorities violated the fundamental principles of self-determination and equality of nations and the basic human rights which were enshrined in the Charter of the United Nations. Moreover, assimilation implied a series of measures of direct or indirect coercion for the purpose of denationalizing minorities, negating the rights of individuals to their own identity and thereby the rights of a national and ethnic minority as a whole, and from that point of view it could be considered to approach the threshold of genocide. A harmonious integration rather than full assimilation might be a way of preserving the characteristics of various groups and thus achieving unity among diversity and the building of pluralistic or multicultural societies, which might be preferable, under certain circumstances, to multinational federal structures. ..."

32/ See chapter IX above.

33/ A distinction was drawn between "historical", "classical" or "involuntary" minorities, resulting from events of a historical or geographical nature (for example, changes in frontiers, transfer of populations, and slavery) and "minorities by election", "voluntary minorities" or "new minorities" consisting of persons who have recently and voluntarily left their country of origin and moved to other countries (such as immigrants and foreign migrant workers). Report on the Seminar, (ST/TAO/HR/49) op. cit., para. 33.

34/ Ibid., para. 42.

77. Violence or intimidation, suggestion by coercion, material incentives, explicit and violent condemnation of the indigenous culture as a whole should be regarded as illegitimate means of exerting influence and of bringing about cultural or religious changes. The use of these methods is tantamount to ethnocide.

78. Those measures constitute an attack, whether deliberate or not, on the fundamental elements of the social cohesion of the indigenous community, which is seriously affected by the disintegration of the indigenous moral, social and legal standards and the weakening of the means used for the social control of the community.

79. Systematic and deliberate opposition to certain social or religious customs of the indigenous populations would be acceptable 35/ only as a way of discouraging, by appropriate means, certain practices which violate the sanctity of human life even though they may be associated with a particular religion, as may happen in very exceptional cases.

80. However, other beliefs and religious or magic rites, which have always been of vital importance for the indigenous cultural world, constitute one area that has been especially affected by intolerance and ethnocentric rejection, which have resulted in abuses throughout the whole period in which the indigenous cultures have been in contact with those of the dominant non-indigenous populations. In most cases, people have not understood or not tried to understand the disastrous effects of these abuses on the cultural life of the indigenous community, although on some occasions such abuses have been part of a deliberate policy.

81. In the past, there have been cases of "forced" conversion to the religions of the dominant groups, and pressure or intimidation has been used to induce the indigenous populations to discontinue the practice of certain rites or ceremonies which were regarded ethnocentrically as offensive to the ethical and religious principles of the dominant groups. Pompous "acts of faith" have led to the disappearance not only of religious objects and relics but also of documentation or records of enormous cultural value to the indigenous populations and to mankind as a whole.

82. These barbaric acts of suppression have resulted in serious losses for the cultural heritage of the world, but for the groups of mankind which have been victims of acts of fanatical intolerance or incomprehension, such acts have been merely the major incidents in the continuing process - planned and subtle or straightforward and simple - of the cultural suppression and cultural imposition which all indigenous groups and nations in all parts of the world have suffered in varying degrees at various times. All indigenous groups, communities and nations which have been vanquished in wars of conquest or subjection or in

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35/ Although it would not perhaps be advisable as a means of inducing the group in question to abandon such customs altogether.

"punitive" campaigns, or which have been placed under a regime of colonial subjugation in some other way, have been subjected to limitations and restrictions which placed serious obstacles in the way of their free expression and cultural development. For many indigenous groups, these impositions in their most serious forms have come to an end only recently; for others, unacceptable acts of suppression and imposition are still being committed on a large scale. For a few others, lastly, the period of cultural attrition seems to be a thing of the past, and new horizons have been opened up for the renascence and further development of their distinctive cultures.

83. Let us now consider the information available on these matters. Among the countries which have supplied information in this respect, Malaysia reports that the principles to be used as a guide for official policy regarding the Orang Asli include the following: 36/ "The social, economic and cultural development of the aborigines should be promoted with the ultimate object of natural integration as opposed to artificial assimilation. The primary objective should be the fostering of individual dignity and the advancement of individual usefulness and initiative. Recourse to force or coercion as a means of promoting integration shall be excluded."

84. Some of the Governments which have provided information on this question merely state that, since the use of force or intimidation to compel or induce indigenous persons, groups or communities to take part in cultural activities or to attend cultural institutions against their will is unknown in their countries, it has not been necessary to adopt any measures in this respect.

85. Norway for instance states that "there is no question of such protective measures being necessary. Australia reports that "Aboriginals are not subject to force or intimidation to compel them to take part in cultural activities or attend the cultural institutions unwillingly". New Zealand reports "There are no known instances in modern times of the use of force or intimidation to compel or induce Maoris to take part in any types of cultural activities or to attend cultural institutions against their will."

36/ Part of principle (b) in "Statement on Official Policy regarding Orang Asli populations". These principles, which seem to be based on the provisions of article 2, paragraphs 2 (c), 3 and 4, of ILO Convention No. 107, are reproduced below (para. 534).

86. Some countries make reference to the fact that criminal law provides for redress against the use of force or threats against anyone, adding that this includes the indigenous populations. 37/

87. In several of the countries reporting that no specific legislative provisions have been considered necessary to prevent interference with indigenous culture in its varied manifestations, there has been, however, an intensification of efforts to protect sites and objects of archaeological importance that have endured up to the present time and which have been disappearing through intentional destruction, through systematic drainage abroad to art collectors of different kinds including some reputable museums, or through simple lack of care. These endeavours have resulted in enactments of a protective character. The sites in question may be, and some are indeed, places of religious and cultural significance to present day indigenous populations. In other instances, on the other hand, some indigenous religious rites and practices that have also survived until the present time have been objected to in violent ways by the prevailing segments of the population. But acts of this sort are not indispensable to identify instances of lack of recognition and respect for indigenous cultural manifestations and efforts to impose alien cultural values and patterns on them. In some matters, indeed, the unqualified application of the general law could limit indigenous freedom to carry out traditional practices. There are, for example, matters dealing with marriage, family relationships, burial of the dead, etc., where the indigenous persons or groups still adhere to traditional customs and practices. Some concessions must be made in matters of this kind. There are, for example, general laws on the burial of the dead which, if strictly enforced, would interfere with some indigenous customs. Certain customs relating to marriage have been strongly objected to and discouraged by missionaries who felt that these practices were offensive to their cultural tenets. This has been the case with practices of polygamy which some missionaries have, in the past, actively discouraged.

88. In Australia, for instance, although there have been and there are no legislative or administrative restrictions on the form of Aboriginal marriage, in the past polygamy has been discouraged by some missionaries. While the form of Aboriginal marriage has not been officially restricted, neither has it been officially recognized. In relation to certain social service benefits, customary marriages are fully recognized, but this administrative practice has not been extended to recognition of the entitlement in relation to all wives of polygamous unions. The Government has stated "this matter is under review".

89. Another area of problems in this regard has involved practising medicine-men or priest doctors. In many places, there has been a concerted effort to hamper their work. In New Zealand for instance it is reported that there was formerly a statute making it illegal for Maori tohungs (priest doctors) to attempt to cure diseases by magic rituals. This Act was repealed in 1944, as the practice had long died out since the introduction of the social security programme and the extension of medical services throughout the country.

37/ For example, Guyana.

4. Measures to safeguard the maintenance and further development of the indigenous Culture and its transmission to future generations

90. If the fundamental right of the indigenous populations to the free development of their personality within their own cultural patterns is to be respected, the cultural institutions and activities of the dominant segments of the population should never be imposed on persons who resent and reject such intrusion. The cultural background of these groups, and the close attachment of indigenous persons, groups and communities to this background, should always be respected. It is necessary to understand or at least to envisage the destructive effects which abusive interference of this kind may produce in indigenous societies.

91. Procedures must be devised to prevent outright attacks and abusive impositions in the cultural field; the influences of one culture on another should be oriented to the greatest extent possible through channels leading to positive cultural exchanges and not merely to the cultural undermining and alienation of certain segments of the population. Regardless of the final objective of the policy chosen by the State in this respect, an approach of this kind is essential if one wishes to avoid the destruction of indigenous communities. Even where State policy is aimed at inducing indigenous populations to abandon their traditional culture and to adopt the culture of the dominant segments, it is essential to be clearly aware of the effects that the proposed measures may produce. It is obvious that this policy will be legitimate only where it is carried out with the consent of large sectors of the populations concerned. Where, on the contrary, the indigenous populations have manifested their determination to preserve their traditional culture, this desire should obviously be respected and appropriate measures should be taken.

92. It is not enough, therefore, to prevent or punish abusive conduct involving cultural penetration or imposition. It is essential to recognize and to protect the right of the indigenous populations to preserve, develop and perpetuate their culture and cultural, social and legal institutions by transmitting their cultural heritage to future generations, whenever they clearly express the wish to do so.

93. In this regard, there are a series of measures which the State can and should take to discharge this important function. Some measures will involve the protection of this right and of activities carried out in exercise of it. Others will consist of positive measures of assistance and promotion on the part of the State.

94. The information available on these matters is considered below.

95. There are no legal impediments in Sweden preventing the Lapps from transmitting to future generations their traditions and cultural characteristics, "but on the other hand," the Government states, "there is no special legislation which gives positive support to such efforts." In a similar manner, the Government of Guyana has stated: " ... Amerindians are free to maintain and further develop their culture but there are no special legal enactments directed to this end."

96. Measures of this type are surely not enough, if the indigenous communities have clearly expressed their desire to preserve and develop their cultural heritage and to transmit it to future generations. Suitable positive measures are then necessary and the State should act constructively to this end.

97. In Finland, the Government reports, ethnic minorities are at liberty to maintain their cultural heritage and to transmit it to new generations. Their cultural activities are encouraged and subsidized by the State. On measures taken for the preservation of Lapp culture and cultural, social and legal institutions the Government states:

> "The measures taken for the preservation of Lapp culture ... mainly ... aim at the preservation and development of the Lappish language and handicrafts and the facilitation of their traditional means of livelihood. These measures, which are to some extent dealt with in other paragraphs, often comprise administrative orders by central or local authorities. As an example of such orders, mention might be made of the one given by the Central Forestry Board on the principles to be followed in the care of State-owned forests in Lapland. According to this order, the interests of reindeer breeding shall be taken into consideration. At the moment, there is a working group studying ... how best to reconcile the interests of forestry and those of reindeer breeding in areas where they coincide."

98. The Norwegian Government states that the maintenance and further development of the indigenous culture are guaranteed. ... Reference is made to the following measures which have already been initiated in order to protect successful commercial establishments and operations of the indigenous communities and their traditional industrial enterprises:

1. The State grants loans and guarantees to economic enterprises.

2. The State has given grants to reindeer slaughtering firms.

3. The State has given funds to home craft activities.

4. The authorities control the import of reindeer meat in order to protect Lapp reindeer husbandry.

On important matters concerning the Lapps in general, the opinion of the Lapp organizations is ascertained.

99. The Ministry of Agriculture receives all applications for the development of watercourses and sends them to the Lapp organizations for their opinion. If deemed necessary, a committee is appointed to report on any harmful effects to the Lapps. In such a committee the Lapps will constitute the majority. Reports of this nature are funded by the State.

100. According to information provided by the Canadian Government:

> "A Cultural Development Programme operates under the Department of Indian Affairs and Northern Development. Since 1964 it has granted over half a million dollars to registered Indian individuals and groups for the advancement of traditional cultural activities. Two national cultural conferences have been held, and a national cultural committee established to implement their conclusions. An Indian cultural magazine, 'Tawow', has reached a circulation of 15,000, eight books have been published and six are in preparation, including a number of tribal histories. Three documentary films have been made. A fine arts collection of works by registered and non-registered Indian artists had eight major showings across Canada. Special grants were made to subsidize pageants and ceremonial occasions."

101. Reference has been made above 38/ to the Cultural/Educational Centres Programme introduced by the Federal Government in 1971 "to assist native people in the development, preservation and appreciation of the many aspects of native culture." In this connection the Government states that:

> "... there are certain intangible results of the participation of Indian people in the planning and operation of their own fulfilment, pride, initiative, creativity and awareness. Such benefits can only contribute to the growth of the culture and the race.
>
> "At present 59 cultural/educational centres across the country share 5.3 million dollars. The centres vary in the size and scope of their programs depending on the population supporting that centre. The largest Centre, the Saskatchewan Indian Cultural College, for example, is funded on the basis of its commitment to service the entire Indian population of Saskatchewan. As a result, the College receives an annual contribution of well over $1 million and is involved in a wide range of programs. There are, however, many centres which service only one band, with the consequence that the diversity of their programs is necessarily limited.
>
> "Since 1972, Government has spent $37 million (to date) on this Program. In the field of literature and art, the Department, through a Grants Program, enables Indian and Inuit artists to enhance their careers in their specialties and thereby encourages potential and increases public awareness of Indian Art."

102. On other programmes the Canadian Government states:

> "Under the Department of Indian Affairs and Northern Development, a program of grants for the advancement of Eskimo cultural expression provides funds to Eskimo individuals, groups and organizations requiring assistance in their cultural endeavours for the retention, preservation and promotion of Eskimo culture. Art exhibitions, books and films have been produced.
>
> "The Department publishes a trilingual magazine (Eskimo-English-French) entitled "Inuittituut" which has a distribution to northern communities, libraries and universities. Articles are published in the language of the contributor.
>
> "Another important form of assistance is to organizations of Indian women: Some Homemakers Clubs receive grants from the Indian Affairs Department to assist with their programs. The Department of the Secretary of State also provides funds to assist provincial and national women's native groups. The sum so expended is over $300,000 annually. Grants have been made to Indian Band Councils to develop libraries on the reserves.
>
> "The National Museums of Canada maintain an extensive program of research and exhibition of Indian art and history artifacts. The National Museum of Man, now undergoing extensive renovation, will contain an outstanding exhibition area for this purpose. Currently, a "Museumobile" and several travelling exhibitions of native art and culture have carried

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38/ See chapter XIII on education

collections to many parts of the country, including Indian and Eskimo communities. The Museum has a program of extensive research into pre-history, ethnological history, linguistics and ethnology. Major field studies have been undertaken by Museum ethnologists with the Ontario Iroquois, the Charrier-Chilcotin of British Columbia, Indian tribes on the Prairies and in the northwest. The National Art Gallery has mounted a number of exceptional exhibitions of Indian and Eskimo art."

103. The Government of the Philippines reports that "the Bill of Rights embodied in the old and new Constitutions guarantees the right of all persons to enjoy their own culture in a manner not contrary to the laws of the land. The provisions of the New Constitution are the culmination of the recognized right of the minorities to autonomous cultural development. There is no law abridging or stultifying such a natural right of the individual. The Philippines specifically prohibits class legislation and any law found to be of such nature is declared unconstitutional and, hence, null and void. There is freedom of speech and the press."

104. The previous Constitution (of 1947) provided, inter alia, that the Filipino culture shall be preserved and developed for national identity ... (section 9 (2)), and that the State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of State policies (section 11).

105. In Brazil, the Indian Statute (Act No. 6001 (1973)), referred to above, provides:

"Article 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 applied to other Brazilians, safeguarding native usages, customs and traditions, as well as the particular conditions recognized in this Law.

"Article 2. It is the duty of the Union, the States and the Counties (municipios), as well as the agencies of the respective indirect administrations, within the limits of their competence, for protection of the native communities and preservation of their rights, to:

"I. - Extend to the Indians the benefits of common legislation, whenever application thereof is possible.

"II. - Furnish assistance to the Indians and native communities, even though they are not integrated in the national communion.

"III.- Respect, while providing the Indians with means for their development, the peculiarities inherent to their condition.

"IV. - Assure the Indians of free choice of their way of living and means of subsistence.

"V. - Guarantee the Indians the right to remain, if they so wish, permanently in their habitat, providing them with resources there for their development and progress.

"VI. - Respect, in the process of integrating the Indian in the national communion, the cohesion of the native communities, and their cultural values, traditions, usages and customs.

"VII. - Carry out, whenever possible with the co-operation of the Indians, programs and projects tending to benefit the native communities.

"VIII. - Utilize the co-operation, spirit of initiative and personal qualities of the Indian, with a view to improving his living conditions and integrating him in the development process.

"IX. - Guarantee the Indians and native communities, in the terms of the Constitution, permanent possession of the land they inhabit, recognizing their right to exclusive usufruct of the natural wealth and all the utilities existing on that land.

"X. - Guarantee the Indians full exercise of the civil and political rights to which they are entitled by law."

"...

"Article 28. An Indian park is an area contained within land in the possession of Indians, whose degree of integration is sufficient to allow of economic, educational and sanitary assistance being supplied to them by the agencies of the Union, wherein the flora, fauna and natural scenery of the region are to be preserved.

"(1) In the administration of the parks, the freedom, usages, customs and traditions of the Indians shall be respected.

"(2) The police measures necessary to keep order and preserve the existing natural wealth in the area of the park must be taken with the use of persuasive means and in accordance with the interests of the Indians living there.

"(3) The subdivision of land in the Indian parks shall comply with the tribal regime of property, usages and customs, and likewise with the national norms of administration, which must be adapted to the interests of the native communities.

"...

"Article 47. Respect for the cultural heritage of the native communities, their artistic values and means of expression is hereby assured.

106. In Malaysia, the principles listed in the Statement on Official Policy regarding the Orang Asli populations 1961 include the following, which are relevant in this connection: 39/

> "The social, economic and cultural development of the aborigines should be promoted with the ultimate object of natural integration as opposed to artificial assimilation. The primary objective should be the fostering of individual dignity and the advancement of the individual usefulness and initiative. Recourse to force or coercion as a means of promoting integration shall be excluded. Due account must be taken of the cultural and religious values and of the forms of social control existing amongst the various communities, and of the nature of their problems in undergoing social and economic change. The dangers involved in disrupting their values and institutions unless they can be replaced by acceptable substitute must be recognized. The aim should be to mitigate the difficulties experienced by these communities in adjusting themselves to new conditions.
>
> "The aborigines shall be allowed to retain their own customs, political system, laws and institutions when they are not incompatible with the national legal system. In this respect the methods of social control of the deep jungle groups shall be used as far as possible for dealing with crimes or offences committed by aborigines."

107. In this connection, it should also be mentioned that the Aboriginal Peoples Ordinance (1954, amended 1967) provides in section 4 that "nothing in this section shall be deemed to preclude any aboriginal headman from exercising his authority in matters of aboriginal custom and belief in any aboriginal community or any aboriginal ethnic group".

108. The following is one of the criteria guiding the activities of the Department of Orang Asli Affairs:

> "(g) The implementation of economic development shall be done in a manner which preserves and makes use of their cultural heritage (e.g. the "Cotong Royong")."

109. In an effort to obtain basic information on Orang Asli groups and their culture, and to preserve some aspects of their material culture as it exists today, the Research and Planning Division of the Department of Orang Asli Affairs has been entrusted with the following functions:

> "(a) To carry out research projects in the fields of education, health, economics and sociology in relation to the Orang Asli of Malaysia.
>
> "(b) To procure books, photographs, films, journals etc. in the field of social science and other studies relating to peoples similar to Orang Asli.
>
> "(c) To procure artefacts and specimens of the material culture of the various Orang Asli ethnic groups in Malaysia for record purposes and exhibition in the Library of this Division.
>
> "(d) To provide continuous evaluation of all departmental administrative and development measures.

39/ Principles (b) and (c). See paragraph 83 and foot-note 36.

"Plans for a departmental museum which will provide an adequate record and selection of Orang Asli material culture and also a film library of Orang Asli social activities are under consideration, but a final decision on the form of the museum has not been taken yet."

110. In Australia it is the avowed policy of the Federal Government to give encouragement to the preservation and development of traditional Aboriginal culture and to strengthen the capacity of Aboriginal communities increasingly to manage their own affairs. This action is undertaken in particular through the Aboriginal Acts Board of the Australia Council, which disposes of substantial funds made available by the Australian Government for these purposes. To this end several measures have been taken, as follows:

"... land is being secured for Aboriginal communities to enable them to develop as they choose; Aboriginal languages are being studied and their oral literature is being recorded, both in Aboriginal languages and in translations; Aboriginal sacred sites are being protected; Aboriginal arts and crafts are being encouraged and promoted; and programmes are being developed to help the community generally to understand, respect and enjoy the contribution that Aboriginal culture can make to the national life."

111. During his official visit to Australia in June 1973, the Special Rapporteur came to Maningrida, a small community in the Northern Territory, and among other activities held a meeting with members of the Communal Council and other Aboriginal persons. It was the consensus of Aboriginal persons who met with him, that "a bi-cultural attitude should allow the Aboriginal community to retain the 'good elements' of Aboriginal culture, while also acquiring the 'good elements' of European culture". This statement was included in the monograph on Australia that was sent to the Government for comments and supplementary data. The Government has transmitted the following comments:

"Australian Government policy is in accord with the views expressed by the Maningrida people to the Special Rapporteur.

"Members of various language groups within the Maningrida community have shown preference increasingly in the past few years for establishing satellite communities (outstations) at a distance from the main settlement and usually on their traditional land. These developments, which allow Aboriginals opportunities to maintain and develop their own culture and to adopt such elements of European culture as they choose, are being encouraged."

112. On this matter of the measures taken to protect the maintenance and further development of indigenous culture, the New Zealand Government has reported:

"There has been a tremendous revival of interest in Maori cultural activities in recent years, not only amongst Maoris but amongst non-Maoris as well. Maori culture is included in the curriculum of all schools and it is proposed to increase the time allotted to these activities in the very near future. For the improvement of Maori arts and crafts, the New Zealand Institute of Maori Arts and Crafts was established at Rotorua by the Government in 1963.

"As already mentioned, the Government provides generous subsidies for the erection of tribal buildings; these normally include traditional Maori woodcarving and other forms of Maori art.

"The increasing level of interest in Maori history and culture is evident in, inter alia, New Zealand bookstores which in recent years have come to abound in such materials. Again, all of the larger cities have well-stocked museums which have a major part devoted to Maori cultural material. The museums co-operate with the education authorities in the demonstration and teaching of Maori culture.

"Since the massive migration of Maoris to the cities voluntary Maori cultural organizations have grown up throughout the country and many thousands of young Maoris as well as non-Maoris are learning songs, dances, poetry and other Maori traditional material. These Maori cultural institutions are assisted financially by the Maori Purposes Fund Board which is a statutory body, partly funded from Government sources, concerned with the preservation of the Maori language, poetry, arts and crafts and other traditional culture ...

"The New Zealand Broadcasting Corporation has regular programmes in the Maori language and other programmes related to Maori culture. Consideration is being given at the present time to the allocation of one radio station in Auckland to provide for the needs of Maoris and other Polynesians living in New Zealand."

5. Recognition and protection of the norms of indigenous traditional law

113. This question obviously does not arise where indigenous populations no longer observe the norms of traditional law by which their lives were formerly governed. This appears to be the case in a number of countries where, according to the information supplied by the respective Governments, no measures of this type are required, since the same legal provisions are applied universally. The majority of Governments concerned refer, however, to certain particular areas of the law, especially civil law and family law. In Norway, for example, the Government has indicated that no measures of any kind are required, "since the Lapps have the same family patterns as the rest of the population". The Swedish Government has stated that "in Swedish civil law no special provisions exist regarding, for instance, conditions of inheritance from,or marriage with, persons belonging to ethnic ... minorities." The Government adds: "In those respects the same provisions apply to all the inhabitants of the country." The position appears to be very similar in Finland according to the information supplied by the Finnish Government.

114. The question is relevant, on the other hand, where traditional law is still observed among the indigenous populations. Two questions then arise in regard to its recognition by the State. The first is of course the basic question as to whether such recognition should be granted or not. A number of countries appear to have adopted a positive attitude, although in differing degrees. In one country this question appears to have been decided in the negative, since the Government of Guyana has stated that in that country the "traditional laws of the Amerindians

are not recognized." It is an undoubted fact that the great majority of the Amerindian populations of Guyana live in accordance with their own traditions and customs, since they consist of groups of forest dwellers. The second question relates to the scope of application of this traditional law. Should the scope of application be determined on the basis of geographical-demographic criteria, so that the traditional law will be applicable in areas of the country with a dense aboriginal population? Or should the law be applied on a personal basis in accordance with the following rules? In the case of relations between indigenous persons, the applicable law would be the traditional law common to both parties; in the case of legal proceedings involving both indigenous and non-indigenous persons, conditions would be determined for applying the traditional indigenous law or the general law of the country. Another problem is whether recognition should be accorded only to the norms of private law or to the norms of public law as well.

115. Recognition of traditional customary law in the case of relations between indigenous persons appears to be no more than an inevitable recognition of the facts of social life, and amounts merely to the attribution of official force to legal norms which are in fact applied between indigenous persons as a fundamental element in their mode of existence.

116. State recognition and protection of important norms of indigenous traditional law which are applied in indigenous communities is one important aspect of the process of gaining awareness of the existence of an indigenous cultural world as reflected in legal norms. If indigenous populations have preserved their institutions up to the present time, sometimes after many centuries of contact with the legal system of the dominant segments of the population, it is obvious that they clearly wish to preserve these customs and traditions, which form an integral part of their way of life.

117. We may quote in this connection the following statement by the Government of Australia:

> "While it is Government policy not to interfere with traditional Aboriginal law and custom, it has generally been considered inappropriate to accord formal recognition to these laws and customs. Aboriginal law has not generally been incorporated into Australian legislation, although the Intestate Wards (Distribution of Estates) Ordinance of the Northern Territory provides for the property of Aboriginals who die intestate to be distributed in accordance with Aboriginal traditions. Australian courts increasingly take cognisance of Aboriginal law when considering Aboriginal cases.
>
> "As indicated, formal legislative provision has been made to provide recognition of Aboriginal custom in relation to inheritance. Proposed legislation in relation to Aboriginal lands in the Northern Territory will protect traditional rights in land. Consideration is being given to the possible advantages of the formal legislative recognition of Aboriginal traditional marriage but action has already been taken to eliminate practical disadvantages resulting from lack of such formal legal recognition.
>
> "The Aboriginal Affairs Planning Authority Act 1972-1973 of Western Australia also provides that the estates of certain Aboriginals are to be distributed in accordance with customary law."

118. The continued existence of the indigenous legal system and of indigenous legal usages, customs and traditions may be due to the cultural resistance manifested by indigenous groups which reject the imposition of a system which is not their own. This occurs in situations in which groups are in contact and in conflict with one another. In many cases, however, the legal system of the dominant segments of the population, which is also generally described as the "national" system, is not in fact rejected. There is merely a lack of contact with the national system in circumstances that constitute a real and effective ignorance of the law, which no legal fiction can invalidate. In other cases there is complete lack of correspondence in certain specific aspects between the two legal systems, which adopt positions that are to a large extent antagonistic or contradictory. In these cases, the "national" court cannot of course be required in every instance to apply the indigenous law in preference to the "national" law, but at the same time the disparity between the two legal systems and worlds of culture should not be ignored altogether. Lastly, there will be cases in which the two legal systems adopt positions which are different but not contradictory. In these cases it should always be possible for the court - using its judicial discretion - to take into account the indigenous customary law and thus to render a fairer and more realistic judgement.

119. In the latter case there may also be a legal provision of a general type to the effect that usages, traditions and customs which are not contrary to the law are to be recognized and applied in specific cases where it may be desirable to do so.

120. The Special Rapporteur hoped to be able to analyse this material in a systematic form in the final report on the basis of fuller information which, however, was not available. The information available is in consequence given in the form in which it was possible to present it.

121. In the majority of States the essential condition for the recognition of the norms of indigenous customary law is that they should not be contrary to public order, morality, the general policy of the State, the general principles of the national legislation or the national law or legal system. This is the case in the Philippines, for example, where "customary practices not contrary to law are tolerated and socially recognized. The Courts take judicial cognizance of such customs, traditions and practices". This latter point is of great importance since in the last analysis it is the courts that finally decide what force should be attributed to the norms of indigenous customary law.

122. In Laos the courts are obliged to seek information regarding the special usages and customs of the ethnic groups which live in mountainous areas and have no form of writing. In this connection article 53, paragraph 2, of the Code of Civil Procedure provides that the hill-dwellers may be brought before the same courts, but that:

> "... Nevertheless, before the end of the hearing, in cases involving persons belonging to mountain tribes which have no form of writing, the court shall summon one or more headmen of the tribe concerned to appear before it and shall consult these headmen regarding the special customs and usages of the tribe. Reference to these consultations shall be included in the judgement of the court".

123. The Government of Laos has indicated that, in accordance with this provision, the courts are obliged to "respect the special customs and usages" of the groups concerned. It does not appear that any conditions of any type are imposed in this connection.

124. In Malaysia, in a similar manner the Orang Asli are allowed to retain their own customs, political system, laws and institutions when they are not incompatible with the national legal system. In this respect the methods of social control of the deep jungle groups are used as far as possible for dealing with crimes or offences committed by aborigines. 40/ In this connection, it should be repeated that the Aboriginal Peoples Ordinance provides in section 4 that "nothing in this section shall be deemed to preclude any aboriginal headman from exercising his authority in matters of aboriginal custom and belief in any aboriginal community or any aboriginal ethnic group". The implementation of economic development is carried out in a manner which preserves and makes use of their cultural heritage. (See paras. 106 and 107 above.)

125. In Brazil this recognition does not appear to be subject to any conditions of any type, in the circumstances referred to in Act. No. 6001 of 19 December 1973 (the Indian Statute), which provides as follows:

> "Article 6. The usages, customs and traditions of native communities and their effects shall be respected as regards kinship, order of succession, distribution of property and deeds or business among Indians, unless they opt for application of common law.
>
> "Sole paragraph. Common law norms apply to relations between non-integrated Indians and persons alien to the native community, except insofar as they are less favourable to the former with due exception of the provisions of this Law."

126. As may be seen from the text reproduced above the indigenous law is - in respect to certain matters - applied in relations between indigenous persons, unless the latter opt for application of common law. No details are given of the formalities required for the exercise of this option, in order to establish that it has been freely exercised, and nothing is said with regard to its scope. 41/ Ordinary law is applied in relations between "non-integrated" Indians and persons "alien to the native community," unless the indigenous law is more favourable to the former. Act No. 6001 applies in all cases.

127. The section of Act No. 6001 relating to "Indian parks" includes certain provisions regarding respect for the usages, customs and traditions of the indigenous population residing therein:

> "Article 28. An Indian park is an area contained within land in the possession of Indians, whose degree of integration is sufficient to allow of economic, educational and sanitary assistance being supplied to them by the agencies of the Union, wherein the flora, fauna and natural scenery of the region are to be preserved.

40/ Principles (b) and (c), Statement on Official Policy regarding the Orang Asli population. See para. 106, above.

41/ No reply has been received to a request for information on this point which was included in the summary on Brazil transmitted to the Government for comments and supplementary data.

"(1) In the administration of the parks, the freedom, usages, customs and traditions of the Indians shall be respected.

"(2) The police measures necessary to keep order and preserve the existing natural wealth in the area of the park must be taken with the use of persuasive means and in accordance with the interests of the Indians living there.

"(3) The subdivision of land in the Indian parks shall comply with the tribal regime of property, usages and customs, and likewise with the national norms of administration, which must be adapted to the interests of the native communities.".

128. The information at present available in regard to the recognition of the norms of indigenous traditional law contains references also to a number of specific aspects of civil law and family law institutions, 42/ which will be examined in the following paragraphs.

129. The situation is ambiguous in a number of countries where, however, clear elements of recognition of customary law coexist with clear elements of interference and disregard of indigenous traditional law.

130. For example, the situation prevailing in India has been described thus:

"The major variations in family structure are to be found among the tribal groups and semiaboriginal castes and a few Hindu castes of the southern coast and the northern fringes. The Muslim family is similar to that of the Hindus, except that, unlike the Hindus, the idea of common ownership of property does not prevail among the Muslims; Islamic law regards property as essentially belonging to the individual ...

"The Constitution of 1950 specifies the framework of a uniform civil legislation, including a family code, and states that the Union (central) or any state government may legislate in matters of family life governing marriage and divorce, adoption of infants and minors, wills, intestacy and succession, and joint family and partition. Accordingly, government leaders have attempted to modify or eliminate certain practices that they regard as obsolete in the modern state. Among these practices have been bigamy, child marriage, prohibition of divorce or remarriage by widows, and the lack of property rights for women. Nevertheless, family life has continued to be governed in many instances by customary laws, and governmental efforts have been met with only limited success because of deep-rooted customs ...

"The Hindu Marriage Act of the Hindu Code, adopted in 1955, forbids polygamy and permits intercaste marriage and divorce by either sex on certain grounds. Remarriage is permitted after divorce and payment of alimony to a divorced mate of either sex who does not marry is provided for. Under the Hindu Succession Act of 1956 and other acts, full equality is enjoyed by both sexes with respect to all rights and obligations, particularly the rights of women in inheritance. The Adoption and Maintenance Act of 1956 incorporated legislation on the guardianship and adoption of minors.

42/ The text of article 6 of Act No. 6001, which has been reproduced above, refers in particular to kinship, order of succession, distribution of property and deeds or business among Indians. See para. 126 above.

"These laws are not readily enforceable. They are the basis of a common code of social laws. Their enforcement on all castes and communities is not practical at present, since many social laws are regarded as having a religious basis, and interference with religious practices and tenets is forbidden. In the late 1960s, for example, several women's organizations complained to the authorities that the provisions of the acts dealing with marriage and inheritance among Hindus were more often violated than observed. In the rural areas many daughters continued to be denied the right to inherit their fathers' properties and very few of them had the facility to apply for divorce in the event of maltreatment by their husbands." 43/

131. As regards official recognition and protection of the norms and traditional law of the indigenous communities in Indonesia, the Anti-Slavery Society reports:

"Customary law is recognized and the aim of Law 6 is to "preserve their customs as a cultural heritage. Honesty, truth and justice, based on norms of their customs and their customary law constitute obligations for every member of the society for preserving the foundations of their legal system. Legal decisions are enforced by the head of the community and the Elder with authority concerning their customs. Decisions in disputes and the enforcement of such decisions are carried out by the community, under the influence of the Head. More serious disputes, or those involving outsiders, may be dealt with by the district magistrate or official in the nearest non-tribal village with putative authority over the village. This is extremely rare and cases are only taken outside the village with the utmost reluctance and when all else has failed.

"As there is no legal status for members of isolated groups there is consequently no hard and fast rule when outside authority becomes involved.

"Traditional forms of marriage, adoption, divorce and inheritance are recognized in Indonesian law if such arrangements are part of adat law recognized as a source for Indonesian law ... In the question of transfer of ownership of real and personal property, the adat law of the community will govern such transactions and, if in accordance with that law, will not be overruled by Indonesian law." 44/

132. Some of the available information deals with the question whether marriage contracted by indigenous persons in accordance with their traditional rights and customs is recognized as lawful and, if so, whether it has the same status as marriage contracted with all the formalities established in civil law. Indigenous marriage usually takes place in the context of legal systems in which only civil marriage contracted with all the legal formalities and duly registered will be considered as marriage conforming to civil law.

43/ Rinm-Sup Shinn and others, op. cit., pp. 170-171.

44/ Information submitted on 3 September 1976 and 24 April 1977.

133. In this connection, the relevant statements of the Government of Chile may be quoted:

> "... the institution of marriage is regulated for all inhabitants of the territory in the law promulgated on 10 January 1884 whereby marriage not contracted in conformity with the provisions of this law has no civil effects. The law provides that the contracting parties are free to comply or not with the requirements and formalities prescribed by the religion to which they belong. However, these religious requirements and formalities will not be taken into account in order to determine the validity of the marriage or to regulate its civil effects.
>
> "Indigenous persons may marry in accordance with their religious rights and customs, but if the marriage is to have civil effects it must comply with the rules prescribed by the Civil Marriage Act.
>
> "The Civil Marriage Act regulates the marriages of all persons inhabiting the territory of the country. A marriage solemnized in violation of the provisions of the Civil Marriage Act has no legal validity.
>
> "The rules on impediments and prohibitions, formalities prior to solemnization of marriage, solemnization of marriage, nullity and dissolution of marriage are the same whether they apply to indigenous persons or non-indigenous persons."

134. Thus, in some countries, marriages solemnized according to indigenous rights and customs will produce civil effects only when all the formalities stipulated by civil law have been observed.

135. In other countries, despite the strict regulation of civil marriage, other unions that fulfil certain requirements concerning uniqueness and duration and, in some countries, marriages performed according to indigenous legal rights, ceremonies and customs can be regarded as having the same legal effect as civil marriage. Since it is stipulated that they shall produce the same legal effects as civil marriage, these indigenous unions and marriages are in fact considered as marriages, albeit of a particular kind. Customary formalities in the last case are recognized as effective in producing the desired legal consequences: the solemnization of a marriage that can be registered and that is valid for all subsequent civil purposes.

136. In the framework of inter-american indigenous activities, it should be noted that the Fourth Inter-American Indian Conference held in Guatemala City, Guatemala, from 16-26 May 1959 adopted a resolution, the first operative paragraph of which stated:

> "1. That de facto unions between indigenous persons, in conformity with their rights and customs, should be considered equal to civil marriage." 45/

45/ Quoted by Alejandro Marroquín in Balance del Indigenismo, informe sobre la política indigenista in América. Instituto Indigenista Interamericano, Sección de Investigaciones Antropológicas, Ediciones Especiales, No. 62, Mexico, S.D., 1972, page 33.

137. In Guatemala, where the Conference was held and where civil legislation has fully equated registered de facto unions with civil marriage,46/ marriages between indigenous persons performed in accordance with their rites and customs have been recognized as valid. An authority writes:

> "In 1947, a legislative decree made it possible for a couple living in common-law union to have it legalized by the local authorities. They may do so after three years of living together as man and wife. Indians who have been united through traditional rituals need not wait three years.
>
> "...
>
> "... In isolated areas, a traditional ritual often gives local recognition to the union of a couple. Such rituals have more meaning for the people than recognition by the national government or by the Church." 47/

138. Similarly, the Government of Canada states:

> "Since common law marriages are recognized in Canada, there has been little difficulty in establishing the legality of all marital unions among native people, and few cases have come to court. Legal marriages are in accordance with Canadian requirements for a license, a presiding authority, and witnesses. In fact most Indian marriages are solemnized by the Christian churches."

139. The Canadian Government has stated that the validity of indigenous marriages has been upheld even in cases of marriage between indigenous and non-indigenous persons and in the absence of the observance of the formalities required for "legal marriage", reporting in this connection that:

> "one or two court cases have arisen in regard to inheritance in marital unions involving Eskimo women and white men. One case involving two Eskimos was decided by the Territorial Court of the Northwest Territories in favour of the widow who claimed for herself and her infant child an estate of over $25,000. There was no record of the marriage since she and her late husband had not taken out a license, having been married in accordance with Eskimo custom in a remote region on the coast of Baffin Island. Because the Marriage Ordinance of the Territories did not prohibit the legality of such marriages, the court found that the marriage was valid under the law of England of 1870, and in accordance with established Eskimo custom going back to time immemorial, even though a license had not been obtained."

46/ See articles 173-189 and, in particular, articles 178, 182 and 183 of the Civil Code.

47/ N. Whetten, Guatemala, the Land and the People, New Yale University Press, 1961, pp. 240 and 241.

140. Turning now to a specific aspect, wherever the indigenous populations have continued to contract marriage in accordance with their customary law, indigenous customary marriages should be recognized and, if the parties so desire it, registration should be possible on the basis of the performance of the customary ceremony.

141. In Brazil marriage performed according to tribal rites seems to be recognized, as article 13 of Act No. 6001 provides that "There shall be suitable books available at the competent assistance agency for administrative registration of the births and deaths of Indians, the cessation of legal incompetence and marriages performed according to tribal rites". It is also provided that "administrative registration shall constitute, when appropriate, a sufficient document to justify civil registration of the corresponding act, admitted, in default of the latter, as subsidiary evidence." (Sole paragraph).

142. No information is available 48/ as to whether these marriages are regarded as comparable to or placed on an equal footing with other forms of civil or religious marriage or with marriages or de facto unions that may have been recognized by the State.

143. In accordance with article 12 of the same Act No. 6001, however, "births, deaths and civil marriages of the non-integrated Indians shall be registered in accordance with common legislation, taking into account the peculiarities of their conditions as regards surname, given name and filiation." It is added that "civil registry shall be made at the request of the interested party or the competent administrative authority." (Sole paragraph).

144. In the Philippines, at least for 20 years counting from the date of the adoption of the Civil Code, certain exceptional rules have been operative for Mohammedan and pagan marriages under certain specified circumstances. The Civil Code provides:

> "Article 78. Marriages between Mohammedans or pagans who live in the non-Christian provinces may be performed in accordance with their customs, rites or practices. No marriage license or formal requisite shall be necessary. Nor shall the persons solemnizing these marriages be obliged to comply with Article 92.
>
> "However, twenty years after the approval of this Code, all marriages performed between Mohammedans or pagans shall be solemnized in accordance with the provisions of this Code, but the President of the Philippines, upon recommendation of the Secretary of Interior, may at any time before the expiration of said period, by proclamation, make any of said provisions applicable to the Mohammedan and non-Christian inhabitants of any of the non-Christian provinces." 49/ 50/

48/ No reply has been received to a request for information included in this respect in the summary transmitted to the Government for comments and supplementary data.

49/ Article 92 of the Civil Code, mentioned at the end of the first paragraph of this article, requires registration of priests, ministers and rabbis authorized to perform marriages.

50/ No information has been received in response to the request transmitted to the Government of the Philippines, on the question of whether the proclamation mentioned in the second paragraph of article 78 of the Civil Code has in fact been made.

145. It is also provided that for a period of 20 years from the approval of Act No. 394 (1949) of the Republic, divorce among Moslems residing in non-Christian territories shall be recognized and be governed by Moslem customs and practices.

146. As has already been indicated 51/ the Australian Government has stated that "Aboriginal law has not generally been incorporated into Australian legislation." The Government has added that "under the present law in Australia, Aboriginal customary marriages are not recognized and cannot be registered with the appropriate authorities. There are many difficulties in giving statutory recognition to such marriages including polygamy and child brides. It has been suggested that such marriages be recognized but no decision has been made by the Australian Government concerning this matter."

147. New Zealand reports that there are no special laws and practices relating to marriage formal or informal or to de facto unions. The general practice has been for Maoris, who have been nominally Christians for well over a century, to contract religious marriage; lately, however, increasing numbers of Maoris are contracting marriage under civil law. There are no special laws relating to de facto marriages by Maoris, but permanent de facto unions are recognized for social security purposes whether the parties are Maoris or otherwise. The same law applies to other aspects of family law such as adoption of children and divorce or dissolution of formal or informal marriages, which are all dealt by the courts under the general law of the country applicable to all persons. Non-governmental sources in New Zealand agree that Maori customary practices have been "tolerated" in some aspects. It is pointed out, nevertheless, that the general trend has been to bring Maori marriage and other social customs and land legislation within the scope of traditional English law as it obtains in New Zealand, through registrations of births, deaths and marriages, effected only in this century. Land legislation has evolved with an ultimate goal of "replacing Maori custom with a system of English land law". The Government has stressed, however, that "it should be noted that legislation recently introduced into Parliament provides for the repeal of a law passed in 1967 which modified the Maori customary system of inheritance to land. The new legislation will restore the previous situation." 52/

148. We shall now consider some other matters which come under the heading of culture and cultural, social and legal institutions, and on which information is also available. These matters include de jure or de facto limitations or restrictions with respect to certain civil and commercial acts by indigenous persons or groups, and also certain limitations or restrictions on marriages between indigenous and non-indigenous persons. We shall then deal with the question of assistance to indigenous groups and persons from rural areas who have recently migrated to urban areas.

51/ See para. 117 above.

52/ Information furnished in 1974.

6. Limitations or restrictions with respect to certain civil and commercial acts by members of indigenous populations

149. Very little information is available on the question whether de jure or de facto limitations or restrictions are imposed, with respect to certain civil and commercial acts involving the acquisition, mortgage, transmission or alienation of property by indigenous persons or groups. Some governments have stated that there are no de jure or de facto limitations or restrictions of this kind in their countries. 53/

150. In a number of other countries, there are no general limitations or restrictions of this kind, but restrictions are imposed in the case of acts relating to land and resources connected with land. 54/ These cases will be examined in the chapter on land tenure. It need only be emphasized here that, in these systems, the legal capacity of indigenous persons is full in every sense and that specific limitations exist, by way of exception, only with respect to acts relating to land.

151. The Government of Mexico reports that in this respect a distinction must be made between community property and private property. Community property is subject to a legal regime that precludes mortgage, transmission or alienation. The private property of indigenous persons may be mortgaged, transmitted or alienated, without limitations other than those the law imposes on all Mexican citizens.

152. Another example is New Zealand, where the only acts subject to a certain measure of control are acts relating to the disposal of Maori land. 55/ Any legal acquisition or disposal of property, including land but with the exception of "Maori land", is free from any limitation or restriction, and the Maoris enjoy exactly the same rights in this respect as other citizens. On this question, it is stated that:

> "There are no limitations or restrictions of this kind whatsoever. By far the greater proportion of Maoris buying properties in urban areas at the present time are buying non-Maori land. It is also common for Maori farmers to receive financial assistance through the Maori and Island Affairs Department to buy non-Maori land for farming purposes. A Maori who owns non-Maori land has exactly the same rights as any other citizen in respect to mortgaging, selling, leasing or transmitting such property."

153. From the information available, it would seem that there are a number of clear cases of general limitations or restrictions.

53/ Finland, Norway and Sweden. In the latter case, the Government adds that in "Swedish law no special provisions exist regarding, for instance, conditions of inheritance from ... persons belonging to ethnic ... minorities. In those respects, the same provisions apply to all inhabitants of the country".

54/ For example in Chile, and in New Zealand in relation to Maori land.

55/ The expression "Maori land" broadly denotes land which has belonged to Maori individuals or communities since before the arrival of European settlers in New Zealand or which has become Maori property by virtue of a court decision. These lands are subject to a special regime, which will be dealt with later in the chapter relating to the law of ownership with especial reference to land.

154. In Canada the provisions of the Indian Act apply only to status Indians and, therefore, such limitations and special provisions as are contained in it do not affect non-status Indians, Metis or Inuits:

> "The limitations placed on indigenous people with respect to the acquisition, mortgaging, transmission or alienation of property are those provisions in the Indian Act designed to keep inviolate the land and property of the Band. No such restrictions apply to non-status Indians, Métis or Eskimos.
>
> "The Indian Act exempts from taxation the interest of an Indian or a Band in reserve land and the personal property of an Indian or Band situated on a reserve. No succession duty, inheritance or estate tax is payable on either type of property upon the death of an Indian or the succession thereto if it passes to an Indian. The real and personal property of an Indian or Band situated on a reserve is exempted from charge, pledge, mortgage, attachment, levy seizure, distress or execution in favour of or at the instance of any person other than an Indian. Any passage of title to any personal property - or interest therein - situated on a reserve by reason of its having been purchased by the Crown with Indian moneys or moneys appropriated by Parliament for the use and benefit of Indians or Bands or given to Indians or Bands under a treaty or agreement between a Band and the Crown, is void unless consented to by the Minister of Indian Affairs and Northern Development or entered into between members of a Band. Officers or employees of the Department of Indian Affairs or missionaries or teachers on reserves are prohibited from trading for profit with an Indian or selling him goods without a license. It is also prohibited to remove from a reserve, or to possess after removal without permission, minerals, stone, gravel, clay or soil, or trees, saplings, shrubs, underbrush, timber, cordwood or hay.
>
> "Other provisions of the Indian Act bestow on the Minister the authority to manage Indian Band moneys, and to control the descent of private property, including the granting of approval to wills executed by Indians. Such provisions, however, are yielding to new practices, and there is now extensive Band management in many kinds of economic dealings."

155. Referring to similar restrictions on the alienation of trust property affecting Indians in the United States, a publication has focused on the difficulties this causes in certain circumstances:

> "... Because of this trust status, it is often difficult for Indians to obtain financing for the private development of their own land. It was only in 1974 that the Congress passed an Indian Financing Act, and the benefits to be gained under this act have yet to be realized". 56/

56/ American Indian Law Newsletter, vol. 7, No. 11, Special Issue containing the American Indian response to the response of the United States of America, p. 41.

156. The Anti-Slavery Society states that in India:

"The statement of basic freedoms to be enjoyed by all citizens (art. 19 of the Constitution) has been restricted in the case of Scheduled Tribes by subparagraph (5) which made it possible for the State to control the disposal of STs' property - particularly land. All States in the Union with ST populations have fulfilled this requirement (though in many areas it had been fulfilled since British times) by implementing laws prohibiting the sale of land by tribals to non-tribals.

"The basic law common to all States is that a tribal can only sell land to a non-tribal with the permission of the District Collector (i.e. Administrator) who must fully scrutinize the proposed transaction to check that it is in the tribal's best interest and that the price is fair. In some States such laws are restricted to the Scheduled Areas (Gujarat 1961, Andhra Pradesh 1958, 1971) in others they are of more general applicability (MP 1959, Maharashtra 1966, Rajastham 1955, West Bengal 1955) and in still others their scope has been widened from SAs to all STs (Orissa replaced the 1956 Act with a more general one in 1960).

"However, such Acts have not succeeded in controlling the process of alienation of tribal land." 57/

157. In Guyana for instance the Government has stated that "Indigenous persons or groups are not subject to de jure or de facto limitations or restrictions involving the acquisition, mortgage, transmission or alienation of property, except under the Amerindian Ordinance." In fact, the Amerindian Ordinance provides in Chapter 58 S.12 (1) that:

"The Commissioner of Interior shall undertake the care, protection and management of the property of the Amerindians and may -

(a) take possession of, retain, sell or dispose of the property of an Amerindian;

(b) in his own name sue for, recover or receive money or other property due to or belonging to an Amerindian or damages for any conversion of or injury to such property;

(c) exercise in the name of the Amerindian any power which the Amerindian may exercise for his own benefit;

(d) in the name and on behalf of an Amerindian appoint any person to act as an attorney or agent of an Amerindian for any purpose connected with his property;

57/ Information submitted on 31 March 1977.

"Provided that the powers conferred by this action shall not be exercised by the Commissioner without the consent of the Amerindian, except in so far as may be necessary for the preservation of his property.

"The Commissioner shall keep records and accounts of all moneys and other property received or dealt with by him under the Provisions of this section."

158. In Brazil, limitations and restrictions are imposed on all non-integrated indigenous persons, as a result of a tutelage regime which is established by law. The Indian Statute (Act No. 6001 of 19 December 1973) provides that:

"Article 7. The Indians and native communities not yet integrated in the national communion are subject to the tutelary regime established by this Law.

"Section 1. The principles and norms of common law tutelage apply, where appropriate, to the tutelary regime established by this law, irrespective, however, of tutelage in the special branch of legally mortgaged real estate, as well as that of real or fidejussionary suretyship.

"Section 2. Tutelage is assigned to the Union, which shall exercise it through the competent Federal agency of assistance to the forest-dwellers.

"Article 8. Acts practised between the non-integrated Indian and any person alien to the native community are null and void, when unassisted by the competent tutelary agency.

"Sole paragraph. The ruling of this article does not apply to the case when the Indian shows an awareness and knowledge of the act practised, so long as it is not detrimental to him, and of the extent of the effects thereof."

159. When certain conditions are met, the tutelage can be put to an end, as provided in the same Indian Statute:

"Article 9. Any Indian can petition the competent Court of Justice to release him from the tutelage provided in this Law, vesting him with full civil capacity, so long as he fulfils the following requisites:

"I. Minimal age of 21 years.

"II. Knowledge of the Portuguese language.

"III. Possession of the necessary skill to perform a useful activity in the national communion.

"IV. Reasonable comprehension of the usages and customs of the national community.

"Sole paragraph. The Court shall decide after summary investigation, in the light of the opinion of the agency of Indian assistance and the Public Prosecutor, and the sentence granting the petition be transcribed in the civil register.

"Article 10. Upon fulfilment of requirements of the preceding paragraph, and at the written request of the interested party, the assistance agency can recognize the Indian's integrated condition by formal declaration, all restrictions as to capacity being thereby removed, so long as, the decision being judicially ratified, it is entered in the civil register."

160. Whole communities can also be emancipated by Presidential Decree, under the following conditions:

"Article 11. By decree of the President of the Republic, emancipation of the native community and its members from the tutelary regime established by law can be declared, when applied for by the majority of the members of the group and proof has been furnished, by an enquiry made by the competent Federal agency, of their full integration in the national communion.

"Sole paragraph. For purposes of the provisions of this article, the requirements established in Article 9 must be met by the applicants."

161. In Australia, the situation prevailing in general is that of absence of limitations and restrictions in this respect. In the State of Queensland there are, however, certain limitations and restrictions on the free management of their property by Aboriginals and Torres Strait Islanders.

162. The Federal Government has considered these provisions to be discriminatory and to violate the fundamental rights and freedoms of Australian Citizens and has accordingly sought, through consultations, to have them repealed. In the light of unsatisfactory action taken by the Queensland authorities, the Federal Government has introduced a Bill in the Federal Parliament seeking to supersede these provisions as they now stand. The Government has stated on this question:

"... Briefly, the Australian Government considers provisions of the Acts which authorize the official management of the property of certain Aboriginals and Torres Strait Islanders without their consent and prevent certain Aboriginals and Torres Strait Islanders from ending the management of their property at will, to be discriminatory ...".

"...

"In November 1974, the Minister for Aboriginal Affairs introduced the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Bill into the Senate ... The purpose of the Bill is to supersede certain provisions of the laws of Queensland that discriminate against Aboriginals and Torres Strait Islanders and deny them basic human rights. These provisions are contrary to the principles embodied in the International Convention on the Elimination of All Forms of Racial Discrimination and the Covenant on Civil and Political Rights. The Bill was passed in the Senate with two important clauses deleted, namely, those relating to entry on to reserves and conduct on reserves. The Bill was received by the House of Representatives from the Senate on 11 February 1975 and the Second Reading Speech stated that the Government will reintroduce both those clauses into the Bill ...

"The restrictions on the management of property by Aboriginals and Torres Strait Islanders in Queensland, were amended by the Queensland Government and [these amendments] came into force on 1 November 1974 ... The amendments permit an Aboriginal or Islander to terminate the management of his property by notice in writing witnessed by a Justice of the Peace. However, the amendments leave intact provisions that authorize the continued management under the present legislation of property managed without the consent of Aboriginals and Islanders under earlier Queensland legislation. Clause 5 of the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Bill will supersede the provisions in the Queensland legislation relating to Aboriginals and Torres Strait Islanders that restrict management of property by such persons."

163. The relevant Queensland laws, and measures taken or envisaged to overcome their restrictive effects, have been described as follows by Senator J.C. Cavanagh, Minister for Aboriginal Affairs, in a speech delivered at the time of the second reading of the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Bill 1974:

"The purpose of this Bill is to supersede certain provisions of the laws of Queensland that discriminate against Aboriginals and Torres Strait Islanders and deny them basic human rights. Some of these laws are discriminatory on grounds of race and others are of general application. They have the effect of imposing on Aboriginal and Islander Reserves a legal regime that is different from that which applies to persons in other parts of Queensland ...

"The present Australian Government has made numerous attempts to resolve these matters by consultation ...

"The introduction of legislation to supersede the Queensland laws was envisaged in the Governor-General's speech on the opening of Parliament on 9 July 1974, and a further letter was sent by the Prime Minister to the Queensland Premier on 20 October 1974 informing him that draft legislation to override discriminatory aspects of the Queensland legislation was being drafted. He pointed out that on this and other matters he had sought mutually acceptable decisions through consultation and was prepared even at that stage to further pursue that course if there was still room for fruitful negotiation. The Queensland Premier replied on 1 November 1974 stating that steps had been taken to enact amendments to the Queensland Acts to remove restrictions on the control by an Aboriginal or Islander of his property. The Premier suggested that consultations be held but it has not yet been possible for this to be done.

"The amendments referred to by the Premier were passed by the Queensland Parliament and came into force on 1 November. The amendments permit an Aboriginal or Islander to terminate the management of his property by notice in writing witnessed by a justice of the peace. However, the amendments leave intact provisions that authorize the continued management under the present legislation of property managed without the consent of Aboriginals and Islanders under earlier Queensland legislation. Moreover, the amendments do not deal in any way with the matters of freedom of movement of an Aboriginal on to a reserve, legal representation before, and appeal from, Aboriginal Courts, compulsory labour and the other unsatisfactory features of the Queensland laws.

"It is the contention of the Queensland Government that the Aboriginals and Islanders in Queensland do not desire any further amendments to the Queensland law. The Australian Government does not accept this contention. It does not believe that any group of Australian citizens should be subject to laws that are inconsistent with fundamental rights.

"The legislation now introduced will deal with the discriminatory aspects of Queensland legislation I have referred to. Clause 5 provides that any property in Queensland of an Aboriginal or Islander shall not be managed by another person without the consent of the Aboriginal or Islander and that any consent so given, whether given before or after the commencement of the Act, may be withdrawn at any time.

"...

"The provisions of the Bill are not intended to replace the whole of the Queensland legislation with respect to Aboriginals and Torres Strait Islanders. They are intended only to remove elements of this legislation that are inconsistent with what the Australian Government regards as basic civil rights to be enjoyed by all Australians, without regard to race or colour. The provisions that the Bill will supersede are quite contrary to the principles of equality and dignity contained in the United Nations Charter and in the other international instruments that I have described. They should form no part of Australian law and ought to be removed."

7. Existence or non-existence of restrictions on marriages between indigenous and non-indigenous persons

164. It is well known that until very recently the legislation of some States contained provisions whose applications rendered such unions invalid and thus caused their offspring to have an inferior legal status. In some States, for example, provisions prohibiting miscegenation had the effect that marriages between persons belonging to different racial or ethnic groups as specified by the law were legally invalid; and, in extreme cases, even sexual relations between persons belonging to different groups were illegal and punishable. If the marriage of the parents was considered merely as a de facto or illicit union, the children were inevitably classified as persons born out of wedlock, with all the consequences which this involved in the legal systems concerned. Where such regulations existed, they were applied inter alia in the case of indigenous persons who married individuals of other racial or ethnic groups.

165. There is very little information on the existence or non-existence of legal provisions which expressly prohibit or restrict such marriages or unions, or which impose legal restrictions on "mixed" couples or families.

166. On examining the available information, we find that all the countries which have transmitted information on this subject state that there are no legal or social prohibitions, limitations or restrictions on marriages or unions between indigenous and non-indigenous persons. 58/ In some cases, it is added that there

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58/ Information to this effect has been communicated by Australia, Chile, Finland, Guyana, Laos, Mexico, New Zealand, Norway, Philippines and Sweden.

are therefore no restrictions or limitations affecting "mixed" families or couples, and that the offspring of such families do not have an inferior legal status. 59/

167. Thus, for example, in Swedish law no special provisions exist regarding marriage with persons belonging to ethnic minorities. In those respects the same provisions apply to all inhabitants of the country.

168. More specifically, in Laos, the Government states that marriage is free between different ethnic groups and true Laotians. Laotian civil law does not prohibit marriage between different ethnic groups and true Laotians.

169. The Government of Finland communicates that "no restrictions are imposed on marriage between Lapps and non-Lapps, on mixed families, marriages and unions, or their offspring".

170. In a very similar manner, the Norwegian Government notes that "marriages between indigenous and non-indigenous persons are not prohibited or restricted either de jure or de facto, that there are no impediments to mixed unions or families and that the offspring of such unions have no inferior status".

171. In Japan there do not appear to be any restrictions on marriages or unions between the Ainu and the Japanese. According to one source 60/ "intermarriage over the centuries and a degree of assimilation have lessened the differences in physical and cultural characteristics between the Ainu and the Japanese".

172. The Government states that in Chile:

> "There is full and complete freedom for a person to marry an indigenous or a non-indigenous person. A marriage between indigenous persons enjoys the same social acceptance as a marriage between non-indigenous persons.
>
> "In practice, there are many marriages which may be described as mixed and there is no legal restriction on an indigenous male marrying a non-indigenous female, or vice versa, as the rule applies to men and women alike. The offspring of marriages between indigenous persons do not have an inferior status of any kind. They participate freely and on the same footing as other children, can study in a private school or a State school, enter the universities they wish, study for the professions or occupations chosen by them, and so on.
>
> "In Chile, there is no legal, moral or social rule preventing the marriage of an indigenous person with a non-indigenous person. Nor are there legal or moral restrictions against such mixed families, since they have the same social status as any marriage between non-indigenous persons, the vital consideration being that every married couple should have a sound moral purpose and a continuing desire for improvement."

59/ This would seem to follow from the statement that there are no restrictions on marriages between indigenous and non-indigenous persons, but only Chile, Finland, Mexico, New Zealand, Norway and Sweden expressly say so.

60/ Harris, George L. and others. Area Handbook on Japan. Prepared for the Department of the Army by Foreign Area Studies Division, The American University, Washington D.C. 1964, pp. 74-5.

173. According to the Government of the United States, in that country:

"Indigenous persons may marry whom they like. However, some indigenous persons and some non-indigenous persons do not always equate a person of mixed blood as being an indigenous person. For example, they may speak of a person of mixed blood as being "part Indian" as opposed to being "an Indian". Some Indian families apply pressure to their offspring to marry within the tribe or to marry an Indian. Some persons of European stock look upon people of Indian descent or of mixed Indian-European blood as being socially inferior. In other cases - such as in the case of the second wife of President Woodrow Wilson - Indian blood was a social distinction. Mrs. Wilson claimed descent from Pocahontas, an Indian maiden given credit by some for saving the Virginia Colony.

"Legally ... mixed blood and mixed marriages do not change the status of the persons involved. The Indian is still entitled to services of the Bureau of Indian Affairs and to membership in his or her tribe. The non-Indian is not entitled to Bureau of Indian Affairs services, although [he] may profit on a marginal basis. For example, the entire family of an Indian man who is receiving vocational training through the Bureau of Indian Affairs employment assistance program shares in the subsistance allowance to which he is entitled if he must live away from his usual location in order to receive training. The wife may be a non-Indian and the children of mixed blood. The non-Indian husband or wife may be adopted into the Indian tribe but if he or she is, he or she is still not entitled to direct Bureau of Indian Affairs services."

174. A publication, however, contains the following information:

"There is no record that the temporary social prominence of Mrs. Wilson appreciably improved the social or economic status of Indians throughout the United States. Since Indians generally are opposed to the assimilationist policy of the United States, social discrimination is not considered to be a major problem from the Indian point of view." 61/

175. In the Philippines the Civil Code and other laws contain provisions concerning marriage between "Christians" and "Mohammedans" or "pagans". These provisions state that marriages between Christian females and "Mohammedan" or "pagan" males may be contracted in accordance with non-Christian customs, rites and practices, without licence or other formality. Persons performing such marriage ceremonies need not be registered, as must priests, ministers or rabbis authorized to perform marriages. As stated in the relevant article of the Civil Code:

"Article 79 - Mixed marriages between a Christian male and a Mohammedan or pagan female shall be governed by the general provisions of this title and not by those of the last preceding articles, but mixed marriages between Mohammedan or pagan males and Christian females may be performed under the provisions of the last preceding article if so desired by the contracting parties, subject, however, in the latter case to the provisions of the second paragraph of said article."

61/ American Indian Law Newsletter, loc. cit., p. 41.

176. The second paragraph of article 78 of the Civil Code states that the provisions of the first paragraph are to remain in force for 20 years. (The full text of this provision is reproduced above). 62/ However, it was stipulated that the President of the Philippines could, by proclamation, make any of the provisions of the Civil Code applicable to the Mohammedan and non-Christian inhabitants of any of the non-Christian provinces.

177. In some States miscegenation has been practised from the time of the first contacts between different population groups. This process has varied in importance and frequency at different times and in different regions, but it appears to be becoming more common in some regions.

178. In some Latin American countries there has been an intensive and uninterrupted process of interbreeding, from the sixteenth century to the present time between all the groups of people living in these countries. Unfortunately there are no accurate statistics which might give a clear idea of the actual situation regarding marriages or unions between indigenous and non-indigenous groups. In most countries of the region, persons marrying are not required to state the ethnic group to which they belong, and this information is not recorded in the marriage register. There is no separate mestizo class, and consequently the fact that an individual is descended from indigenous or non-indigenous parents is not recorded anywhere. All the experts agree that in these countries there has been continuous intermarrying between all groups of the population. A well-known expert on this subject has stated that in 1940 there were 34,362,981 mestizos in these countries, while in 1930 only 29,793,709 people were classified as such. 63/ Thus, the number of mestizos increased by five million in one decade. In conclusion, it may be mentioned that the term "mestizo America" has been coined to describe this region, and has been accepted as appropriate by many writers.

179. A somewhat similar situation seems to exist in New Zealand. In that country there is no restriction whatever on marriage or unions between Maori and non-Maori persons, either de jure or de facto. Intermarriage has occurred in New Zealand ever since the arrival of the first Europeans and in the last 15 years has become increasingly common. In a housing survey of 20,000 Maori families in the early 1960s, 12 per cent of the married couples interviewed included a non-Maori husband or wife. With the rapid migration of Maoris to the cities since that time, and the increasing contact between the races, intermarriage has become very common indeed. Seven or eight years ago Maori social workers in the Wellington urban area estimated that over 50 per cent of the Maoris who were marrying were marrying persons of European extraction. A study of mixed marriages undertaken by a lecturer (John Harre) on the Auckland University staff and published under the title "Maori and Pakeha" indicates that such mixed marriages are just as likely to succeed as any other marriage. The offspring of mixed marriages are subject to no disability because of the legal status of their parents' union. There is no separate class of "mixed bloods" or "mestizo" in New Zealand. In fact the great majority of the Maori population are of mixed ancestry. It is well known that the proportion of full blooded Maoris shown in the census is highly overstated as many Maoris of mixed ancestry describe themselves for census purposes as full Maori.

62/ See paragraph 140.

63/ Rosenblat, Angel, op. cit., p. 25.

180. There are however certain cases in which, although no direct legal obstacles, limitations or restrictions exist, other provisions may indirectly have restrictive effects.

181. The Canadian Government has stated that: "There are no direct restrictions on marriage or unions between indigenous and non-indigenous persons, but the loss of Indian status by an Indian woman marrying a white man ... is now seen as an obstruction by many native women. There is no difference in status between the offspring of such "mixed" marriages and the population at large." 64/

182. Similarly in Guyana, the Government has stated that marriages or unions between indigenous and non-indigenous persons are not prohibited or restricted de jure or de facto. The offspring of such unions do not have inferior status de jure or de facto. In this connection it should be recalled, however, that according to the State Land (Amerindian) Regulation, 65/ a female Amerindian who is married to, or living as the reputed wife of, any person other than an Amerindian shall forfeit all privileges of an Amerindian, as defined in those regulations. It is provided, though, that after the death of the husband this regulation shall not apply, nor shall it apply in the case of a reputed wife after cohabitation ceases. (Regulations, 3 (1)). Children of an Amerindian whose other parent is not an Amerindian are called half-castes, who forfeit all privileges of an Amerindian, save when the half-caste is born under the Indian Regulations 1890, in which case he is personally entitled during his lifetime to all privileges as an Amerindian, but his descendants are not considered Amerindians. 66/

8. Assistance to indigenous groups and persons from rural areas who have recently migrated to urban areas

183. It has been universally recognized for some time that the processes which produce contacts or collisions between cultures should occur in the least harmful manner possible for the most vulnerable groups. In these phenomena of cultural contact, apart from the problems associated with the introduction of elements of urban life or of the technology produced by urban society in regions hitherto removed from their influence, which are invariably disastrous, serious problems arise from the influx of rural population groups to urban centres with the consequent emergence of problems of adjustment to urban life, some of which have already been described in the chapter on housing, quod vide.

184. In the material available in connection with this study, there is very little information on these important aspects. There is only scanty information on the first phenomenon, the introduction of urban life or technology in indigenous

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64/ See chapter V, Definitions of indigenous populations, (E/CN.4/Sub.2/1982/2/Add.6), paras. 349 and 350.

65/ No reply has been received to a request for information included in the summary transmitted to the Government for comments and supplementary data on the reasons for introducing these measures, and their effects, whether unfavourable or not.

66/ These provisions are mentioned in chapter V, Definitions of indigenous populations, (E/CN.4/Sub.2/1982/2/Add.6), para. 276.

communities previously untouched by such influences. There is hardly any information on concerted or systematic efforts to avoid unnecessarily traumatic or disturbing effects resulting from the introduction of elements of urban life or urban technology in rural areas and populations. Mention should, however, be made of at least two examples which illustrate the harmful effects of such contacts when they occur without appropriate guidance or restrictions.

185. With regard to the arrival of urban elements of culture and technology in certain areas of India which were formerly devoid of such influences, it has been written that:

> "The tribal belt of Middle India is in the grip of industrial revolution and subject to rapid urbanization in a comparatively short span of time, which has been termed 'industry-based urban explosion'. In some cases it led to over-urbanization which was reflected in congestion, overcrowding and the formation of slums, particularly in industrial and mining towns, and non-availability of civic amenities such as drinking water, electricity, recreational and other facilities, as well as under or unemployment. The mining towns generally support large populations but lack urban facilities to a great extent. The majority of the forest towns are also deficient in urban amenities and urban services are reported to be in deplorable condition in most cases. Studies of the socio-cultural implication of industrialization carried out on the basis of the HEC complex, the Patratu industrial complex and the Bokaro industrial complex bring into relief the magnitude of industrial nomadism, slum culture and defective town planning; industrial administration needs to be tackled with all seriousness and sincerity.
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> "In the present context, industrial urbanization in certain tribal belts of Bihar, Orissa and Madhya Pradesh has greatly affected the folk and primitive tribal population, which till recently led a homogenous, distinctive and folk style of life. The impact of industrial urbanization has been differently felt by the thousands of uprooted villagers, tribal migrants and villagers of the neighbouring areas. In general, however, as reflected in the study of Hatia and other industrial complexes, their traditional style of life has disintegrated and they continue to struggle hard to adjust to rapidly changing situations. The net result for the uprooted tribals in due course has been loss of traditional occupation, land, house, traditional way of life, exhaustion of cash received by way of compensation and unemployment, keen and unfair competition with the migrants in the labour market, high aspirations and great frustration. All these find reflection in different types of periodic unrest and agitation in industrially dominated tribal areas.
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> "While it is not possible or desirable to halt the process of industrialization, the planners must contemplate built-in safeguards for the interests of the scheduled tribes in these areas." 67/

67/ Dr. L.P. Vidyarthi. A Survey of Research in Anthropology. FCSSR, New Delhi, Popular Prakasham. Bombay, 1972. (Typed copy), pp. 3-4.

186. An author has written the following on the effects of the arrival of elements of urban life and technological innovation from the urban areas to formerly isolated indigenous communities in Brazil:

> "Pacification is ... the first step in the destruction of tribal self-sufficiency. It can have quick and curious results. The first exchange can sometimes be understood not so much as one of gifts as of trophies won in a bloodless battle, as the SPI recognized when dealing with the Parintintin. It is certainly true that pacification teams acquire many such trophies from Indians, to such a degree that, for instance, the Parakana hardly had a bow or arrow left when we came to visit them, the few bows still in use being rude affairs made from unshaped branches. In exchange, nearly every Indian had acquired a gun. This makes them dependent on a supply of ammunition and could produce a crisis as among the Xikrin. Similarly the French trio we met amongst the Surui told us of visiting a Nambikuara camp where everyone was going hungry; they had guns but no bullets, and made bows and arrows not for use but for barter.
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> "These three also told us that the Surui no longer made fire with firesticks since the introduction of matches, even when they had run out of matches; nor would they make resin torches, even when the batteries of their electric torches went dead. The same fatality has overcome other Indians. As a result Orlando Villas Boas avoids bringing fish hooks or small-meshed nets into the Xingu Park except before festivals. He wants to encourage Indians to continue their practice of fishing with bows and arrows and not to deplete their rivers. As might be expected, many Indians complain of this prohibition and go to trade beyond the boundaries of the Park for what they want.
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> "Pacification thus tends to deplete the Indian technical repertory. We saw this amongst the Canela, whose arrows were improvized affairs of a kind used in the past mainly by children." 68/

187. Although it is agreed that action should be taken to ensure that changes and scientific and technological innovations are introduced into the indigenous communities in such a way as to avoid unnecessarily disturbing or traumatic effects, as stated above, no information was available on efforts that may have been made to that end in any country. There is, on the contrary, somewhat more information on assistance arrangements for the benefit of rural persons or groups that have arrived in urban areas, as the following paragraphs show.

188. As is well known, the flow of people from the countryside to the cities has intensified in many parts of the world in recent decades. This has affected many sectors of the rural populations, including indigenous groups. In some areas this phenomenon has assumed particular importance.

68/ E. Brooks, R. Fuerst, J. Hemming, F. Huxby, Tribes of the Amazon Basin in Brazil. London and Cambridge, Charles Knight and Co., 1972, p. 120.

189. Most of the rural groups moving into the towns do so because they are attracted by the concentration of services and facilities available in urban centres and because they believe there is a better future for them there. In the main this involves groups that already have a considerable degree of acculturation or have decided to adapt to other ways of life in an endeavour to share in the benefits they have come to believe they will find in urban centres. Some indigenous groups go to the cities because they have been deprived of their land or they have nowhere else to go as a result of the continuous pressures of the predominant population sectors on their land and resources and they seek a last refuge in the cities because there are no more areas for them to occupy in the countryside.

190. The change from rural to urban living is never an easy one, but it is particularly hard in the case of indigenous populations with linguistic problems and cultural differences, whose adaptation to urban life is compounded by these cultural complexities and obstacles. The language, the culture and the way of life are different and there is a difficult process of adaptation to an environment that is completely new even in the physical sense.

191. These indigenous persons or groups need assistance in adapting to the substantial changes in their environment. They need help in solving the difficult problems they face in connection with housing, training and employment and in the process of social and psychological adaptation to a new way of life in the urban area, through the provision, for example, of special training, services and facilities to equip them to cope successfully with urban life.

192. There is very little concrete information on these matters and it deals with only five countries. 69/ The information relating to Australia merely makes it possible to state that special programmes have been initiated to assist Aboriginals moving to urban areas. Aboriginal organizations in urban areas are funded to provide advisory and welfare services to persons migrating from rural areas.

193. The information relating to Canada is somewhat more explicit. The Canadian Government has stated that:

> "The migration to urban centres of Indian people, and Eskimo people to a lesser degree, has created social problems. A number of programs have been designed by municipal government authorities and welfare agencies to assist these migrants to secure housing and employment and to put them in touch with urban facilities, as well as providing social centres to assist in the adjustment to urban life. In towns and cities across Canada these activities are co-ordinated in 45 Friendship Centres, funded by the Department of the Secretary of State. These Centres have played an important role over many years, and are increasingly staffed by native personnel."

69/ Australia, Canada, Norway, New Zealand and Sweden. In the case of Sweden, the available information merely mentions that the new Government Commission on Lapp Affairs will have as its main task to examine the various problems confronting the Lapps in Swedish society, particularly those Lapps who left reindeer husbandry and moved away from the reindeer breeding areas. The Norwegian Government simply states that "No special arrangements have been put into effect in respect of the Lapps from rural areas, who have migrated to urban areas."

194. As has been mentioned elsewhere, 70/ New Zealand is the only country in which indigenous populations have become predominantly urban. As a result of the mass urban migration in the recent past and the continuing flow of Maoris to the towns the situation in New Zealand is unusual. The State has accordingly adopted a number of programmes to help rural Maoris who have recently migrated to urban areas. As was mentioned earlier, there are several ways in which they can be assisted to find housing. Social welfare staff of the Maori and Island Affairs Department also assist in finding employment. 71/ Every year many school leavers in rural areas move to the towns to seek permanent employment or further education.

195. In co-operation with technical institutes, the Department has the following education programmes:

(a) Maori Affairs Trade Training Scheme: Before the end of the school year, Maori welfare officers visit every rural school with any significant number of Maori pupils and discuss the various avenues of employment open to those who intend to leave school at the end of the year. Applications are called annually for entry into the Maori Affairs Trade Training Scheme which provides special apprenticeship courses leading to full qualifications in skilled trades. These courses are held in Auckland, Hamilton and Wellington in the North Island, and Christchurch in the South Island. The total intake in 1973 was 274 Maori boys, and courses were provided in 11 skilled trades. The boys are provided with hostel accommodation and they spend either one or two full years at a technical institute, according to the trade, where they are given theoretical and practical instruction in the trade concerned and extra lessons in English and mathematics. At the end of the training period the boys are then apprenticed to employers under Government-supervised agreements where they are given on-the-job training and part-time training at the technical institute. They take the normal trade examinations and qualify, in three or four years, as skilled tradesmen. This programme was commenced because the proportion of Maoris to total population apprenticed in skilled trades was very low. The programme has been highly successful and has stimulated Maori parents to encourage their children to enter skilled trades, quite apart from the special Maori Affairs Scheme. Nine years ago only 2.8 per cent of apprentices were Maori. The present figure is about 7 per cent. As the Maoris constitute about 8 per cent of the total population, this proportion can be considered real progress.

(b) Maori pre-employment scheme: This is a programme operated by the Maori and Island Affairs Department in conjunction with the technical institutes. Rural Maori school leavers, both boys and girls, who intend to move to the cities are able to enter a pre-employment scheme in Auckland, Hamilton or Wellington, where they are given accommodation in hostels and during a period of three weeks, they receive instruction in such subjects as English, mathematics, income budgeting, the nature of city government and other subjects (including dress and make-up for the girls). They are taken to various types of employment and higher

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70/ See the chapter on Housing (at present in document E/CN.4/Sub.2/L.596).

71/ In 1973 the Government has stated that this poses "no particular difficulty" as "there is a very small ratio of unemployment".

educational institutions and at the end of the period they are assisted by Maori welfare officers and vocational guidance officers to find positions in the type of work or educational institution they have chosen. In both the Trade Training scheme and the pre-employment scheme the Maori and Island Affairs Department pays weekly wages to the young people concerned.

(c) "Life in the city" courses: These are courses organized by the Department of Education and the Maori and Island Affairs Department for Maori children in the higher forms at secondary school who will probably move to a city. Such courses are for boys and girls and occupy several days, during which time the young people stay together in a university hostel or in a secondary school. The courses are of the seminar type and various speakers discuss all aspects of life in the city and also vocational opportunities.

(d) Hostels: The Maori and Island Affairs Department owns, or helps to finance, hostels in the major towns and cities to provide accommodation for young Maoris moving from rural areas. In addition, the Department owns several apartment buildings to accommodate apprentices who have completed their full-time instruction at technical institutes and are apprenticed to employers. Such hostels and departmental buildings are provided in Auckland, Hamilton, Rotorua, Wellington and Christchurch.