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STUDY OF THE PROBLEM OF DISCRIMINATION
AGAINST INDIGENOUS POPULATIONS

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

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Chapter XVI

OCCUPATION, EMPLOYMENT AND VOCATIONAL TRAINING

A. Introduction

1. In this chapter the Special Rapporteur will consider the major problems facing indigenous populations in the area of occupation and employment, and also some of the special measures which have been adopted by Governments in order to respond to these problems. He will describe relevant international standards, as developed by the United Nations and its specialized agencies; discrimination, both de jure and de facto, as seen in national legislation for the protection of indigenous populations and the level of its implementation; the conditions of employment, with emphasis on those coercive labour systems which still survive today; vocational training schemes, and other measures which have been taken to protect and promote indigenous artisan industries or other traditional modes of production.
2. The Special Rapporteur notes that the employment conditions of indigenous populations have to a large extent been determined by their degree of incorporation within the national or international economy. Examples of abuse have been most apparent, and in certain cases continue to be so, where employers have made use of cheap indigenous labour in commercial agriculture, or mineral and extractive industries. In particular, where such activities have developed in isolated areas, for example in forest regions, it has often proved difficult for national authorities to exercise effective implementation of labour legislation with regard to recruitment practices and protection of the minimum wage.
3. It is important to place these labour systems in their historical perspective. A brief historical overview is therefore necessary, in order to explain the evolution of the complex systems of personal services, compulsory or bonded labour, and coercive recruitment practices which still confront indigenous populations in certain parts of the world.

B. Indigenous labour systems: historical overview

4. The development of labour institutions varied greatly in those countries which came under European colonial domination. In Latin America, for example, the primary concern of the first colonists was to extract mineral resources, a concern which immediately led to the widespread exploitation of indigenous labour. When the colonists later shifted their attention to the control and use of agricultural resources, they continued to exact compulsory services from the indigenous populations for work on the haciendas.
5. In large parts of what are today the United States of America and Canada ^{1/} the main interest of the early colonists lay in the establishment of small-scale agricultural settlements, which they cultivated largely on the basis of their own labour. There was virtually no attempt to integrate the native populations within the colonial economy. When a plantation economy was later developed in North America, the labour input was provided by an imported slave population.
6. In the African and Asian countries which subsequently came under colonial domination, systems of compulsory and indentured labour were widely used on agricultural plantations.

^{1/} It must be remembered that vast areas of what is today the United States of America were conquered and colonized by Spain and therefore, those areas approximated at that time what prevailed in Latin American countries then.

7. In Latin America, the indigenous populations incorporated into the extractive activities were subjected to slavery during the first years of the colonial period, to provide a labour force in the mines. By the mid-sixteenth century, however, indigenous slavery was legally abolished by the Spanish Crown, on the grounds that it proved too destructive in terms of the labour force, and also on humanitarian grounds following pressure by religious missionaries. From then up to the abolition of slavery in the nineteenth century, African slaves were imported to work on sugar and other agricultural plantations. In replacement of Indian slavery, new Spanish legislation provided for forced labour and the exaction of tribute from the indigenous populations. Regulations were enacted making it obligatory for the Indians to work in mines, on haciendas and in work-shops, and to pay regular taxes. Under the compulsory labour system known as the mita, Indians were required to "contribute within certain stated intervals, in the form of personal services such as gathering grass and firewood, food production, herding, cultivating, tending vineyards, gardening and other duties". 2/

8. The Special Rapporteur does not wish to dwell at length on the various forms of exploitation of Indian labour during the colonial period, which have been described at length in reliable sources. 3/ It should be noted that colonial patterns have had their effect on labour systems throughout the post-independence period and, in certain cases, right up to the present day. Spanish colonial policy was apparently designed to protect indigenous communal lands and forms of social organization, in exchange for Indian labour and tribute. But it has been written that

"However, in the second half of the eighteenth century agriculture became more intensive, and with it the demand for labour increased. New methods for squeezing workers from the Indian reservations and throwing the labour force onto the market began to be applied. At the same time, and as a consequence of successive shifts from mining to livestock-raising, and then to agriculture, interest in the ownership of land became greater and greater. For that reason it often happened that the Indians from several reservations would be transferred and be concentrated in a single one, and the lands that they had left vacant would be sold at auction.

"At the same time two complementary processes were developing. The first was that the natives, who had been virtually deprived of their lands, sought to exchange their labour for the use of a piece of land on the large haciendas. The second process was the growing interest of the hacendados or large landholders in having at their disposal a minimum resident work force they could count on, or rather in obtaining part of what was produced by the entrepreneurial efforts of these inquilinos, colonos, huasipungueros, etc." 4/

2/ Solon Barraclough, Agrarian Structure in Latin America, Lexington Books, Massachusetts, 1973, p.6.

3/ For example, Aquiles R. Pérez, Las Mitas en la Real Audiencia de Quito, Quito, Ecuador, 1947; John Francis Bannon (ed), Indian Labour in the Spanish Indies, D.C. Heath and Company, Boston, 1966; Silvio Zavala, La Encomienda Indiana, Madrid, 1935.

4/ Barraclough, op.cit., p.8.

9. In the hundred years, approximately, which elapsed between the Latin American independence declarations of the early nineteenth century and the development of national labour standards in the early twentieth century, the Indians together with the non-Indian peasantry (campesinas) were largely at the mercy of landowners. Traditional haciendas were consolidated during this period at the expense of indigenous communities and their lands. The semi-feudal labour relations and personal services, which had their origins in colonial society, are reported by several authors to have affected an increasingly large proportion of the indigenous peasantry as they were dispossessed of their traditional lands by new laws favouring private property. In certain countries Indian tribute was maintained until well into the nineteenth century.

10. In certain areas a new concentration on export agriculture towards the end of the nineteenth century increased the need for a rural labour force, and led to coercive recruitment practices. An author has written that in El Salvador:

"The abolition of tierras comunales was followed by legislation that sought to control and recruit the people that had been dispossessed: 'agricultural judges' were appointed in each village and these officials had to keep lists of all day-workers, arrange for the capture of those who had left an estate before fulfilling their obligations, and visit private estates regularly to check the need for workers. In this task the local officials were supported by the army." 5/

11. Another author writes that in Guatemala

"Repressive legislation was still needed to force the Indians to move to the estates. Landowners were encouraged to indent the Indian population, advancing credit on the condition that they should contract to work for a fixed period of time on the estates. In 1877 a legal framework for debt-peonage was provided through the enactment of a notorious new law, the Ruling for Labourers (Reglamento de Jornaleros). This Ruling ordered the peasant to carry a work-book recording his debts, and enabled the local authorities to arrest any defaulters. Rural workers were classified in three separate categories: first the labourers (colonos) who would contract to work for four years at a time on an estate in exchange for the right to cultivate subsistence crops on a plot within the estate, but even after the expiry of the four years had to pay off all debts incurred before he was legally entitled to leave the estate: second those who had received no land, but had nevertheless incurred debts which they had to work off before leaving: and third those who had incurred no debts but signed short-term contracts which they were obliged to fulfil. While the new law had been passed to regulate the employment of workers by the various landowners, landowners, political bosses (Jefes Politicos) were installed in all areas of the country to control freedom of movement. Their powers included the issuance of passports to Indians who wished to travel from one part of the country to another." 6/

12. Debt peonage remained widespread throughout the Central American and Andean regions, and has survived at least until very recent times. In Ecuador, for example, an author has written that he visited the province of Imbabura in 1960 and found that "debt-peonage had by no means disappeared". 7/

5/ David Browning, El Salvador: Landscape and Society, Oxford University Press, 1971, p.217.

6/ Roger Plant, Guatemala: Unnatural Disaster, London, 1978, pp.60-69.

7/ Andrew Pearce, The Latin American Peasant, Frank Cass, London, 1975, p.11.

13. With the penetration of the Amazon Basin in the early twentieth century, coercive methods were used by foreign companies to secure the labour of forest-dwelling Indians. Referring to Peru, it has been written that

"Illustrations of 'frontier' institutions with a similar inhuman quality may be found much nearer, in the case of the Peruvian Amazon Company, a British firm operating during the first decade of the present century for the extraction of rubber from the Putumayo region of Peru. (Valcarcel, 1915). The Company recruited some hundreds of employees who were sent into the selva to organize the collection and portage of rubber to river stations by thousands of natives, men, women, and children, of the Borora, Witoto and other nations, under a system of force similar to self-ransom, only perhaps more destructive. The means of coercion used against them included the withholding of food by driving them from their subsistence plots and thus rendering them dependent upon food-stuffs imported by the Company; and whippings, torture and death for failing to deliver sufficient quantities of rubber or for running away, with the result that many hundreds and possibly thousands lost their lives from hunger and murder. The horrors of the Conquest are liable to be repeated on the thresholds of an acquisitive society as it expands, and for the same reasons, for the two cases share several features in common. In both, the exploiters are attracted by marketable produce of exceptional value which requires only to be gathered. In both, the potential labour force lies outside the bounds of society, and equally outside the accountability of resources: for a brief spell, while the bonanza lasts, labour may be had for the taking. In both, the lines of communication leading from the frontier to the institutionalized watchdogs of morality and legality are overgrown." 8/

14. One of the fundamental objectives of the labour legislation introduced throughout Latin America during the first half of the twentieth century was to outlaw compulsory personal services, to abolish or limit payment in kind, and to provide for safeguards against the coercive recruitment practices which had been used notably among the indigenous populations. As will be seen later in this chapter, however, coercive practices are reported to survive in certain areas, despite the safeguards provided by law.

15. The Special Rapporteur has devoted much attention to the past situation of indigenous workers in Latin America, both because the manner and extent of their incorporation within the over-all economy has led to varied and complex labour patterns, and because their past situation is closely related to the development of contemporary labour systems. He notes, however, that compulsory labour systems, the bondage of indigenous labourers, and the widespread exploitation of indigenous labour in the mining and plantation economies, have also been prevalent in other parts of the world.

16. In 1953 it was stated, for instance, that in India:

"Among the other legal enactments which still permitted the use of forced labour on 31 December 1951 were the following: (1) the Bengal Regulations XI of 1806 and VI of 1825; (2) the Madras Compulsory Labour Act, 1858; (3) the Orissa Compulsory Labour Act, 1948; (4) the Angul Laws Regulation, 1936, and the Khondmal Laws Regulation, 1936". 9/

8/ Andrew Pearse, op.cit., p.9.

9/ Indigenous Peoples, Geneva, International Labour Office, 1953, p.391.

17. On plantation labour in India, it was reported, at that time, that approximately half of the labour force in the plantation estates of Assam was aboriginal, and that much of it came "from other states of central and southern India, by recruitment under the Tea Districts Emigrant Labour Act (XXII) of 1932". 10/

18. It was also noted that

"Judging from various sources, both official and private, compulsory labour is also performed by aborigines for local authorities, landlords or contractors in India. According to a report prepared in 1951 by the Commissioner for Scheduled Castes and Scheduled Tribes, 'in spite of the vigorous efforts of the government, forced labour is still in existence and it is mostly the Scheduled Caste and also the Scheduled Tribe people who are suffering on account of this unlawful practice'". 11/

C. The development of international standards

19. The measures adopted by the United Nations and its specialized agencies have been discussed in more detail elsewhere in this Study. 12/ Here, the Special Rapporteur intends only to summarize those measures relating specifically to employment, with particular regard to the situation of indigenous peoples.

20. As is known, while the Universal Declaration of Human Rights and the two International Human Rights Covenants of the United Nations make no specific reference to indigenous populations, there are many provisions in these instruments which are relevant to their situation. Article 25 of the Universal Declaration states that "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work". Article 7 of the International Covenant on Economic, Social and Cultural Rights affirms that States Parties to the Covenant recognise the "right of everyone to the enjoyment of just and favourable conditions of work" including a remuneration which provides all workers, as a minimum, with "fair wages and equal remuneration for work of equal value without distinction of any kind". Article 8 of the International Covenant on Civil and Political Rights states that "No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude. No one shall be required to perform forced or compulsory labour".

21. The United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 13/ contains provisions against the continuation of semi-feudal forms of labour relations. Article I of the Convention states that

10/ Ibid, p.279, see "Annual Report on the Working of the Tea Districts Emigrant Labour Act for the Year ending 30 September 1950".

11/ Ibid, p.390, see L.H.Shrikant, "Report of the Commissioner for Scheduled Castes and Scheduled Tribes, 31 December 1951". (p.26).

12/ See chaps. I and II.

13/ See chap. I, paras. 25 and 26.

"Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article I of the Slavery Convention signed at Geneva on 25 September 1926: (a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined; (b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status".

22. The International Convention on the Elimination of All Forms of Racial Discrimination affirms in article 5 that the States Parties to the Covenant undertake to "prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law" in the enjoyment of rights including "The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration".

23. Under the reporting procedure, established by the International Convention on the Elimination of All Forms of Racial Discrimination the Committee on the Elimination of Racial Discrimination is required to consider reports submitted by States Parties to the Convention. These reports have at times considered the working and employment conditions of indigenous peoples. Regarding Canada, for example, the Committee stated in its report in 1979 that

"Some members of the Committee commended the efforts of the Canadian Government to ensure that the indigenous population was not cut off from the rest of the population. Further information was sought on the per capita income, literacy rate, infant mortality rate and unemployment rate among the indigenous groups as compared with the rest of the population as well as on measures taken to involve the indigenous groups in political activities, to open up employment opportunities for them and, in general, to ensure the improvement of their standard of living". 14/

24. On Australia, the Committee reports in the same year that

"The progress made in respect of the aboriginal population, particularly in the fields of housing, employment and land rights was welcomed by a number of members. At the same time, clarification was requested as to whether the measures adopted were sufficient to create the necessary social and economic conditions for the full integration of the aboriginal population into the economic and social life of Australia". 15/

14/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No.18 (A/54/18), p.39.

15/ Ibid.

25. Of the United Nations specialized agencies, the International Labour Organisation has concerned itself particularly with the employment conditions of indigenous populations. Studies of the situation were first undertaken in 1921, and in 1926 the ILO Governing Body set up a Committee of Experts on Native Labour to frame international standards for the protection of indigenous workers. A Committee of Experts on Indigenous Labour met in 1951 and 1954. At its first session held in La Paz in 1951, the Committee of Experts adopted resolutions concerning: vocational training, recruitment, social security, handicrafts, safety and health in mines, conditions of work and health of women workers among indigenous populations, the protection of indigenous children and young workers, the communication to indigenous peoples of labour and welfare laws in their own languages (among others). At its second session held in Geneva in 1954, the Committee passed further resolutions on items including: the raising of living standards, social protection and integration, land problems, and international technical assistance. A Panel of Consultants on Indigenous and Tribal Populations was later set up, and met in 1962. 16/

26. The ILO has adopted a number of Conventions dealing specifically with the problems of discrimination against indigenous workers, including those mentioned in chapter II, paragraph 36.

27. Convention 107 on Indigenous and Tribal Populations, 1957 may now be considered the basic policy document of ILO on indigenous populations. Among its provisions on recruitment and conditions of employment is the following call on ratifying member States:

"Article 15

"1. Each Member shall, within the framework of national laws and regulations, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to the populations concerned so long as they are not in a position to enjoy the protection granted by law to workers in general.

"2. Each Member shall do everything possible to prevent all discrimination between workers belonging to the populations concerned and other workers, in particular as regards -

"(a) admission to employment, including skilled employment;

"(b) equal remuneration for work of equal value;

"(c) medical and social assistance, the prevention of employment injuries, workmen's compensation, industrial hygiene and housing;

"(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organizations."

28. In articles 16 and 17, the Convention provides for vocational training. Article 18 contains provisions on handicrafts and rural industries. These articles will be quoted under the appropriate headings in Section F, parts 2 and 3, respectively.

16/ ILO Activity with regard to Indigenous and Tribal Populations (paper distributed to participants at the NGO Conference on Discrimination against the Indigenous Populations of the Americas, Geneva, September 1977).

D. Occupational categories and systems of employment

29. In its 1955 study, the International Labour Organisation classified the major occupational groups of indigenous populations in independent countries as follows

"(1) Nomadic or semi-nomadic forest-dwelling tribes which live by hunting, fishing and food-gathering and sometimes also by primitive forms of shifting agriculture on land cleared by burning. In many cases the produce of hunting is the basis of a system of barter which constitutes the first contact with the productive sector of the nation; in some countries hunting has been organized for commercial purposes. There are also forest tribes whose main occupation is agriculture, with hunting and fishing as secondary activities.

"(2) Semi-nomadic tribes living in geographically and economically marginal areas, engaged in subsistence agriculture or grazing (or both) and in gathering vegetable raw materials for handicrafts.

"In some areas, these two groups maintain contact with the national or foreign labour market, since their members work as seasonable labourers in forest or mining undertakings, on coffee, sugar, rice or tea plantations, or as muleteers and the like.

"(3) Settled, independent farmers or stock-raisers, working on an individual or collective basis, and linked to a greater or less degree to the economy of their region or country and to the international labour market, since they also work as seasonable labourers on plantations. In many regions, handicrafts constitute an important subsidiary activity for these aborigines.

"(4) Tenant labourers, bound to the estates by a traditional semi-feudal system entailing a number of personal obligations to the landowner.

"(5) Wage earners, who constitute the main source of manpower for plantations, cattle ranches, mining, forestry, etc. This group is more or less integrated into the general and economic life of each country." 17/

30. In the years since this ILO study was published, there have been some significant changes in the main occupational categories. The rapid rise in industrialization during recent years has had its impact on indigenous life-styles, even in the most isolated areas. With the expansion of agro-industry, the search for strategic minerals and the settlement of colonists from overpopulated areas in hitherto isolated regions, the process of modernization has brought an increasing number of forest-dwelling Indians within the wage economy. In the meantime, indigenous groups have frequently been removed from their natural habitats in order to make way for national development projects.

31. In many countries the abolition of semi-feudal tenancy systems, together with the modernisation and commercialisation of agriculture, has led to a large-scale expulsion of Indian labour from traditional haciendas. Where these measures have not been accompanied by effective agrarian reform programmes, the former tenants have become part of a rising urban or rural proletariat, drifting into cities or seeking occasional and seasonal labour in the countryside. While some indigenous persons or groups may have found regular work, secured a regular contract and protection under the provisions of national labour legislation, there has in other instances been a marked rise in the number who have access neither to land nor to regular employment.

32. Poor social conditions on Indian reservations, or the continuing breakdown of reservations, have also led to disparately high levels of unemployment for indigenous populations of more industrialized countries, in both urban and rural areas. A number of government reports have highlighted this issue, focusing in particular on indigenous unemployment in urban areas.

33. In Australia, a parliamentary committee on aboriginal affairs reported in 1975 that the aboriginal unemployment rate was six to seven times greater than that of the country as a whole. 18/

34. In Canada, a government report published in 1979 noted that "in every province or territory, there exists a substantial gap between the place of Native people in the labour market and other ethnic groups". It cited statistics compiled for a recent study, revealing that the general unemployment rate on reserves was 48 per cent, reaching as high as 95 per cent in some Native communities. 19/

35. In New Zealand, relocation of the Maori population in urban areas has at times been pursued as deliberate government policy, in response to the problems of under-employment in rural areas. A government report published in 1967 contains information to the effect that

"To reduce the severe under-employment in rural areas, the Department of Maori Affairs inaugurated in September 1960 a relocation programme to encourage rural families to move to towns by providing them there with accommodation and employment" 20/

36. The same report subsequently noted that

"In the 1961 Census 2.3 per cent of Maori males in the working age group described themselves as unemployed compared with 0.6 per cent of Pakehas, and it is likely that this relative position would persist if unemployment increased. The Maori already has more difficulty in finding work than does the Pakeha; a survey of unemployed workers carried out by the Department of Labour in May 1963 showed that Maori workers (and those from the Pacific Islands) formed a high proportion of the group. Of the total of 1,053 males and females, 230 or 19 per cent were Maori workers" 21/

37. In the Latin American countries with substantial Indian populations, indigenous peasants have traditionally sold their surplus agricultural produce, textiles and handicrafts in urban markets. Until recently, Indians would walk for several hours from the countryside to sell or barter their produce in weekly markets. But with the improvement of communications, and also with the advent of cheaper bus transport, there are some signs that the nature of this rural-urban trade is now changing. In Guatemala, for example, one writer has noted that the Indian vendor has changed from a transporter of rurally produced goods to a middleman who trades the whole range of products in the marketplace. Indian vendors may maintain residence in rural communities even though the majority of their work days are spent in the city. "The Indian vendor is thus a bicultural individual who divorces his working life from his community involvement" 22/

18/ Parliament of Australia, Aboriginal unemployment: special work projects. Third report of the House of Representatives Standing Committee on Aboriginal Affairs, Australian Government Publishing House, Canberra, 1976, p.10.

19/ Department of Employment and Immigration, The Development of an Employment Policy for Indian, Inuit and Metis People, Canada, 1979, p.3.

20/ Department of Industries and Commerce, The Maori in the New Zealand Economy, January, 1967, p.58.

21/ Ibid., p.91.

22/ John J. Swetman, "Ambidextros Culturales: Vendedores Indígenas Urbanos", in América Indígena, Número 1, Vol. XLI, Instituto Indigenista Interamericano, Mexico 1981, pág. 24.

E. Conditions of Employment. Discrimination and the elimination thereof

1. Discrimination in employment: Government views

38. The Special Rapporteur had no information concerning any de jure impediments or restrictions which might affect the right of indigenous populations to work, to the free choice of employment, to trade union rights, to working conditions and equitable and satisfactory remuneration, to protection against unemployment, or to equal pay for equal work. In their communications on this subject, most Governments limited themselves to citing relevant labour legislation, which guaranteed equal rights for all citizens. Where Governments provided additional information, it was to reaffirm the absence of de jure discrimination, as, for example, in the following statements.

39. The Government of Bangladesh has stated that:

"In Bangladesh, work is considered to be a right, a duty and a matter of honour to every citizen who is capable of working. In this respect, no de jure or de facto discrimination which may affect the right of any group of people in the free choice of employment, working conditions, equitable and satisfactory remuneration, protection against unemployment and equal pay for equal work is allowed. Similarly the legislations relating to Factories, Workmen's Compensation, Minimum Wages etc. are equally applicable to all citizens."

40. According to information provided by the Government of Australia, for example:

"The State of Queensland has specific laws relating to the employment of Aborigines and Islanders. Although the Racial Discrimination Bill does not provide special protective measures in the employment area specifically for Aborigines, the Bill makes it unlawful to discriminate by reason of race, colour, or national or ethnic origin or by reason that a person is an immigrant, in employment and the right to join trade unions."

41. The Government of the United States of America reports that:

"Indians have the same protection as all other citizens in the matter of their employment and their rights to work. Like other citizens they can qualify for unemployment compensation should they be unemployed, and the lower limit to their pay is - like other citizens - set by minimum wage legislation."

42. Certain statutory provisions are also relevant in this connection as, for example, in Brazil, Article 14 of Act No. 6001 provides that:

"There shall be no discrimination between native workers and other workers, and the same rights and guarantees of the labour laws and social security shall apply in either case."

43. It was recognized, on the other hand, that de facto impediments did exist. The Government of Canada states:

"The rights of native people ... are not infringed by any distinctions, exclusions or preferences in law, nor in the defined and publicly defended policy of those in administrative authority; rather, any acts of discrimination result from instances of personal prejudice on the part of individuals in

the absence of adequate supervision. In practical relationships, limited contact with indigenous residents of remote areas result in unequal opportunity, and where the minority groups have been at the lowest socio-economic level the members of the group lack qualification for employment. Thus discrimination de facto but not de jure may be said to exist, and a large number of special measures are in progress to correct this inequity."

44. According to information furnished by the Government of Colombia:

"Thus not only does the speculator/businessman appropriate the wealth already created by the indigenous workers with his rudimentary methods; not only does the white settler appropriate his land; he also ends by appropriating his person, converting him into a wage-earner. And, moreover, the selling and hunting of indigenous persons organized by mining, agricultural and livestock enterprises is a matter of common knowledge."

45. The Government of Mexico declares that:

"From the legal standpoint there is no limitation that operates to the detriment of indigenous persons or populations so far as labour is concerned. This is laid down in the provisions of articles 1, 5 and 123 of the Constitution and in the relevant regulations of the Federal Labour Law which because of our legal-political structure is applicable throughout the Republic. The de facto position is otherwise: indigenous labour gives rise to much abuse owing to the weak and disadvantaged position of the indigenous population in economic relations. Failure on the part of the employers to comply with the provisions of the Federal Labour Law involves liability to penalties of numerous kinds, including criminal proceedings, as can be seen from title 16 of the Law in question."

2. The elimination of discrimination: Special measures

46. The Special Rapporteur was concerned to assess the extent to which Governments have adopted special measures to eliminate employment and recruitment practices which might discriminate against the labour rights of indigenous peoples. He notes that, even though de jure equality may exist, de facto inequality is often likely to occur if Governments do not take positive steps to protect their indigenous peoples who are frequently ill-acquainted with the provisions of national and international law, and may have little or no access to law enforcement agencies. He has already made mention of article 15 of ILO Convention 107, which calls upon ratifying member States to adopt special measures with regard to indigenous populations when "they are not in a position to enjoy the protection granted by law to workers in general". In his communications to the Governments of the 37 countries covered in this study, the Special Rapporteur accordingly requested information as to whether special measures had been taken to:

(a) Inform indigenous workers and their employers of the legal provisions governing labour contracts, remuneration, housing, benefits in the event of industrial accidents, transport and other conditions of work;

(b) Regulate or supervise procedures for the recruitment of indigenous workers and their conditions of employment, in particular to ensure that:

- (i) Written or oral explanations are provided in the vernacular language concerning essential matters so that the workers recruited are aware of all the conditions of employment and accept them freely and with full knowledge;
- (ii) Conditions of employment are offered which conform at least to minimum statutory provisions and regulations;
- (iii) Health standards are met and seasonal restrictions and minimum age requirements are observed;
- (iv) Appropriate transport which meets all the prescribed requirements is provided for the journey to recruitment centres or work sites and for the return journey to the workers' communities;
- (v) It is possible for the indigenous workers to maintain adequate contact with their communities and appropriate communication with their families;
- (c) Ensure that the remuneration of indigenous workers is protected and:
 - (i) Is paid only in legal tender, save for such portion as does not exceed the maximum legal percentage payable in kind or in services;
 - (ii) Is never paid in alcohol, other intoxicating beverages or drugs;
 - (iii) Is never paid in locations close to taverns or stores, except in the case of workers employed in such establishments;
 - (iv) Is never subject to deductions, withholding or adjustments in excess of the maximum limits set for:
 - (a) the part which may be paid in goods or services;
 - (b) the amount attachable to meet obligations incurred previously;
 - (c) money which is to be paid directly to the family of the worker, under Government supervision;
 - (d) recovery of salary advances;
 - (v) Is always paid in full, including the final payment in virtue of any contractual obligation upon termination of the work relationship.
- (d) Guarantee and enforce the right of the indigenous worker to be returned to his community at the expense of the contractor or the employer in the event that:
 - (i) He is incapacitated, by illness or accident, during the journey to the place of employment or during the period of employment;
 - (ii) He is declared unfit for work after undergoing a medical examination;
 - (iii) He is not hired, for a reason for which he is not responsible, after being brought from his community for the purpose of being hired;
 - (iv) The competent authority establishes that the worker was recruited by error or fraud on the part of the contractor or employer;

(e) Ensure that no personal effects or tools regularly used by indigenous workers are appropriated or withheld for payment of debts or non-fulfilment of contract, unless such measures are taken with the prior approval of the competent administrative or judicial authority.

47. While the majority of Governments did not provide any information on these issues, several Government communications have stated that the measures for the protection of indigenous peoples are no different from those for the prevailing sectors of the national population.

48. The Government of Finland, for example, simply reports that:

"All the provisions and regulations concerning labour relations are the same to all without any discrimination. Announcements on these matters are made in Lappish on radio."

49. The Government of Australia gives more details, when it refers to the role of welfare and employment officers and of trade unions in this connection, as follows:

"Special services have not been created to inform Aboriginal workers and their employers of the legal provisions governing employment matters, but counselling on these matters will frequently be done by welfare officers. Employment officers of the Department of Labour, in counselling Aboriginals in remote areas about employment, try to ensure that the Aboriginals know as much as possible about the working conditions they will encounter and their rights under legislation and awards. Follow-up of placements in employment is carried out by the Department of Labour.

"Recruitment of Aboriginal workers and their conditions of employment are not especially regulated, but are covered by awards which apply to workers regardless of ethnic origin. Awards are created by arbitration authorities as a result of negotiations between trade unions and employers. Unions are assisted in the policy of awards by government departments. The only special government legislation regarding the employment of Aboriginals and Islanders exists in one State, Queensland, where legislation provides that where no award exists, employers shall pay all expenses of the employee's conveyance from the place of residence to place of employment and conversely. It also provides for a slow workers permit to be issued on request in order to allow the employment of Aboriginals and Islanders who are infirm or slow workers and unable to find work at normal rates of pay."

50. The Government of New Zealand also reports on the roles of industrial unions and official inspectors:

"The Department of Labour publishes all industrial awards setting out conditions of work and remuneration. The industrial unions play an important part in seeing that all of their members are aware of their rights and conditions. The Department of Labour has factory inspectors and safety inspectors whose function is to ensure that manufacturers are observing the requirements of the law.

"The organized recruitment of indigenous labour is not a feature of New Zealand life. Employers recruiting any type of labour are subject to statutory obligations regarding wages and conditions of employment. Health standards are laid down by statute and are enforced by medical officers of health and sanitary inspectors. Conditions of employment have been strictly controlled in New Zealand by law and by industrial awards for many years."

51. Furthermore, in New Zealand the Citizens' Association for Racial Equality states in this regard that:

"Although there are few special measures to ensure that Maori workers are aware of their legal privileges relating to contracts, accident compensation and so on, these would be held to be unnecessary, since Maoris are employed, for the most part, on the same basis as non-Maori employees. There is little contract labour (except in some hydro schemes) whereby Maori -- or other -- workers are detached from their families."

52. The Government of the United States communicates that:

"No special efforts are made to help the indigenous population in these matters other than those efforts made in terms of employment of all Americans. However, the Indian tribe must agree to businesses and industries locating on its land, and generally has means of seeing that the business continue to be a desirable tenant. Most business people who settle on Indian land realize that they must live at peace with their employees and with their customers, since neither can move readily; and some have imaginative ways in which they adapt methods to the native population. In some instances, such as in the recruitment of forest fire fighting crews from indigenous people by the Forest Service of the United States Department of Agriculture special effort is made to recognize the needs of indigenous peoples when they are airlifted some distance away. The Forest Service has co-operated with the Bureau of Indian Affairs in this effort."

53. The Special Rapporteur had information on the existence of special measures with regard to these issues in certain Latin American countries. Some information was available on Argentina, where:

"The Directorate for the Protection of Indians is responsible for the enforcement in so far as they refer to the Indians, of Decrees No. 16165 (1946) and No. 25305 (1947) concerning work in the sugar industry; Act No. 12789 (1942) concerning the recruitment of workers; and Act No. 11278 (1925) concerning the payment of wages in national currency.

"The recruitment of groups of Indian workers must be organized under the supervision of the Directorate for the Protection of Indians. The inspectors of the Directorate accompany the groups of workers from the place of recruitment to the place of work and inspect their living and working conditions during the whole term of the contract concluded between the Directorate and each undertaking.

"Prior to the promulgation of Act No. 12789, the northern provinces of Salta and Jujuy, whose sugar plantations employ many Indian seasonal labourers from other provinces and from Bolivia, had already adopted similar protective legislation. In 1921 Act No. 1051 was adopted in Salta stipulating that the provincial labour department was responsible for supervising the recruitment of peons by means of written contracts signed by both parties." 23/

23/ International Labour Office, *Indigenous Peoples*, *op. cit.*, pp. 462-463. In the absence of more recent information on Argentina, this information is quoted here despite the dates of the enactments mentioned in it, as it contains relevant data included in and quoted here from the summary of information relating to Argentina prepared in connection with and in support of the present study.

54. Brazil's Indian Statute (Act No. 6001, 1973) contains detailed legislative provisions for supervising the working conditions of indigenous peoples. Sections 14 to 16 of the Statute state that:

"Art. 14. There shall be no discrimination between native workers and other workers, and the same rights and guarantees of the labour laws and social security shall apply in either case.

"Sole paragraph. Adaptation of working conditions to the usages and customs of the community to which the Indian belongs shall be permitted.

"Art. 15. Any contract for work or hire of services entered into with Indians covered by the provisions of Article 4, Item 1, shall be declared null and void.

"Art. 16. Contracts for work or hire of services entered into with natives in process of integration or inhabitants of parks or farming settlements shall depend on prior approval of the Indian protection agency, and comply when necessary with special norms.

"§1. The conclusion of contracts for levies of workers or home workers under the orientation of the competent agency is to be encouraged so as to favour continuity of community life.

"§2. In any case of services rendered by non-integrated Indians, the Indian protection agency shall exert permanent control and supervision over the working conditions, denouncing abuses and taking steps to see that appropriate sanctions are applied."

55. Furthermore, in connection with points 2 (b) and (c) above, it should be noted that in accordance with article 58, III, of Brazil's Indian Statute, it is considered a crime against the Indians to facilitate by any means the acquisition, use and distribution of alcoholic beverages within tribal groups or between non-integrated Indians. The offence is punishable by six months to two years imprisonment.

56. In Paraguay, Chapter VII of the Labour Code of 1961 provides for special standards for the employment of indigenous workers from communities which are not integrated with the rest of the population. In 1973, the Government of Paraguay stated in this connection:

"With regard to work as a social function, the indigenous worker also enjoys the protection of the State and must not be regarded as a chattel. Consequently, he has a right to follow his vocation, to devote himself freely to the occupation, industry, job, craft or trade for which he is fitted, provided that its exercise is lawful. He likewise enjoys the freedom to change his employment. Law No. 729 'which sanctions the Labour Code' provides for his protection 'on an equal footing with an integrated worker'. For instance, chapter VII, entitled 'Indigenous Labour' proscribes, in articles 185 to 191, express labour hiring conditions that place the worker in a situation of dependency, while articles 132 and 237 respectively of the Code ensure protection of their wages. It should be noted that the minimum wages laid down by the Administrative Authority for Labour likewise apply to indigenous workers.

"Here we must stress the stipulations in article 192 of the Labour Code, which reads: 'The State, through the competent organs of the respective ministries, shall ensure the protection of non-integrated indigenous persons and shall safeguard their institutions, goods, person and labour with the following ends in view: (a) to promote their social, economic, and cultural development and the improvement of their standard of living with a view to their gradual integration into the national community; (b) to prevent their exploitation and extermination and (c) to ensure that protection is not used to bring about or prolong their segregated status.'

"At the present time, the Ministry of Justice and Labour, working through the Administrative Authority for Labour on a programme of co-operation and for the purpose of exercising better control as regards the monitoring of compliance with the labour laws in indigenous matters, is working jointly with the Department of Indigenous Affairs of the Ministry of National Defence and the Association of Indigenous People of Paraguay to obtain information and evidence concerning the general conditions under which indigenous persons are hired for all types of work, and in particular livestock breeding and agriculture, with a view to protecting their rights and advising them on the fulfilment of their obligations, and thus ensuring a better balance between the indigenous worker and his employer. The Directorate-General of Labour has now appointed an official whose task it is to obtain information, supervise compliance with the labour laws and monitor the general conditions of hygiene and safety available to the indigenous worker." 24/

57. With regard to the implementation of Law No. 729 in Paraguay, the Anti-Slavery Society has communicated in connection with this study:

"To our knowledge, no penalties, remedies or compensations were ever imposed in order to ensure the de facto realization of this law. Nor were any services to inform the Indians about this law provided by the Government."

3. Discrimination in employment: Non-governmental views

58. Little information was available to the Special Rapporteur concerning wage discrimination against indigenous peoples in specific enterprises, as compared with the remuneration given to other population groups. One such allegation, however, has been made with regard to Paraguay.

"In the oil factory of Filadelfia, the wage for the Indian labourers is G 25 an hour, and for those who ethnically are Mennonites, it is G 50. The same thing happens with the masons ... In the co-operative of the European Mennonites, this cotton is graded and paid for according to quality. In the Indians' co-operative (under Mennonite control) the cotton is not graded and is all paid for at the rate of the lowest quality of the Europeans ... Moreover, the Indians are never paid in toto, there is always a residue which is only paid when the product is marketed in Asuncion." 25/

24/ Report to ILO, quoted in the summary of information relating to Paraguay prepared in connection with and in support of the present study.

25/ Information provided by the Anti-Slavery Society.

59. Many allegations have been made with regard to discrimination in access to employment, in the training which is a prerequisite to such access, and in overall conditions of labour. In the United States, for example, one source has made the following general statement:

"Although Indians may legally be entitled to enjoy the same protection as all other citizens in the matter of their employment and their rights to work, de facto impediments do exist to their exercise of these rights. For, in order to qualify for even semi-skilled labour, some training is required which many of the unemployed people living on the reservations do not have. In order to acquire such skills, the individual must have access to programmes which will effectively impart prerequisite training. Yet the data available indicate that programme offerings for Indians are not highly accessible, nor practical in terms of the types of employment skills offered, nor highly successful in imparting the skills selected for course offerings." 26/

60. One author, summarizing the labour conditions of indigenous peoples in 10 Latin American countries, has written that:

"Anthropologists, non-governmental organizations, church affiliated groups and news reporters have recently alleged that indigenous workers in most of these countries suffered employment abuses. These allegations, studied by international intergovernmental organizations, include remuneration below the legal minimum, recruitment and transport under extremely bad conditions, debt-bondage (the practice of inducing workers to incur financial obligations to the employer through the purchase of high-priced basic commodities in the employer's work store), and unpaid forced labour, including conditions of slavery. Such abuses are normally said to occur in areas where the governments have been unable to enforce national legislation, especially labour codes and regulations. It is difficult, however, to obtain reliable verification of such allegations. No country has laws which openly discriminate against these populations, but only a few have established special measures to protect indigenous workers." 27/

61. While some of these situations may be described as isolated cases of abuse in isolated areas where the Government has proved unable to exert its authority and implement national labour legislation, in other instances the abuses have apparently been very widespread throughout the country. In the following sections the Special Rapporteur, drawing his information from a wide range of non-governmental sources, will describe certain settlement, recruitment and employment procedures which discriminate against indigenous peoples, and which frequently constitute violations of accepted international standards.

4. Forced changes in traditional occupations

62. Development projects in areas inhabited by indigenous populations are frequently conceived not for their benefit, but for that of the prevailing sectors of the national population. Examples are dams and hydro-electric projects, logging enterprises, and petroleum or mineral extraction. Furthermore, rural settlement

26/ American Indian Law Newsletter, vol. 7, No. 11.

27/ Lee Swebston, "The Indian in Latin America: Approaches to Administration, Integration and Protection", in Buffalo Law Review, vol. 27, No. 4, pp. 748-749.

programmes may be designed to benefit non-indigenous populations at the expense of the indigenous communities. Colonization programmes may be controlled by the Government, aiming to provide extra land for the urban and rural poor. Or they may be spontaneous programmes, often carried out by entrepreneurs seeking to establish new plantations and agro-industrial enterprises.

63. In cases where the traditional use of land and resources conflicts with the aims of national development planning, government agencies may at times have taken steps to alter traditional occupations without adequate consultation of the indigenous peoples themselves. In Bangladesh, for example, a source states that a land use survey has been published for the Chittagong Hill Tracts, where the Chittagong Hill Tracts Development Board has put into effect a large number of projects with development assistance from the Asian Development Bank. The indigenous peoples were reportedly to become "wage earners in the forest or other development industries, giving up their jhum farming and nomadic way of life". 28/

64. In other instances the combination of large-scale development projects and encroachment by non-tribals may have seriously adverse consequences for traditional occupations. In India a writer has commented that:

"However, it is not just that the tribals do not benefit financially from the exploitation of their areas. Account must also be taken of the deleterious effects that the huge industry, mining, urban-industrial and hydro-electric dam schemes are having on adivasis' ability to continue their traditional methods of production. In addition to the lack of investment in tribal agriculture and alienation of agricultural land by encroaching non-tribals, tribals are being forced by a combination of land alienation for dams and industrial developments, and prohibition of the use of forest resources to give up their largely autonomous and self-sufficient methods of production. Instead they become badly paid landless labourers, either harvesting their traditional forests and working in mines for the benefit of the non-tribal areas, or migrating seasonally or permanently to distant brickfields, plantations and other areas of high agricultural potential in search of work." 29/

65. In yet other instances, the penetration of hitherto isolated areas by spontaneous settlers dedicated to commercial agriculture may create a large demand for both permanent and seasonal labour, with the input provided by indigenous workers who are compelled to abandon their traditional way of life.

66. In Bolivia, a number of sources have described the adverse effect on traditional life-styles of the recent boom in sugar and cotton production in the east of the country, as well as the rudimentary methods of rubber extraction practised in forest regions. 30/ It has been alleged that the methods used to coerce the Chiquitano and other Indians into working on the commercial estates have included induced indebtedness and also forced labour. 31/

28/ International Work Group for Indigenous Affairs "Bangladesh: Tribal fight for land in Chittagong Hill Tracts", in IWGIA newsletter, June 1981.

29/ Steve Jones, "Tribal Underdevelopment in India", in Development and Change, Institute of Social Studies, The Hague, Vol. 9, No. 1, January 1978, pp. 50-51.

30/ I sold myself: I was bought. Report on the situation of sugar-cane harvesters in Santa Cruz, Bolivia, IWGIA, Copenhagen 1980, passim.

31/ Idem. Also see Anti-Slavery Society, Bolivia: Report on a visit to investigate allegations of slavery, London, 1977, pp. 20-25.

67. In Brazil, there have been many reports of the disruptive effects on Indian life-styles caused by the intensive development projects of recent years in the Amazon Basin. ^{32/} In this region, Indians have rarely been seen as a source of labour, for the labour supply is usually provided by non-Indians brought in from outside the development areas. But indigenous and tribal groups have been subject to forced relocation, from areas where the Government and private contractors have wished to exploit timber, mineral, agricultural and other resources. One source has stated that Indian land rights have been sacrificed by FUNAI for the larger economic interests of State highway programmes, large-scale mining projects and agri-business: and that this has led to the uprooting of scores of Indian tribes. A similar fate is predicted for other Indian tribes in Brazil, notably in the far northern part of the Amazon Basin where highway and mining development projects at present threaten the territorial integrity of the large Yanomami and Waimiri-Atroari tribes. ^{33/}

5. Coercive labour systems

68. Mention was made earlier in this chapter of various coercive systems of employment, to which indigenous peoples have been subjected at least until recently in several parts of the world. By law, such exploitative labour systems as serfdom, debt bondage, and the numerous types of compulsory personal service have generally been abolished. Despite legal provisions, however, there is evidence that such practices still continue today, and that the victims are very frequently tribal and indigenous peoples. Information was available to the Special Rapporteur concerning "unfree labour", provoked or forced migrations, inadequate recruitment systems, and working conditions incompatible with human dignity.

69. The action taken by the United Nations Working Group on Slavery has already been described earlier in this Study. ^{34/} It has been noted that members of the Working Group recognized that a "special problem exists in countries with indigenous populations who might be vulnerable to exploitation, such as debt bondage and other slavery-like practices". In particular, the Working Group has dealt with debt bondage or bonded labour, forced labour, abusive and exploitative labour practices, and non-enforcement of minimum wage provisions.

70. The Special Rapporteur summarizes here the information received by the Working Group on the situation of indigenous peoples in several countries covered by this Study.

71. A representative of the Minority Rights Group gave information to the Working Group concerning the situation of Aborigines on remote pastoral stations in Australia. He stated that slavery-like practices against Aborigines still existed in these regions. Although new legislation affecting Aborigines had been introduced in 1967, they were still forced to work for little or no wages in these remote areas, and women were forced to prostitute themselves to the European landowners. ^{35/}

72. The Anti-Slavery Society has provided information concerning debt-bondage practices against indigenous groups of Eastern Bolivia and forced labour of indigenous workers on rubber plantations. The Society's report to the Working Group

^{32/} See, Anti-Slavery Society, Tribes of the Amazon Basin, 1972.

^{33/} Shelton David, Victims of the Miracle, Cambridge University Press, 1977, pp. 160-161.

^{34/} See chap. I, on Measures adopted by the United Nations, paras. 54-62.

^{35/} E/CN.4/Sub.2/434, para. 17.

cites cases where workers in the department of Santa Cruz were reportedly still locked up at night in the enclosed sheds of the rubber gathering areas around the river Piragua. It also describes instances where Amerindians are induced by anticipos (advance payments) into debt from which they can never escape:

"Once they have commenced work they can only buy articles in company stores at grossly inflated prices, often as much as 500 per cent above the normal commercial value. A bar of soap, which would cost approximately 5 pesos in a normal store, will be sold for 25 pesos; and there was one account of a girl who received no more than a pair of trousers for her 12 months work in 1974-75. All articles, be they clothing or such essential foodstuffs as rice, oils and margarine are sold in the same way. In 1976, according to a report from another source, approximately 25 people escaped from a 'siringa' (rubber plantation) but were recaptured after the owner had reported the incident to the local police ... The report of the National Agrarian Reform Service also provides extensive details of land and labour relationships in the remainder of Santa Cruz Department, particularly on the cattle ranches. Many of the apatronados (peons under the patron's protection) have been compelled to accept this status in order to pay off prior debts, while others have sought it voluntarily in order to escape from the exploitation of the rubber plantations. After a few years service the peons in many cases find themselves in more debt than before, largely thanks to the consumption of alcohol bought at inflated prices from the landowner himself. At other times, contractors in the service of landowners have taken such commodities as alcohol and cigarettes to Indian villages." 36/

73. The Anti-Slavery Society report also described some of the recruitment methods used by commercial farmers in order to secure a seasonal labour force at harvest time from among the Indian peasants of the Bolivian altiplano.

"Landowners have relied on contratistas (contractors) who have used indebtedness as a means to secure their own labour force. On the estates themselves, landowners and their capataces (foremen) have used various methods including threats and physical force (in isolated instances), withdrawal or delayed payment of wages, in order to keep the labour force on their estates throughout the harvest season. And the contractors, although in theory they should represent the interests of their own work force, are more often than not in the pay of individual landowners and therefore inevitably represent the interests of the patron. When abuses have occurred - over payment or treatment in violation of contractual conditions - the migrant workers have traditionally had little means of protection ... The contractors themselves may be independent or may be on the payroll of one or more landowners. As an example of the first category, a group of contractors in 1974 brought 4,000 peasants from Potosi, and put them "on the market" at 160 Bolivian pesos each. In such cases the peasants have signed no contract at the time of their recruitment, while the contractor is more concerned with his "sale price"

36/ Anti-Slavery Society, Bolivia: Report on a visit to investigate allegations of slavery, London, 1977, pp. 21-22. Presented to the Working Group on Slavery at its third session, and summarized in E/CN.4/Sub.2/389.

than with any guarantees of adequate labour conditions. The second category, of contractors in the service of individual landowners, appears to be more common. In these cases the contractors will have requested large advances of money from the landowners in order to make anticipos to the peasant farmers in times of scarcity. Though the anticipo will normally be between 50 and 100 Bolivian pesos, there were reports of anticipos of far higher sums, of up to 1,000 pesos. The higher and anticipo the greater the control exercised by the contractor, and there are reports of cases where peasants are kept in debt for several years." 37/

74. The Anti-Slavery Society has provided information to the Working Group in 1976, 1978 and 1980 concerning the situation of indigenous labourers in Guatemala. The Society's reports concentrate largely on the recruitment and employment conditions of the several hundred thousand indigenous peasants who engage on annual seasonal labour on coffee, cotton and sugar estates. As in the Bolivian case, it is noted that much seasonal labour is recruited through anticipos (advance payments) offered by contractors acting on behalf of landowners:

"The number of 'contratistas', or 'habilitadores' (as they are also frequently called) is on the increase ... Studies carried out in the department of Huehuetenango (from where the greatest migration flow comes) show that the debt motivation followed by compulsory labour is still extremely strong. A series of interviews showed that, whereas over half of the Indians contracted tended to go voluntarily to the 'contratista' in order to offer their services, well over 30 per cent were contracted by the 'contratista' who attended the local markets at strategic moments. Although some attempts have been made by government to control the activities of the 'contratistas', these have been inadequate to date." 38/

75. The Anti-Slavery Society also reports that:

"Although individual labour contracts are in many cases signed by the migrant workers, they specifically leave open the amount of time in which the anticipo can be worked off. Copies of such contracts have recently been seen by members of the Society. The contracts mention the amount of the anticipo received by the worker, and then state that if for any reason justified in the opinion of the respective authority he cannot complete within this harvest period the number of days to which he has committed himself, then he must do so in the next harvest period. Presumably, if the migrant worker incurs further debts on the estate, or contracts a high-interest loan as well as the anticipo, he may easily find himself caught in a situation of spiralling debt." 39/

37/ Ibid., pp. 16-17.

38/ Anti-Slavery Society, Report for 1976 to the Working Group on Slavery, Supplementary Information for the Working Party on Slavery, 30 July 1976.

39/ Ibid., Report for 1978 to the Working Group on Slavery, Incidents of slavery and abuses against rural workers in Guatemala, 1976-1978.

76. With regard to the transport, living and working conditions of indigenous migrant workers in Guatemala, the Anti-Slavery Society refers to a report of the International Labour Organisation, which emphasized the following significant shortcomings in the system of seasonal labour recruitment and working conditions:

- "(a) Inappropriate recruitment systems;
- "(b) Low salaries out of proportion to the sacrifice that the workers and their families have to endure;
- "(c) Sub-human conditions in transport from the place of origin to workplace, and vice-versa;
- "(d) Lodging and life conditions of the migrant workers and their families within the workplaces, which are totally unacceptable as regards hygiene, health education and morality;
- "(e) Sickneses easily contracted by workers and their families, due to the difference of climate and the almost total absence of hygiene measures;
- "(f) Leaving in penury the families in their place of origin, who do not follow the heads of family, with all the consequences that are derived from this situation;
- "(g) The fact that it is impossible for those children who accompany the heads of family to continue the studies that they have commenced in their place of origin." 40/

77. The United Nations Working Group on Slavery has also received reports of abusive labour practices against forest-dwelling Indians in South America. At its third session held in 1977, the Minority Rights Group presented written and oral allegations on forced labour and debt bondage of Amerindians, especially in the Amazon area. Debt bondage, it was stated, was created mainly by selling manufactured goods at high prices to the Indians, in exchange for the Indians' services or products. 41/

78. In 1978 and 1979, the Anti-Slavery Society presented information concerning debt-bondage affecting tribal populations in India to the Working Group at its fourth and fifth sessions. The Society stated that debt-bondage was a country-wide phenomenon affecting as many as 5 million to 7 million people, mostly "untouchables" and "tribals". The report emphasized the link between debt-bondage and other slavery-like practices, such as child labour and the sale of women and children for the purposes of prostitution. 42/ A representative of the Society subsequently expressed his appreciation of the Indian Government's efforts to put an end to the problem of bonded labour. He pointed out, however, that according to a recent survey carried out by the Gandhi Peace Foundation and the National Labour Institute, 84 per cent of bonded labourers were from scheduled castes and tribes, who were also the most impoverished and traditionally those who suffered the most discrimination in society. As shown by the same survey, the problem was a continuing one, since many labourers had become bonded even after the passage of the Bonded Labour System (Abolition) Ordinance of 1975. 43/

40/ Ibid., Report for 1976, op. cit., see ILO Technical Assistance Report, Colonization, Agrarian Transformation, Rural Development and Agricultural Labour (OIT/TAP/Guatemala/R.18).

41/ E/CN.4/Sub.2/389, 30 August 1977, p. 4.

42/ E/CN.4/Sub.2/410, 30 August 1978, p. 8.

43/ E/CN.4/Sub.2/434, 24 August 1979, p. 3.

F. Vocational training and the creation of employment

1. Preliminary remarks

79. It has been seen that the rapidly changing situation of indigenous peoples in the economy of several countries has called for new directions in vocational training and employment guidance. As pointed out elsewhere in this study, 44/ New Zealand is at present the only country in which the indigenous populations have for the most part become urban people. Nevertheless, in many other countries, it has been seen that an increasingly large percentage of Indian peoples are now facing problems of unemployment or underemployment. While these problems may be most acute in situations of large-scale rural-urban migration, they also exist in rural indigenous communities among small farmers, tenant farmers and landless labourers and on Indian reservations.

80. The International Convention on the Elimination of All Forms of Racial Discrimination calls upon member States to take special and concrete measures on behalf of those racial groups which are at a disadvantage with regard to the remainder of society. Article 2 (2) provides that:

"States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms".

81. The Indigenous and Tribal Peoples Convention - 107 (1957) - of the International Labour Organisation provides:

"Article 16

"Persons belonging to the populations concerned shall enjoy the same opportunities as other citizens in respect of vocational training facilities.

"Article 17

"1. Whenever programmes of vocational training of general application do not meet the special needs of persons belonging to the populations concerned governments shall provide special training facilities for such persons.

"2. These special training facilities shall be based on a careful study of the economic environment, stage of cultural development and practical needs of the various occupational groups among the said populations: they shall, in particular, enable the persons concerned to receive the training necessary for occupations for which these populations have traditionally shown aptitude.

"3. These special training facilities shall be provided only so long as the stage of cultural development of the populations concerned requires them: with the advance of the process of integration they shall be replaced by the facilities provided for other citizens."

44/ See the chapter on Housing.

82. The Director-General of the International Labour Organisation recently outlined some of the factors which prevent disadvantaged groups of society from having full and equal access to training facilities:

"Nevertheless, inequities still persist and are difficult to eliminate because they are often part of inherited values, result from political, social and economic circumstances or are disguised under the cover of administrative and organizational regulations. Thus, barriers are created which prevent certain groups of the population from having a fair chance of receiving training corresponding to their personal needs and to those of society.

"The task ahead is to remove these barriers. In the first place a fresh look needs to be taken at entry requirements. These are sometimes high and even prohibitive. True, such high entry requirements are set, in particular in developing countries, as selection criteria because of the large number of young people and adults competing for the limited number of training places. Hence, those who have obtained higher educational qualifications stand a better chance of being accepted. In such cases the question is never asked whether the high entry requirements are always technically and socially justified. A close look at many of these requirements reveals that they are not always technically feasible or indispensable and that they are economically and socially unjustified.

"Second, there is the question of the location of training facilities. All too often these facilities are located too far from trainees' homes, and all too often it is the poor who are the most badly affected because they live in remote areas and cannot afford to pay the travel expenses. This implies that we must either bring the service closer to the clientele, through better geographic distribution of training facilities, or provide improved access, i.e. by means of adequate transportation, provision of meals and possibilities of boarding.

"Third, language barriers have to be removed. In some developing countries where the majority of people communicate in a local language, training is still offered in the official language of the country, which is mastered by only a few. This tends to discriminate against the majority and to eliminate illiterates, school drop-outs and low achievers from training opportunities. Such barriers can also prevent migrant workers from enrolling in training courses." 45/

83. The above statements tend to be of particular relevance for indigenous populations. On the one hand, it is imperative that their members should have access to the technology and training which is sought by them and can be used for their benefit and the benefit of their communities. On the other hand, it is not sufficient for selected members of indigenous groups to have such access, if the training programmes are not adapted to the needs of their own communities. In particular, when internship programmes are provided, with the instruction taking place in a distant place and different environment within an alien culture, and perhaps also in an alien language, there is an obvious danger that the training will not be very successful and, on the other hand, will be conducive to cultural alienation of the individual from his traditional way of life. 46/

45/ Training: Challenge of the 1980's, Report of the Director-General, International Labour Conference, sixty-sixth session, 1980, pp. 25-26.

46/ See what is said in the Chapter on Education in connection with education in residences away from the community.

84. In his communications to the Governments of the countries covered in this study, the Special Rapporteur requested information as to whether programmes of vocational training for the indigenous populations were designed specifically for that purpose and were based on the appropriate ethnological and anthropological studies, whether provision was made for the training of persons belonging to the indigenous populations as instructors and for conducting the programmes in the vicinity of the place where such persons lived and worked, whether the language of instruction was, to the extent necessary, the vernacular and whether the programmes were co-ordinated with programmes and methods of basic education supplemented by assistance measures, thereby enabling independent workers to acquire the necessary materials and equipment and helping wage-earners to find employment compatible with their abilities and aspirations.

85. The Special Rapporteur also requested information concerning any administrative provisions made to provide the indigenous populations, either free of charge or at reduced cost, with special courses or apprenticeships in public or private commercial and agricultural establishments, placements, grants and aid programmes.

2. Vocational training: General survey

86. In certain countries, there are legal provisions stipulating either that it is a duty of the State to promote vocational training, or a right of its citizens to receive it. In Bolivia, for example, the Constitution provides that:

"The State shall promote vocational training and professional technical courses, which shall be directed towards economic development and national sovereignty."

87. And in Mexico, the latest amendment to the Constitution declares that training for employable skills is a basic social right. In Brazil, the Indian Statute of 1973 (Act 6001) refers more specifically to the right of indigenous peoples to receive vocational training, stating that "The Indian shall be provided with adequate professional training in accordance with his degree of acculturation". Such provisions, however, contain no directive that the training should be in accordance with the needs and expressed interests of the indigenous populations.

88. In a number of countries, information was provided concerning training programmes which were specifically directed at indigenous peoples. The Government of Australia reports that training in institutions, as opposed to on-the-job training, is provided under grants administered by the Department of Education, with which the Department of Labour works very closely in selection of students, advice as to courses and placement after training. The Commonwealth Department of Aboriginal Affairs supplements the Department of Labour's efforts in a number of ways. Substantial funds are provided from the Aboriginal Advancement Trust Account to the States each year for the development of employment opportunities and vocational training programmes for Aborigines. A total of \$500,000 has been provided this financial year to the States for Aboriginal employment programmes.

89. Aboriginal movement to areas where employment or vocational training is more readily available is encouraged by the provision of funds to voluntary bodies to enable the establishment of hostels for Aboriginal workers and young people undertaking training.

90. Special vocational training courses for Aborigines are operating or planned in each State and the Northern Territory. Most of these courses are designed to reconcile the Aborigines' cultural background with living, learning and working in the general community, and by compensating for educational disadvantages which may

have developed during early schooling, to enable the student to continue with post-school training. For example, in an attempt to increase the numbers of qualified Aboriginals available for employment in the public service and for work in their own communities, the Social Studies School of the South Australian Institute of Technology, in conjunction with the Department of Community Welfare in that State, is offering a special 2 year full-time training programme in community development and other aspects of community work with their own people. The Department of Community Development is offering 10 cadetships to Aboriginals who, on completion of the course, will become members of an Aboriginal Task Force in the Department. Other students are expected to be sponsored by private organizations or by other State or Commonwealth government departments. The Commonwealth Government is supporting the course financially.

91. Other special training centres are located near major centres of Aboriginal population. For example, a vocational training complex has recently been established at Port Hedland at a cost in excess of \$1 million to serve the northern areas of Western Australia, where it is hoped to develop the potential of the Aboriginal workforce. Education and training in a variety of skills is also normally available on settlements and missions.

92. Special vocational courses for Aboriginals are usually provided free of charge (a training wage may even be provided). Financial assistance is available to Aboriginals undertaking a variety of general or special courses of study (see Section 3, Education, Study Grants).

93. With regard to commercial and agricultural training, the Australian Government also states that:

"Aboriginals who wish to attend public or private commercial agricultural training and eligible for assistance under the Aboriginal Study Grants Scheme, which is administered by the Australian Department of Education in consultation with the Department of Aboriginal Affairs. Special courses in business management have been arranged for borrowers from the Capital Funds for Aboriginal Enterprise."

94. In Canada the Government provides information to the effect that:

"Under the Post-School Division of the Education Branch of the Department of Indian Affairs and Northern Development a total of 11,769 Indians received vocational training in the education year 1972-73. This total is distinct from the 32,555 Indians who took adult education classes in various subjects, including basic literacy in English or French. Location in new employment was assisted for 15,133 Indians, including some families. Under a Saskatchewan programme Métis and Indians are assisted in moving to new employment with grants which provide transportation, meals and accommodation en route, board and room for a month, suitable clothing, tools and equipment up to \$100 and furniture up to \$200.

"Under the Band Management Division of the Department of Indian Affairs and Northern Development, which controls the transfer of responsibility for many reserve activities to the Council instead of the Regional Superintendent or Agent, a number of practical courses are offered in agricultural development, administration, small business practices and similar subjects.

"The federal Post-School Division also conducts a training-on-the-job programme in co-operation with private industry, sharing the wage cost on a 50-50 basis. Where the training employer is a federal, provincial or municipal government office or a private non-profit organization, the Department of Indian Affairs will contribute up to 100 per cent of the training wages for a training period of up to 52 weeks.

"There have been for example, over 40 natives trained in the Department of the Solicitor-General and a number are now employed as custodial and assistant parole officers. An agreement was made with KAINAI Industries Ltd., to provide on-the-job training for 240 Indians of the Blood reserve in Alberta, in the manufacture of trailers and sectional houses. An industrial-environmental training centre is being opened at Rivers, Manitoba. Indians are being trained at a pulp mill in Meadow Lake, Saskatchewan. For some time the Canadian Forces School of Military Engineering at Chilliwack, B.C., has provided training for Eskimos in the operation and maintenance of heavy-duty equipment. Other experimental courses are designed to train natives for such varied employment as teachers of basic literacy (in English), and as mine workers.

"It is hoped that such training programmes will lead to employment in the industries involved. In addition, agreements are in effect to promote the employment of native people in resource development industries operating in the North, under the Employment Liaison Programme of the Department of Indian Affairs and Northern Development. A major oil company in the Arctic has undertaken to recruit and transport native workers from their homes to the work sites on a rotation basis. Several provinces have also established liaison with employers to increase the employment of native people."

95. On India, an author has written that:

"In the matter of vocational training, scheduled castes and scheduled tribes are not only entitled to the opportunities available to the general population but also get additional facilities to enable them to catch up with the rest. The Ministry of Education has requested all the ministries of the Government of India, the State governments and the union territory administrations and also the universities throughout India to make the following concessions in respect of students from scheduled castes and scheduled tribes in all technical and other educational institutions controlled by them:

"(1) Twenty per cent of the seats should be reserved for them.

"(2) Where admissions are restricted to candidates who obtain at least a prescribed percentage of marks, there may be a 5 per cent reduction for them, provided that the lower percentage does not fall below the minimum required to pass the qualifying examination.

"(3) The maximum age limit for the admission of students belonging to these communities should be raised by three years.

"(4) Students belonging to these communities should be eligible for admission for reserved seats if they attain minimum prescribed standards without any reference to the gap between their marks and those of the last person admitted to the open seats.

"The Ministry of Irrigation and Power has made a reservation for scheduled tribes of 5 per cent of the seats in its two technical training centres situated at Poona and Kotah.

"The Ministry of Labour and Employment has made a similar reservation of 5 per cent of the places in its 357 industrial training institutes and centres established throughout the country. The upper age limit for admission to these institutes and centres is 25, but this condition is relaxed in the case of candidates from scheduled tribes, provided they are otherwise suitable.

"The Ministry of Mines and Fuel has made a combined reservation of 12 $\frac{1}{2}$ per cent for candidates belonging to scheduled castes and scheduled tribes for admission to its five mining training institutes." 47/

96. The same writer adds that the Government is aware that training programmes without proper follow-up may not serve much purpose, and trainees may revert to their old, less satisfactory, occupations. The Scheduled Areas and Scheduled Tribes Commission, which submitted its report in 1961, also observed that "satisfactory records have not been maintained of the follow-up efforts made to rehabilitate the trainees on completion of their courses". The Commission's observation was brought to the notice of the State governments for necessary action. In some States, like Madhya Pradesh and Maharashtra, co-operatives are formed at the end of the training period and financial assistance is given for the purpose of buying tools, equipment and construction of godowns. In certain other cases where it is not possible to form such societies, the Adivasis are given individual financial assistance up to 500 rupees, partly in the form of a subsidy and partly as an interest-free loan repayable by instalments. 48/

97. The New Zealand Government has provided information on the Maori Affairs Trade Training Schemes, which provide annual apprenticeship courses leading to full qualifications in skilled trades. The courses are held in the four centres of Auckland, Hamilton and Wellington in the North Island, and Christchurch in the South Island. The Government has communicated that the Maori Affairs Trade Training Schemes are specifically designed for Maori and other Polynesian students. Some of the young men trained under this programme are now employed by technical institutes as instructors. As already mentioned, these courses of instruction are held at four places in New Zealand. As they cater particularly for rural boys, the boys have to be brought to places where technical institutes are in existence. They are also centred in places where the boys may more easily be placed in proper employment at the conclusion of their training. All instruction is given in English as all of the boys speak English and, in fact, many of them do not speak Maori.

98. The Government adds that the training schemes are co-ordinated with basic education and the trainees are given every assistance in finding employment compatible with their abilities and aspirations. Finance is available by way of loan from the Department to assist a qualified Maori tradesman to set up his own business.

99. During his official visit to New Zealand in June 1975, the Special Rapporteur visited the Maori apprenticeship arrangements at Seaview, and was much impressed by the good work being done by the trainees in carpentry, masonry and homebuilding. He notes, however, the opinion of the New Zealand Citizens' Association for Racial Equality that such schemes "do not yet provide for more than a small proportion of Maori school leavers, most of whom take unskilled or semi-skilled manual employment".

47/ P.M. Henon, "Towards Equality of Opportunity in India", in International Labour Review, October 1966, pp. 373-374.

48/ Ibid., p. 374.

100. The Government of Norway has communicated that:

"As an element in labour market policy, special vocational training courses are arranged every year for unemployed and underemployed people who need training in order to secure suitable and stable employment. The courses are held at ordinary vocational schools or at special centres.

"In Alta a permanent course has been established for the particular purpose of providing training for the Lapp population in Inner Nord-Troms and Inner Finmark. The training largely follows the same programme as in the rest of the country. However the courses are extended to include teaching in theoretical and general subjects. Teaching is in Norwegian. Some of the teachers usually have a knowledge of Lappish, but there has been no deliberate policy of recruiting Lapp teachers.

"Owing to the great distances, scattered pattern of settlement and relatively few participants, there are practical difficulties in arranging courses near the participants' homes. The labour market authorities have instead generally chosen to concentrate the course activities at one place. However, courses in building construction have been held in other localities. The extra expenses for living away from home are refunded to the participants".

101. The Government of the United States reports that:

"Vocational training efforts have been many. One such effort was called a 'whole family training' method. The entire indigenous family was moved to one of three deactivated military bases where the wife was given help in managing the family's affairs as they would be managed in an urban setting while the husband was given an entry-level skill. Another more recent effort which takes place on the reservation is one which Indian men with an interest in construction work are recruited and put into teams, where they learn business practices, construction industry skills, and good work habits. At the request of Indian tribes, vocational training and placement efforts now take place closer to the reservation or actually on it".

3. The protection of handicrafts

102. After agriculture, handicrafts is probably the most important source of livelihood, subsistence and sometimes income for indigenous populations. For the most part, handicrafts have traditionally been directed at providing for their own needs, whether the tools of hunting and fishing and agriculture, or textiles for clothing and utensils for domestic use. In some instances, however, indigenous groups have developed a relatively large handicrafts industry for domestic or even foreign trade. The straw-hat industry in Ecuador and Peru, or the colourful textiles produced by the Otavalo Indians of Ecuador, or by the Mayan and Quiche Indians of Guatemala, are but a few examples.

103. The Convention on Indigenous and Tribal Populations, 107 (1957), cited above, provides in this connection:

"Article 18

"1. Handicrafts and rural industries shall be encouraged as factors in the economic development of the populations concerned in a manner which will enable these populations to raise their standard of living and adjust themselves to modern methods of production and marketing.

"2. Handicrafts and rural industries shall be developed in a manner which preserves the cultural heritage of these populations and improves their artistic values and particular modes of cultural expression."

104. The Special Rapporteur requested information from Governments and non-governmental organizations as to whether they have established programmes: (a) to protect the traditional handicrafts and industries of the indigenous populations with a view to improving techniques and methods of work, production and marketing, and working conditions, taking care not to disturb any fair labour arrangements for the organization of such activities which are essential to the indigenous tradition; (b) to obtain equitable and satisfactory prices; (c) to protect designs and artistic characteristics against unfair competition from mass-produced reproductions; and (d) to promote the establishment of the more effective operation of co-operative organizations so that they may more successfully meet the challenge presented by modern manufactured products.

105. Responses to this request, as well as information otherwise available to the Special Rapporteur for the study touch upon some aspects of these points only. Available data merely allow references to legal provisions and to public policy purposes as stated by Governments. This information is set out in the following paragraphs.

106. The protection and encouragement of indigenous handicrafts as well as rural or popular industries may be provided for by the Constitution or by a fundamental law.

107. In Brazil, for example, article 53 of the Indian Statute of 1973 stipulates that:

"Handicrafts and rural industries are to be encouraged with a view to raising the Indians' standard of living by suitable adaptation to modern technical conditions".

108. In other countries, though there may not be a specific reference to indigenous forms of production, constitutional law may provide for State protection of popular arts and crafts. Article 192 of the Constitution of Bolivia states that:

"Examples of popular arts and crafts are factors of the national culture and enjoy special protection by the State, with the aim of preserving their authenticity and increasing their production and dissemination".

109. References may be made in those provisions to the preservation of the authenticity, the protection and the promotion through credit facilities of these handicrafts and popular industries. Thus, for example, article 109 of the Constitution of Guatemala, makes the following provision:

"Handicrafts and typical national industries of the people shall enjoy the special protection of the State with a view to preserving their authenticity and shall enjoy credit facilities for promoting their production and marketing. National art and folklore in all their manifestations shall enjoy the same protection and shall be cultivated in private and public educational centres."

110. The protection, promotion and encouragement of handicrafts and similar industries may not be provided for in any fundamental law but constitute important aspects of official government policy, as stated above. Some of the data available describe these industries and stress efforts to improve the production and marketing aspects thereof as is seen from the information concerning Canada, Costa Rica, the United States of America and India.

111. According to information received from the Government of Canada:

"The encouragement of native art and crafts and assisted marketing has been particularly successful in the North among Eskimo people. Co-operatives have been organized among native artists, and soapstone carving and print making have developed under the aegis of a quality-control and marketing agency, bringing good returns to the native people.

"Sales of Indian arts and crafts have rapidly expanded through promotional efforts in recent years, and the wholesale marketing agency established by the federal government is to be transferred to Indian corporate ownership by 1975. At present, it operates with an all-Indian advisory committee with representation from all regions of the country.

"The value of products from the Indian-Eskimo Arts and Crafts programme is between \$4 million and \$5 million annually."

112. The Government of Costa Rica states that:

"So far the Government has established isolated programmes for the protection of indigenous crafts. To date there has been no large-scale production. There are plans to develop such production and to exploit the local crafts in an organized way, with special reference to consumption by the people."

113. The Government of the United States communicates that:

"The United States Department of the Interior has under it the Arts and Crafts Board, through which it can protect the use of 'Made by American Indians' and other such statements to the use of the indigenous population. This same unit of government helps advise native craftsmen on the production and marketing of their work so that it can compete in the open market against other products of a similar nature. The Arts and Crafts Board publishes a flyer in which it advertises craftsmen whom it regularly deals with and this is an inducement for some Americans to deal with these craftsmen."

114. An author has written that in India:

"The importance of developing cottage industries and promoting handicrafts in order to improve the social and economic condition of people in rural areas generally, and of scheduled castes and scheduled tribes in particular, has been recognized by the public authorities in India, especially as a means of creating employment opportunities for landless labour and unemployed cultivators. In the first three five-year plans increasing allocations were made under these heads. The responsibility for carrying out these programmes is that of respective state governments. The forms this promotional work takes are, in particular, aid to cottage industries; establishment of training-cum-production centres, craft centres, industrial training centres and occupational institutes for girls and women; loans and subsidies to artisans; stipends for training in sericulture, pisciculture and weaving; and supply of 'ambar charka' (hand spinning wheels) and sewing machines.

"The Khadi and Village Industries Commission has been doing work in the sphere of hand spinning and handloom weaving, and processing of cereals, pulses and fibres, bee-keeping and village pottery and the production of vegetable oils, leather, palm-gur, non-edible oils and soaps and handmade paper. The All India Handicrafts Board has been running centres for the development of handicrafts using cane and bamboo, Toda embroidery and woodwork". 49/

115. Other information available to the Special Rapporteur for this study refers to the traditional character of these handicrafts and stresses aspects of their authenticity and better marketing practices, as some data available on Australia, New Zealand and Norway.

116. Information on government policy for the protection of handicrafts was provided from several countries. The Government of Australia communicates that:

"For many isolated Aboriginal communities, the production of traditional arts and crafts is a major activity and an important source of income. Ways of ensuring the protection and survival of these arts and crafts, and of promoting their development are being examined. A Crafts Advisor has been appointed to work throughout Australia with Aboriginal people encouraging the development of crafts which utilize traditional techniques, culture and designs in contemporary art and craft forms. This craft development work is aided by the short-term visits of artists and craftsmen who provide expert assistance on specific projects. In several States the Aboriginal affairs authorities operate Aboriginal arts and crafts wholesale and retail outlets which have provided a sympathetic, fair and consistent economic return to the Aboriginal artists and craftsmen".

117. In New Zealand, according to official information the Government established a Maori Arts and Crafts Institute in Rotorua in 1962. The Institute is financially self-supporting from revenue received from tourists visiting the thermal area which has been vested in the Institute. Every year seven or eight Maori youths enter the Institute on leaving school and undertake a three year course in traditional Maori woodcarving. On the completion of their training the woodcarvers may be employed by the Institute itself or by commercial firms producing Maori souvenirs, or may enter business on their own account. The Government subsidizes the wages of the apprentices during their training as part of the Maori Affairs Trade Training Scheme. The Institute also provides, free of charge, courses in women's crafts, such as weaving and plaiting. Women who are nominated for these courses by a Maori organization or a school also receive an allowance to provide for their accommodation while they are at the Institute. These courses normally occupy about three weeks.

118. During his official visit to New Zealand in June 1973, the Special Rapporteur had occasion to visit this Maori arts and crafts institute in Rotorua. He was impressed by the high quality of carving produced and with the organization of the training conducted there. He understood that efforts were being made to preserve traditional designs and to use old techniques. The Citizens' Association for Racial Equality states in this regard that apart from establishing this Institute in 1926 "the Government has done little to protect and encourage traditional handicrafts and industries".

119. The Government of Norway provides information concerning the Lapp Vocational and Home Crafts School in Kautokeino:

"This school was founded in 1954, being entirely owned and operated by the State. The school has its own board nominated by the Ministry of Church and Education, with representatives from, inter alia, the Norwegian Lapps' National Association and the Norwegian Association of Reindeer Breeding Lapps. The school offers accommodation facilities, and the pupils have free board. The teaching curriculum at the Lapp Vocational and Home Craft School in Kautokeino comprises the former syllabus covering techniques particularly associated with the Lapp tradition, for example woodwork and bonework, sledge-construction and boat-building etc. Recent years, however, have seen great changes in the pattern of teaching, and today it mainly follows the curricula organized for corresponding classes in vocational schools in the rest of Norway".

120. In its information the Government of Norway also mentions the conflict of interest between the need to preserve and develop Lapp cultural traditions in the area of home crafts and the need to qualify young Lapps to compete effectively for jobs with the rest of the Norwegian population:

"This double objective contains an inherent clash of interests which further complicates the collision of cultures in which all Lapps are involved. The cultural collision is especially demonstrable at the vocational school in Kautokeino in the declining interest for time-honoured Lapp techniques and traditions, a declining interest which is partly due to the breakthrough of modern techniques and motorized transport in reindeer herding, but which must also be attributed in part to lack of motivation among the younger age groups. Nevertheless, some voices in the area have shown an interest in bringing the syllabus provided at the school more into line with Lapp economic activities. The Ministry has thus been requested to introduce a study stream covering agricultural activities, including the study sectors relating to uncultivated land and reindeer husbandry. The board of the school has been requested by the Ministry to report on the provision of such a study stream".

121. In Malaysia, one of the principles guiding official policy in connection with the Orang Asli population reads as follows:

"As a means of furthering their economic development, handicrafts and rural industries would be encouraged, but should be developed in a manner which preserves their cultural heritage, improves their artistic values and particular modes of cultural expression".

122. Information provided by the Government of Colombia deals with the handicaps confronting indigenous peoples in the marketing and exchange of their artisan goods.

"There are many working tools and implements which are not produced in the community and hence have to be acquired in trade with the outside world. This trade thus becomes one of the means by which the outside world is causing the break-up of such communities. The Indians do not have a market production system and have not assimilated the laws that govern them. Hence they carry on unequal trading that is highly detrimental to their economy, while the trader pockets an exorbitant profit. Such wide gaps in profit-making encourage the traders to become specialists in trading with the indigenous people and to monopolize the whole of their trade. For instance, they exchange indigenous products (handicrafts, skins, etc.) for which good prices are paid in their home society, against articles which the self-same society produces at low cost, while at the same time they encourage wholesale consumption of these articles within the tribe owing to their great selective usefulness as compared with indigenous products. Thus, in addition to a trade profit, there is a growth in consumption which redounds to the benefit of the monopolist trader. The physical isolation of the tribes and their cultural unity are factors that militate against them and in favour of the trader, since the laws of competition have no place there."

123. One very important aspect in this area of activity is the lack of correlation between the prices paid for the handicrafts or indigenous art products which are sold by the indigenous populations and the prices of different articles and goods (like fertilizers, tools, machinery) that are bought by these populations.

124. In general, the produce of the indigenous populations commands very low prices in spite of its excellent quality and unique characteristics while, at the same time, the articles they have to buy are transferred to them at very high prices, regardless of their quality which is not always very high.

125. This has been well known for a long time. It has unfortunately been an accepted, actively promoted and even forcefully maintained practice, sometimes even constituting an important element of public policy in this connection. It has, on the other hand, been repeatedly denounced by the indigenous populations themselves or on their behalf by solidarity groups as a form of domination by exploitation. In this respect the following paragraphs of the Barbados II Declaration should be borne in mind:

"Physical domination means economic domination. [... Non-Indians] also exploit us commercially, because they buy up our goods cheaply (crops, handicraft products) and sell to us at high prices.

"This domination is not only local or national but international as well. The big transnational corporations are seeking our land, our resources, our labour, our products, and are supported in their efforts by powerful and privileged groups in non-Indian society.

"Physical domination relies on force and violence and uses them against us".

126. Indigenous handicrafts often suffer from unfair competition by unscrupulous merchants who produce and/or sell cheap imitations of the indigenous handicrafts. These merchants thus deceive the uninformed buyer (in many cases a visitor or a tourist) who gets merchandise of an inferior quality. They also divert sales away from the legitimate producers of the authentic handicrafts. This seriously affects a market that provides at least a supplementary source of income for people who badly need it, to the benefit of swindlers who, not infrequently, have international connections. Although such occurrences are common and on the increase, the Special Rapporteur did not have any information on any official action designed to prevent and eliminate such practices and has only obtained indications of informal action in this respect.

127. Also important are the contents of training programmes that would tend rather to confine indigenous peoples to the role of handicraft producing agents than to allow them to seek some other type of higher education that they may freely choose for themselves. These occupational or professional preferences freely exercised by indigenous populations, being suitable in view of the specific circumstances under which they live, must not be discouraged or even denied, as sometimes happens through the abusive intervention of educational tutors or advisory personnel. 50/

50/ See, e.g. what has been said in the chapter on Education regarding certain practices by student advisers.

4. Alternatives in employment policy: Comments and considerations

128. In this summary of action taken by Governments in the area of vocational training and employment, it has been seen that much of the training has in the past taken place away from the indigenous communities, and has been aimed at finding employment for them elsewhere. Though traditional skills have at times been imparted, and the instructors have at times been indigenous peoples themselves, the tendency has been to concentrate on teaching them new skills and techniques which might enable the indigenous peoples to compete for employment at the national level.

129. There may be strong resistance by indigenous groups to employment strategies which are inconsistent with traditional values, and are premised upon the need for migration to major economic growth areas. If pursued to the exclusion of indigenous social and cultural values, such policies are tantamount to ethnocide (cultural genocide). This point has been made in a recent report published by the Department of Immigration and Employment in Canada:

"Notwithstanding their desire and readiness for employment, Native citizens do not wish to disappear as a people. Past Native employment strategies have not given enough importance to the establishment of cohesive Native cultural communities in those centres to which Native people move in search of employment. Any new Native employment policy will need to rely heavily on the Native migration policy of the Secretary of State with its network of Friendship Centres to provide a cultural continuum from reserves to urban areas to those who choose to settle in predominantly white communities. The absence of a strong cultural support system could turn an otherwise effective employment programme into a form of cultural genocide". 51/

130. The same report recognizes the essential policy dilemma, between one view which "behaves as if it were possible in any Native community to create sufficient jobs to achieve full employment" and the other which sees the principal source of new jobs in non-native growth areas, and therefore encourages migration. 52/

131. It must be recognized, moreover, that training programmes in themselves can in no way compensate for the provision of adequate resources and facilities which guarantee either wage employment or a subsistence livelihood. As the Director-General of the ILO has noted,

"Let there be no misunderstanding: training does not, as is often asserted, create new employment opportunities. Nor is the completion of a training course always a guarantee of employment. Training can only improve the chances of individuals to find wage employment or, if properly conceived and designed, lead to self-employment". 53/

51/ Department of Employment and Immigration, Canada "The Development of an Employment Policy for Indian, Inuit and Metis People", p. 8.

52/ Ibid., p. 15.

53/ Training: Challenge of the 1980s, (ILO), op. cit., p. 26.

132. In the same vein, it can be said that there is no real point in providing indigenous peasant farmers with information on new agricultural techniques, or the advantages of intensive farming, unless they have security of tenure over their land, equal access to agricultural credit with other sectors of the population, adequate marketing facilities as well as good communications for the marketing of their surplus produce. Training schemes in rural areas should best be considered as part of integrated rural development schemes planned in consultation with the local indigenous population.

133. If this does not occur, and if training programmes are planned without adequate knowledge of local circumstances and with no indigenous input, then they may well prove counter-productive. This is especially true of in-school training, in cases where a special syllabus is planned to cater to the needs of the rural population. If the majority of the rural population are compelled by economic circumstances to seek labour elsewhere, they might easily resent the special measures which are seen to discriminate against them by lowering their educational standard compared to that of the remainder of the national population.

134. When a large percentage of the indigenous population is engaged in permanent or seasonal wage labour, then knowledge of their legal rights as regards remuneration and job protection may prove to be the best way of furthering their interests. In several countries, such information often tends to be disseminated by non-governmental organizations rather than by Governments themselves.

135. In all projects that are planned or introduced for implementation in areas occupied by indigenous populations, indigenous participation is essential in the decision-making processes as well as in the provision of the labour force that they themselves may freely decide to contribute.

136. In this connection, tourist centres or tourist promotion developments located in indigenous areas deeply affect the indigenous communities and the lives of their populations who are often not consulted or allowed to participate in the planning processes. This exclusion is further aggravated by the communities' failure to share in the occupational and labour advantages that might have emerged (all personnel being brought in from outside, mostly from non-indigenous areas) and the absence of training opportunities for the members of the communities. Such opportunities should at least be available in certain occupations that are acceptable to the indigenous community members because of their acquired or traditional skills, or their willingness to acquire the necessary skills. These are, of course, only some aspects of the very complex and serious problems that tourism and its associated industries usually inflict upon indigenous communities who often suffer the full impact of the unfavourable effects of such industries, without sharing in the development accompanying them, which the indigenous communities themselves might consider desirable. The impact of tourism on indigenous communities should be the subject of serious and thorough study.

137. Consultation and participation are essential in areas of employment and vocational training and in respect of handicraft production, marketing and protection, as well as in other important aspects of life and work in present day societies owing to the increase in international links or contacts.
