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STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST
INDIGENOUS POPULATIONS

Final Report (First Part) submitted by the Special Rapporteur,
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XII. HOUSING

A. Introductory remarks

1. The International Bill of Human Rights refers by implication to housing in proclaiming the right to an adequate standard of living within a just and egalitarian order. Reference should be made in this respect to article 25 (1) (in connection with articles 2, 7, 22, 26 (2), 28, 29 and 30) of the Universal Declaration of Human Rights and to article 11 (1) (in connection with articles 2, 4, 5 and 9) of the International Covenant on Economic, Social and Cultural Rights. Furthermore, article 12 (1) (in connection with articles 2, 5 and 26) of the International Covenant on Civil and Political Rights guarantees for all persons equally the right to choose their residence within a State. These provisions are fully applicable to indigenous populations as part of the total population of the country in which they live, although, obviously, these groups of people give rise to special problems which, on the one hand, are similar to those of other minority groups and, on the other, present their own special peculiarities.
2. It should be noted at the outset that the great majority of indigenous peoples throughout the world live in rural regions, ^{1/} and therefore, generally speaking, they share the problems which affect rural populations.
3. In many countries and regions of the world, but generally more so in those where the process of industrial and economic development has not firmly taken hold, the attention given to urban and rural areas shows an imbalance because Governments tend to give priority in their investment and development programmes to the more populated centres. Thus insufficient attention is given to population groups in rural areas, and this situation is further accentuated among isolated groups or groups in remote places (refuge areas) where certain indigenous groups have resettled. Furthermore, frequently no attention whatsoever is given to groups living in forest or mountain areas who are isolated from the rest of the country's population.
4. It is not easy to determine whether this lack of concern denotes a deliberate process of discrimination against these groups. In certain cases the circumstances and the regions in which they live place them beyond the reach of normal government administration. It must be the purpose of this study to indicate where an imbalance exists which cannot be justified, and perhaps, if the available information allows, to give some indication of a possible solution to some of the problems most commonly encountered in this area and what changes in certain branches of government administration might accordingly be required.
5. With regard to housing, the indigenous populations of the various countries are faced with much the same problems as those affecting the rural populations in general, with the exceptions noted below.

^{1/} The information available records only one exception in this regard, New Zealand.

6. Although the indigenous populations have some special housing problems which are attributable to their way of life, their traditions and their customary economic occupations, other problems they face can squarely be attributed to neglect, lack of the necessary action or discrimination.

7. Indigenous rural housing is generally inferior to the rural housing of the poorest sector of the dominant group. Some of the problems which affect rural indigenous housing stem from tradition and custom. However, the great majority arise from the economic impotence of indigenous peoples, within the market economy that surrounds them, their socially and culturally oppressed position, and their lack of political and social power to bring about desired changes in their housing conditions. There is a need here for a serious study of the housing problem, especially as it affects the indigenous population, but the information available is not adequate for this purpose. Available data show, however, certain basic aspects of the problem, which will be discussed in this chapter.

8. In some countries, there are certain indigenous population groups whose housing conditions present unusual aspects which must somehow be taken into account in any solution of their housing problem.

B. Special housing of certain indigenous groups

9. Among the population groups that live in more or less isolated areas which are not particularly attractive to non-indigenous settlement and which can generally be characterized as refuge areas of the indigenous population, there are extreme cases of unusual types of housing, which often are of a strictly temporary nature and of flimsy construction - for example, the housing of the jungle dweller, the eskimo and the desert nomad.

10. Housing of the jungle dweller. While caves, rocky overhangs or hollow trees are merely used as shelters by the most primitive groups, other groups build houses for the community or the family or both. The jungle dweller who builds houses makes use of the materials most easily obtainable from the jungle itself (trunks and stakes for the framework; palm leaves, straw, leaves and grasses for the roof). The construction varies from simple types of refuge or shelter from the wind, the rays of the sun and the direct effect of rain (huts or screens), through more complex forms finally reaching more formal buildings of extremely variable dimensions which serve to shelter the family or clan or are used for important meetings. Special circumstances give rise to different types of dwellings such as tree dwellings and pile dwellings.

11. Eskimo housing. These dwellings are also constructed by using directly obtainable materials, i.e. blocks of ice covered with snow which are generally fitted together to form a cup-like structure (igloo). ^{2/}

12. Desert nomad housing. In some desert or semi-desert regions, nomadic populations do not build shelters or houses of any kind but sleep directly on the ground beside a bush or close to small fires. Other groups in other regions build huts which they abandon after using them for a short time. Another alternative is the collapsible or portable dwelling used by some semi-nomadic groups.

^{2/} Another cup-like structure existing in a quite different environment, but also built of directly obtainable materials, is the "hogan" housing that is characteristic of the Navajo Indians.

13. When efforts have been made to settle these nomadic or semi-nomadic groups, problems have arisen because of the reduction of the area to which they lay claim (as will be seen in the discussion of land problems). The type of housing to be constructed by or for such groups when they are "settled" more or less permanently also has presented problems.

C. General housing problems

14. In addition to these problems of providing or helping to construct housing and its adaptation to the physical and cultural needs of the beneficiary, problems also arise in connection with sanitation services and running water, although these are closer to the general problems facing non-indigenous rural populations. These same difficulties, together with quasi-urban housing problems, also arise when the indigenous worker, in an attempt to supplement his traditional source of livelihood, obtains seasonal work as a tenant farmer on land belonging to an agricultural enterprise. As the problems of seasonal housing are related to the provision of housing services under suitable contractual conditions, it is accordingly appropriate to consider the conditions under which housing is provided for these groups in order to determine whether or not unjustified inequalities and unsatisfactory arrangements exist in relation to what is generally considered adequate for other sectors of the non-indigenous population.

15. Housing problems likewise arise among urban populations when there are both indigenous and non-indigenous sectors in a given locality. Apart from the differences which may exist in the spacing of houses, based on tradition and custom of the persons or families occupying a dwelling, the indigenous leaders and competent authorities are faced with problems regarding basic decisions on the location, whether intermingled close together or more scattered, of indigenous and non-indigenous neighbourhoods. Furthermore, consideration must be given to whether or not housing and related services are available under the same conditions of equality to indigenous and non-indigenous sectors of the population alike. The opportunities that are available in the "free market" of the private-enterprise housing sector are also important. Even more important is the action by the State to provide adequate housing for indigenous groups in urban centres, as well as the conditions under which this is done, which is always to be free from unnecessary impositions.

16. Housing problems that are largely attributable to the scarcity or inadequacy of housing arise in all parts of the world. These deficiencies in quantity or quality are clearly accentuated and exacerbated in areas of high population growth. When, due to underemployment or growing unemployment in rural areas, there is a mass exodus from those areas to the urban centres, existing shortages in the urban centres become extreme, and, at the same time, housing within the reach of the new arrivals falls even further below the minimum safety and health requirements.

17. The "poverty belts", "slums" and "ghettos" of modern cities are well known. It is in these areas, already plagued with problems and deficiencies, that the new arrivals find a place - or make a place - for themselves. The basic services there, such as drinking water, running water, sewerage, drains and rubbish collection, are either extremely defective or insufficient, with the resulting consequences.

18. Because of their limited or non-existent purchasing power, these groups of the population cannot leave such districts and are caught in a net of circumstances which is frequently worse than the situation that they left behind in their place of origin in the country, even though there is the vague possibility that things may improve in the distant future.

19. This situation becomes still more serious when the new arrivals are illiterate, have a poor command of the language spoken in the city and have traditions and habits which are ill adapted to the peculiarities of modern urban centres. These persons constitute a large proportion of the indigenous groups who settle in the poverty belts, slums and ghettos. It is thus apparent that while they suffer acutely from the whole gamut of problems facing other new arrivals in similar circumstances, their problems are made more numerous and serious by their own special difficulties. The acute housing shortage is made even worse for these groups, which find themselves in a particularly unfavourable situation from the very outset.

20. Furthermore, those who do manage to escape from such circumstances are faced with the whole range of problems which, in this kind of urban environment, affect the indigenous populations just as they affect members of other racial, ethnic or cultural minorities who have been able to surmount the initial economic and social barriers of the dominant group.

D. Discrimination and the elimination thereof

1. General remarks

21. Discrimination with regard to urban housing may stem from the law, contractual arrangements or practice. In any of these cases, it may be direct or indirect in nature, and it may either be deliberate or the consequence of actions which were not explicitly intended to be discriminatory. Such discrimination generally comes about through the use of certain "selective" legal procedures or the simple "selective" procedures of persons and groups.

22. The most direct and obvious forms of discrimination with regard to housing arise from local ordinances on selective zoning or from so-called restrictive covenants.

23. It is well known that under certain local ordinances, for example:
(1) specific areas may be assigned to the members of a particular group;
(2) persons belonging to a specified group may be prevented from residing or acquiring property in areas where persons belonging to other groups already occupy the majority of dwellings; (3) residents of certain areas must give their consent if persons belonging to another group wish to acquire or occupy a property in those areas.

24. It is also generally known that certain contractual arrangements compel the owners of premises situated in certain areas to sell or rent only to members of a specific group, or not to sell or rent to members of a particular group. There are also less obvious and direct contractual procedures which indirectly result in the exclusion of certain groups by imposing such requirements as: (1) the consent of certain persons or groups of persons; (2) a specified minimum income; (3) entry into clubs or associations which, in fact, only admit persons of specific groups; (4) a limited maximum number of occupants of a house; (5) a carefully chosen level of education.

25. One example of the more cunning legal methods that are used is to reserve entire areas of an urban centre or a rural area for public or private industrial use, which, in effect, stops the building of housing as a way of preventing these areas from being occupied by a group whose presence there might be considered "undesirable" or "inconvenient". A further example is that of pushing through plans for expanding a city or town to areas, which, by reason of their cost or other special circumstances, are inaccessible to certain groups.

26. Other more indirect procedures involve not so much the legal or contractual requirements or conditions imposed but rather the fact that they are applied much more strictly for persons from certain groups than for those from others.

27. In addition to these procedures - generally based on the concept of "zoning" - to prevent the access of certain groups to specific areas, other procedures are used to evict certain groups from the areas they occupy which are wanted by the dominant groups, when the former are not willing to accommodate the latter by selling out and vacating the area they occupy.

28. A procedure which comes within this last category is that of harmful or dangerous installations being set up in areas occupied by certain groups thus making it impossible, difficult or inconvenient for them to remain there. Sometimes the discomfort, harm or danger caused is not deliberately sought, but it should be noted that whether the effect is intentional or not, great care should be taken to ascertain whether the compensation or reparation which should be made is adequate and acceptable. In the case of ancestral lands, for example, the reparation or compensation procedure can actually be used to carry out an "expropriation" which would not normally have occurred. These lands or premises have been placed "out of bounds" as a result of legal texts on the basis of the evident will on the part of the indigenous groups to keep them undisturbed and devoted to the purposes mandated by tradition.

29. A final point to be noted in this preliminary analysis of discrimination with regard to housing is that it is a particularly serious matter to prevent the free flow of certain groups to given areas and, consequently, to force those groups indirectly to remain or settle in or to constitute the "belts", "slums" or "ghettos" in housing districts which are rejected by the dominant groups as unsuitable. Frequently the district in which a person is forced to live affects his access to schools and to public and private places and services, which, moreover, are generally less satisfactory than those available in other sections, districts or areas.

30. In such a district, the buildings are generally in a state of dilapidation or poor repair, and, as already stated, there is a lack of basic sanitary installations and of adequate communal recreation areas. In addition, street lighting, public and private transport services, and municipal services such as running water, drinking water, sewerage, drainage and rubbish collection either do not exist or are inefficient or inadequate.

31. Although the information on housing problems in the various countries for which data are available is scarce, it is sufficient for a discussion of certain aspects of the matter.

2. Data on specific countries

32. Several Governments have made statements of a general character asserting that there was no discrimination of any kind against any person or citizen in the matter of housing. Others have made reference to legislation preventing, prohibiting or punishing discriminatory acts, including acts related to housing, still others have mentioned the fact that while the same legal provisions apply to all, there are differences between indigenous and non-indigenous housing. These differences are attributed to something other than discrimination, the weak economic position indigenous persons and groups occupy in society at large, the traditional occupations to which they adhere or the traditional land tenure institutions and practices which may act as obstacles to obtaining loans and grants for housing purposes, or a combination of these factors. Finally, some of these Governments admit, either explicitly or implicitly that discrimination does play a role in creating or prolonging these differences.

33. Focusing first on general statements 3/ it may be noted that the Government of Bangladesh has communicated simply that "there is no discriminatory treatment against any citizen of Bangladesh in respect of housing." Containing an implied reference to citizens, a Danish official publication has stated that in Greenland today "Danes and Greenlanders live side by side in the same blocks. Discrimination in the traditional sense is non-existent." 4/

34. Other statements contain assertions on the inexistence of discrimination de jure - or even de facto - coupled with references to legal provisions designed to prevent, punish or eliminate any possible discrimination in housing.

35. Thus according to information provided by the Government of Finland no direct or indirect limitations, restrictions or obstacles whether de jure or de facto are imposed on the access of Lapps to ownership, rental or occupation of housing. The provisions of Article 6b of the Penal Code, would be applicable to persons guilty of imposing such limitations, restrictions or obstacles. 5/ The Government later makes reference to certain de facto differences between Sami and non-Sami housing. 6/

36. The Government of Australia first simply stated that the authorities "have generally considered that positive programmes to meet aboriginal housing needs will be more effective than legislative or administrative provisions to combat discrimination in this field." Nevertheless, the Government has also communicated that

"Clause 12 of the Racial Discrimination Bill, 1975, makes it unlawful for a person, whether as principal or agent, to discriminate against a person by reason of the race, colour or national or ethnic origin or by reason that he is an immigrant, in the provision of land, housing and other accommodation".

3/ The Government of Costa Rica has stated simply that "these aspects", that is to say, all those concerning special measures related to indigenous housing, have been covered by the Executive Decrees for the setting up of Indigenous Reserves and that those Decrees, in turn, have been "duly incorporated in the Indigenous Law No. 6172 of 20 December 1977 for due application". However, the Special Rapporteur has found no explicit references to housing in the texts either of the Decrees or of the Law and is not in a position, therefore, to provide any relevant details.

4/ Greenland Arctic Denmark. (published by the Ministry of Foreign Affairs of Denmark), 1977, p. 27.

5/ Article 6b of the Penal Code of Finland deals with acts or the refusal to serve a person or to admit a person to a public meeting because of his race, colour, racial or ethnic origin, or religion and provides for sanctions of imprisonment or fines for such offences of "discrimination". See para. 73 in chapter VIII of the present study (E/CN.4/Sub.2/476/Add.5)

6/ See para. 44, below.

37. The Government of New Zealand reports as follows:

"The Race Relations Act 1971 already contains provisions aimed at preventing discrimination against Maoris or other ethnic groups in relation to housing. There have in the past been occasional cases of what seemed to be discrimination when Maoris endeavoured to rent houses or apartments, but a remedy is now provided by the Act. The Government's Maori housing programme has operated in the urban areas on the basis of spreading Maori homes throughout the rest of the population, rather than concentrating them in particular areas. This has caused very little difficulty and has shown that Maori and non-Maori families are usually friendly neighbours. Opposition to having Maori families in a neighbourhood is not common.

"During the year ended 31 March 1975, the Race Relations Conciliator appointed under the Race Relations Act 1971 dealt with 14 complaints alleging discrimination against Maoris in relation to housing. Upon investigation, the Conciliator found that six cases were not justified, one was justified, one was rectified and the others were withdrawn or discontinued.

"...

"No cases have been reported to the Race Relations Conciliator, or to the Maori and Island Affairs Department, of Maoris being intimidated or subjected to pressure to induce them to sell, vacate or abandon housing which they are already occupying."

38. Other general statements like those of the Mexican Government denying all discrimination - "No such discrimination exists" - or of the Government of Norway denying any de jure discrimination "Legislation on housing contains no special provisions giving the Lapps less secure legal status than other Norwegians" are later followed by observations on the reasons for existing differences or the lesser capacity of the indigenous people to protect their rights and interests in matters of housing, which are discussed below.

39. It is emphasized in the information on a number of countries that the poor housing situation of indigenous peoples, particularly of peoples living away from their ancestral homelands, owes more to social or economic causes than to racial or ethnic discrimination.

40. Thus, the Anti-Slavery Society, referring to indigenous groups living outside their ancestral areas in Paraguay, says: "No racist limitations are imposed on the indigenous access to housing. The bad housing situation of those indigenous groups no more in their traditional environment is rather a social than a racial problem". The Society adds, about the Guarani living outside their traditional environment, that "the most effective measure to improve upon the housing conditions among the Guarani seems to us to be the increased better distribution of their salaries".

41. The Government of Mexico, referring also to the economic status of indigenous groups in this regard, went on to say ^{1/} after its general statement, that "In fact, the limits, restrictions and obstacles which may be suffered by indigenous persons and communities stem from their economic situation and not from their being subjected

^{1/} See para. 38 above.

to discrimination. It is highly important to bear in mind that this situation is in no way exclusive to indigenous nuclei but is similar to that endured by a considerable number of Mexicans who live in similar economic conditions, in desert, semi-desert and mountainous regions of the country and is due to complex geographic, economic and social problems faced by our nation".

42. Similar ideas seem to be present in the following statement by the Government of the United States, after asserting that "anti-housing discrimination ordinances apply to indigenous persons.. should they be needed". 3/

"Housing patterns of indigenous population living in urban areas largely result from their economic situation. Those in low paying jobs may live together in indigenous communities. Others are scattered throughout the urban population."

43. The Norwegian Government after its general statement quoted above, 2/ pointed out, however, that "for various reasons the Lapps may in reality have less opportunity than others to safeguard their rights and interests in the sphere of housing. In this connection attention is particularly drawn to the generally weak economic situation of the Lapps and to the fact that their dispersed pattern of settlement and sometimes limited knowledge of Norwegian may make it difficult for them to make contact with the public and private bodies competent to offer assistance and advice on housing questions".

44. In other cases, reference is made to the differences existing in the housing problems encountered in certain regions of the country and/or between those faced by the indigenous populations and by the non-indigenous populations. Thus, the Finnish Government has made reference to the traditional occupation of reindeer breeding and/or to the temporary character of arrangements made, in addition to pointing out the differences existing between the northern and the southern parts of the country in connection with housing:

"A housing shortage exists mainly in the southern part of the country, in big cities and industrial centres. It is not a typical problem of the Lapp populations. However, certain exceptional measures were needed for the granting of land and houses to the so-called Skolt-Lapps who had moved over to Finland as refugees from the Petsamo province surrendered to the Union of Soviet Socialist Republics in accordance with the Truce of 1944. After some temporary arrangements, the final settling was made possible by Act No. 273 of 20 May 1955 which was supplemented by Act No. 593 of 19 September 1969.

As a general observation, the Government mentioned, nevertheless, that the

"dwellings of the Lapp populations, on the average, are smaller and less equipped than those of other populations. This is at least partly due to the traditional way of life of the Lapps and, in the case of the Skolt-Lapps, to the difficulties encountered in their resettling."

3/ See para. 50, below

2/ See para. 38, above.

45. With regard to some countries, express reference has been made to common tenure of land, particularly, in traditional indigenous areas, in contrast to other forms of land tenure outside those areas. It is stated that in no such cases is there any de jure discrimination; but mention is sometimes made of certain problems which arise for indigenous groups holding land in common when it comes to obtaining loans or negotiating other forms of housing finance. 10/
46. The Mexican Government states that a distinction must be made between communal and private property, which are governed by different legal rules. Indigenous groups have the right to possess all communal property jointly and to use it, therefore, to satisfy their housing needs; furthermore, this property is unalienable imprescriptible and unattachable. With regard to private property, indigenous persons are entitled to it without restrictions other than those imposed by the law of the land on all Mexicans.
47. Likewise, the Chilean Government reported in 1975 that, except for the form of land tenure and the use, enjoyment and disposal of indigenous lands of the communities in the south of the country, indigenous groups are in all other respects subject to the ordinary law. They may buy and rent property and obtain loans in order to acquire it, without restrictions of any sort. Thus, for example, an indigenous person living in the communities of the south is completely free to buy a flat in Santiago.
48. The Canadian Government has stated that: "the native people of Canada are not restricted as to ownership, rental or occupation of housing on the basis of race. In raising loans for house-building, however, Indians have been impeded by the reserve system which will not permit Indian lands to be mortgaged".
49. In some countries, including some that were mentioned above, it has been recognized, however, that at least part of these differences in the condition of housing and in the access to it, stem from phenomena of discrimination against indigenous populations. Thus, for example, it has been stated that in Canada although no comprehensive survey of off-reserve housing has been undertaken, most reports indicate that a significant proportion of Indians off reserves have been confined to sub-standard housing, not only as a result of their lower incomes but also due to discrimination in the housing market. A recent study for the Canadian Council on Social Development asserts that prejudice against native renters (including Indians) is greatest in cities, where natives are treated more poorly than immigrants from other countries.
50. The Government of the United States of America has stated that: "Anti-housing discrimination ordinances apply to indigenous persons as well as to other minorities should they be needed". Indigenous persons not on reservations are subject to the same housing programmes that are available to all citizens.
51. In the information received from the Government of the United States of America there is, however, one sentence stating that "in urban centers, such as Los Angeles or Chicago there is very little discrimination against indigenous persons living anywhere they have the means to live".

10/ These problems will be examined a little more closely later. See paras. 109 to 111 and 171 to 176 below.

52. Non-governmental sources are more outspoken. An author writes that:

"In any event, most urban Indians live in marginal or sub-marginal housing. At least in some areas this is due to discrimination; in addition, of course, it is strongly related to the lower income level of the Indian worker. However, a recent study conducted by this writer strongly indicates that in some cities Indians are not acceptable as tenants in middle class housing even when they are able to afford it." 11/

53. A publication contains information to the effect that:

"The urban American Indians for reasons of employment or lack of housing on the reservations compete with other minorities and the general public for housing. In most cases, they find themselves in poor, inadequate, and unsafe houses and/or apartments." 12/

54. The same source states that discrimination against the American Indians is prevalent in three categories where American Indians may seek shelter: (a) home ownership, (b) rental, (c) temporary occupancy.

"(a) Home ownership - Although there is a law which prevents the American Indian from experiencing discrimination to potential homeowners, sellers of such units in urban and rural areas still exist who avoid selling their property to American Indians; for example, an Indian family had purchased a home in a western state through a real estate broker. The seller became outraged when told that his home was sold to an American Indian. Within a few days of the sale, the seller proceeded to rip out most light, curtain, and bathroom fixtures that would normally go with the sale of a home. The landscaping was also dug up and shrubs, trees, etc. were removed.

"(b) Rental in urban and rural areas near American Indian reservations - Discrimination occurs in cities or towns near Indian reservations and/or for American Indians attending colleges or universities. They face the problem of obtaining adequate, safe and sanitary homes and/or apartments.

"(c) Also, the migrant farm labor seeking temporary shelter faces the same problem. Numerous examples can be given, but lets look at two: a) Temporary housing for university students - Students find it very difficult to obtain rentals. Many are forced to accept rental which is generally in poor physical condition but pay market rental rates. The market was tested in a western college community by the rental listing provided by the university. An Indian student answering a home listed would be told that the unit had just been rented; an anglo would go to the same address and find that the unit was still available. b) Each year hundreds of Indian migrant farm laborers are recruited to farms in various states to assist in the harvest of farm produce. When being recruited they are told housing would be provided to them; in most cases, the housing conditions are worse than on the reservation. The discrimination laws do not seem to apply here.

11/ Joann Westerman, "The Urban Indian", in Current History, December 1974, p.27.

12/ American Indian Law Newsletter, vol. 7, No. 11, Special Issue containing the American Indian response to the response of the United States of America, p. 28.

"With these two obvious situations, it takes substantial documentation before any court of law will enforce the act. In many cases, the charges would be dropped because of lack of evidence to prove discrimination." ^{13/}

55. The information on Sweden refers to certain restrictive legal measures which were intended to apply to Sami people dedicated to traditional activities of reindeer breeding, limiting them to "dwellings of Lapp type (i.e. tents with an open hearth and an open smoke hole) ^{14/} but which could not be fully applied and ultimately fell into disuse, making way for positive steps both to provide and to improve housing. These are considered below in connection with special measures which have been adopted with regard to housing.

56. As regards the question of measures to protect indigenous persons, families or groups from intimidation or pressure intended to induce them to sell, vacate or abandon housing they are already occupying, it should be borne in mind that this is sometimes tied in to the possession of the land on which this housing exists. The loss of the land means in most cases the loss of housing or housing rights. Some cases will, therefore, be found in the chapter dealing with land, quod vide.

57. A few Governments have, however, transmitted very general information as regards this matter, stating either that no pressures exist on ethnic grounds; that no special measures are needed or that all nationals are protected from intimidation or pressure by the same general laws.

58. Thus, for instance, the Mexican Government transmitted a categorical statement saying that "No such pressures exist on ethnic grounds."

59. The Finnish Government states that no measures are needed to protect Lapp persons, families or groups from intimidation or pressure intended to induce them to sell, vacate or abandon housing they are occupying.

60. The Canadian Government has stated in this regard that

"Protection against coercion in the matter of housing is afforded to all Canadians by law."

61. According to the Australian Government "There are no special measures to protect Aboriginal Australians from pressures or intimidation intended to induce them to sell, vacate or abandon housing they occupy, as they are entitled to normal protection under Australian law."

62. With regard to the prevention of dangerous or harmful construction in areas now occupied by dwellings of indigenous persons, families or groups or around such areas, the Governments which have transmitted information in this regard have simply stated that: in this matter the same policies are applied and the same measures adopted for indigenous and non-indigenous groups (Mexico); that "building laws and regulations

^{13/} American Indian Law Newsletter, vol. 7, No. 11, loc. cit., pp. 27-23.

^{14/} See para. 145, below.

in all provinces protect the population as a whole against nearby construction which could cause damage to their dwellings" and that "no special legal provision is made to protect native rights in regard to housing off-the-reserve, but property on-the-reserve may not be alienated from Band use" (Canada) or that "Aboriginals enjoy the general protection of the law in relation to dangerous or harmful construction adjacent to places where they live." (Australia).

63. The New Zealand Government has furnished more detailed information, stating that

"The control of dangerous or harmful construction near residential areas of any kind is exercised by the local authorities under the Town and Country Planning Act and under the bylaws of the local authorities relating to the erection of buildings. The Town and Country Planning Act requires local authorities to produce plans of the whole of the area which they administer under which all land is zoned as residential, commercial, industrial, etc. No building of any sort may be erected without a permit from the local authority and no permit will be granted for a building that does not comply with the building bylaws. Nor will a permit be issued, for example, for an industrial building to be erected in an area which is zoned residential. All this system of law is of general application."

64. The Finnish Government has furnished information on the prevention of future harmful activities in Sami areas and on the evaluation and compensation of damage caused by such activities in the past. The Government states that in order to avoid harmful and dangerous construction in the future, a Government sponsored environment plan comprising the whole Lapp County has been started. The work for the evaluation of damage inflicted by touring activities upon the local populations in the Lapp County has also been started. Certain administrative measures have been taken and grants given to compensate for the damage to the Lapp environment resulting from certain industrial undertakings (like hydroelectric stations, logging and lumbering activities, as well as growing tourism).

65. The chapter on health and other matters and the one on land go into these questions of harmful or dangerous activities carried out in areas occupied by indigenous persons, groups or communities, or in the neighbourhood of such areas.

E. Contemporary housing situation

1. Introductory remarks

66. The present study does not claim to deal with the world housing situation, or even with the indigenous housing situation in the countries it covers. It is concerned merely with the differences which exist in those countries between indigenous and non-indigenous housing and the role which discrimination may play in those differences. It has to analyse, to the extent the available information permits, the measures taken in those countries to overcome that situation with a view to eliminating discrimination, if any, and adopting suitable policies aimed at affirming and upholding the effectiveness of the indigenous person's right to clean, healthy and satisfactory surroundings, with housing of types and standards

suitable to family needs in the communities chosen by them and possessing the services essential for present-day living. It is essential that, in all this, no undue inroads should be made into indigenous traditions in essential aspects as determined by themselves. It is important, therefore, to establish whether there are procedures for consultation of the indigenous communities concerned and their participation in the processes of planning, siting, designing and building housing.

67. However, before proceeding to examine the differences to be found, the discrimination that exists, the policies adopted and the measures needed in indigenous housing in order to overcome the unfavourable situation prevailing nowadays, certain aspects of the over-all housing situation during recent decades should be noted. This is necessary if only to place the discussion of the relevant aspects within the requisite context, by reference to certain general housing phenomena which have a bearing on the subject of this study. 15/

68. In the developing countries particularly, a clear disparity exists between the rural and urban areas, in standard of living and in economic and social opportunities. The high rate of emigration from the former areas to the latter, stemming in part from this disparity, together with the high rate of population growth, has created in urban centres, during recent decades, a housing demand much higher than those countries can cope with. The attraction of larger towns for the inhabitants of rural areas has resulted in a huge demand for housing, entailing massive investment in urban installations. The lack of suitable policies, allied to the staggering rise in urban land prices, has made it even harder to carry out housing projects.

15/ The summary review that follows is based on one or more of the following United Nations publications: World housing conditions and estimated housing requirements, Sales No. 65.IV.8; Review of the housing situation in the ECAFE region (E/CN.11/1 and NR/SUB.4(9)/L.6); Improvement of slums and uncontrolled settlements, Sales No. S.71.IV.6; 1970 Report on the world social situation, Sales No. 5.71.IV.13; The realization of economic, social and cultural rights: problems, policies, progress. Study by Manouchehr Ganji, Special Rapporteur of the Commission on Human Rights, Sales No. 9.75.XIV.2. In addition, two United States official publications have been consulted: United States Senate, Ninety-first Congress, Second Session, Select Committee on Nutrition and Human Needs, Nutrition and Human Needs, 1970, part 4, Housing and Sanitation, Washington, D.C., United States Government Printing Office, 1970; and Department of Health, Education and Welfare, Public Service, Issue study on housing, urban rural problems and sanitation, CPEHS-OPD, Program Analysis Series, August 1969, mentioned in the previous publication, particularly pages 1787 and 1797.

69. The shortage of funds and the lack of trained labour and technical personnel from which the developing countries suffer have further complicated matters. As a result, the proposed housing targets have not been reached in those countries. Moreover, the building that is done is usually concentrated in urban areas, which receive priority. Relatively few resources are earmarked for building or improving housing in rural areas, where the bulk of the population actually live.

70. In general, serious deficiencies are to be found in essential housing services and there is serious overcrowding in existing units, which are clearly inadequate.

71. With regard to quality of services, housing conditions in the majority of developing countries are far from satisfactory. In Latin America, the countries in which more than 70 per cent of dwellings had piped water formed roughly one third of the total, and the countries in which more than 70 per cent of dwellings had electricity numbered only 10. In Paraguay, only 23 per cent of dwellings had piped water, 33 per cent had drinking water and 47 per cent had electricity. No proper account of the situation in Asia can be given with the data available. What information there is on current conditions shows that the housing situation is critical, although it may have improved somewhat.

72. Overcrowding, that is to say, the occupation of housing units by an excessive number of persons, is a widespread problem felt particularly in urban slums and in rural areas. In general, the figures are disturbing.

73. In Asia, an average density of over 2.5 persons existed in many countries; 59 per cent of dwellings in Pakistan and 51 per cent of those in Malaysia had a density of three or more persons per room.

74. In Latin America several countries had an average density of over two persons per room. In Mexico and Paraguay the average density was 2.6 persons per room. The data also showed that 53 per cent of dwellings in Paraguay, 47 per cent of those in Mexico, 42 per cent in Nicaragua, 40 per cent in Ecuador, 38 per cent in Panama and 34 per cent in Peru had a density of three or more persons per room.

75. It has been calculated that in urban centres the over-all population density of the low-income districts is 650 or more persons per square kilometre in the large cities, compared to an average density of 30-50 persons per square kilometre in high-income districts. The high population densities for the low-income districts reflect the large number of persons per room occupied, the low ratio which exists between the street surface area and the built-up area and the small area of green space per inhabitant.

76. In the urban sector, income disparities are revealed clearly in the different living conditions in different urban districts, particularly in large towns and their environs.

77. The normal picture is one of a marked contrast, between residential districts and suburbs, consisting of luxurious buildings provided with all up-to-date services and ample green space, and huge slum areas, overcrowded with families living in the worst conditions in squalid mud houses and shanties without water, electricity, garbage removal and other necessary facilities.

78. In several countries in Latin America there are large numbers of people living in slums and uncontrolled settlements. As examples, it may be mentioned that, in the 1960s and 1970s, slum dwellers made up 30 per cent of the population in Buenaventura, 50 per cent in Recife and Maracaibo, 49 per cent in Guayaquil and 46 per cent in Mexico City. In Lima, their numbers increased from 360,000 in 1961 to 1 million in 1969, and in Mexico City from 330,000 in 1952 to 1.5 million in 1966.

79. It has been calculated that at present slums and uncontrolled settlements in the countries of Asia and the Far East represent between 15 and 47 per cent of the total housing stock.

80. Many countries have adopted low-cost housing policies to remedy the situation. Mortgage banks and special housing funds have been set up or expanded to deal with the problem of uncontrolled settlements. A great deal could no doubt be done if Governments gave sufficient priority to housing development. With present-day theoretical and practical knowledge, the chief need is to give these regions adequate funds together with committed official support. The majority of Governments have adopted measures to alleviate the housing shortage; but unless they earmark a sufficient percentage of investment for a rigorous campaign to establish a balanced socio-economic structure housing conditions will get worse.

81. The majority of Governments in Asia have allocated proportions well below what is needed and, logically, housing conditions have deteriorated. According to available statistics, in some of these countries only 0.5 to 3.0 dwellings per 1,000 inhabitants had been completed in 1967, and in 1960 the building of 8 to 10 dwellings per year for every 1,000 inhabitants of the developing regions of the world had been set as a target, on the assumption that available dwellings, which were reasonably sufficient in number, would be renewed within 30 years in urban areas and 20 years in rural areas.

82. A reduction of these figures will depend on the strategy adopted at the national level for investment in housing, land use, construction materials and training of technical manpower and, above all, on a more equitable distribution of employment opportunities, income, health services and other public services and on better housing in rural areas. Without a well planned and executed strategy, it can certainly be foreseen that the existing numbers of slum dwellers and uncontrolled settlers will increase rapidly and give rise to further social crises.

83. Only a few countries of Latin America and Asia had managed to build enough housing with the minimum requirements to accommodate a rapidly growing population.

84. Moreover, housebuilding tends to be concentrated in urban areas, which are given priority. Relatively few funds are allocated for housing or improvements to existing dwellings in rural areas, where the bulk of the population actually lives.

85. The market-economy developed countries are not free from the problems of housing shortage and inadequate housing, or from the problems of overcrowding. In such countries, these phenomena chiefly affect the deprived classes and those with limited incomes, despite the abundant goods produced by them, in contrast with the standard of living which prevails among other sectors of the population in these countries. Large sectors of ethnic or national minority groups have unfavourable housing conditions.

86. For example, in the United States of America, in 1968, further subsidies were approved, in addition to those already available, both for renting and for purchasing accommodation. Attention was also given to building houses for low-income persons in suburban areas, as a means of increasing the mobility of ethnic or national minorities, although the achievement of this objective in practice has encountered many difficulties.

87. In 1969 a study by the United States Government was published which includes the following statement:

"There are an estimated 6.7 million (9.9 per cent of the total) occupied substandard dwellings. Four million of these lack one or more essential indoor plumbing facilities (water supply, toilet facilities or bathing facility) and 2.7 million are in such a dilapidated condition that they cannot be rehabilitated without major repairs". 16/

88. In 1970 the following table was published in the United States, summarizing the distribution of inadequate housing in that country; the data are arranged according to race, income and location (metropolitan or non-metropolitan) of residence. Unfortunately, indigenous groups are not shown separately but are included in the category relating to "non-whites", and chiefly among those with lowest incomes and in non-metropolitan areas: 17/

16/ Department of Health, Education and Welfare, Public Health Service. "Issue study on housing, urban-rural problems and sanitation". CPEHS-OPD, Program Analysis Series, August 1969, p. 1797.

17/ United States of America, United States Senate, Ninety-first Congress, Second Session, Select Committee on Nutrition and Human Needs, Nutrition and Human Needs - 1970, part 7, Rural Housing, Washington, D.C., U.S. Government Printing Office, 1971 p. 2012, table 3. Testimony of George W. Rucker, Research Director, Rural Housing Alliance, to the Committee.

United States of America: Substandard housing (i.e. dilapidated or lacking in essential plumbing facilities: hot and cold running water, a bath or shower, and inside toilet), by race, income level and place of residence

(in percentages)

	1950	1960	1968
Percentage of all occupied units rated as substandard:			
All United States households.....	35.9	16.0	7.7
Metropolitan households.....	21.0	9.5	4.0
Non-metropolitan households.....	54.9	27.7	14.4
All white households.....		13.0	5.8
All non-white households.....		44.0	23.7
White metropolitan households.....		7.3	3.1
White non-metropolitan households.....		22.9	10.5
Non-white metropolitan households.....		28.2	10.8
Non-white non-metropolitan households.....		77.3	55.3
Households by income levels:			
Incomes under \$4 000.....	45.5	31.8	
Incomes of \$4 000-\$7 999.....	14.1	8.8	
Incomes of \$8 000 and over.....	6.6	2.5	
Metropolitan households:			
Incomes under \$4 000.....	28.8	20.9	
Incomes of \$4 000-\$7 999.....	9.4	6.1	
Incomes of \$8 000 and over.....	3.3	1.7	
Non-metropolitan households:			
Incomes under \$4 000.....	62.6	44.0	
Incomes of \$4 000-\$7 999.....	25.2	14.2	
Incomes of \$8 000 and over.....	15.8	5.2	

89. In Canada, the Federal Government had announced in 1968 its intention of devoting a greater proportion of funds than in previous years to housing for low-income families, the elderly and the disabled, and in 1970 it made available a sum of \$200 million for experimental housing programmes for families with low and modest incomes.

90. In general, a widespread housing shortage existed in Europe and Japan. In the latter country, although rents in most public apartment buildings are low, applicants for tenancy must have a minimum income to qualify for admission. In 1968 a housing survey showed that one family in eight lived in housing below Japanese minimum standards of space, privacy and suitability. One fifth of the families in Tokyo and Osaka were obliged to crowd or double up in small houses and apartments. Low income families criticize government housing policy, which tends to favour middle-income groups. 18/

18/ George L. Harris, and others; Area Handbook for Japan, Foreign Area Studies Division, The American University, Washington D.C. 1964, p. 32.

91. From Europe, data are available for two countries where the situation is relatively good - Denmark and Sweden. In Denmark, the Rent Subsidies Act of 8 March 1967 had placed low-income groups in a better position to maintain or achieve a reasonable housing standard. In Sweden, a country whose situation is regarded as relatively better than that of others in Europe, a study on the low-income class, made at the outset of the 1970s, found that 11 per cent of working-class households - which include many "non-poor" along with the poor - lacked three or more of the following services in their houses: hot water, drainage, lavatory, central heating, shower or tub, modern cooking stove, refrigerator, compared with 4 per cent and 1 per cent respectively for the middle and upper classes, according to their occupation.

92. Overcrowding was an even more serious problem. In over 26 per cent of working class families, there was more than one person to a room (not counting living-room and kitchen), as against 15 per cent and 3 per cent respectively in the middle and upper classes. 19/ Overcrowding was even more common among families with children under 16 years of age. Forty-six per cent of working-class families were living in conditions of overcrowding, compared to 22 per cent and 4 per cent respectively in the two higher classes. 20/

93. As is well known, the dangers of overcrowding include, among other things, infectious diseases, skin diseases, accidents in the home, emotional disturbances, invasion of privacy and the resultant tendency to spend more time away from home, with the usual consequences for family ties (relaxation of parental vigilance and control over children) and, in the absence of recreation, heightened predisposition to neurotic behaviour and undue friction. 21/

94. In general, the quality of rural housing is still very poor everywhere. In the majority of developing countries, a very low percentage of houses in rural areas had inside running water, electricity and lavatories; in addition, a high degree of overcrowding occurred. Migration and uncontrolled settlement of marginal groups in the slums or outskirts of large towns is due in part to the desire to escape those disadvantages, but such groups then find themselves in similar or worse circumstances in those localities.

19/ Sweden, Arbetsgruppen för Låginkomstfrågor (Working Group on Low-income Questions), Kompendium om Låginkomstutredningen (Compendium of studies on low incomes), Stockholm, 1971, p. 130.

20/ Ibid., p. 132

21/ See M. Ganji, op.cit., p. 241.

95. It should be remembered that it is in rural areas and in slums that the majority of indigenous persons and families seeking housing adequate for their requirements are to be found; needless to say, they do not find it.

96. A brief outline is given below of the current situation relating to indigenous housing in the few countries having the data to make such a review possible. It is stressed that the examples given are not intended to single out the countries mentioned in particular. Much the same situation prevails from one developing country to another and from one industrially developed country to another. As will be seen below, in general there are also notable similarities outside indigenous areas in all countries, in the sense that, in all of them, indigenous housing constitutes the lowest level of housing and is in the worst state, with, a high degree of overcrowding. Housing in indigenous areas is found as a general rule to be equal in condition, with no discrimination, although its quality leaves much to be desired. All this applies today, after improvement and building programmes undertaken in this field in many countries. Inadequate housing, generally in poor condition, and overcrowding in existing units means that the indigenous housing presents a dual problem, both quantitative and qualitative, in all countries. There are, of course, features which are either accentuated or of lesser importance from country to country or even among different regions of the same country.

97. In reviewing here the available data relating to the current indigenous housing situation, a distinction should be made at the outset between housing in urban centres, large and small, and on the land of agricultural undertakings, which is open to the entire range of discriminatory attitudes and practices prevalent in those environments, on the one hand and, on the other, housing located in the rural communities of various types, either within or outside the areas occupied by indigenous communities, which suffer from other problems stemming chiefly from the socio-economic factors relating to the situation of such population groups.

98. Two examples are given of Latin American countries to illustrate situations that exist in all of them in different degrees of intensity or acuteness. Paraguay and Ecuador reflect typical manifestations of the problems encountered in matters of housing by indigenous people on or near non-indigenous settlements.

99. Of the Asian countries Indonesia serves as an example of the general situation and attitudes in that part of the world.

100. Of the industrially developed countries, Canada and the United States of America are mentioned here, again, only as exemplifying typical situations, in that group of countries, of the housing problems affecting indigenous people outside of the reserves or reservations.

2. Indigenous housing outside the traditional or reserved areas

101. As to the housing of indigenous labourers at the edge of non-indigenous settlements, outside of their traditional environment in Paraguay, Mr. F.K. Schmitz-Wimenthal, who visited the indigenous population in the Mennonite Zones in 1970 on behalf of the German Federal Ministry for Economic Co-operation, wrote about the housing situation there in an official report on this matter, that:

"Each settlement has its Indian workers' quarter, which is not easily shown to official observers, as the housing situation there is catastrophic. E.G., at the edge of Loma Plata, an Indian quarter was built at a place where there is no water. The Indian women must carry the water on their heads over a distance of until three kilometres. They must wash in a mud hole, where children bathe and cattle drink, too. The houses have but one room, of about two by three metres, much too small for the large families, so that part of the family has to live outside under animal skins or covers." 22/

102. A similar image is described by Mr. Renshaw for the approximately 1,500 Indians of Fuerto Casado:

"Housing not so bad, inside the mission, but those living outside live in conditions of complete squalor, shacks or corrugated iron, sacking and old pieces of wood - when it rains everything is a sea of mud. All water is taken from one tap at the edge of the mission, often the supply is cut off". 23/

103. It has been remarked that the housing situation among the Western Guaraní in the Central Chaco is identical to the preceding one. 24/

104. In order to illustrate the situation prevailing in many developing countries in the 1940s, particularly in the Latin American region, the following information may be mentioned. In Ecuador, according to an investigation into the living conditions of the peasantry in various parts of the province of Fichincha carried out by Plutarco Naranjo Vargas for the National Welfare Institute, the Indians' and estate workers' houses consist generally of four mud walls enclosing a room roofed with tiles or straw. In most cases, the Indians share their houses with their animals. Suffice it to say that on estates where there is pedigree stock, the cattle are better housed than the workers. Leonidas Rodríguez Sandoval, presbyter of the Archdiocese of Quito, states that the Ecuadorean Indian's hut has no walls. The framework is made of untrimmed wood; this is stuck into the ground and thinly woven with reeds. There is only one narrow, low entrance with no door. There are no windows. The Indians sleep on the ground on a heap of straw beside the hearth. They have no tables and eat off and sit on tree stumps. Aníbal Buitrón and Bárbara Salisbury Buitrón, in a report submitted to the same Institute, after describing two thirds of the houses in the rural districts of the same province in terms similar to those above, make the following observation: "The hacienda owners care little or nothing for the condition of the houses intended for their tenant-labourers (huasipungueros)." 25/

22/ Information furnished by the Anti-Slavery Society on 3 September 1976, in connection with the present study.

23/ Ibid.

24/ Ibid.

25/ International Labour Office: Indigenous peoples: Living and Working conditions of aboriginal populations in independent countries. Studies and Reports, New Series, No. 35, Geneva, 1955, p. 110.

105. As an illustration of the situation of indigenous housing in several Asian countries, and of the attitude towards it found in many sectors of opinion, as well as of the policy being followed or proposed for adoption, the observations made on the subject in one of those countries may be mentioned here.

106. Referring to de facto differences existing in Indonesia between non indigenous and indigenous housing, the latter has been described in an official statement in the following terms: "their dwellings are not houses in the usual meaning of the word but still resemble huts ... Said huts do not meet the specifications of health, societal life or quality". 26/

107. The Anti-Slavery Society states that starting out with such an appraisal of housing in isolated communities, the Government has programmes aimed at resettling groups into model villages composed of individual family houses three meters square. This has occurred throughout Indonesia from the Mentawai Islands off Eastern Sumatra, especially the island of Siberut, to Ceram in South Maluku and in Sulawesi. The use of non-local building materials has meant that the standard reached is not as high as that achieved by using traditional methods and in consequence the completed houses are only used by the community to store food and during periodic official visits. Such programmes are framed in such a way as to be incompatible with traditional life, both in material used and in design, and the overriding principle of minimum disruptiveness has been sacrificed with the result that failure is inevitable.

"It is in the area of housing that government plans exhibit most explicitly the intention to change as soon as possible the traditional ways of life. In many areas of Indonesia, and especially in Kalimantan, this is a continuation of Dutch colonial practice where there was a systematic campaign against long houses which were burnt down. This has occurred in specific areas, not as official government policy, but rather enthusiasm on the part of local functionaries sometimes fuelled by a religious fanaticism." 27/

108. What is said of Canada and of the United States of America about the housing situation of indigenous people living outside of the reserves or reservations is also valid mutatis mutandis for Aborigines living off the reserves in Australia and for indigenous people living outside of their traditional areas on or near non-indigenous settlements in other countries.

109. In 1976 the general indigenous housing situation in Canada was summarized as follows: 28/

"General living and sanitary conditions are far below accepted standards. Over a period of 30 years, the Government's various housing programs have resulted in 31,164 houses for Indians. Of this number, only 14,145 are, by any modest standard, habitable at the present time. The balance require major rehabilitation (9,442) or are beyond repair (7,547). In addition there is a backlog of 4,351 houses required by existing families who have

26/ Department of Social Affairs, Written Statement dated 24 October 1975, pp. 10-11, transmitted by the Anti-Slavery Society.

27/ Information furnished on 3 September 1976, in connection with the present study.

28/ National Indian Brotherhood, Economic and Social Conditions of Canadian Indians, op. cit., pp.2-3.

no shelter whatsoever. It is expected that the housing need by 1981 will be for an additional 20,000 new houses. A further 9,000 existing houses will need major reconstruction. In other words, the Federal Government will have to find a way to deliver in five years, a number of houses close to the total which it had such difficulty providing over the past 30 years.

"In 1968-69, 10 per cent of the homes were one room, with an average of 5.5 people per household. The average area of new Canadian homes is just over 1,000 square feet, but 90 per cent of average Indian houses have less than half this area. 70 per cent of the Indian population have no water in their homes. Approximately 25 per cent use water hauled from sources known to be contaminated and another 40 per cent rely on surface water as a source. As many as 90 per cent use pit privies for sewage disposal and 10 per cent have no means of disposal. Any organized means of garbage disposal is absent in about 40 per cent of Indian communities."

110. Further on the indigenous housing situation in Canada, on the reasons for the failure of existing policies and on the need for a new housing policy to solve existing problems in that area it has been written: 29/

"The housing needs of Indians are acute and worsening. The Federal Government has a responsibility to meet these needs within a larger context of related community needs which also need attention.

"In discharging its responsibility, the Federal Government has to be prepared to consider a significant shift in its policy orientation to the problem. This has to include major adaptations in terms of organization, financing arrangements and delivery systems.

"The kinds of policy and program adaptations which are necessary will need to take into account the legal, economic and social circumstances which distinguish Indian communities from other communities.

"A housing program, or indeed, any other program will not be accepted by Indians as a trade-off in whole, or in part, for their special status, the status of their lands, or for possible future claims against the Crown.

"The housing policy proposed by DIAND/CMHC does not recognize the nature of the Indian housing problem, the legal, economic and social conditions which govern Indian existence, nor the essential incompatibility between provisions of the National Housing Act and these conditions.

"Application of the proposed housing policy would represent for Indians a retreat by the Federal Government to the values and assumptions which produced the first housing policy in 1946. In the present circumstances, however, no significant number of houses would be produced and it would be difficult to hold any one accountable, because of the number of actors involved.

"A lapse of more years while the backlog of need and misery accumulates will mean more moral and physical destruction of Indian people. This condition Indians will no longer tolerate.

"SPECIFICATIONS FOR AN INDIAN HOUSING POLICY:

"The policy and the programs which are proposed in this submission are those which the National Indian Brotherhood supports. An Indian housing policy needs to recognize a number of important policy factors. These can be summarized as follows:

"(i) Indians have a right to a clean, healthy, and satisfying environment and to adequate housing of a standard which will meet the needs of families in the communities of their choice.

"(ii) The Federal Government has a primary obligation and responsibility to provide sufficient funds and technical support to bring Indian housing and community standards at least to the level enjoyed by the majority of lower-income groups in Canada. In this context, Indians can be represented as a "no-income" group and their need for housing and related programs constitutes an emergency situation.

"(iii) A primary federal obligation and responsibility with respect to all capital improvements on "lands reserved for Indians" can only be discharged adequately if the Federal Government assumes the full costs of such improvements in the first instance. Any funds that might become available from other sources must be seen as a form of supplementary assistance which would not have the effect of offsetting, to any significant degree, federal monies specifically appropriated for Indians.

"(iv) The Indian claim to housing and other needed capital improvements is based on three main considerations:

"(a) The Federal Government carries, both historically and legally, a special responsibility to maintain the well-being of Indian people. This responsibility, for the most part, remains to be honoured.

"(b) All capital improvements on "lands reserved for Indians" including housing, are encumbered by the status of lands to which they are attached. Thus:

The Indian interest in capital improvements on Indian lands is one of "occupation and possession", as opposed to free-hold title. This interest, can only be liquidated within a highly circumscribed set of conditions which have the effect of placing any capital improvements completely outside the normal market.

It follows that, neither Indian lands, nor the capital improvements attached to them, can be regarded as equities in which individual Indians can develop a financial interest. Even if Indians had the financial resources to assume the burden of large mortgages and to amortize them, it is highly discriminatory for the Federal Government to attempt to twist the rules of property acquisition to fit a situation where such rules simply do not apply.

Within a much narrower context, Indians can be expected to pay a "use" fee, according to their means, for the right of occupation and possession, and to cover certain kinds of maintenance and service costs. They can also "sell" their

right of occupation and possession to the Band council or to any individual member of the Band. Such transactions, however, would involve relatively small amounts of money, more in scale with the present Indian economy, and would recoup to the seller only such investments as personal labour, the cost of materials, or the supplies personally purchased to improve the house.

"(c) The degree of poverty in which most Indian people live, and which they did not create, exceeds that of the majority of other Canadians who are also poor. This level of poverty has the effect of putting Indians outside the scope and reach of housing programs as now delivered by CMHC and the provinces, aside from the considerations which have been outlined with respect to the status of Indian lands and the capital improvements on such lands."

111. The information quoted in paragraphs 42 and 52 above and 174 to 176 below, in connection with the United States, shows that housing patterns of indigenous people living in urban areas largely result from or are closely related to their economic situation, although some are due to discrimination. Those in lower paying jobs live together, while others are scattered throughout the urban population, without real access to the better sections thereof. Eighty to ninety-five per cent of indigenous housing is dilapidated, makeshift, unsanitary and crowded, compared to eight per cent of the homes of the general population. Most indigenous persons do not have running water in their premises and what little there is, is contaminated. Often they have to haul water from far away places. Many do not have any of the modern conveniences that are taken for granted by other sectors of the population.

3. Indigenous housing on traditional or reserved areas

112. The situation of housing located on indigenous traditional or reserved areas does not seem to be altogether good either, although in certain countries it seems to be clearly better.

113. In fact, as far as Paraguay is concerned, the Anti-Slavery Society reproduced the description given by other observers about the very unfavourable housing situation of the indigenous workers in or near non-indigenous settlements, outside of their traditional environment and concludes that:

"The situation is much better for those Indians who still live in houses, huts or shelters of a traditional kind, where sufficient space is provided for the families."

114. As regards Canada and the United States of America, despite housing construction and repair programmes, as well as loan and grant schemes, the situation was still far from satisfactory in the reserves or reservations.

115. In Canada the housing stock on Indian reserves has increased by 64 per cent since 1958, but in 1977, more than 1,250 Indian families were living in houses which were recorded as needing replacement. Conditions of crowding have become aggravated, and in 1977 one in three Indian families lived in crowded conditions. 30/

30/ Indian and Northern Affairs Canada. Indian Conditions. A Survey. Published under the authority of the Minister of Indian Affairs and Northern Development, Ottawa, 1980, pp. 30-31.

116. The following table is included to illustrate the phenomenon of crowding in on-reserve dwelling units (1977): 31/

	% with one family	% with two families	% with three or more families
Urban	83.2	13.4	3.4
Rural	79.6	15.7	4.7
Remote	80.6	15.5	3.9
Total	81.2	14.8	4.0

The need for new housing on reserves has risen to approximately 11,000 units. This backlog has resulted from the following factors: (a) recent increase in family formations following the Indian "baby boom" of the late 1950s and early 1960s; (b) need to reduce crowding (13.8 per cent of on-reserve homes have two or more families, affecting 40 per cent of families); (c) need for replacement housing (Indian housing has an average life of 15 years compared to 35 years among the national population). To eliminate this backlog and to meet the normal new housing demand of 2,000 units annually, the current rate of construction (2,200 units per year) would have to be doubled for five years. In addition to an increase in the backlog for new and replacement housing, the number of on-reserve units needing major repairs has increased tenfold since 1960, representing an increase from less than 10 per cent to approximately 24 per cent. 32/

117. Regarding certain essential basic services in houses the same publication states: the proportion of on-reserve houses with electricity (though often with modest capacity) is approaching national levels. Those with water and sewage facilities, despite considerable improvements in the last 15 years, still lag far behind. The lack of services is more pronounced on rural and remote reserves, where in 1977 fewer than 40 per cent of houses had running water, sewage disposal and indoor plumbing facilities compared to more than 60 per cent of all Canadian rural houses. Variations of service levels on a regional basis may be attributed to differing capital investment priorities during the past 10 to 20 years, the accessibility of lands and differing life styles. 33/

118. The following charts show the situation in 1977 of sewage disposal and water supply in Indian on-reserve housing in Canada: 34/

31/ Ibid, p. 30. Department of Indian Affairs and Northern Development (DIAND) "Statistical Report Listing of Information Related to the Housing Needs Analysis, 1977".

32/ Ibid, pp. 30-31.

33/ Ibid, pp. 31-32.

34/ DIAND, "Statistical Report Listing of Information Related to the Housing Needs Analysis - 1977", cited in ibid, p. 32.

SOCIAL CONDITIONS living conditions

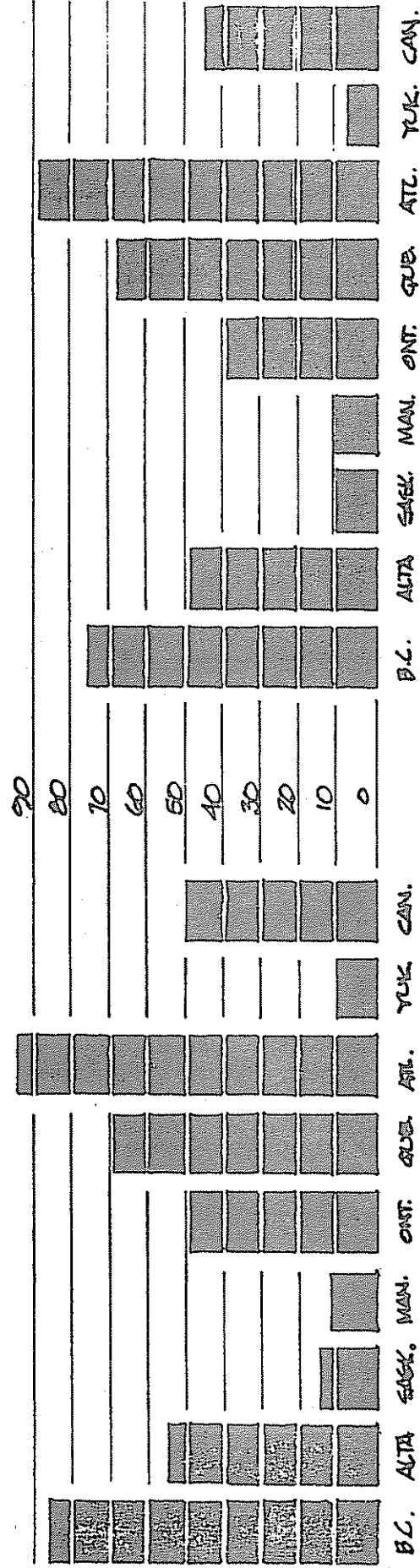
RUNNING WATER

On-Reserve Houses
1977

SEWAGE DISPOSAL

On-Reserve Houses with Pipe Sewers or Septic Tanks
1977

100%



source:
Statistical Report: Listing of Information Related to the
Housing Needs Analysis -- 1977, DIAND

Variations of service levels on a regional basis may be attributed to differing capital investment priorities during the past 10 to 20 years, the accessibility of bands and differing life styles.

119. The Government writes in 1973 that: "As indicated earlier, the Federal Government is engaged in a program through Federal subsidy of eliminating within a decade substandard indigenous housing on Federal reservation areas."

120. In this connection it has also been written: 35/

"Though public housing legislation was passed in 1937, American Indians living on reservations, representing the lowest income and most poorly housed minority in this nation, were not able to participate in this program until 1961, nearly 25 years after other poor people in urban and rural areas; thus nearly three decades behind in providing for housing needs to the American Indian.

"The impoverished American Indian has always appeared on the bottom rung of the priorities ladder for Federal aid - and housing aid has been no exception. Although the Bureau of Indian Affairs estimates that nearly two-thirds of all reservation homes are substandard at the close of the government's fiscal year 1973, development of new low income housing on most reservations is either pitifully inadequate or nonexistent.

"The program which was identified to be applied to alleviate the housing conditions of the reservation Indian was originally an urban program and was to become known as the mutual help program. Since 1969 when the program was adopted, the guidelines used to implement mutual help have been urban guidelines. To a great extent, this has led to the inadequacies of the program."

121. In October 1973 the Civil Rights Commission found in the largest reservation in the North American continent in which some 128,000 Navajos live,

"... a bleak situation of poverty and despair, joblessness and alcoholism, and most important, neglect and betrayal of the American Government, on which the Navajos, by treaty, were made dependent for survival.

"... Half of the Navajo population lives in rented houses of one or two rooms. Each home averages five occupants. 60 per cent have no electricity, 80 per cent no water. To meet ordinary United States standards, 19,281 new homes would have to be built.

"... ." 36/

122. Reservation housing has been regarded as one of the greatest hotbeds of corruption. It is pointed out that previous to the Kennedy Administration, Indians did not qualify for public housing. Many lived in substandard, makeshift accommodations. In 1972, when public housing was available to them, it was revealed by the BIA that of 88,450 Indian housing units, 33,453 were substandard. The BIA estimated that 48,300 new homes would be required to replace substandard homes and to provide homes for families living with other families. The same source points out that on reservation after reservation, rumours and charges of corruption in housing have become rampant. In addition, it is noted, allocation to public housing is also rife with corruption, in some cases usually at a tribal level. 37/

35/ American Indian Law Newsletter, Vol. 7, No. 11, loc. cit., p. 28.

36/ "Civil Rights Commission looks at Navajo Nation", in Akwesasne Notes, vol. 6, No. 1, 1974, p. 27.

37/ Burnette and Koster, The Road to Wounded Knee, Bantam Books, New York, 1974, pp. 97-98.

123. With reference to living conditions of reservation Indians it has been stated:

"As for living conditions, from 80 to 95 per cent of Indian housing is dilapidated, makeshift, unsanitary and crowded, compared to 8 per cent of the homes of the general population. Most homes consist of one or two rooms, constructed as a tar shack, dirt hut, an adobe mud hogan, or a grass wickiup. This housing offers little protection from weather fluctuations. Indians rely on fireplaces or wood-burning stoves for warmth and cooking. 'Nothing kills the incentive more than to live day-in and day-out in cramping quarters [of one room] surrounded by a dirt floor, a dirt roof, and sometimes, dirt walls', one observer said. One can appreciate the reasons for an Indian infant mortality rate four times higher than that of the general population, a Public Health Service official remarked, when one visits 'the types of housing in which [Indians] live'. These are the 'skid rows of the plains'.

"As for running water, most Indians have none on their premises, and what little there is, is often contaminated. A Public Health Service survey of 42,506 Indians in 11 western states disclosed that 81.6 per cent had to haul their water for 'distances of a mile or more'. This water is drawn from ponds, ditches, creeks and wells, and 77.8 per cent of the water tested was found to be contaminated. Sometimes drinking water was used by livestock or was adjacent to outhouses.

"More than half of all reservation Indians have no indoor bathrooms and 45 per cent of their outdoor facilities have been judged inadequate by sanitation officials. The Oglala Sioux, for example, who had to haul all their drinking water (all of which was contaminated), had no satisfactory outhouses. Reservation refuse disposal and food sanitation practices are poor. The Public Health Service survey said: 'The unsafe water supply is a very common cause of many diseases.'. And the head of the service's Division of Indian Health said: 'It is almost unbelievable that the vast majority of these people do not have any of the modern conveniences that we just take for granted.'.

"... ." 38/

38/ Gerald S. Nagel, "Economies of the Reservation", in Current History, December 1974, pp. 248-249.

F. Housing programmes

1. Preliminary remarks

124. Since the housing situation is unsatisfactory everywhere, programmes and schemes have been drawn up and applied in each of the countries covered by this study to resolve that situation or at least alleviate it significantly. Nowhere have those efforts been fully successful; they have always been frustrated to a greater or lesser degree.

125. In the developing countries, as already noted, ^{39/} the demand for housing has been excessively acute, owing in large measure to population growth and migration from the countryside to urban centres, on a scale beyond what they can normally cope with. In addition, fewer funds than necessary have been allocated for efforts to solve housing problems. As a result, the housing situation has got worse.

126. In the industrially and economically developed countries, efforts have been made to solve the housing problems that exist, but they have not been vigorous enough and due account has not been taken of the particular situation and growing needs of the indigenous populations. As a result, the amount of housing available has become still more inadequate, and the overcrowding in existing dwellings has worsened. ^{40/}

127. There are basically two major approaches to this question: either measures on indigenous housing are included without distinction in the plans and programmes for housing in general, as part of the over-all plans and programmes or as part of those designed particularly for rural areas, but without being given special features; or special programmes and plans are drawn up and applied for the housing of indigenous groups, taking into account their differing requirements and particular traditions, and the fundamental difficulty they have in financing in the usual way that part of the building costs which they are to cover under the arrangements made.

128. In this chapter, which reviews the information available on the countries which have adopted this basic approach, reference will be made to what they have done in order to take due account of those special circumstances.

129. The review will begin with the efforts deployed in this sphere by countries which do not specifically differentiate and will then pass on to what has been done by countries devoting separate attention to the problems of indigenous housing.

2. General housing schemes. The same for all.

130. While the information available on certain countries does not indicate the existence of housing measures especially oriented towards indigenous populations, in others it is explicitly stated that no special schemes exist, the same general measures applying to indigenous and non-indigenous populations alike.

131. Some of the information merely refers to general legal provisions for obtaining loans, mortgages or credits for purposes of construction or purchase of housing, without any reference even by implication to indigenous populations and the applicability of these provisions to the special circumstances of those populations.

^{39/} See paras. 68 to 86 above.

^{40/} See paras. 87 to 92 above.

132. Thus, the Government of Bangladesh has simply stated that "all the grants, loans, credits or assistance in any form, from the House Bldg. Finance Corporation or any other government or non-government bodies treat all citizens on equal footing."

133. Similarly, the Government of Guyana states:

"Regulations have been enacted to guarantee mortgages up to 90 per cent of the value of properties for construction or purchase by persons of the lower income group. Housing Development (Mortgage Guarantee) Regulations, 1973, No. 4/1973."

"Order No. 44 of 1973 - Public Corporations (Guyana Co-operative Mortgage Finance Bank) Order No. 44/1973. This legislation will mobilize long-term loan funds and establish rates and conditions for approved mortgages."

"All applications for erection of buildings are approved by the Town and Country Planning Division of this Ministry and consideration would be given to ensure that population is adequately protected from harmful or dangerous constructions."

"(1) Persons are required to sign an agreement of sale under the terms and conditions laid down.

"(2) Individuals can join a group and undertake to build a home on a co-operative basis, under terms and conditions laid down by their Co-operative Society.

"Any individual can apply for a mortgage from any of the following agencies:-

- (1) Guyana Housing and Development Co. Ltd.
- (2) New Building Society
- (3) Guyana National Co-op Bank Trust Co. Ltd.
- (4) Guyana Co-operative Mortgage Finance Bank

PRIVATE SOURCES INCLUDE -

- (a) Insurance Companies
- (b) Commercial Banks
- (c) Credit Unions
- (d) New Widows and Orphans Fund

"(3) Building of houses on a

- (a) Self-help Group basis
- (b) Purchase of a hire-purchase house by securing a mortgage and making a 10 per cent down payment to the Ministry of Housing."

134. Other information refers to rural housing, albeit with no further details - as is the case, for example, in the report from the Guatemalan Government, which states that:

"The National Housing Institute deals with all matters relating to rural housing improvement: building, land acquisition, loans, domestic hygiene, law of property, etc. In addition, there is the National Housing Bank (BANVI), which provides suitable loans on favourable terms, for those who wish to build housing in rural or urban areas."

135. In other cases, the information refers explicitly to the fact that the measures adopted apply equally to indigenous and non-indigenous peoples. Thus, for example, the Chilean Government reports that:

"Whatever kind of public or private measures may be adopted to alleviate the problems of inadequate housing which affect indigenous persons living in rural and urban areas, they are the same as those adopted for the country's population as a whole, since the indigenous peoples are subject to the same legislation, protective measures and development plans as the rest of the country's inhabitants."

136. The same seems to happen in Greenland according to general statements transmitted by the Danish Government which seem to apply to all persons having permanent residence in Greenland. The Government states in this regard that building costs in Greenland are approximately double the costs in Denmark proper, and because the pay level is lower, the Government has had to subsidize house building to a considerable extent. There are various public-aid schemes for the erection and operation of housing facilities for letting purposes, and for building single-family houses (freehold apartments) and for payment of the half-yearly charges. The subsidies total about 87 per cent when the present interest level is used as a basis for the calculations.

137. The apartments built in Greenland since the beginning of the 1960s, primarily in the west coast towns where the major part of the population is living, is of a standard reasonably equalling the standard of the apartment houses built by the Danish building societies, i.e. they are equipped with bath, w.c., and up-to-date laundry facilities.

138. Greenlanders and people of Danish origin are now living side by side in the same apartment buildings, and pay the same rent, see paragraph 142 below in regard to contributions towards housing to be paid by Government personnel sent out from Denmark.

139. The councils of the Greenland municipalities administer the letting of apartments, etc., on behalf of the Government. Discrimination in the traditional sense is non-existent.

140. Also in regard to government loans for building private single-family houses, the local municipal councils are co-operating in that they establish a classification by need of the persons they consider should have a loan.

141. The private owner approaches the municipal council when he intends to submit an application for a loan. The application is reforwarded by the municipal council, with a recommendation, to a special committee, the Housing-Aid Committee, which is domiciled at Godthab. This Committee, in addition to Government representatives, includes also representatives of the Greenland Landsting. Loans are granted, bearing interest at the rate of 4 per cent per annum to the extent of the initial cost, and no initial owner-contribution is required. In addition aid is granted to the extent of 40 per cent of the annual expenditure, and 7.5 per cent for each child younger than 16, up to a maximum of six children however. The same aid-principles are applied in regard to calculation of the rent charges in the Government-owned apartment buildings.

142. Only persons with permanent residence in Greenland have the possibility of obtaining the subsidized loans, and of becoming tenants in the Government-owned apartment buildings. Government personnel sent out cannot obtain loans for freehold housing facilities, nor for a long-term tenancy, but housing facilities are made available to them against payment of a specific housing contribution, fixed through negotiation with the trade organizations, in the Government's apartment buildings. The same apartments are let alternatively to the population as well as to personnel, depending on the size of the family.

143. As a special feature in connection with town planning in Greenland it must be pointed out that land is not subject to private ownership but belongs to the State which assigns it free of charge to the user. In practice the rule has hitherto been followed that a person desiring to erect a building must have the permission of the local authority... . The Prime Minister's Department is the supreme authority in matters relating to building activities. The State controls the location of private buildings.

144. In 1981 the Government of Denmark stated that

"The Ministry for Greenland is the formal owner of the Government's apartment houses, and The Greenland Technical Organization functions as consultants to the Ministry and is entrusted with the administration of the construction works. Questions relating to the location of the buildings, their appearance and layout, are discussed in detail with the municipal councils - prior to the start of the building activities.

"The Government's expenditures for building of residential houses constitutes the largest item of the construction programme of the Ministry for Greenland. The expenditure in 1979 totalled Dkr. 160 million. Approximately 300 housing units are built annually, primarily flats in multi-storey houses, linked houses, and row-houses; in the small towns and in the hunting districts many single-family houses are still being built however.

"There are approximately 13,000 housing units in Greenland, about one-half of them are owned by the State and let to the population, while the other half is privately owned single-family houses or municipal housing facilities for letting. The housing facilities in Greenland are relatively new, and only 2,500 housing units, approximately, originate from before 1953.

"Although many dwellings have been built over the last 25 years, there is still a great demand for housing in most of the towns, this is because large numbers of young people are now annually appearing, looking for housing, at the same time as, due to the economic developments, the annual construction of housing is reduced, as compared to the 1960s and the beginning of the 1970s."

145. Reference has been made above 41/ to the case of Sweden where certain restrictive provisions were replaced by positive measures. The relevant information is as follows:

"According to the reindeer pasturage law, the herding Lapps were not to live in anything but dwellings of 'Lapp type' - tents with an open hearth, áran, and open smoke-hole, raeppen. The restriction could not be enforced. The first dwellings of comparatively modern type were built illegally at the big viste at Rensjön. For a long time the building of modern housing was prevented by the pasturage law and the officials of the Lapp administration.

"Nowadays certain local authorities have broken with tradition and had fairly modern dwellings built for the nomads. The municipality of Karesuando has led the way. But slum-like housing still exists, particularly in the villages north of Torneträsk, which lies within the municipal area of Kiruna. An improved housing standard is on the way, however, especially since the National Union of Swedish Lapps, as well as the press, radio and television, have shown up the bad conditions.

"Of recent years, too, herdsmen's huts have been built in fairly large numbers. Building and equipment costs, at prices for the year 1961, amounted to nearly \$2.7 million. Since 1961 further amounts have been invested, particularly in the villages north of Torneträsk, where the Labour Market Board has invested \$1.1 million for technical development within the area".

146. The Mexican Government reports that, in order to deal with the difficult housing situation there are bodies which undertake people's housing programmes - some for workers, others for the rural population - such as the National Institute for Community Development, which has built dwellings with the use of available credits in some indigenous communities. The Government further reports that, in addition, the National Institute for Indigenous Affairs, acting through the legal departments established in the Indigenous Co-ordinating Centres in each inter-ethnic region, and the Department for Extramural Studies in the Indigenous Environment, acting through the Indigenous Agencies located in the areas provide advisory and management services in this connection.

147. It goes on to say that the same policy is applied and the same measures adopted for indigenous and non-indigenous groups with regard to access to housing, in accordance with development plans, whether public or private.

"Through rural development programmes, the Public Investment Programme for Rural Development (PIDER) has granted recoverable credits for the procurement of house building material. As part of the normal programme of the Indigenous Co-ordinating Centres, under the section Assistance to Communities, credits have been granted for building material procurement with recoveries from 50 to 100 per cent.

"As already mentioned, the National Institute for Community Development (INDECO), through house building programmes, has carried out house building work in inter-ethnic zones, in accordance with requests from state governments.

"Housing improvements and repairs are carried out by the Indigenous Co-ordinating Centres, in their normal housing improvement programmes and special programmes of the state governments and federal agencies.

"Grants and loans are dealt with under the integrated programmes of the Public Investment Programme for Rural Development, through the National Institute for Indigenous Affairs, for housing repairs and improvements.

"There are no special subsidies for these purposes."

41/ See para. 55 above.

3. Special housing schemes for indigenous populations

148. On public measures taken to alleviate the problem of inadequate housing, the Finnish Government has stated that:

"In order to improve upon the economic conditions and the housing of those, including the Lapps, who carry on reindeer breeding, certain arrangements were made possible by the Reindeer Farming Act of 19 September 1969, No. 590. According to this Act, grants and loans can be conferred to facilitate the acquisition of land and construction of housing."

149. On grants and loans which have been received by persons or groups engaged in reindeer breeding and as regards the absence of information on the percentage of such grants and loans that have gone to Lappish applicants or beneficiaries, the Government stated in 1974 that in accordance with the Reindeer Farming Act of 19 September 1969, loans for housing have been granted as follows: The total amount of loans have been Fmk 45,000, in 1970, Fmk 85,700, in 1971, Fmk 65,000, in 1972, Fmk 56,400, in 1973. In addition, loans were granted for paying a redemption price to brothers and sisters Fmk 18,500 in 1972 and Fmk 37,500 in 1973, for providing electricity Fmk 7,500 in 1973, for buying movable property Fmk 34,000, in 1973 and for building Fmk 25,000, - in 1973. There are no statistics indicating what percentage of those who have benefited by these measures belong to the Lapp populations since no distinction is made on ethnic grounds.

150. Concerning arrangements for the provision of housing to non-reindeer breeding groups of the Lapp population, the Government of Finland referred to its statement quoted in paragraph 44, above.

151. In order to help the Lapps to obtain satisfactory living accommodation, the Government of Norway has introduced special measures in the main Lapp districts of Inner Finnmark. These measures include advice to home builders, loans and grants. For example, special local government officials have been appointed under the County Governor of Finnmark for the purpose of giving advice to those building homes in these areas. Moreover, according to their needs, home-builders may obtain interest-free and instalment-free loans on certain conditions, and these loans usually cover a substantial share of the construction costs. The loans remain free of interest and repayment by instalments as long as either the person to whom the loan has been extended or his/her spouse owns the house and uses it as a dwelling. Furthermore, special funds are made available every year in the Lapp districts in Nordland, Troms and Finnmark in the form of grants for housing improvement. In the Report to the Storting No. 99 for 1969-70, of Recommendation to the Storting No. 40 for 1970-71, the housing schemes are described in detail. From autumn 1970 when these housing schemes were introduced, up to the end of 1973 the Ministry of Local Government and Labour has granted a total of 10.2 million Nkr in the form of interest-free and instalment-free loans for in all 254 dwelling-houses.

152. In India a number of States have passed legislation or issued orders with a view to conferring on the members of Scheduled Castes and Tribes the ownership of the land they occupy. But such measures are still inadequate and in any case are not fully enforced. Allocations have been made for the allotment of building land to Scheduled Castes under central and state plans; only West Bengal has such a programme for the Scheduled Tribes. "...".

153. Reasons given for the poor results achieved are "First of all, in the planning stages in his report for the year 1965-66 the Commissioner for Scheduled Castes and Scheduled Tribes noted that the Government's recommendation to carry out a socio-economic survey prior to the opening of any tribal development block had been only partly followed by the state authorities concerned, and that in a number of instances the programmes had failed to take adequate account of the real requirements of the population. This led to the expenditure of funds on projects of little utility; houses were built but people would not live in them; roads were built only to be washed away in the rainy season; basketry centres were started where there were no bamboos, and so on." 42/

154. As regards housing loans available in India, one source indicated that:

"For the construction of houses more than 50 per cent of the loan is given by the moneylender. About 25 per cent is given by the government, about 8 per cent by the co-operative societies and the remaining 10 per cent or so by the other agriculturists." 43/

155. Concerning the construction of housing for indigenous populations in Brazil an official publication 44/ states that in 1972 FUNAI commenced construction of 1,537 houses for the Indians living in Indian posts in the States of Parana, Sao Paulo, Santa Catarina and Rio Grande do Sul. During the "week of the Indian" (April 1972) the first 119 houses were handed over to tenants.

156. In Malaysia the work programme of the Department of Orang Asli Affairs includes the planning and constructing of model settlement schemes thereby ensuring proper housing facilities for selected Orang Asli groups. The Department carries out, among other functions, the construction of model housing schemes and clinics, schools, school hostels, offices, stores and community halls. The number of Departmental construction teams, which are mainly composed of Orang Asli carpenters, brick layers and skilled workers, is being increased from 5 to 10 in order to cope with the increasing workload.

157. Progress reported under the Second Malaysian Plan (1971-1975) up to June 1973, listed "347 units" under "Houses for Orang Asli". Three hundred and thirty-five new units were included as planned for the second half of the Second Malaysia Plan, that is, from June 1973 to 1975.

158. In this connection, the "Pasokan Pembena" or Orang Asli Work Brigades, which have been very active in the construction of all kinds of buildings on Pattern Settlements for Orang Asli, are of special interest here. These Pasokan Pembena or building brigades are made up of Orang Asli workers, which include carpenters, masons and other skilled workers who travel from one indigenous settlement to another in the jungle, building dwellings, schools, clinics, inns, shops and offices. During his official visit to Malaysia in June 1973, the Special Rapporteur had the opportunity of inspecting the housing projects in various communities. He was able to see that the houses and buildings in the jungle posts he visited were adequate for their purposes; they offered a clear example of the efforts being made to provide the Orang Asli population with adequate housing.

42/ J.P. Arles, "The Economic and Social Promotion of the Scheduled Castes and Tribes in India", in International Labour Review, volume 103, No. 1 January 1971, p. 41.

43/ M.G. Kulkarni. Problems of Tribal Development, A case Study, Harsul Blok, Nasik District (Maharashtra). Cokhale Institute of Politics and Economics, Bombay, India, 1968, p. 138.

44/ Assessoria de Relações Públicas de Fundação Nacional do Índio (Public Relations Office, National Indian Foundation). Funai em números. Brasília, D. F., July 1972, p. 6.

159. For most of the present century New Zealand has had a very widely used State Advances Corporation (a Government corporation) to which citizens, whether Maori or non-Maori, can apply for loan finance for housing purposes at reasonable rates of interest, such loans being secured by a first mortgage of the property. By the 1930s it was apparent, however, that the general standard of Maori housing was considerably below that of the rest of the community. At that time, the great majority of the Maori people were living on tribal land in rural areas. Because of the multiplicity of owners in the tribal or family lands, it was rarely possible for a Maori to obtain a housing loan and it was obvious that special measures had to be taken. This led to the passing of the Maori Housing Act 1935.

160. The Government has communicated that:

"Under this Act a sum of money was set aside annually to be administered by the Department of Maori Affairs to enable Maoris to obtain loan finance for housing on the security of Maori lands. With some amendments which do not affect its thrust, that Act is still in force. The programme administered by the Department provides special services not available through the State Advances Corporation. For example, the Department operates a convenient system of housing deposits under which a Maori intending to build a house may make weekly deposits from his wages into an account held by the Department until he has accumulated sufficient funds for the initial deposit on a building allotment. The Department also provides architectural services and plans at a much cheaper cost than would be obtainable elsewhere.

"An interesting development resulting from the massive migration to the cities since the Maori Housing Act was first passed, is that relatively few houses are now built on Maori land and it is necessary for building lots to be obtained in the cities. To meet the demand the Department buys building lots as they become available and from these Maori families are able to choose the one they prefer. They may also purchase a building lot privately if they so wish. The houses built under the Maori housing programme are fully up to the standard prevailing in the community at large.

"Whether in town or country, the policy of the Department has been to spread Maori houses throughout the community and as a general rule no more than three houses are built adjacent to one another. The annual programme is for between 500-600 houses per year. A new programme commenced a few years ago provides for the special case of elderly Maoris who have been living or decide to reside in their traditional tribal areas. Government funds are available for the Department to build small apartment blocks adjacent to the marae (tribal centre), which are rented to elderly people at a low rental."

161. The New Zealand Government has stated that:

"The amount of finance allocated this year [1973] for the Maori housing programme is \$7,663,000.

"Except in the case of apartments for elderly people, no special provision is made for rental houses for Maoris. There is, however, a large scale programme of State-owned moderately-priced rental housing which is available to all citizens within appropriate income limits. These houses are located in urban areas throughout New Zealand. Between 700 and 800 Maori families per year are allocated rental houses.

"In addition to houses made available under the Maori housing programme and the State rental housing programme, many Maoris nowadays obtain loan finance for housing through the State Advances Corporation and other lending institutions. The known figure of Maori families moving into new houses has been about 1,500 families per year in recent times. This figure applies only to housing obtained from Government sources; an increasing number of Maoris obtain housing from other sources. The actual general total of new houses would therefore be somewhat higher.

"Loans are granted under the Maori housing programme for the improvement and repair of buildings already occupied.

"The standard of Maori housing and household amenities can be gauged by census statistics. Unfortunately the 1971 census figures are not yet available for housing, but the 1966 figures show the state of affairs seven years ago and there is no doubt whatever that the position has improved since then. The following are the 1966 figures:

"Proportion of Maoris who owned their own homes (with or without mortgages) (Note: the balance of homes were mostly rented)	50%
"Proportion of Maori homes with electric or gas facilities	72%
"Proportion of Maori homes with piped water supply installed	78%
"Proportion with hot water service installed	92%
"Proportion of homes with flush toilet	77%
"Proportion of homes with refrigerator	79%
"Proportion of homes with electric washing machine	72.9%
"Proportion of homes with telephone	55.8%
"Proportion with bath or shower installed	90.7%
"Proportion of homes with radio	79%"

162. During the Special Rapporteur's official visit to New Zealand (June 1973) all persons who mentioned housing problems agreed that the Government "pepper potting" or "house-spreading" policy had helped in preventing segregation, and the widespread surgence of ghetto-type sections in towns. Many persons, however, conveyed to the Special Rapporteur their regret that this policy was preventing the Maori population from keeping their communal ties and from having easy access to the local Marae. ^{45/} In fact, some of these persons believed this policy to be a deliberate "Pakeha" (European) attempt to lessen these ties and provoke the absorption of Maoris into the general European community.

^{45/} Similarly, the Citizens Association for Racial Equality, a New Zealand Non-Governmental Organization has indicated that "the 'pepper potting' system has come under much criticism from Maoris who would prefer to maintain communal ties by retaining a higher Maori density of housing."

163. Subsequently, the Government has transmitted information to the effect that the so called "pepper potting" policy of distributing Maori houses throughout the urban communities rather than in a solid block has been very much affected by circumstances prevailing in new housing subdivisions. In such subdivisions, the Maori and Island Affairs Department tried wherever possible to acquire building sites in groups of two, or three throughout the subdivision. It is frequently the case that other building sites in the same subdivision are used for state rental housing and for sale to private purchasers. A fairly high proportion of families moving into State rental houses happen to be Maoris or other Polynesians and some of the private purchasers are also Maoris or other Polynesians. The result is that in such areas the density of Polynesian people generally is very much higher than would be expected from the "pepper-potting" policy. It is interesting to note that enquiries amongst Maori families tend to show that their opinion is divided as to whether they would prefer to live in a group or separated from other Maori families. It is clear that housing in solid communities is looked upon with disfavour by a large proportion of Maori families moving into the cities. So far as access to a marae is concerned, the Government is giving substantial financial aid to urban Maoris for the establishment of marae in their areas. If, as some people seem to have told the Special Rapporteur, the "pepper-potting" policy were "a deliberate attempt to lessen these ties and provoke the absorption of Maoris into the general European community", it is surely contradictory for the Government to be encouraging and assisting the formation of maraes in the very areas where homes for Maoris have been built."

164. The reported construction of apartment blocks for the aged should be noted in this connection.

165. In connection with an assertion that little had been done to provide new suburbs with adequate community services, and especially urban maraes, the Government has stated that since 1971 it has had a programme of financial assistance towards the erection of Maori centres or marae in the thickly populated urban areas. The amount voted for this purpose in the 1974 financial year was \$150,000. Subsidies are paid at the rate of \$1 for \$2 raised by the community. A number of marae projects were in the course of construction and some had been completed.

166. In Australia there are housing programmes for the aged, the provision of hostels in certain areas and general housing programmes.

(a) The general housing programmes include the provision of funds by the Federal and State Governments for public housing projects and subsidies given to Aboriginal Housing Societies on reserves or in remote communities. It has been reported that although there is a very substantial backlog, much work is being done in this respect throughout the country. The Commonwealth Government also provides funds for Aboriginal housing in the Northern Territory.

(b) Under the Housing for the Aged schemes there is an Aged Persons Homes Act under which the Federal Government contributes two thirds of the necessary funds to provide housing for the aged, and the other third is to be raised by public subscription. An Aboriginal Aged Persons Homes Trust had been established, to raise the non-governmental third of the funds for housing for aged aboriginals, and a Board of Seven Aboriginals recommends on how the trust funds should be spent. It has "been wound up because experience showed that it duplicated effort in other programmes and, for various reasons, could not carry out its function effectively. The Trust's remaining cash assets have been transferred to Aboriginal Hostels Ltd. to be used for the acquisition and construction of hostels for aged Aboriginals. Direct grants from the Aboriginal Advancement Trust Account will continue to be made to housing associations for housing aged persons".

(c). The Government has reported that the programme for the provision of hostels has been helping aboriginals in the solution of their housing needs in some areas:

"Many Aboriginals live in remote areas or small country towns where there is often a lack of satisfactory employment, and little or no opportunity to undertake secondary or tertiary studies or special training courses. The Commonwealth Government is attempting to stimulate the development of such areas but, at the same time, by providing funds for the establishment of hostels at major developing centres, the Government is enabling those Aboriginals who so wish to move to such centres for further education, vocational training or employment. The Government makes direct grants from the Aboriginal Advancement Trust Account to voluntary organizations, including Aboriginal organizations, which establish and operate employment, vocational or educational hostels. In 1972/73 an amount of \$650,000 was set aside for this purpose. Funds are also provided for the same purposes through the annual grants to the States."

167. During his official visit to Australia in June 1975, the Special Rapporteur visited two housing developments in a big urban centre. One comprised many modern and well built homes which had been constructed on a large tract of land. These homes had all modern facilities and were in a prime area. The other project was located in a downtown area. With funds provided by the Federal Government, an aboriginal association had acquired title to a whole block of houses, divided by a passage in the middle. The association, which was in the process of incorporation, was slowly reconstructing the buildings, many of which were in ruinous conditions. The association's efforts were, however, hindered by the opposition of the local authorities who were not co-operating in the necessary measure for needed work in connection with water and sewer services. Trash collection services had not been made available for cleaning of the passage-way.

168. In 1975, the Government stated that:

"The Redfern Aboriginal Housing Association project has been proceeding satisfactorily, with the co-operation of the local authorities, which some time ago resumed garbage collection service".

169. During that official visit the Special Rapporteur also visited two housing projects located in other areas. One of them was in Maningrida, a rural community where the members of the communal council communicated to him that several homes which had been built several years before, were lacking essential services and had, therefore, never been fully in use. The Council members stated that in order to solve some of their housing problems, new homes with all the necessary services should be made available, and the lacking services installed in the old homes so that they could be put fully in use. The other project was located in Darwin and provided houses for aboriginal families established there, as well as temporary shelter in hostel-like manner for aboriginals who came to town for short visits. Both types of buildings and services (homes and hostels) seemed adequate for their respective purpose.

170. In connection with these two projects, the Government stated in 1975 that:

"The Aboriginal housing association at Maningrida is directing the provision of houses and the supply of electricity and water services to them. The association employs expert architectural advice and skilled building supervisors and is carrying out a development programme designed to provide substantial numbers of new houses with all services provided.

"The cyclone which struck Darwin in December 1974 severely damaged accommodation at Bagot but the new houses built by the housing association stood up well and are being repaired. The housing programme there will be resumed as soon as practicable".

171. The Canadian Government states:

"No special legal provision is made to protect native rights in regard to housing off the reserve, but property on the reserve may not be alienated from Band use.

"A five-year plan to provide additional housing for Indians on reserves was begun in 1966, and fairly extensive construction of new houses has taken place. Indian Bands are encouraged to take a greater part in the administration of continuing housing programs, under a Departmental grant system or by using Band funds along with CMHC loans.

"A rental housing scheme for the north, where construction and heating costs are abnormally high, was begun in 1966. It provides a 3-bedroom house with heat, light, sewer and water services to Indians and Eskimos at a rental geared to their income, the rental beginning at \$5 a month. There is a parallel program for Métis and low-income whites. In the Northwest Territories, about 2,500 houses were built under these two programmes by the end of 1972, with an average annual over-all cost of \$1,800 per unit, and an average return in rent of \$250. In the Yukon Territory a rental-purchase program has been set up, to provide houses for Indians and low-income whites, with a forecast capital cost of \$8 million.

"Some provinces also enter into housing schemes for native groups. Newfoundland has a house construction program, as has Arctic Quebec. The Alberta Government has initiated a housing program for the Métis population, the work being done by the community.

"Water and sanitation systems on Indian reserves are being constructed by the Department, with an outlay of \$9,102,000 for this purpose in 1973-74. Extending electric power to Indian reserves cost the Department \$1,598,000 in the same year, and brought the percentage of reserve homes with electric power services to 83 per cent."

172. According to a source: 46/

"Subsidy housing was introduced in 1962. It was designed to provide all Indian families capable of a personal contribution with houses of a minimum standard. Houses were constructed according to designs prepared by the Departmental Engineering and Construction Division. The personal contribution from the Indian was a small cash contribution and his labour for construction. The house size ranged from a minimum of 287 square feet to 600 square feet, according to the size of the family. Privacy was again limited and funds to build even these small, low-cost units were hard to obtain.

"... The average cost per unit under this program, considering funds from the Government, Band funds, and personal contribution, totalled \$3,667.

"In the fiscal year 1971-72, the Department of Indian Affairs Housing program called for the construction of 1,933 new units and 500 renovations. In the fiscal year 1972-73, the Department of Indian Affairs Housing program called for the construction of 2,400 new houses and 1,000 renovations.

"Under the loan agreement between the Central Mortgage and Housing Corporation and the Department of Indian Affairs, loans to Bands produced the following:

YEAR	LOAN	UNITS CONSTRUCTED
1970	\$1,673,000	133
1971	\$1,916,000	122
1972	\$1,282,000	164

"Under the loan agreement between the Central Mortgage and Housing Corporation and the Department of Indian Affairs, loans to individuals produced the following:

1970	\$ 415,000	54
1971	\$ 483,000	72
1972	\$ 426,000	43

To date, the backlog of needed houses is approximately 10,000 units. Within the next five years, due to new family formations, this figure will increase to approximately 15,000."

"The recent 1973 Department of Indian Affairs housing survey reveals that approximately 10,000 Indian families need homes and approximately 5,000 houses need major repairs.

"Program:

"At present there are four Department of Indian Affairs housing programs

- (i) Subsidy Housing Program,
- (ii) Band Administered Housing Program,
- (iii) Indian On-Reserve Housing Program,
- (iv) Indian Off-Reserve Housing Program.

"All are narrow in scope and fail to accurately consider the local situations.

- (i) The Subsidy Housing Program at present provides for a maximum subsidy of \$10,000 for the construction of single dwelling units. This figure of \$10,000 is arbitrarily chosen. It is based on no known housing standard. In order to be effective, the costing and funding of house construction must be based on factual information.
- (ii) The Band Administered Housing Program is to permit Band Councils to undertake their own housing programs within the standards and criteria established for the Subsidy Housing Program administered by the Department. No alternative is developed by this program, other than the Band having taken control on the administration of funding and no input in the budgeting process.
- (iii) The Indian On-Reserve Housing Program involves loans from Central Mortgage and Housing Corporation for construction of houses on reserves ...

- (iv) The Indian Off-Reserve Housing Program provides assistance to an Indian who is regularly employed away from his reserve, by securing a Central Mortgage and Housing Corporation first mortgage loan, as well as a forgivable second mortgage loan from the Department of Indian Affairs. Because this program involves Central Mortgage and Housing Corporation, Department of Indian Affairs, Veterans Land Act, and frequently a lawyer and/or a real estate agency, unnecessary administration delays and problems hamper its effectiveness."

173. In this regard, some sources believe that: 47/

"The programs of the past have clearly failed to provide either durable or adequate housing for Indian people. Millions of dollars went into housing which was constructed to such a low standard that, in the marketing parlance of today it would be known as "disposable" housing. The concept behind this notion presumably was that the housing was intended for "disposable" people. Given the rate of inflation over the years (a \$2,357 house in 1945 and a \$10,000 "subsidy" in 1975) the current program appears to preserve the original concept in a slightly different form. The assumption that Indians have the financial resources to supplement a \$10,000 subsidy in communities where credit is rarely available and urban market dynamics do not operate, is to offer Indians, in effect, a \$10,000 house. To propose any new policy (as DIAND and CMHC are doing) which assumes that Indians have the financial resources to operate within the provisions of the National Housing Act, even to a limited degree, is to deprive them even of \$10,000 houses.

"To introduce a new program in 1975 which is certain to be declared a failure in 1981 will only add to the growing backlog of housing need and to the misery of Indian families. It is a failure which neither the Federal Government nor Indian people can afford. Indeed, the costs which would be exacted by such a failure is one that Indian people are no longer prepared to pay. These are costs which, unfortunately, can only be expressed in abstracted statistics and not in the innumerable and real traumas suffered by Indian families. Inadequate, overcrowded and essentially primitive housing conditions which prevail in Indian communities have a direct impact on family stability, educational achievement, health and motivation."

174. According to information furnished by the Government of the United States:

"Under an agreement with the Housing Assistance Administration (HAA) of the Department of Housing and Urban Development, tribal governments and tribal housing authorities are helped in developing and managing public housing programs until they have the experience and staff to operate on their own.

"Through the more than 100 local Indian housing authorities the Department of Housing and Urban Development (HUD) has been producing housing under the 1937 Housing Act, as amended. 48/ Under a joint agreement among HUD, Bureau of Indian Affairs and the Indian Health Service, a level of effort of 6,000 units a year was established for five years. The main housing produced under this agreement has been mutual-help housing, homeownership programs such as Turnkey III and the conventional low-rent programs. In each of these programs, the local Indian housing authority and HUD enter into a contract through which HUD gives financial assistance for housing to be rented at rates based on the low-income occupants' ability to pay.

47/ Memorandum to Cabinet: Indian Housing National Indian Brotherhood, 1975, pp. 5-6.

48/ In connection with the 1937 Housing Act, see the information quoted above according to which American Indians living on reservations were not able to participate in this programme until 1961, when it was amended (para. 120, above).

"Conventional low-rent and Turnkey III programs in Indian communities operate the same as they do in non-Indian communities. The local housing authority (with HUD approval of plans, specifications, and costs) contracts with a private developer and in some cases an Indian housing development enterprise. These contracts are called "annual contribution contracts." In conventional low-rent housing the dwellings are rented to low-income families with HUD's financial assistance payments being made over the 40-year period during which the development cost of the project (financed by the local housing authority's sale of bonds to private investors) is retired. In Turnkey III projects the dwellings are rented for a 25-year period during which the occupants can earn the right to own their dwelling after the 25 years by performing their own maintenance.

"In the mutual-help program HUD provides the Indian housing authorities with the cost of building materials and specialized labor. The participating Indian families donate their own labor as a down payment and perform their own maintenance to permit a reduction in the monthly payment for the dwelling. This program is also a homeownership program and was devised and perfected by the BIA and HUD.

"As of June 30, 1973, some 25,000 new housing units have been completed. Of this total, some 15,000 new units are the result of the joint agreement mentioned above. The remainder of the national commitment under this joint agreement should be started by June 30, 1975. The Bureau of Indian Affairs operates a Housing Improvement Program intended to improve existing housing and to build some new housing for the most needy Indian families who do not qualify for other housing programs. Since it was introduced in fiscal year 1964, through fiscal year 1973, nearly 20,000 existing units have been improved and approximately 2,800 new units have been built. Some 3,300 homes are expected to be improved and approximately 560 new units built during fiscal year 1974.

"About 1,000 units a year are built on Indian lands using conventionally financed housing programs such as Farmers Home Administration, Federal Housing Administration, Veterans Administration and tribal credit programs. Water and sanitation facilities for Indian homes are generally provided by the Indian Health Service of the Department of Health, Education and Welfare."

175. In connection with the information contained in the preceding paragraph the following may also be quoted: 49/

"The General Accounting Office Report "Slow Progress in Eliminating Substandard Indian Housing" emphasizes a Bureau of Indian Affairs 1967 commitment to eliminate substandard housing on Indian reservations during the 1970's. Had the 8,000 unit per year commitment been fulfilled and extended for another five year period, the Bureau of Indian Affairs' pledge may have become a reality; but 8,000 units have not been built or renovated yearly. The commitment expires June 30, 1974, and it is estimated by the Housing and Urban Development alone that its production level will fall far short of the 1969 commitment. In fact, a HUD spokesman recently stated that in FY 74 only 3,100 will go into contract with Indian housing authorities. Moreover, at the beginning of FY 74, HUD was 15,600 units short in terms of construction starts. Falling short of the original commitment and actual construction even further behind, the GAO's 1971 pessimistic conclusion is becoming a reality:

49/ American Indian Law Newsletter, Vol. 7, No. 11, loc. cit., pp. 29-33.

'In 1971 that GAO stated that, "The Bureau's goal to eliminate substandard Indian housing on reservations in the 1970's will not be achieved unless the program is accelerated substantially".

"Even with the commitment of the agencies, HUD did not provide adequate funds and staffing so the projected goals could be met. This was obviously a misleading commitment made to Indian tribes, tribal councils, and Indian people as to what HUD was to do.

"At the rate the Housing and Urban Development's production and commitment funding levels are made, the housing needs of the American Indian will not be met in a decade.

"The only major and forward commitment [towards] providing decent housing to Indians on reservations was made in 1969, but this commitment was more an outcome of the budget planning process than a serious reflection of housing needs or goals. Public law 86-121, known as the Indian Sanitation Facilities Act, made the Indian Health Service of HEW responsible for the construction of water supplies, waste disposal facilities, and other sanitation facilities for Indian houses and communities.

"During the latter part of the 1960s with increased housing production on Indian reservations an embarrassing situation developed: namely, HUD-funded, low-rent housing units would be completed, but no one could move in because water and sewer hookups were not available. The problem was a lack of coordination and planning between the responsible agencies. Additionally, the Bureau of Indian Affairs, which is responsible for the provisions of access roads, often had not completed the roads when a housing project was ready for occupancy.

"An attempt to clarify agency functions and to establish procedures for coordinating their services were the reasons for a tri-agency "Memorandum of Understanding" signed in 1969 by representatives of the Department of Housing and Urban Development; the Department of Health, Education and Welfare; and the Department of Interior.

"The agreement required that the Bureau of Indian Affairs, and the Housing Assistance Administration of the Department of Housing and Urban Development were to advise the Indian Health Service of the projected housing starts for the coming in advance in order to ask for the matching funds to accommodate HUD goals in housing production.

"The agreement projects the development of 8,000 units of new and renovated housing units yearly for the five-year period extending from FY 70 through FY 74. Of the 8,000 units, HUD was responsible for 6,000 units of new housing, the BIA for 1,000 units of new or improved housing, and the tribal groups would produce another 1,000 units of new housing; this was a national commitment to Indian housing.

"Although the three major agencies have a memorandum of understanding, there are other governmental agencies involved:

[The following agencies are listed in this connection: The Army Corps of Engineers, the National Park Service, the Department of Transportation and the Department of Labor]

"The failure of coordination among the Federal agencies is based on eight different reasons:

...

1. Jurisdiction of Agencies;
2. Funding of Agencies;
3. Inter-agency Organization Structures;
4. Insufficient Clout;
5. Level of Coordination;
6. Inadequate Indian Involvement;
7. Insufficient Time;
8. Insufficient Involvement in necessary overall coordination].

"This intergovernmental chaos is the result of there not being 'anybody in charge', but it is also the natural outcome of there not being an Indian housing program. The major housing efforts today for rural Indians are through the low-rent, mutual help, and turnkey III programs of the Department of Housing and Urban Development. It cannot be overly stressed that these programs are designed and administered by an urban-oriented agency whose recognition of, or participation in rural areas has been meager. Though HUD has made some sporadic efforts to consider the varying cultural and aesthetic needs of Indian tribes in the design, location, and materials used for their housing, on the whole, the Agency's record in this area is poor. Again, in New Mexico, the many Pueblos have labored with HUD for months over the use of adobe brick, the traditional and sturdy construction material for Pueblo housing. When HUD seemed convinced that adobe was an acceptable building material and even without steel reinforcements, it then brought into dispute the shape of the bricks.

"Another example of HUD's urban orientation is the myth pervading the agency that housing in rural areas is cheaper. But construction costs are high on Indian reservations, often due to transportation of materials and labor. Still HUD persists in assigning non-reservation prototype costs to Indian housing."

176. Discussing the complexities of the problems facing indigenous populations in obtaining mortgage credit for housing, the following has been written: 50/

"Recently, another serious problem affecting Indian housing on many reservations are families -- precisely how many is not known -- whose incomes exceed the limits set for the public housing program. These families are often living in the same deteriorating and inadequate housing as the poorest members of the tribe, simply because there is no adequate housing available. There are several reasons for this situation. First, and this is a problem endemic to all rural areas, there is very little mortgage credit available to those Indian families who could afford to build their own home without Federal subsidies. Secondly, the shallow subsidy interest credit programs of HUD and Farmers Home Administration, designed to serve those families who need some assistance but who are not at the public housing level, are just not serving the reservations.

"The reaction of many tribal councils and Indian housing authorities to this problem has been to seek HUD permission to raise the income limits for families entering public housing. On its face, this solution would make sense. After all, public housing is often the only new housing being produced in any large quantity on the reservations. However, public housing is currently the only program able to serve the poorest persons and families, and that there are too few public housing units on reservations to serve even a small fraction of the poorest Indians, then the idea of placing more moderate income people in public housing units loses its credibility. There are other solutions available.

"It is unlikely that private mortgage capital will soon become available on Indian reservations. There are many reasons why private lending institutions do not find the reservations attractive markets, including very low incomes, fear of credit risks, lack of long term development prospects, and prejudice. There is, however, a public program that can provide financing for those families able to afford their own home, and shallow subsidies to those families in need of them.

"The Farmers Home Administration programs offer direct Federal lending; the program provides market rate financing for moderate income families, or interest subsidies for those families unable to qualify for public housing because of higher incomes. Single family home loans are available under the Section 502 program and rehabilitation loans are available under the Section 504 program. A multi-family program is also administered by the FHA, but because of inadequacies in the legislation, this program cannot be used on reservations. Clearly, Farmers Home Administration programs would be valuable tools for improving Indian housing conditions.

"Unfortunately, the performance of these programs on Indian reservations has been less than spectacular. In fiscal [year] 1972, only 417 loans were made on Indian reservations under the FmHA Sections 502 and 504 programs, amounting to \$5.8 million. This amount was approximately four-tenths of one per cent of the total number of loans made under these programs in that year. In fiscal [year] 1973, there were 485 loans made to Indians, amounting to \$6.8 million, but again this was only four-tenths of one per cent of the national loan volume under these programs. If anything can be noted about this pattern is that it is consistently poor.

"An estimate of the use of FmHA programs by Indians had been made and has been compared to the use of Farmers Home loans by the overall rural population. Over the past two fiscal years, Section 502 and 504 loans have been made to Indians at a rate of 2.1 loans for every thousand Indians living on reservations or in rural areas. For the rural population at large, the rate is approximately 4.3 loans for every one thousand population. While these figures are rough, they do give some indication of the current situation. If the actual need for these loans was taken into account, as evidenced by income levels and occupancy of substandard housing, Indians are seen at an even greater disadvantage although these figures do not specify whether the loans were made off or on the reservation.

"Inadequate use of these programs by Indians cannot be entirely attributed to the Farmers Home Administration and its policies. It was only as recently as 1970 that legislation made rural housing loans available on non-farm leasehold lands. In recent years, the FmHA staff has decreased steadily, at the same time its potential workload has increased. Few county supervisors have the opportunity to travel about and explain the benefits of the FmHA programs to rural Indians, and there have been some county supervisors who have been reluctant to loan to Indians. Basically, there is ignorance on both sides. Unfortunately, few BIA housing personnel have made the necessary effort to explain the program to Indians or to explain Indian concerns about the program to Farmers Home Administration.

"Various Indian tribes are reluctant to participate in the rural programs of the FmHA because the leasehold agreement could, in the likelihood of loan default, result in alienation of Indian land. Yet the leasehold agreement is exactly the same as that used for HUD public housing and other programs. Additionally, Indian tribes have said that, unlike local tribal administration of the public housing program, the FmHA programs are administered by non-Indian Federal employees. This may be a concern when a loan goes into default, though there is a potential remedy for this concern."

4. Imposition of non-traditional patterns of housing on indigenous populations

177. As has already been noted 51/ in the opinion of the Anti-Slavery Society, the housing situation is much better in Paraguay "for those Indians who still live in houses, huts or shelters of a traditional kind, where sufficient space is provided for the families." This is not an isolated case, there are many examples of similar situations.

178. The desire on the part of public authorities and private enterprises in many countries to impose non-indigenous housing patterns on indigenous people has often resulted in marked failure, particularly where these changes are not warranted by the circumstances of the specific cases. The following are some examples of such unsuccessful changes imposed on indigenous populations in a few countries.

179. During the Special Rapporteur's visit to Bolivia in June 1974, the existence was noted, in the township of K'ausaya, of sectors which showed two well-defined types of population settlement: one which followed a pattern of concentrated housing, with houses ranged side by side in streets and avenues; and another organized according to the notion of scattered housing, with houses surrounded by a family plot. It was explained to him that, in order that the community could be provided with the basic services of drinking water, drainage and electricity at reasonable cost, the first-mentioned "concentrated" type had been officially promoted. It could be observed, however, that in that section of "concentrated" housing there was much more evidence of accumulation of refuse and waste near the houses than in the sector of "scattered" housing. The Special Rapporteur was informed that scattered housing, still preferred by the local inhabitants since it resembled what was said to have been the traditional pattern in that regard, had been abandoned only because regular electricity, drainage and drinking-water services would be available only in the concentrated sector.

180. According to an official publication 52/ traditional housing arrangements at village stage consisted often of a single large house, rectangular or circular in shape, with open compartments for individual family units. It is asserted that this type of community was found among the Wai-Wai until the early 1950s, a whole community living in a single large conical house, with a second house in which festivities were carried out. It is added, though, that today, however, the Wai-Wai have been persuaded to abandon this type of settlement pattern by the missionaries, who claimed that it was conducive to some kind of "immorality". Now the Wai-Wai live in individual houses, often built on the traditional pattern. 53/

181. During his visit to Mexico in July 1977, the Special Rapporteur noted, in the first Huichol community which he visited in Jalisco, that the housing units built for the indigenous population did not conform to the traditional pattern, either in the way they were laid out or in regard to interior arrangements. Having mentioned

51/ See para.113, above.

52/ A brief outline of the progress of integration in Guyana, published by the Ministry of Information and Culture of Guyana, January 1979, p.6.

53/ Ibid. It is further reported that "in spite of tribal divisions (based mainly on language and to a lesser extent on culture), the traditional political unit of Amerindian Society is the village, rather than the tribe. Villages can be of any size, and can vary in population from less than a hundred to several thousands. Often, in the old days, a village consisted of a single large house."

this aspect to the authorities accompanying him on his visit, and having confirmed that the local inhabitants wished to return to that pattern, the Special Rapporteur was told that efforts were being made to correct such irregularities. The Special Rapporteur would be grateful to receive information on the matter.

182. The Government provided (1980) the following information concerning the fact that, in accordance with standards now in force, housing units built for indigenous groups were to conform to the traditional housing pattern of the settlements where such programmes are being developed.

"In the Agreements established by the Co-ordination of National Planning for Depressed Zones and Disadvantaged Groups, with the Secretariat for Human Settlements and Public Works, in which they undertake to co-ordinate their activities in establishing and operating the 'SAHOP-COPLAMAR Programme' for the improvement of rural housing, clause 5 established the characteristics of rural housing, in which 'the undersigned parties undertake to respect the characteristics, customs and ways of life, with regard to housing, of the inhabitants in the settlements where the programme is being carried out.'"

183. The comments on government programmes to resettle the indigenous peoples into model villages, 54/ to the effect that they are framed in such a way as to be incompatible with traditional life, both in the materials used and in design, and that they fail to observe the overriding principle of minimum disruptiveness, together with the conclusion that this makes them inevitable failures, should be borne in mind in this connection. It is considered useful to reproduce here some additional comments on the subject:

"It is in the area of housing that government plans exhibit most explicitly the intention to change as soon as possible the traditional ways of life. In many areas of Indonesia, and especially in Kalimantan, this is a continuation of Dutch colonial practice where there was a systematic campaign against long houses which were burnt down. This has occurred in specific areas, not as official government policy, but rather enthusiasm on the part of local functionaries sometimes fuelled by a religious fanaticism." 55/

G. Need for consultation with, and participation of, indigenous populations in housing schemes

184. It is obvious that more indigenous input is needed if indigenous housing is going to improve. Consultation with and contributions by indigenous populations are then clearly needed in order to ascertain the situation and the needs as they themselves see them, as well as to give the control of indigenous housing, or significant participation in it, to indigenous populations so that its implementation conforms to their own traditions and plans. There is also the need to increase the involvement of indigenous personnel in, and to provide them with training for, the necessary operations.

54/ See para.107, above.

55/ Ibid.

185. In some countries there seems to exist some degree of indigenous consultation and participation in certain aspects of housing projects.

186. It was stated above that in Australia the Commonwealth Government provides funds for the establishment of Aboriginal Housing Societies on reserves and in remote communities. The Aboriginal groups are involved in design and material decisions as well as in actual construction using as much local material as possible. To date 15 societies have been established and others are being formed. In 1972/73 the Government set aside an amount of \$400,000 for grants to housing Societies. A panel of the Royal Australian Institute of Architects has been established, following a seminar to help co-ordinate research and development programmes. The Government has communicated that over 100 Aboriginal housing associations have been established in the country and that in 1973/74 some \$8 million was granted to housing associations and over \$13 million was provided in 1974/75 for this purpose.

187. According to an article published in 1975, there seems to have been some degree of consultation regarding a proposed text of housing rules in the United States:

"The Department of Housing and Urban Development (HUD) published proposed regulations on Indian housing in the September 19, 1975 Federal Register. The proposed regulations are the result of HUD's review of Indian housing programs in consultation with Indian people. These regulations were drafted by an interdepartmental working group from the Bureau of Indian Affairs (BIA), Indian Health Services (IHS) and HUD. Before they were published a tentative draft was sent to all Indian Housing Authority (IHA) offices for review." 56/

188. The First Inuit Circumpolar Conference adopted a resolution demanding control by Inuit people of some of the activities and the provision of adequate means of transport so that they could themselves act efficiently in those endeavours. Resolution 77-10 reads:

"WHEREAS, housing in many parts of the Inuit world is deplorable; and

"WHEREAS, water, sanitation, electricity and communication are generally inadequate; and

"WHEREAS, management and maintenance of utilities and communications is often not in the hands of Inuit users; and

"WHEREAS, transportation and fuel supplies are much in demand, are generally not at hand and are serious problems;

"NOW, THEREFORE, BE IT RESOLVED THAT:

1. monies for housing be distributed to the Inuit themselves for housing design, materials and labor;

56/ Curtis Berkey and Loretta Lehman, "HUD publishes proposed Indian Housing Rules", in American Indian Journal, vol.1, No. 2, 1975, p.20.

2. control and planning of utilities and communications be given to Inuit users;
3. Inuit have control of monies for the management and maintenance of utilities to determine priorities in their villages;
4. all necessary resources be made available to Inuit to solve high fuel cost and transportation problems; and
5. transportation to and from Inuit villages be made adequate to serve the needs of the Inuit." 57/

57/ This resolution is of a general character (see chapter IV, paras. 22 and 24 (i)).

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