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STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST INDIGENOUS POPULATIONS

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

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XVIII. POLITICAL RIGHTS

A. International provisions

1. The international Bill of Human Rights includes a number of provisions concerning political rights and related stipulations.

(a) The Universal Declaration of Human Rights contains specific provisions in article 21, as follows:

> 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
>
> 2. Everyone has the right to equal access to public service in his country.
>
> 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

This article should be read together with the following stipulations:

Article 2

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 7

> All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 19

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

> 1. Everyone has the right to freedom of peaceful assembly and association.
>
> 2. No one may be compelled to belong to an association.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

(b) The International Covenant on Civil and Political Rights contains specific provisions on political rights in article 25, as follows:

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

This article should be read together with the following stipulations:

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or public order (ordre public), or of public health or morals.

Article 20

1.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

2. The International Convention on the Elimination of All Forms of Racial Discrimination provides inter alia for political rights in article 5 (c), which should be read together with paragraph (d), subparagraphs (viii) and (ix), of the same article and with articles 2, 6 and 7 of the Convention, as follows:

"Article 5

"In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

"...

"(c) Political rights, in particular the rights to participate in elections - to vote and to stand for election - on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

"(d) Other civil rights, in particular:

"...

"(viii) The right to freedom of opinion and expression;

"(ix) The right to freedom of peaceful assembly and association;..."

These provisions have to be read together with those in articles 2, 6 and 7 as follows:

"Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved."

Article 6

States parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

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

Article 1 of the Convention defines "racial discrimination" and paragraph 4 of that article contains the following provision.

"Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."

B. Initial remarks

3. The real significance for indigenous populations of the provisions quoted in paragraphs 1 and 2 above depends on many circumstances which may vary from country to country and even from region to region within the same country.

4. It must be pointed out that, as is well known, the effective exercise of the rights set out in these provisions is affected everywhere by a number of factors, particularly those of an economic and social character. In the case of indigenous populations, the effective exercise of political rights is affected by a long list of complex circumstances which transcend any formal and abstract recognition embodied in the constitutions and other fundamental laws of the countries where such populations are to be found. Although not entirely absent, explicit de jure discrimination is infrequent. Generally speaking, the factors responsible for preventing indigenous populations from effectively exercising those rights which are formally granted to the population as a whole, or from participating in the electoral or consultative processes otherwise than within the strict confines of the area they inhabit, are to be found in the de facto situation. Their economic, social and cultural way of life sets them substantially apart in this regard. Their prevailing concern with local affairs has tended to confine their action almost entirely to the region in which they live. This tendency is exaggerated in the case of isolated populations, such as certain groups of forest-dwellers and mountain-dwellers who, by virtue of their complete physical isolation, have absolute control over their own affairs, but, at the same time, lead strictly separate lives from the rest of the population of the country. A similar sort of situation may prevail in the case of nomadic and semi-nomadic populations whose isolation is relative. The presence of indigenous populations in these areas of refuge is often the direct result of the expansionist tendencies of the dominant population during the colonial period or even during the independent life of the country.

5. There is a whole complex of pressures which have continued to impinge on these groups, keeping them, whether deliberately or not, in a state of physical and institutional isolation. It is this process of pressure and defensive action which can be held responsible in not a few cases for the ignorance of the official language and the illiteracy which in practice prevent greater participation by these groups in the consultative and voting processes or election or appointment to public office outside their own communities. The same process is responsible for eliminating from books and other publications and from the institutions and practices imposed by the dominant groups any information concerning, or consideration or recognition of, the political institutions, practices and sensibilities of the indigenous populations. Furthermore, whenever indigenous populations live in contact with other non-indigenous population groups which have assumed a predominant position, they have suffered varying degrees of interference in their internal organization and methods of control and this has seriously affected their own socio-political processes inside their communities.

6. The range of factors relevant to the situation of indigenous populations in the various countries in which they live could have been made clear only if the information available had been based on a close and systematic scrutiny of that situation. However, this is not the case. The information available in connection with the present study is mainly of a fragmentary nature and relates only to a few situations.

C. Discrimination and the elimination thereof

1. Introductory remarks

7. The information available in this regard reveals no clear-cut cases of specific de jure exclusion of indigenous inhabitants from the right to vote or to be elected or appointed to public office. Nor is there any information concerning systematic denial, limitation or restriction in law in connection with their rights of peaceful and unarmed assembly or of association for political purposes and their freedom of expression for these ends.

8. In practice, however, even without such legal provisions there can be serious limitations in this regard. Although, for the purposes of the present study, the formal recognition of these rights is of lesser interest than the possibilities open to indigenous populations for the effective exercise of any rights that other segments of the population can in fact exercise fully, mention should be made of the basic provisions in force as they emerge from the information gathered. Because this information does not provide a basis for comparative analysis, the account that follows will deal mainly with certain specific cases in each country. Only in a few instances was it possible to present any kind of comparative analysis.

9. In the countries for which information is available, the law makes provision for all citizens, without distinction as to race, colour, or national or ethnic origin, to enjoy equality with respect to political rights, in particular the rights to participate in elections, to vote and to stand for election and to take part in the government as well as in the conduct of public affairs. In most cases, these rights are enshrined in the Constitution. Usually the Constitution sets out the qualifications and disqualifications for persons entitled to vote in an election of members to a national Parliament or legislative assembly and to be elected as members of such bodies, the basic criteria of the electoral system to be followed at such elections, and the intervals at which these elections shall be held. It also establishes machinery such as elections commissions or tribunals for the purpose of ensuring impartiality and compliance with the provision of the law in the registration of electors and the conduct of elections.

10. It must be stated, however, that even though the law may accord to all persons within a country the right to vote and to stand for election, there are a number of circumstances which may prevent the exercise of that right by all persons on an equal footing. In some cases, the failure of members of a non-dominant group to take full advantage of the right in question may be due to historical factors, economic opposition, educational opportunities or some form of existing de facto discrimination. For example, despite the fact that no individual or group may today be excluded by law from suffrage, the members of certain non-dominant groups appear to face a number of obstacles in achieving full and free participation in electoral and political processes. Indigenous voter registration and political participation have been slow to take effect or actually made difficult in some areas.

11. Despite significant progress in many areas, indigenous candidates and voters are reported to have experienced hostility on the part of non-indigenous persons and many forms of discrimination by State and local governmental officials and bodies, political parties, and public and party officials. False information, fraud and outright intimidation are apparently still used in some countries to

block, weaken or neutralize the indigenous vote. Measures have been taken to change the boundaries of constituencies where indigenous voters are in the majority, so as to reduce their voting strength and consolidate predominantly non-indigenous districts. Measures adopted to prevent indigenous persons from becoming candidates include: abolishing elective offices, extending the terms of incumbent officials, substituting appointment for election, increasing filing fees, delaying or refusing registration.

12. Nevertheless, there is evidence of increasing participation of indigenous people in the electoral processes of all the countries surveyed in recent years.

2. Consideration of the information available

(a) General statements

13. Before entering upon the examination of concrete statements and provisions dealing with more specific aspects of political rights, some general statements received from Governments which cover a wide range of subjects will be quoted.

14. The Government of Denmark has stated in respect of Greenland, that:

> "The provisions laid down by the Central Governmental Authorities relating to the rights referred to under outline item 71 do not refer to any specific groups of the population; they refer either to the population of the realm in its entirety (the provisions of the Danish Constitution concerning the right to vote, and eligibility for the Folketing, and concerning freedom of association, of assembly, and of speech and expression) or to the entire population of Greenland (the provisions concerning the right to vote, and eligibility for the Greenlandic Landsting, and for the Greenlandic municipal councils)."

15. The Government of Bangladesh has stated that "in Bangladesh, every citizen enjoys the same political rights and privileges, irrespective of his religion, race, caste, sex or place of birth or origin."

16. The Government of New Zealand has transmitted the following general statement in addition to the specific information it has also provided on several aspects of political rights. The Government writes:

> "Both in national elections and in local elections all citizens aged 21 or over who have the necessary residential qualifications are entitled to vote or to stand as candidates for election."

17. The Finnish Government has stated that

> "there are no denials or restrictions affecting the right of the Lapp population to participate in elections or other popular consultations; their right of access to elective or non-elective public office, their right of peaceful assembly and association for political purposes, or their right to form or join political parties, or their freedom of expression to those effects."

18. The Australian Government, on its part, has reported that:

> "Aboriginals share full political rights with other Australians. They may enrol, vote and stand for election at all levels of government. Aboriginals are however excused from compulsory enrolment under the Commonwealth Electoral Act although they may, of course, enrol voluntarily. Aboriginals also share with all other Australians the same rights of peaceful assembly and demonstration, association for political purposes, and formation of and membership in political parties."

19. Some Governments have included in their information data on past restrictions that have now disappeared or have referred to difficulties now confronting indigenous populations in the effective exercise of their political rights.

20. Thus, the Government of Canada, referring to past restrictions, stated:

> "In 1950 Eskimos were granted the right to vote in federal elections, and in 1960 restrictions against voting by registered Indians were removed. There is now no discrimination against [Eskimos with regard to] voting, holding political office or participating in the electoral process in federal, provincial or territorial elections."

21. The Government of Australia has added to its information quoted above (para. 18) some data with reference to the exercise of political rights by Aborigines and states:

> "It is likely that educational, economic, cultural and linguistic factors hinder many Aboriginals from effectively exercising their political rights, but Aboriginals have in recent years become increasingly politically aware and urban Aboriginals are generally able effectively to exercise their political rights. Special educational programs are carried out by the Australian Electoral Office. The National Aboriginal Consultative Committee, too, provides a training ground for Aboriginals wishing to acquire wider political influence."

22. The Norwegian Government has included some references to the fact that the timing of certain elections sometimes poses difficulties for Sami voters, although there are no restrictions whatsoever on their political activities. The Government also states that there are some language difficulties:

> "... There are no de jure or de facto obstacles to participation in political activities. At elections the language problem may prove difficult. At times when elections are being held, the nomadic Lapps are heavily occupied so that it may be desirable to enable them to vote by post. The Lapp organizations have now taken up this question."

23. The Government of the United States of America, in addition to other information supplied in connection with political rights, has stated in general terms that:

> "... representation of American Indians and Alaska Natives in the governmental structure has been, largely, a matter of happenstance. The indigenous person has won an election by virtue of his ability to get votes from a constituency that he then represents."

24. On this question, in general, it has been written that

"... the heart of the question ... is ... Do Indians or can Indians participate not only in elections of their tribal government but in all other levels of government, county, State, and federal? The answer is unfortunately: 'not, unless the individual is willing to expend great effort'.

"The poor representation of American Indians and Alaskan Natives in the governmental structure has not been the result of happenstance. Instead the reason can be pointed out exactly, the systematic exclusion of Native Americans from the elective and governmental process. The treaties referred to in the United States answer provided that Congress must approve; this approval was the condition that was not met." 1/

25. It has been added:

"Although Indians finally received the legal franchise in all States in 1948, 24 years after Congress granted it, Indians have been systematically denied registration, the process by which one can be eligible to vote. This is done by not making a register available, not providing bilingual explanations or simply refusing to register people. Another major method by which Indian franchise becomes meaningless is through gerrymandering, the drawing of district lines to dilute the strength of a group or area. This is done by either including all the Indians in all districts making their vote worth less than a less popular non-Indian district or splitting up the Indian population so that they are outnumbered in every district." 2/

26. It has been stated in an official report that in the United States of America:

"Indians constitute less than one half of 1 per cent of the population of the United States and are widely dispersed throughout the country. Hence, they are not a particularly effective political force. Therefore, historically Indians have depended greatly on their unique legal status to protect them from the erosion of their rights by non-Indian private interests and State and local government." 3/

27. The Government of Australia reports:

"Since Aboriginals comprise less than 1 per cent of the total population, are predominantly rural and scattered throughout Australia, and were by tradition organized effectively only into small local units, their failure to become a political force is not surprising. Political awareness amongst Aboriginals is, however, increasing rapidly."

1/ 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. 53. See also government information quoted in paragraph 128, below.

2/ American Indian Law Newsletter, vol. 7, No. 11, p. 53.

3/ Report prepared by the United States Commission on the Conference on Security and Co-operation in Europe for the European Review Conference in Madrid (November 1980), p. 150.

28. Turning to the more specific information which refers to concrete aspects of the question, it should be stated from the outset that, in general, there is only information on basic de jure aspects, with no significant discussion of the actual application or enforcement of the relevant provisions. All the data available in connection with the present study will, nevertheless, be discussed in as concrete terms as possible. Aspects of the right to vote and to be elected, as well as that of access under conditions of equality to non-elective public office will be dealt with. The rights of assembly, of association, including formation of and admittance to political parties, will then be discussed, together with whatever data are available on the right to freedom of speech and expression of political opinions and views. It should be borne in mind that this chapter is not intended to be an exhaustive analysis of political rights per se. It focuses on elements in the information available for the study which would indicate any differences in the way in which such rights are implemented with regard to the indigenous populations, particularly differences which may be prejudicial to them.

(b) The right to vote

29. Generally speaking, in all countries surveyed, the requirements for voting are: nationality of the State in question, 4/ attainment of a given age (usually 18 or 21) and freedom from civil interdiction (for example, civil incapacity, insanity, moral turpitude) and from disqualification from the exercise of political rights (for example, conviction of a serious crime).

30. In some countries, certain legal provisions would exclude some citizens from the right to vote like other citizens because they do not fulfil specified literacy or other educational requirements or do not have other skills referred to in the law in general terms which leave a wide margin for interpretation.

31. The Brazilian Constitution excludes illiterate persons from the right to register as voters. The Constitution provides:

> "Article 147. Brazilians over eighteen years of age registered as prescribed by law shall be voters.
>
> "...
>
> Paragraph 3. The following may not register as voters:
>
> "a. Illiterate persons;
>
> "b. Those who do not know how to express themselves in the national language;
>
> "c. Those who are deprived, temporarily or permanently, of political rights."

4/ In three of the countries surveyed, however, aliens may vote in municipal elections, provided they satisfy certain conditions such as residence (Bolivia, Constitution art. 220; Paraguay, Constitution art. 312 and Venezuela, Constitution art. 111).

32. Act No. 6001 provides:

> "Art. 5. The norms of Articles 145 and 146 of the Federal Constitution relating to nationality and citizenship, apply to the Indians or forest-dwellers.
>
> "Sole paragraph. Enjoyment of civil and political rights by the Indian depends on verification of the special conditions established in this Law and in the pertinent legislation."

33. Further, concerning the enjoyment of the general rights of citizenship without discrimination, the Special Rapporteur notes that, although under article 147 of the Federal Constitution Brazilians over 18 years of age have the right to vote, under section 9 of Act No. 6001 "an Indian may not be emancipated from tutelage and therefore acquires the right of citizenship until he is 21 years of age and only if he has 'the necessary skill to perform a useful activity' ..."

34. The Philippine Constitution provides that "it shall be the obligation of every citizen qualified to vote to register and cast his vote" (article V, section 4). Other provisions seem, however, to disqualify certain indigenous persons from voting like other citizens, but grant them the right to elect their own representatives to certain public bodies. It has been written, in fact, that:

> "... Illiterate Aborigines do not have voting rights, but those who fulfil certain conditions regarding education may elect their own representatives to the various government bodies." 5/

35. Provisions making literacy a prerequisite for the right to vote have now disappeared from constitutional or statutory texts in several other countries. 6/ Elsewhere, a distinction has been drawn making the vote obligatory for those who know how to read and write and optional for those who do not. Most of these provisions have now also disappeared from constitutional and statutory law. One country, however, makes that difference in its Constitution adopted in 1977 and presently in force. 7/

36. The fact that citizenship was only "conferred" on American Indians in the United States of America in 1924 and that some had not asked for it or wanted it, and all received legal franchise in all states in 1948 has been discussed earlier. 8/ The statement of the Canadian Government that Inuits were granted the right to vote in federal elections only in 1950 and restrictions against voting by registered Indians were removed only in 1960, has also been quoted before. 9/

5/ International Labour Organisation, Indigenous Peoples: Living and Working Conditions of Aboriginal Populations in Independent Countries, Studies and Reports, New Series, No. 35 (Geneva, International Labour Office, 1953), p. 550.

6/ For example, in Chile (1925 Constitution, art. 7), Ecuador (1946 Constitution, art. 17) and Peru (1933 Constitution, art. 86).

7/ Ecuador, Constitution of 1977, article 33, which reads: "Voting is universal, direct and secret, obligatory for those who know how to read and write, and optional for illiterate persons."

8/ See paras. 24 and 25 above and paras. 55-59 of chapter VII on basic principles (E/CN.4/Sub.2/476/Add.2).

9/ See para. 20 above.

37. There are, however, other countries in which full citizenship is still granted only to some indigenous peoples and not to all. Thus political rights are exercised only by those who have full citizenship. This appears to be the case in Paraguay, since, according to information supplied by the Anti-Slavery Society, political rights have in fact been "granted to the minority among the Indians, who have full citizenship, ... but not to the others". 10/

38. Even where all enjoy full citizenship in law, some difficulties may remain which restrict the exercise of voting rights in practice.

39. Thus, the Government of Costa Rica states:

> "Ninety per cent of the indigenous population do not participate in elections or other consultations of the people because they do not have an identity card, which for various reasons - schooling, culture - they have not been able to obtain or keep valid. There are no legal limitations, once an identity card is obtained."

40. In the United States of America, certain difficulties encountered by American Indians in registering as voters have been mentioned above. 11/

41. At the local level, the indigenous inhabitants have been having a more satisfactory record of participation and have been taking an active part in many activities and civic affairs of political importance in the immediate locality in which they live and in local government in the rural areas in which they are concentrated. In recent times, there have been instances of participation by these populations in similar activities in urban centres.

(c) The right to stand for election and to be elected

42. In all countries covered by the study, a candidate for elective public office must meet the requirements for exercising the right to vote and, in addition, he must possess the necessary abilities and qualifications to carry out the relevant functions satisfactorily. The conditions, abilities and qualifications for access to non-elective public posts usually follow a similar pattern in the different countries.

43. A specified age, higher than that required for voting is often required for standing for election to higher posts, such as senators, or representatives in national assemblies. 12/

10/ Information furnished on 3 September 1976.

11/ In paras. 24 and 25.

12/ This happens in all countries surveyed. For example, an age limit of 30 years is set in Pakistan for election to the Senate (Constitution, art. 62(c)) and in Norway for election as a representative (Constitution, art. 61). The minimum age in Brazil for election to the Federal Senate is 35 (Constitution, art. 41). In India the minimum age is 25 for election to the House of the People in Parliament and 30 for election to the Council of States in the same Parliament (Federal Constitution, art. 34 (b)).

44. In Ecuador, candidates for elective office must be affiliated to a political party as a necessary requirement. 13/ Similarly, in Sweden, the seats in the Riksdag are distributed among parties in accordance with a system of representation which is proportional to the votes obtained in the election. 14/

45. In certain countries the law prevents indigenous people from standing for election and being elected to public office.

46. This is the case in Brazil where "persons who may not be registered may not be elected to office" (Federal Constitution, art. 150). Since, as has been discussed above, 15/ illiterate persons may not register as voters, it follows that indigenous people who are illiterate, may not stand for election.

47. In Paraguay many indigenous persons may not stand for election to public office since not all of them have been granted full citizenship. This has meant that indigenous people tend not be represented in public office. 16/ The Anti-Slavery Society which has submitted this information adds, as an example, that there is no Indian deputy in the National Assembly. 17/

48. In other countries, there is no de jure restriction on indigenous people standing for election and being elected to public office, but de facto there are obstacles which ultimately curtail their participation in political activities, including that of being elected. This is the case, for example, in Costa Rica, where according to information furnished by the Government up to 90 per cent of the indigenous population does not take part in elections or other popular consultations because they have no knowledge of the identity card needed to do so. Once they have obtained the card, there are no legal limitations on their participation in electoral and political processes. 18/

49. According to information quoted above, 19/ in the United States of America the electoral roll is not open to all indigenous people, some are simply refused registration or the necessary explanations in a language they can understand in order to register and thus become eligible to vote as well as to stand for election.

50. Other practices include "gerrymandering" or other dilution tactics, through which the relative numerical strength of the indigenous vote is diminished or neutralized so that they are outnumbered where they could otherwise be very important groups or even constitute a majority.

13/ Constitution of 1977, article 37, which reads: "Only legally recognized political parties may present candidates in a public election. In addition to the other requirements imposed by the Constitution, to run as a candidate in any public election a person must be affiliated to a political party."

14/ Constitution, article 14.

15/ See paras. 31-33, above.

16/ See para. 35, above.

17/ Information submitted on 3 September 1976.

18/ See para. 37, above.

19/ See para. 25, above.

51. Similar practices are used in the Central Tribal Belt in India according to information quoted below 20/ in the context of a discussion of questions pertaining to the autonomy of tribal populations in the areas they inhabit and their recognition as local or regional politico-administrative entities.

52. In several of the countries for which information is available, the indigenous population has representatives at various levels in national Government. They participate, for example, in the national and State legislative bodies.

53. Thus in 1975, according to information furnished by the Government of Australia, three Aboriginals had been elected to Australian parliaments under universal franchise. In late 1974 Mr. Hyacinth Tungutalum of Bathurst Island was elected to the Northern Territory Legislative Assembly, and in the 1974 Queensland State elections, Mr. Eric Deeral, of Hops Vale and Cairns, North Queensland, was elected to the Legislative Assembly. Senator Neville Bonner of Queensland retains his seat in the Australian Senate.

54. The Government of Canada has stated that:

> "The first Indian, Frank Calder, a Nishga chief, was elected to the British Columbia legislature in 1949.
>
> "... two native people sit in the federal House of Commons, having been elected in the federal election of October 1972: Len Marchand, M.P. for Kamloops-Caribou, and Wally Firth, M.P. for the Northwest Territories ...
>
> "Several native people have been elected to the Territorial Councils of the Northwest Territories and the Yukon."

55. The statements of the Government of the United States of America to the effect that indigenous persons have won an election by virtue of their ability to get votes from a constituency that they then represent, as well as the assertion by the Government that "representation of American Indians and Alaska Natives in the Governmental Structure has been a matter of happenstance" have been referred to above. 21/

56. The Government has further stated in this connection, that:

> "Indian tribes are governed, generally speaking, through a constitution that has been ratified by the Secretary of the Interior and that spells out how a tribal government is elected, how long it serves the tribe, and who is entitled to vote in tribal elections. The rights of peaceful assembly are guaranteed indigenous people by the United States Constitution as are the rights of peaceful assembly of all other citizens.
>
> "Denial of rights of an indigenous person by his or her tribal government generally are redressed at election time. However, at least one protest on an Indian reservation - the protest at Wounded Knee on the Pine Ridge (Oglala Sioux) Reservation - came about, in part, because a dissident group of Oglala Sioux tribal members did not agree that the tribal government represented their point of view."

20/ See paras. 168 and 169, below.

21/ See para. 23, above.

57. In this connection it has been written:

"It is ironic that the United States chose only to respond by citing the existence of tribal governments and an isolated incident on the Pine Ridge Reservation in South Dakota while at the same time Navajo People in Arizona are being denied their franchise through illegal and immoral means.

"Indians have the right of peaceful assembly and freedom of speech but without a meaningful franchise these rights are void. Rights in a vacuum are not rights.

"While it is true that the major problem [is one] of determining eligibility, assuming eligibility in a recognized tribe is [based on] ancestry, the tragedy of this process is that people with little or no tribal blood are included on some rolls while people with the requisite amount or more are excluded. This procedure is particularly prevalent in areas where mineral wealth is present and per capita payments will be made.

"The United States has also failed to provide adequate help for similar tribes that have been ignored in making a correct updated roll. Of course proving ancestry is to no avail if the tribe to which one belongs is no longer recognized." 22/

58. It has been indicated that one of the most dramatic problems which led to activities of the American Indian Movement was corruption in the Bureau of Indian Affairs and within federally controlled "elective systems" of government on Indian reservations. 23/

59. It has also been pointed out that the Wounded Knee siege was caused in part by the fact that the Oglala Sioux were not allowed to elect their own officials themselves but had to accept persons imposed by the Bureau of Indian Affairs. 24/

60. As to indigenous representation in local government it has been pointed out that in Finland there is mixed Lapp and non-Lapp representation in the Communal Councils of the provinces where the Lapps reside, as other groups of population also reside there. The municipal and rural communes constitute local administrative entities which have been granted, by law, a far-reaching right to local self-government.

61. In New Zealand as a result of the local elections in 1971, 13 of the 21 cities elected from one to four Maori councillors, thus bringing to 22 the total number of Maoris elected to the municipal councils.

62. In any event, the indigenous populations and some non-governmental bodies complain that, in spite of the growing non-indigenous vote for indigenous candidates, the latter have so far achieved a merely symbolic representation which does not give them an effective say in the decisions of the multirepresentational assemblies to which they belong.

22/ American Indian Law Newsletter, pp. 53-54.

23/ John Mohawk, "The sovereignty which is sought can be real", Akwesasne Notes, vol. 7, No. 4, 1975, pp. 34-35.

24/ "Facts on file", Weekly World News Digest, 1973 (New York), p. 166.

63. Thus, for example, in New Zealand - a country in which the participation of the indigenous population in local government is most apparent - the Government rightly notes as important that:

> "There is a long tradition of Maori participation in local government in rural areas and, in the last 15 years, they have been playing an increasingly prominent part in urban areas. The last local body elections were held in 1971. There are 21 cities in New Zealand and in the 1971 elections 13 cities elected from one to four Maori councillors. Altogether, 22 Maoris were elected to city authorities. Bearing in mind the fact that there are some cities with only a handful of Maori residents, it is clear that the residents of most cities have no prejudice against Maoris in their controlling authorities. There is not one city where the Maori proportion of the population is sufficient to elect one of their number without substantial support from non-Maori citizens. Maoris were also elected in many boroughs and counties. On a number of occasions Maoris have been elected as mayors of boroughs and chairmen of county councils. In the last elections two cities elected Maori Deputy Mayors."

64. On the other hand, the Citizens' Association for Racial Equality, a domestic non-governmental organization that is working towards more effective equality of the various population groups in the country pointed out, in its statement to the Special Rapporteur during his official visit to that country in June 1973, that:

> "A great network of local bodies and ad hoc organizations exists in New Zealand, and Maoris are invariably eligible for election or appointment to these. But their minority status means that they are seldom able to exercise effective control over them, let alone an effective voice within; their representation, at best, is usually of a token nature. The result is that Maoris are invariably left out of the decision-making process - and often from decisions that vitally affect them (or their children)." 25/

65. The separate Maori and non-Maori representation in Parliament is discussed below in section D,2. In the case of local body elections, the situation is different. All citizens resident in a local authority area vote on a common roll. Cities are governed by city councils, smaller towns by borough councils and the rural areas by county councils.

66. In this connection, reference should be made to the provisions in force in some countries, whereby certain seats in the local and national assemblies are reserved for certain disadvantaged population groups, including indigenous populations.

67. In New Zealand, there is separate Maori representation in Parliament and in the Cabinet. Separate Maori representation was provided for by the Maori Representation Act, 1867. Today, the statute law on elections and the life of Parliament is contained in the Electoral Act, 1956. The House of Representatives now consists of 80 members, four of whom are Maori (see paras. 141-147 below).

68. In India, the Scheduled Tribes, which have been included by the Indian Government among those it describes as the "weaker" sections of the population, are entitled to proportionate representation in state assemblies and the National Parliament. These arrangements are described in more detail in paragraphs 138 to 140, below.

69. In Pakistan, by Order No. 13 of 1970, seats have been allocated to the centrally administered tribal area in the National Assembly (see para. 137, below).

25/ Information furnished orally to the Special Rapporteur in Auckland during his official visit to New Zealand in June 1973 and later confirmed in writing.

(d) The right to equal access to public service

70. In all the countries for which information is available, the law imposes no restriction on the eligibility of nationals to access to the public service on the ground of race, colour, national or ethnic origin. The right to take part in the Government, as well as in the conduct of public affairs at any level, and to have equal access to public office is based only on personal competence and merit with no restrictions other than those established by law. In many countries, the right to hold public office is restricted to citizens and certain of the highest administrative and political offices must be held by citizens by birth and not by naturalized persons.

71. Initial appointments to career posts in the administration are in most cases made on the basis of competitive examinations as a general rule.

72. In one country (Guatemala) a fundamental law provides that "in filling public posts, there shall be no discrimination based on race, sex, civil status, religion, birth, social or economic position or political opinion". According to the same law any discrimination on political, social, religious, racial or sex grounds which harms or favours public servants or persons aspiring to enter the Civil Service shall make the public officials responsible liable to fines, suspension or in grave cases, dismissal following a hearing before the National Civil Service Board.

73. In many countries indigenous people are markedly underrepresented in appointed governmental posts. The fact that they occupy so few important public posts, or none at all, is largely the result of linguistic, cultural and educational differences, the bulk of indigenous populations often being illiterate in many countries.

74. There are, however, clear cases where there are other reasons, whether in addition to the former causes or independently, for preventing, limiting or restricting access to appointive public office which seriously affect any criteria for bringing about conditions of equal access to such office.

75. For example, the Anti-Slavery Society states that in Paraguay indigenous people rarely occupy appointive public office and never "on any but ... the lowest administrative level". This is communicated together with indications that only some of the indigenous populations in Paraguay have been granted "full citizenship". 26/

76. In several countries, the indigenous inhabitants hold non-elective office in the national Government, including some important posts, since according to the information available, there is nothing to prevent them from holding any office, provided that they have the abilities and qualifications required by law. This, however, as is pointed out, is the stumbling-block for the indigenous populations in these countries, since, until very recently, very few indigenous inhabitants possessed the education and experience required for many of the important posts. For example, New Zealand explains the fact that only one Maori judge sits in its courts by the absence of candidates with the requisite qualifications: namely, being a lawyer and having practised law for a specified

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26/ See paras.37 and 47, above.

number of years. A similar situation is to be found in other countries. In all of them, however, it is reported that more and more indigenous inhabitants are pursuing university and professional studies and submitting applications for public posts.

77. The Government of Canada has stated that one Indian Senator has held office in the Canadian Senate, an appointed body.

78. In Guyana, according to an official publication:

> "Earnest of things to come in so far as Amerindian development and integration with the rest of the community are concerned is seen in the fact that even now, when far-reaching long-term plans for Amerindian integration are just beginning to be implemented, Amerindian citizens of Guyana are already becoming far more visible than before among the coastal citizenry. Thus the past few years have seen a much greater intake of Amerindians into the army and the police force, the nursing profession, teaching, business, and Government and other offices.
>
> "In 1969, Parliamentary Secretary for Amerindian Affairs, Mr. Philip Duncan, became the first Amerindian citizen to represent Guyana at the United Nations. Mr. Duncan, who was one of the Guyana's team of delegates attending the twenty-eighth United Nations General Assembly, thereby set the pattern for the future participation of Amerindians in the external affairs of the country ..." 27/

79. In Australia the Office of Aboriginal Affairs carries out the directions of the Minister-in-Charge. In the State of Victoria, there is an Aboriginal Affairs Advisory Council created by the Aboriginal Affairs Act, 1967; this Council includes aboriginal members. There is also a Minister for Aboriginal Affairs in this State. Arrangements for a statutory advisory council are being made in the State of New South Wales.

80. In connection with access to non-elective office, the Government of the United States of America reports that:

> "... the Bureau of Indian Affairs has had ... Indians as Commissioner[s] ... and, ... [like] various other units of government concerned with Indian matters, has a high proportion of Indian employees that presumably inject Indian thinking into the executive branch of government ..."

81. Reference has been made above in chapter X, Administrative arrangements, paragraph 72, to statutory preference to be granted to American Indians in posts available in the Bureau of Indian Affairs. The low representation existing in these posts despite legislative mandate and judicial adjudication has also been pointed out.

82. What has been called "the failure to comply with a legislative mandate to give employment preference to Indian people within the Bureau of Indian Affairs" 28/

27/ Guyana, Ministry of Information and Culture, "A brief outline of the progress of integration in Guyana", January 1970, pp.33, 61-62.

28/ American Indian Law Newsletter, loc.cit., pp.47-49.

was reflected in Congressman Olsen's report (1970) which stated, inter alia, that most positions occupied by Indians in the Bureau were of a low category and salary and that non-Indians were often promoted to supervisory positions when Indians were available. The cases of Freeman vs. Morton and Mancari vs. Morton have been mentioned as upholding the right of Indians to preferential employment in the Bureau of Indian Affairs. 29/ It was also shown that the number of American Indians employed by the Federal Government in agencies and departments where the Indian preference statutes are not in effect were even lower. The low figures given were said to represent an increase of 0.1 to 1.0 per cent in various levels. 30/

83. The Special Rapporteur has received information from the Government on the more recent situation of Indian employment within the Bureau of Indian Affairs and in agencies and departments of the Federal Government which had shown some improvement. The Special Rapporteur did not receive data on Indian employment in State and local Government agencies and departments.

84. The New Zealand Government has stated:

> "In the case of non-elective public offices, the same opportunities are open to Maoris as to non-Maoris. In the ... Cabinet of 20 Ministers there were two Maoris and one part-Maori holding office [in 1973]. In the judiciary there ... [was in 1973] only one Maori magistrate. To qualify for judiciary positions a person must have practised as a barrister for at least seven years. In the past only a few Maoris have qualified in law, which meant that there was little opportunity for a Maori to be appointed to the judiciary. In the last few years, however, the number of Maori lawyers has substantially increased and it may be expected that more will be appointed to the judiciary in future years. In the armed services and the police force there are large numbers of Maoris holding responsible positions. In the public service Maoris are able to apply for any position for which they are qualified and there are in fact Maoris holding positions of responsibility in a wide range of Government departments. In recent years two Maoris have held the position of permanent head of a Government department. With the numbers of Maoris now moving through the upper grades of the public service, there is every prospect of an increasing number reaching top positions."

85. The Citizens' Association for Racial Equality, a non-governmental organization mentioned above (see para.64), has transmitted information to the effect that Maoris

> "are underrepresented in the civil service, even in the Department of Maori Affairs where all the important posts are held by Europeans. Civil service procedures for appointments and promotions take little or no account of the different cultural background and patterns of social behaviour of Maoris - and thus it is not surprising that they are underrepresented in positions of responsibility."

29/ Ibid.

30/ Ibid., p.49.

86. The Government pointed out in 1974 that the comments quoted in the preceding paragraph

> "do not seem to take proper account of the part which is in fact being played by Maoris in local government in New Zealand.
>
> "It has already been mentioned, in other material supplied, that important decisions on Maori land development, Maori housing and investments by the Maori Trustee are made by the Board of Maori Affairs which has a Maori majority. Legislation just introduced into Parliament provides for an increase in the number of private Maori members of this Board from four to seven. As the present Minister, who is Chairman, is a Maori, the new Board will comprise eight Maoris and four officials. In addition, District Maori Advisory Committees are being set up throughout the country to exercise delegated powers from the Board. These delegated powers will include the powers to make decisions on many aspects of Government lending to Maoris. So far as the social welfare division of the Department of Maori Affairs is concerned, this is almost entirely staffed by Maoris (and a few Pacific Island Polynesians) from the Executive Director downwards. Persons applying for positions in this service are expected to speak Maori and to have a good knowledge of Maori society and culture."

87. Some countries reserve a certain percentage of positions in the public services and provide special training facilities to candidates belonging to indigenous groups to enable them to compete for higher posts in the administrative and allied services. In some countries the qualifications and standards required have been lowered in order to give indigenous candidates a chance of occupying some of those posts. (See paras.88, 89, 92, 130, 135 and 138 below.)

88. According to information provided by the Government of Pakistan, it has relaxed the age limit by up to three years for minority communities and tribal candidates in certain districts in order to facilitate their access to the public service of Pakistan. (See para.135,below.)

89. According to information from the Government of Chile:

> "As to the possibility of being named to public office, whether elective or not, ... they [indigenous people] are subject to the provisions both of the Constitution and of the Administrative Statute. As regards access to public service in areas of indigenous concentration, however, there is a system of assigning them special points in the competitive examinations for such posts in accordance with regulations to be issued by the President of the Republic (Law 17, 729, art.67).
>
> "Apart from this, in the Araucanía area for example, there is a large number of civil servants, especially teachers, who are Mapuches or of Mapuche descent."

90. In other countries, the indigenous populations have been granted special representation in appointive bodies, mainly in the executive branch. 31/

31/ For example in Australia, India, Pakistan and the Philippines. Not so in Malaysia, however, where the Government appoints a person to represent Orang Asli interests in Parliament and this person sits in the Senate. See para.134,below.

91. Thus, according to information provided by the Philippine Government, the President normally includes a qualified member of national cultural minorities as head of one Cabinet-level agency or department. 32/

92. In Pakistan the Constitution provides that for a period not exceeding 10 years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan (section 27 (1)). People of different areas or classes should be enabled - through education, training, industrial development and other methods - to participate fully in all forms of national activities, including their employment in the service of Pakistan. (See para.135, below.)

93. In India, a certain proportion of posts in the public services has been set aside for members of the Scheduled Tribes, and the Government provides special tutoring facilities in order to accelerate advancement to senior posts in the federal civil services. While the provision regarding reservation of seats in the Parliament and State Assembly expires 20 years after the entry into force of the Constitution, those Constitutional provisions concerning reservation of posts in public service are entrenched.

(e) The right of assembly; the right of association; the right to form and join political parties; freedom to express political views and opinions

94. The information available in connection with these matters does not contain any references to provisions applying specifically to indigenous populations. It refers in general to provisions applicable to all persons and does not include any indications as to how these provisions may have been enforced with regard to indigenous populations. The data available are incomplete and fragmentary. It may, however, be useful to indicate briefly the de jure situation as reflected by these provisions, the texts of which are available in connection with the study, pointing out the few references to the de facto situation as it affects indigenous populations.

95. In all countries for which there is information on these matters 33/ provision is made in the Constitution, in other fundamental texts and/or in statutory law for citizens 34/ or the inhabitants of the country 35/ to enjoy - on an equal footing - the right of assembly, the right to participate in public meetings and demonstrations or processions in public places - provided that these

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32/ See para.131 below.

33/ No information whatsoever was available on Argentina, Australia, Burma, Chile, El Salvador, Guyana, Indonesia, Laos, Malaysia, New Zealand, Nicaragua, Norway, Panama, the Philippines, Sweden or Venezuela. This, of course, does not imply that these rights are not recognized or regulated in those countries.

34/ As, for example, in Bangladesh, Denmark (Greenland), India, Pakistan and Sri Lanka. Whether this right is attributed only to citizens or to all the inhabitants of the country is not specified in the information relating to Canada, for example.

35/ As, for example, in Bolivia, Brazil, Costa Rica, Ecuador, Guatemala, Honduras, Japan, Mexico, Pakistan, Paraguay, Peru and Sri Lanka.

rights are exercised peacefully and that those participating in such activities are unarmed 36/ - and the right to associate with others for any legal purpose. 37/ In all systems the exercise of these rights is subject to regulation to safeguard, inter alia, public order, public morality and public decency. 38/

96. In some countries provisions also exist establishing the right of citizens to form associations in order to participate in political affairs. 39/

97. Regarding some concrete examples of the formation of their own political parties by the Maoris in New Zealand, the Government has stated that:

> "Generally speaking, Maoris tend to support one or other of the main political parties, but it is normal at each general election for small political parties to be formed by Maoris. There is no restriction on their right to do so or against any peaceful assembly and association for political purposes. These freedoms are preserved by the common and statute law for all persons, subject to laws of general application as to public safety, slander, etc."

98. As to Paraguay, it has been stated that:

> "There is no special political association of Indians in Paraguay (the Asociación Indigenista being a body of non-Indians). 40/

36/ E.g. Bolivia, Brazil, Costa Rica, Ecuador, Denmark (Greenland), Guatemala, Honduras, Japan, India, Mexico, Pakistan, Peru, Sri Lanka and Venezuela.

37/ E.g. Bolivia, Brazil, Costa Rica, Ecuador, Denmark (Greenland), Guatemala, Honduras, Japan, Mexico, Pakistan, Paraguay and Peru.

38/ See foot-notes 34 to 37 immediately above.

39/ Information is available concerning only a few countries, i.e. Bolivia, Ecuador, El Salvador, Guatemala (which, however, prohibits "the formation or functioning of political parties that advocate the communist ideology or, by their doctrinaire approach, methods of action or international connections, act against the sovereignty of the State or the foundations of the democratic organization" of the country; it is also provided that not less than 20 per cent of those affiliated to a political party must know how to read and write, whereas the percentage of illiteracy among the indigenous population is high - see in this connection Chapter XIII, Education (E/CN.4/Sub.2/1983/21/Add.2, paras.76-85)), Honduras, Mexico, Pakistan and Paraguay (in which, however, "neither the formation nor functioning will be allowed of any political party whose purpose is to destroy the republican and representative democratic system of government or the multiparty system. The subordination of Paraguayan political parties to, or their alliance with, similar organizations in other countries is prohibited. Nor may subsidies or directives be received from abroad.").

40/ Information submitted by the Anti-Slavery Society on 3 September 1976.

"... The Consejo Indígena ... tends to consider itself an informal representative of the Indian community, but its prestige depends on its being supported by Paraguayans, of the Marandú Project." 41/

99. As regards political parties in Suriname, it has been reported that "political parties are racial, but the Government is a coalition of these parties ...". 42/

100. In Guyana an official source provides the following information:

"Although Amerindians have been electing their own village leaders since 1955, Amerindians as a group had no political voice before 1962, when a body calling itself the Amerindian Association was formed. This Association, founded by a group of educated Amerindians, but open to 'all persons genuinely interested in the welfare of Amerindians' numbered 5,000 members in 1969 and had branches in 20 Amerindian villages.

"In keeping with its stated aims and objectives ('... to promote and represent the interests and welfare of Amerindians in Guyana, and to make representation, and to take appropriate actions in these respects'), the Association early became very vocal about the question of Amerindian land rights urging as one of its main planks of existence the granting to Guyana's Amerindians of firm title to all lands occupied by them.

"So successful was this call that by 1965, when the conference for settling Guyana's independence was held in London, special consideration was given by the Guyana representatives at the conference to the question of giving Amerindians titles to their ancestral lands." 43/

101. On political parties in Greenland, Denmark, an author writes:

"There are currently four political parties in Greenland. Two of them still have not established themselves formally as political parties, and are called movements, but are equivalent to parties. They act on the basis of their political programmes, they take part in elections and so on." 44/

41/ The Consejo Indígena is an informal body composed of respected indigenous leaders from various Paraguayan groups. It is closely related to the private Marandú Project whose collaborators selected the first members of the Consejo Indígena. The Consejo gradually gained independence and became a spokesman for indigenous claims, and came to be recognized unofficially by State bodies, namely the Indigenous Affairs Department, as an informal representative of the indigenous population. Ibid.

42/ V.S. Naipaul, The Middle Passage (André Deutsch Limited, London), 1962, p.164.

43/ Guyana, Ministry of Information and Culture, op.cit., p.37.

44/ Helge Kleivan, "Kalaallit Nunaat - The land of the Greenlanders", IWGIA Newsletter, No.22, Copenhagen, June 1979, p.15.

102. These four parties are described as follows by the author:

"'Siumut' [In the early 1970s] a group of young politicians who later formed a moderate socialist party Siumut (i.e. 'Forward'), formulated their strong criticism of the post-war development process. They launched severe attacks on the concentration of the population in a few towns, which was one of the main features of the notorious 'G-60' scheme initiated in 1964. This policy effected the abandonment of many of the outlying settlements, as part of the effort to direct labour to the industrial plants in the towns of West Greenland. The remaining settlements stagnated due to a pronounced concentration of investments in the larger population centres only."

"'Atassut' (i.e. 'the connecting link') is a movement that has been established in opposition to Siumut. It stresses the importance of the best possible relationship between Greenland and Denmark, hence the name of the movement. Atassut is in favour of home rule, but its representatives in the Commission on Home Rule were much more willing to compromise with the Danish politicians when the Siumut representatives were fighting most courageously to retain undivided ownership and control for the resident population of Greenland over non-renewable resources."

"'Inuit Ataqatigiit' (i.e. 'the brotherhood of the Inuit people'; also meaning 'human brotherhood') is the only movement strongly opposed to home rule. It is a socialist group fighting for independence, and maintaining that the compromise in the Commission on Home Rule over non-renewable resources was a sell-out. Like the Siumut party it is most definitely against Greenland's membership of the EEC, and like Siumut it has a clearly anti-centralist attitude."

"'Sulissartut Partiat' (i.e. 'the Labour Party') is closely related to SIK, the labour union of Greenland. This party is very close to Siumut on all the main issues." 45/

103. Freedom of expression, including that of political views, is also provided for in all systems for which information is available. 46/

45/ Ibid., p.19.

46/ The data relating to Bangladesh, Burma, Chile, Costa Rica, Denmark (Greenland), Guatemala, Guyana, India, Japan, Pakistan and Suriname contained the texts of provisions dealing with this right. The information relating to Canada, Finland, Sweden and the United States of America contains statements of a general character concerning freedom of speech. Since none of these provisions or statements carried any specific references to the use of this right for political purposes or to its use by indigenous populations for the stated purposes, no meaningful discussion of these matters could be developed.

104. As regards some aspects of the rights to freedom of expression and of assembly and association for political and related purposes, in the United States of America it has been argued by many individuals, groups and organizations that being a leader, or even a member of some associations - particularly the American Indian Movement - and engaging in activities on behalf of Indian rights, has given rise to harassment and persecution.

105. Furthermore, it has been alleged that certain associations seem to have been placed under surveillance and to have been singled out for harassment and disruption.

106. A publication contains information that would tend to indicate that there is a campaign against the American Indian Movement which is said to have been "tagged for disruption and surveillance":

> "As part of that programme, the CIA developed illegal relationships with local police departments, which included training programmes in intelligence work, routing payment of 'gratuities', the lending of CIA agents and equipment for police work, and the use of police officers during CIA break-ins. The CIA also had a long-time agreement with the Justice Department which exempted any CIA agent from criminal investigation or prosecution. These practices were exposed in the recent Rockefeller Commission on CIA Activities.
>
> "...
>
> "The combinations of arrests, court actions and harassments point more and more to a state-federal-local conspiracy to deal expediently, efficiently, and thoroughly with native activists.
>
> "...
>
> "The legal campaign against the American Indian Movement has continued for almost three years now, waged by an army of civil servants and police and prosecutors who never have to worry about where their rent money or supper for their children is coming from. These salaried officials are backed up by millions of dollars of travel money, investigators, secretaries, and all the technology and information the United States can command." 47/

47/ Akwesasne Notes, vol.7, No.5, 1975, pp.8, 14.

D. Special measures

1. Introductory remarks

107. The mere elimination of the adverse distinctions made against indigenous populations is not sufficient. Further measures must be taken to ensure that indigenous populations are truly on an equal footing with other population groups which enjoy their rights and freedoms in a fuller sense, as individuals and as peoples. After centuries of suppression and exploitation positive measures have to be taken to achieve conditions of real opportunity for these groups, which are now disadvantaged and vulnerable.

108. One such measure is the reservation of elective or appointive posts for candidates from underprivileged or disadvantaged groups in the general context of society as a whole. Among these "marginal" groups are the indigenous populations who after centuries of deprivation, persecution and exploitation, are in extremely depressed situation from which they must emerge as full participants in the common effort and add their voices and views to the collective approach to problems and their solution. Their approach is recognized as valid and useful and they should have the opportunity to contribute their ideas thus enriching and broadening the content of any action taken in the many areas in which they are particularly competent.

109. Their own forms of organization and internal control have to be fully implemented so that they may find in their own roots the best ways of acting in accordance with their inherited life-styles and values. To this end, a necessary measure of autonomy or self-determination has to be granted them in executive, administrative, legislative and judicial matters as well as in cultural, linguistic and educational approaches, including areas concerning matters of health and medicine, traditional occupations and forms of land tenure and development of natural resources.

110. The concentration of the indigenous populations in certain areas or regions of countries where their own ancestral traditions and inherited institutions prevail can then be recognized and treated as local or regional socio-political entities for administrative and political purposes.

111. The following paragraphs will be devoted to the examination of such solutions as are referred to in the information available in connection with the study concerning ways in which a more just and equitable solution may be found for these populations to organize and function in the broader context of the State in which they find themselves today.

2. Separate representation of indigenous populations

112. In the outline used for the collection of information in connection with the study, the following text was included under item 73:

> "Information as to whether separate representation of the indigenous and non-indigenous populations has been established at any level and, if so, details as to the special conditions governing the separate electorates and separate access to elective and non-elective positions, whether legislative, executive, administrative or judicial, and an indication as to whether such conditions work to the advantage or disadvantage of the indigenous populations of the country."

113. Few Governments and no non-governmental organizations responded to this question. Some information was gathered from other sources, such as domestic non-governmental organizations contacted during the Special Rapporteur's visit to several countries and scholarly publications. Whatever information is available as a result of these efforts is presented here.

114. No information whatsoever was available for many countries in this regard. 48/

115. Information is available on some countries to the effect that there is no separate representation for indigenous populations in those countries. 49/

116. The Government of Brazil states that: 50/ "there is no separate representation for the various ethnic, religious and similar groups. The representation of small ideological groups is assured by the existence of various political parties".

117. The Canadian Government has also stated that:

> "No separate representation in provincial or federal governments has been introduced, nor has it been sought by the native people. Indians, Eskimos and Métis have participated in all three major political parties in Canada. Extraordinary steps have been taken in the North to provide for balloting in remote communities with the flying in of official polling materials."

118. In somewhat similar terms, the Finnish Government has submitted the following information:

> "There is no separate representation for the Lapps at any level. As they have the same political rights as other people, there are Lapp Members of Parliament and members of the local communal councils which are representative bodies for local self-government."

119. In response to a request for information on certain aspects of political rights, the Government simply stated:

> "There is no discrimination against the Lapps in regard to these rights. The same legal rules apply to all Swedish citizens, including the Lapps. There is no spearate political representation of the Lappish population."

48/ Argentina, Bangladesh, Bolivia, Colombia, Denmark (Greenland), Ecuador, El Salvador, Guatemala, Guyana, France (Guyana), Honduras, Indonesia, Japan, Laos, Panamá, Paraguay, Perú, Sri Lanka, Suriname and Venezuela.

49/ For example, Brazil, Canada, Costa Rica, Finland, México and Sweden.

50/ Study of Discrimination in the Matter of Political Rights, Conference Room Paper No. 77, para. 51.

120. An expert who has been active for a long time in Sami affairs in Sweden has stated in this regard, that:

> "The Lapps have no representatives in the Swedish Parliament ... . In 1971 a new reindeer farming statute was presented in a Government proposition and by lobbying and forming a group consisting of several political parties we succeeded in getting several ameliorations in the text of the law. It has been possible, in the current Parliament situation, to get a union of several parties for such ameliorations, but things can change very much from election to election ... . It is impossible for the Lapps to rely on just one political party; it would be dangerous to do so." 51/

121. On this question, the Government of Mexico states:

> "By virtue of the principle that all persons are equal before the law, enshrined in article 10 of the Constitution, there is no separate representation in our country of indigenous and non-indigenous populations."

122. With reference to separate representation of indigenous and non-indigenous populations in elective and non-elective collective bodies, the Government of Costa Rica answers simply "Question does not apply".

123. The information concerning three countries contains elements which would indicate the theoretical possibility of separate representation (Chile), the intention of the federal Government to establish such separate representation in a federal territory (Australia) and the existence at recent elections of separate indigenous lists of candidates which did not however gain separate representation (Norway).

124. The Government of Chile states (1975):

> "There is no possibility in Chile, on the basis of legal texts, of achieving mandatory separate representation of indigenous populations that would mean also separate access to elective and non-elective positions, whether legislative, executive, judicial, etc.
>
> "At certain times in the past some political scientists have favoured abandoning the idea of bringing about a certain degree of political parallelism between indigenous people and their non-indigenous co-nationals ... .
>
> "The aim of achieving an integration of indigenous people that does not absorb the customs, religion, etc. inherent in their special way of life largely conflicts with the objective of those who support political and ideological parallelism. Convincing evidence that indigenous people do not seek and have not sought to separate themselves from the country's political context by forming an ideological grouping of their own that would represent solely and exclusively the interests and aspirations of their race is to be seen, for example, in the high number of Mapuches who invariably present themselves as candidates, covering the entire range of existing political ideologies, in the country's elections of representatives.
>
> "Such a statement of the situation rules out the possibility of any desired separate representation that indigenous people could have or seek at any level.

51/ Speech by Tomas Cramér, Sami ombudsman, at the Federal Union of European Nationalities meeting, 9 May 1972. Joruplunds Folkhöjskob in South Slesvig, West Germany.

"Now, if we may reflect on the matter for a moment, we can say that separate representation of indigenous people would be perfectly possible in fact and would be perfectly valid from the legal point of view. We make that statement on the basis of actual existence of human and geographical conditions that would make it possible. Such conditions would be: they inhabit well-defined areas of the country, forming genuine zones of concentration, e.g. the Mapuches from Bio Bio to Llanquihue, the Aymaras in the Northern Zone, etc.; they have uniform customs, needs and problems as regards their social situation and standard of living; they possess organizations which represent them and have mass support, such as the Araucan Societies; they are deeply devoted to their ancestral customs and venerate their forebears, an aspect often exploited by politicians; they account for a significant part of the electorate in their areas; lastly, those and other situations would make possible, or would pave the way for, achievement of separate political representation.

"However, in spite of all the above, apparently the non-political nature of their organizations and the great diversity of ideologies found among the members, which is augmented by their extreme political instability, have prevented the formation of a single Mapuche or indigenous party of the kind propagandized by some politically motivated sectors.

"All the above is to be understood as being without prejudice to the right of every citizen of the Nation to be guided by and to adhere to any of the country's political ideologies."

125. The Government of Norway has stated that there has never been separate representation for the Lapps. In the last two elections, there was a separate Lapp list of candidates, but at the last general election it did not receive enough votes to gain representation.

126. The Government of Australia communicates:

"To date, special protective or supplementary measures [for the separate representation of Aboriginals] have not been considered necessary. The ... [federal] Government has indicated however that it would provide for special representation for Aboriginal members in the Legislative Council of the Northern Territory, and has undertaken to investigate whether Aboriginal representation could be provided in State and Federal parliaments."

127. In some countries, provision has been made in different contexts for the separate representation of indigenous populations either in elective posts (United States of America) or in appointive posts (the Philippines), but either information has also been made available on the non-implementation of these provisions (United States) or the Special Rapporteur has no information on implementation thereof (the Philippines), as will be discussed in the following paragraphs.

128. The Government of the United States of America has reported that

"Although at least one treaty signed by the United States Government and an Indian tribe specifies a representation in the Congress under certain conditions, this has never come about and representation of American Indians and Alaska Natives in the governmental structure has been, largely, a matter of happenstance ... . The indigenous person has won an election by virtue of his ability to get votes from a constituency that he then represents."

129. In chapter X on administrative arrangements (see E/CN.4/Sub.2/1982/2/Add.4) reference is made to the statutory preference to be granted to American Indians in posts avaiable in the Bureau of Indian Affairs. The low representation existing in these posts despite legislative mandate and judicial adjudication has also been pointed out.

130. Information provided by the Government of the Philippines would indicate that under certain circumstances the examination requirements for employment in the civil service may be waived in the case of members of the national cultural communities, and has transmitted the following legal text:

> "Republic Act 2260 (Civil Service Law): ... Sect. 23. Requirement and Selection of Employees - Opportunity for government employment shall be open to all qualified citizens and positive efforts shall be exerted to attract the best qualified to enter the service.
>
> "Employees shall be selected on the basis of their fitness to perform the duties and assume the responsibilities of the position whether in the competitive or unclassified service ... .
>
> "Qualification in an appropriate examination shall be required for appointment to positions in the competitive or classified service in accordance with the civil services laws except otherwise provided for in this Act: Provided, ... and provided, finally, that for the period of ten years from the approval of this Act and in line with the policy of Congress to accelerate the integration of the cultural minorities, wherever the appointment of persons belonging to said cultural minorities is called for in the interest of the service as determined by the appointing authority, with the concurrence of the Commissioner of Civil Service, the examination requirement provided in this Act, when not practicable, may be dispensed with in appointments within their respective provinces if such persons meet the educational and other qualifications in an appropriate examination which may be required if the appointing official so directs."

131. The Government has also stated: "The President normally includes a qualified member of national cultural communities (minority) as a member of the Presidential Cabinet, as head of one Cabinet level agency or department".

132. Despite efforts made to obtain further information on these aspects, the Special Rapporteur was unable to ascertain any degree of implementation in practice of these provisions.

133. In several countries, the indigenous populations have been granted special separate representation in elective or appointive bodies. 52/

134. In Malaysia, according to information provided by the Government, it appoints a person "to represent Orang Asli interests in Parliament" and this person sits in the Senate.

135. Among the entrenched provisions of the Pakistan Constitution is one that provides that steps should be taken to bring on terms of equality with other persons the

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52/ Although this generally occurs in the legislative or the executive branches of government, there are special courts having exclusive jurisdiction in cases involving indigenous land rights. The information available in this respect does not, however, indicate whether indigenous membership in these courts is prescribed by law. A case in point would be the special Land Courts existing in New Zealand, Maori Land Court and Maori Appellate Court.

members of "under-privileged castes, races, tribes and groups" and, to this end, such groups should be identified by the Government and entered in a schedule of under-privileged classes. The Constitution also provides that "for a period not exceeding ten years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan". Moreover, the Constitution states that the people of different areas and classes, through education, training, industrial development and other methods, should be enabled to participate fully in all forms of national activities, including employment in the service of Pakistan. The Government reports that this representation has not been neglected in the higher cadres of administration. The Government has waived the age limit by up to three years for minority communities and tribal candidates in certain districts, including aboriginals of some of them.

136. The Government of Pakistan has stated that:

> "In article 36, the Constitution has safeguarded the legitimate rights and interest of minorities including their due representation in the Federal and Provincial Services."

137. For the purpose of electing members to the seats allocated to the Centrally Administered Tribal Areas in the National Assembly the President put Order No. 13 of 1970 into effect. 53/

138. In India, special measures have taken the form of enactments designed to ensure the participation of disadvantaged groups in the political processes. The Scheduled Castes (the so-called "untouchables") and the Scheduled Tribes, which have been described by the Indian Government as the "weaker" sections of the population, are entitled to proportionate representation in State Assemblies and the National Parliament. One of the consequences of this arrangement is, according to the Government, the fact that the legislative bodies are constantly "alive" to their needs. A certain proportion of posts in the public services has been set aside for members of the Scheduled Castes and Tribes, and the Government provides special tutoring facilities in order to accelerate advancement to senior posts in the federal civil services. While the provision regarding reservation of seats in the Parliament and State Assembly expires in 20 years after the commencement of the Constitution, those Constitutional provisions concerning reservation of posts in public service are entrenched.

139. Regarding the separate representation of Scheduled Castes and Scheduled Tribes in certain pluripersonal bodies and their claims to certain posts and services, the Constitution of India provides:

> "330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the house of the People - (1) Seats shall be reserved in the House of the People for:
>
> (a) The Scheduled Castes;
>
> (b) The Scheduled Tribes except the Scheduled Tribes;

53/ The Gazette of Pakistan, Islamabad, 18 July 1970. The Special Rapporteur requested the Government of Pakistan to provide the text of Order No. 13 of 1970 or information on its content, but received neither.

(i) In the Tribal areas of Assam;

(ii) In Nagaland;

(iii) In Meghalaya;

(iv) In Arunachal Pradesh; and

(v) In Mizoram; and

(c) The Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.

(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.

Explanation - In this article and in article 332, the expression 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.

"...

"332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States - (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in Nagaland and in Meghalaya, in the Legislative Assembly of every State.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district.

"...

"334. Reservation of seats and special representation to cease after 30 years. Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to:

(a) The reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and

(b) The representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination,

shall cease to have effect on the expiration of a period of 30 years from the commencement of this Constitution:

Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

335. Claims of Scheduled Castes and Scheduled Tribes to services and posts. The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State."

140. The Anti-Slavery Society states: 54/

"In view of the fact that the one protective piece of legislation assiduously implemented by the Government of India is that of reserving seats for the Adivasis in State and Union legislatures, it may seem contradictory to assert that the Adivasis are actively prevented from acquiring real political power in India. However, reservations policy of the Government of India is little more than a sham since there is no hope of the Adivasis acquiring real political muscle in this way ..."

141. In New Zealand, as stated before (see paras. 67 and 84 above), there is separate Maori representation in Parliament and in the Cabinet. Separate Maori representation was provided for by the Maori Representation Act, 1867. The Electoral Amendment Act 1937 introduced a secret ballot for Maori voters who enjoy the same electoral privileges as non-Maoris in electing the representatives of the four Maori electorates. Today, the statute law on elections and the life of Parliament is contained in the Electoral Act, 1956. The House of Representatives now consists of 80 members, four of whom are Maori. The Maoris are usually represented in the Cabinet. 55/

54/ Information furnished on 31 March 1977 in connection with the present study.

55/ In 1973 there were three Maori ministers in a Cabinet of 20 ministers. See para. 84 above.

142. New Zealand has had arrangements for the separate representation of the indigenous population for over a century. On the historical background of this question it has been stated that:

"Within a few years of the establishment of self-government in New Zealand, it became apparent that very few Maoris qualified, under the law existing at the time, to take part in Parliamentary elections, either as voters or as candidates. The reason for this was that persons could register as electors only if they owned freehold land of a prescribed value. As all Maori land was held at that time under Maori customary tenure, very few Maoris were qualified.

"In 1867 the Maori Representation Act was passed to overcome this difficulty and to ensure that Maoris were represented in Parliament. The Act provided for the establishment of four Maori electorates together covering the whole country, and all male Maoris aged 21 years or more were given the right to vote or to be a candidate in one of those four electorates.

"It is an interesting comment that the Maoris received universal manhood suffrage sometime before the rest of the community. This was extended to the rest of the population in 1882 and in 1893 the vote was extended to all adult women, Maori or non-Maori. New Zealand was thus the first country in the world to have full adult suffrage, and the Maori people shared in this distinction."

143. The arrangements now in force have been described in the following terms:

"The present electoral law provides that persons who are half-Maori or more must enrol in one of the four Maori electorates. Each electorate can elect one member of Parliament who need not be a Maori; but in practice so far Maori members have invariably been elected by Maori electorates. Persons who are less than half-Maori must enrol in a non-Maori electorate and persons who are half-Maori may choose whether to enrol in a Maori or non-Maori electorate. In practice, as already remarked in this paper, persons of Maori descent are not required, when enrolling, to produce any evidence of their ancestry and there is a growing number of Maoris who would have some difficulty in stating just how much Maori ancestry they have. As already indicated, people have a certain freedom of choice as to whether they enrol in one type of electorate or the other.

"There has been a good deal of discussion during ... [recent] years about the future of Maori representation in Parliament. Both of the leading political parties have made it public that they will not change the present situation until there is a clear indication from the Maori people that they consider it time to abolish the separate Maori seats. In 1967 the electoral law was amended to make it possible for a person registered as a Maori elector to stand for Parliament in any electorate whether Maori or non-Maori. Similarly, a person who is not legally a Maori may stand for a Maori seat.

"Since the 1967 Act the major political parties have nominated Maoris as candidates for non-Maori seats on a number of occasions. None of these Maori candidates have succeeded in being elected, although several have come reasonably close to it. They have at least demonstrated that a substantial number of non-Maori electors are prepared to vote for a Maori candidate. There is a widespread feeling amongst the Maoris that they will be prepared to do away with separate Maori seats when they see a reasonable number of Maoris being elected to Parliament in non-Maori seats.

"... [Since the beginning of the 1970s] there has been a movement amongst the Maori people for an increase in the number of Maori seats in Parliament on the grounds that the increase in the Maori population now justifies more than four seats. There is some justification in this view that the Maoris are under-represented, and the Government has indicated in a policy statement that this matter will be attended to. For many years the Maori population was in fact overrepresented relative to its proportion of the population, but the recent increases in population have changed the situation. But taking into account the substantial number of Maoris who undoubtedly are enrolled on the non-Maori rolls, the under-representation is probably somewhat less than would appear from the ratio between the present four Maori seats and the total Maori population as shown in the census."

144. During his official visit to New Zealand, the Special Rapportuer heard many people criticize the fact that Polynesians, who are eligible to take part in housing and other Maori schemes, are not entitled to vote as Maoris and in fact vote as "Europeans", which for some people means "swelling the ranks of the opposite side".

145. The Government has stated, commenting on the above information, that

"The Special Rapporteur was told that Polynesians who are entitled to take part in housing and other Maori schemes are not entitled to vote as Maoris. This is correct. The special representation of Maoris in Parliament was instituted to ensure that the original inhabitants of the country should have a guaranteed voice in Parliament. It is considered that there could be very little justification in extending this to Polynesians who have migrated to New Zealand from other parts of the Pacific any more than there should be separate representation of other immigrant communities, such as Indians, Chinese, Dutch, Greek and so forth. The Government has recently announced that the whole question of Maori representation is being examined to ensure that Maoris are represented in Parliament in proper proportion to the population. The Government intends to amend the law to provide for this."

146. A further aspect was brought to the Special Rapporteur's attention during his official visit to New Zealand. In fact, several persons also complained that in addition to the under-representation discussed in the preceding paragraph, there were certain difficulties with the geographical distribution of Maori ballot boxes, some of which were not easily accessible to Maori voters, who had to travel rather long distances to vote. All concurred, however, in the view that separate Maori representation, even with its difficulties, should be kept until something better was found.

147. The Government has reported on changes introduced subsequently into the electoral law, stating that:

"... So far as the distribution of ballot boxes for Maori voters is concerned, the electoral law was amended prior to the last election to enable Maori voters to vote in any polling booth in the country instead of voting only in separate booths as had previously been the case. It is now thought that there should be no special difficulties for Maori voters in this respect. The Government does not propose to abolish separate Maori representation until the Maori people are satisfied that this should be done."

3. Indigenous communities as politico-administrative entities having autonomy or self-determination

(a) Introductory remarks

148. There is constant reference by indigenous communities and organizations to the concept of self-determination, which they consider the only form that would enable them to take over the reins of their destiny and which they claim as an inalienable right to determine for themselves the future course of their existence. The content of this right to self-determination is not the same in the claims put forward by various populations. In their reaction, governments often confuse any claim for autonomy or self-determination with a demand for absolute and immediate freedom, independence and sovereignty. If, however, one examines the claims of indigenous peoples more closely, one soon sees how they differ in content. Some call for forms of autonomy limited to certain specific spheres, in which dictates coming from outside, far from being helpful, only complicate everything. Others aspire to and demand more complete self-determination as a people which, it is true, in certain cases goes as far as the right to organize itself as a nation-State with full independence and full enjoyment of the freedom and sovereignty it entails. In the latter cases, this often goes back to treaties concluded with the colonial government or with the government of the independent successor State in which the indigenous population sees recognition of its separate existence as an independent nation-State. It is pointed out that subsequently that recognition was unilaterally modified by the non-indigenous State, which claims, as its own, the territory in which the indigenous community concerned lives, and disregards undertakings solemnly entered into in treaties concluded with what was then recognized as an independent nation.

149. At the third United Nations seminar on recourse procedures and other forms of protection available to victims of racial discrimination and activities to be undertaken at the national and regional levels, held at Managua, Nicaragua, from 14 to 22 December 1981, in connection with the Decade for Action to Combat Racism and Racial Discrimination, the summary of the discussion concerning these questions included the following:

> "Self-determination in its many forms was the basic pre-condition to the possibility for indigenous populations to enjoy their fundamental rights and to determine their future and preserve, develop and transmit to future generations their ethnic specificity". 56/

150. Part of the discussion at the seminar was described as follows:

> Reference was made to the fact that the right of self-determination was expressed at several levels and included economic, social and cultural, as well as political factors that must be studied in each case. As contemplated in United Nations language, that right in the largest sense of its "external" manifestations, meant the right of Statehood, also including the right to choose various forms of association with other political communities.

56/ Report of the seminar (ST/HR/SER.A/11), para. 58 (m).

It was also mentioned that the right of self-determination, however, also arose on an internal level of national society, where a people or group having a defined territory might be autonomous in the sense of having a separate and distinct administrative structure and judicial system determined by and internal to themselves. One participant stated that concepts of historical importance, like "self-determination" and "colonialism", should not be used out of their precise context. To apply the concept of self-determination in the sense of preservation of cultural identity did not seem to be appropriate. In any case, it was difficult to imagine that any country would accept to detach parts of its territory in order to form autonomous national entities. That would not be in the best interests of indigenous groups.

It was also stated that the right to self-determination was also a right of individuals in that each individual had the right to free expression and to realize his or her full human potential as defined by each of them. In that sense, reference was made to the right to be different that was both an individual and a group right as recognized in the declaration on race and racial prejudices adopted by UNESCO in 1978.

With respect to that right as it applied to indigenous nations and peoples, it was mentioned, in particular, that the essence of the right was the right of free choice and, therefore, in a large measure the indigenous peoples themselves must create the content of this principle. Their differing aspirations and goals must be respected in each case ... 57/

151. The participants in the seminar thus clearly established the diverse nature of the claims of different populations and communities. In recognition of the complexity of the subject, it was formally suggested that perhaps another study on the right to self-determination should be prepared from the point of view of the existence of indigenous populations with different claims.

152. In addition, at the International NGO Conference on Indigenous Peoples and the Land, held at the Palais des Nations, Geneva, from 15 to 18 December 1981, a proposal was submitted in Commission 1 (legal commission), which it accepted and included in its report to the plenary Conference. The Conference in turn included this point in its Final Declaration, in the following terms:

"The Conference requests the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint a special rapporteur to further study the right to self-determination, focusing in particular on this right as it refers to indigenous nations and peoples".

153. Another aspect of supreme importance for the orderly and harmonious existence of indigenous communities is that of autonomy in the forms of their internal organization. Any interference in such matters has disastrous consequences, which disorganize and destabilize indigenous communities by preventing them from functioning normally as such.

57/ Ibid., paras. 54-57..

154. The importance of this aspect was recognized at the Conference of Specialists on Ethnocide and Ethnodevelopment in Latin America, convened by UNESCO and the Latin American School of Social Sciences (FLACSO) and held at San José (La Catalina, Santa Bárbara de Heredia), Costa Rica, from 6 to 12 December 1981. As a result of its work, the Conference adopted by acclamation, on 11 December 1981, the San José Declaration, which states the following with regard to this particular aspect:

> "Respect for the forms of autonomy required by these peoples is an essential pre-requisite for guaranteeing and implementing these rights.
>
> Moreover, the specific forms of internal organization of these peoples are part of their cultural and juridical heritage, which has contributed to their cohesion and the maintenance of their socio-cultural tradition.
>
> Disregard for these principles constitutes a flagrant violation of the rights of all individuals and peoples to be different, and to consider themselves as different and to be considered as such, a right recognized in the Declaration on Race and Racial Prejudice adopted by the General Conference of UNESCO in 1978 and hence must be condemned, especially when it creates a risk of ethnocide.
>
> Moreover, it creates a disequilibrium and a lack of harmony within society and may induce these people, as a last resort, to rebel against tyranny and oppression and thus endanger world peace and, consequently, is contrary to the Charter of the United Nations and the Constitution of UNESCO." 58/

155. On this subject, the discussion at the seminar mentioned in paragraph 149 above was summarized as follows:

> "Interference in the organizational and cultural traditions of Indian nations and peoples, whether by State authorities, representatives and organizations of the predominant groups or transnational organizations, always had a devastating effect on indigenous communities which were thus destabilized. It was immaterial for the victims whether the destructive force came from within or from without the country in which they lived.

58/ See the text of the Declaration in document E/CN.4/Sub.2/1982/2/Add.1, annex VI (Chapter II, Measures taken by the specialized agencies).

When those forms of interference, exploitation and alienation that had been termed internal colonialization by some reached extremes of offensiveness, they would constitute what had been termed ethnocide or cultural genocide. The San José Declaration had been adopted on 11 December 1981 at a recent UNESCO/FLACSO meeting of Experts. In it ethnocide was declared to be a crime under international law as was genocide under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide."

"Respect and support for the indigenous peoples' own internal organization and their cultural manifestations was a sine qua non for any arrangements conducive to the appropriate participation of indigenous communities in all matters that would affect their destiny.

Indigenous participation in decision-making processes on all matters affecting them was essential for the elimination of discriminatory and exploitative conditions."

"Some participants stressed that profound structural changes in the present organization of the global societies in which indigenous peoples and nations lived were necessary before such favourable aspects of equality could be realized. Otherwise formal equality would be either meaningless or even harmful."

"Drastic economic, social, cultural and political structural changes were necessary to bring about the elimination of discrimination against, and exploitation of, indigenous peoples." 59/

156. Consequently, de facto or de jure recognition of the existence of indigenous communities as local or regional politico-administrative entities means little or nothing if interference in basic forms of internal organization is such as to produce disequilibrium and destabilization in their midst.

157. This is one of the defects pointed out in the United States Indian Reorganization Act of 1934, which, while according recognition of important aspects of initiative and responsibility to the indigenous communities, peoples and nations of that country, imposed upon them, as has been mentioned, foreign ways of consulting the will of their members and of determining when and how decisions are reached which are binding for those members.

59/ ST/HR/SER.A/11, para. 58 (e), (f), (i), (j), (g) and (n).

(b) Examination of the information available

(i) Initial remarks

158. Indigenous communities or organizations may have been recognized in law or in fact as local or regional politico-administrative entities. They may have been granted a measure of autonomy or self-determination in legislative or administrative matters or in the establishment of their own courts, or in all these spheres.

159. In the outline prepared for the collection of information for the study, which was sent out to Governments, regional inter-governmental organizations, specialized agencies and non-governmental organizations, items 74 and 75 deal with these questions. The response was very unsatisfactory. However, some information became available to the Special Rapporteur from other non-governmental sources in which the two subjects were inextricably intertwined, thus making it very difficult to differentiate between them for the purposes of this study.

160. In some cases, indigenous populations may have been given the power of self-government but subject to limitations, restrictions or interferences that may have disrupted their internal organization, altered their internal control patterns or imposed on them an alien manner of choosing the indigenous authorities, measures which ultimately deny them, in practice, the self-determination that has ostensibly been granted them.

161. In the following paragraphs, whatever information is available in connection with these aspects will be discussed.

(ii) Indigenous communities as local or regional politico-administrative entities

162. There is no information from several countries in this respect. 60/

163. For certain countries only governmental information was available, indicating simply that indigenous communities do not have the character or the status of local or regional politico-administrative entities. 61/

164. In response to a request for information in this regard, the Government of Sweden has stated that "Lappish organizations and communities do not have the status of political entities".

165. The Finnish Government has transmitted information to the effect that apart from their participation in the communities where they reside together with non-Lappish populations in the mixed communal councils, Sami communities have no special politico-administrative character. The Government points out in this respect that:

> "The municipal and rural communes constitute local administrative entities which have been granted by law a far-reaching right to local self-government. ... rural communes ... in which the Lapps in Finland are mainly residing, are also inhabited by other people. Consequently, there is a mixed representation in their communal councils."

60/ Argentina, Bangladesh, Bolivia, Brazil, Burma, Colombia, Denmark (Greenland), Ecuador, El Salvador, France (Guyana), Indonesia, Lao People's Democratic Republic, Panama, Paraguay, Peru, Philippines, Sri Lanka, Suriname and Venezuela.

61/ E.g., in Finland, Norway and Sweden.

166. The Government of Norway has stated:

"The Lapp organizations are not regarded as party political, but express their views on questions relating to Lapp policy. In their work they follow a broad general policy line in an effort to influence public opinion."

167. In some countries, although the traditional form of leadership continues to exist and to have socio-cultural functions in indigenous communities, these communities and groups of communities are not allowed to assume the character or the status that they could well have, on the basis of numerical strength and organization, as politico-administrative entities of a local or regional character. 62/ In one way or another this is prevented, 63/ obstructed, undermined 64/ or simply utilized and manipulated for purposes alien to the communities' own goals and ends. 65/

168. According to information provided by the Anti-Slavery Society, 66/ the Tribals in the Central Tribal Belt in India are split up between eight states, so that everywhere they form politically insignificant minorities in predominantly Hindu states. They are thus deprived of the numerical strength on the basis of which they could have obtained the character and status of political entities of a local or regional character. The Society states:

"There are 32.4 million Scheduled Tribals in the Central Tribal Belt split up between eight States in such a way that nowhere do tribals comprise more than 23 per cent of the total population of the state ... despite the fact that there are two heavy concentrations of tribals that could easily form the basis of new states containing a large proportion of the total tribal population of the Central Tribal Belt and giving them a far greater say over their own affairs. Again it could be argued that if the Government of India were truly concerned with tribal development, it would have encouraged some move towards greater tribal autonomy in these areas, but bearing in mind the fact that these regions include almost all of India's mineral deposits and a large part of her forests, one can see why the Government prefers to have them split up between different states.

The two areas are:

1. The 'Jharkhand' region comprising nine districts on the borders of eastern Madhya Pradesh, Southern Bihar and Northern Orissa, with a population of 14.9 million, 55 per cent of which are tribals.

2. The Bastar (Southern Madhya Pradesh) Boraput (Southern Orissa) area including the agency areas of Northern Andhra Pradesh with a population of 8.1 million, 57 per cent of which are tribals. These areas could form perfectly viable states either separately, or together in a large state, with a population of about 28 million over 50 per cent of whom would be

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62/ E.g., in Guyana, India and Japan.

63/ As in India.

64/ As in Guyana.

65/ As in Japan.

66/ Information submitted on 31 March 1977.

tribals and which would include about 45 per cent of all the tribals in the Central Tribal Belt. Singly the states would compare numerically with Punjab (11 million), Haryana (10 million) and of course Nagaland (0.5 million); fused as one unit the tribal state would be more populous than Orissa (22 million), Gujarat (27 million) or Rajasthan (26 million)."

169. The Anti-Slavery Society further states on this matter:

"The state boundaries in India were redrawn by the States Reorganizing Committee in 1956, but, despite the fact that the Jharkhand party which was calling for a tribal state comprising Southern Bihar and nine districts in other states was the major opposition party in Bihar at the time, its request was dismissed on the grounds that it would leave Bihar an 'unbalanced' state and that people outside Southern Bihar were against it. No consideration was paid to the benefits that would accrue to a large part of the tribal population as a result of their having effective political representation for the first time and a larger measure of control over the development of their area. Similarly, in other parts of India state boundaries were aligned according to whether the inhabitants of the peripheral boundary areas spoke relatively more or less of the non-tribal regional languages such as Hindi and Bengali, Oriya and Telegu. No account was taken of the fact that the boundaries split culturally and economically homogeneous tribal areas between different states leaving the Adivasis powerless and dependent.

"However, despite, or perhaps because of, the tribals' powerlessness within the national and state political system, there have been a large number of political uprisings by Adivasis in many different parts of India.

"... The tribal revolts have all been ruthlessly smashed by rich non-tribal landlords, Congress politicians and the police. As with the revolts of the nineteenth century, the reactions of the non-tribals to tribal agitation has been violent suppression.

"... By a combination of gerrymandering and violent suppression of popular movements, the State in India has successfully prevented the tribals from acquiring any real political strength thus assuring the continued exploitation of the tribal areas and tribal labour by Government-supported forestry, mining and other developments, and by the non-tribal landlords, money-lenders and traders who are the political stalwarts of Congress and other major centre-right parties in tribal areas. It is highly unlikely that the Government will cede any real political power of its own free will and therefore it would seem that the future for the tribals must lie in organizing both among themselves, and with other segments of the rural poor, in order to transform themselves into a real political force to be reckoned with." 67/

170. In Guyana according to an official source: 68/

"... the traditional Amerindian local government unit is the tribe, the headman or Teuchau of each local community being generally responsible for orienting the affairs of his 'constituents', with whom he maintains close and constant consultation.

67/ Ibid.

68/ Guyana, Ministry of Information and Culture, op. cit., pp. 61-62.

"In the stricter sense of the term local government, however, the administration of the interior has for many years been in the hands of an Interior Department headed by a Commissioner of the Interior and responsible from 1961 to 1966 to the Ministry of Home Affairs and then to the Ministry of Local Government until 1969."

171. The information that immediately follows that quoted in the preceding paragraph gives clear indications of official attitudes towards these autonomous communities which have functioned as local political and administrative entities and the lack of official recognition of their traditional leadership. It also shows that official efforts are being made to change the internal organization of these communities - which in passing is said to be "just as effective" for the populations involved - into the organizational forms officially promoted by the State:

"Naturally, the prime plank of the department's policy has been the encouragement among Amerindian communities of the development of a sophisticated local government set-up such as that obtaining on the coast, where village administration is carried out by a number of elected nominated local authorities guided by a Government-appointed Local Government Board.

"To wean the Amerindian away from his simpler (and to him just as effective) traditional method of running his village affairs is not an easy task, however, and the problems of effecting the desired change-over have been many.

"Nevertheless, the weaning has gone on quietly and unobtrusively over the years, and today every Amerindian settlement of any size has an elected captain serving for four years and an elected village council serving for two years. All elections are by secret ballot, and adult suffrage is universal."

172. It has been written that in Japan:

"A few old Ainu villages governed by chieftains and elders still exist and the Government has set up some new ones as tourist attractions. Many Ainu, however, live in hovels scattered among the Japanese in the towns and villages." 69/

173. In Chile, some communities appear to have certain elements of the status of a local or regional politico-administrative entity. In the words of the Government:

"... the indigenous organizations, those which can be considered as such (this excludes Peasants' Committees, Communal Councils, etc., which were the product of party political interests and represented a certain ideological trend) are and have been non-political, so that in that sense the question of their recognition does not arise. It is necessary to explain that the organizations we are discussing operate in areas where indigenous populations are concentrated, in a manner independent of the community or communities which form them, and to be a member of the organization, it is enough to be indigenous.

69/ George L. Harris and others, Area Handbook for Japan, prepared by the Foreign Area Studies Division, The American University, Washington D.C., 1964, pp. 74-75.

"What is more, the term 'community' relates to a legal concept which originally was much like the civil quasi-contract of the same name and which time and legal regulations have been shifting to and changing into a sui generis organization. This institution was originally based on a chieftainship or lonco, which generally spares the indigenous inhabitant heading it the problems of establishing himself but does not by any means recognize privileges within the member families and even less a political or religious structure.

"The existence of these chiefs of the Otrora community, who are highly respected, proceeds without outside interference, almost automatically and, as stated, generally on the basis of direct-line kinship with the established chief.

"We consider that this chieftainship is nowadays of relatively less significance, being limited to what we might call the administrative sphere of the reserve, with importance in the direction and organization of religious and festive ceremonies and, in some more remote regions, with an incipient mission of family equity similar to the right of correction and guidance which the civil law accords to a father over his children.

"Indigenous communities, as very sui generis legal entities formed not always of kin but also of separate family groups, have absolute independence in appointing their loncos, and the members of these communities are also independent in being personally responsible for their lawful and unlawful actions, being subject in that respect to the jurisdiction of the ordinary courts of law, to which they have recourse on a footing of absolute equality with the other inhabitants of the Republic.

"In short, the chiefs and representatives of these communities originate in a system of self-administration but they have neither political nor correctional ascendancy over those they represent."

174. In another country, Guatemala, municipal organization in indigenous communities or populations is a compromise between the internal social organization of the local indigenous inhabitants and the wider political system of the State in which they live. Basically, this means a formal coating of the indigenous civil and religious hierarchy with formal elements similar to those governing the country's other municipalities. They are politico-administrative entities in which the local communities and supra-local institutions in which the indigenous hierarchy operates as the agent of order and organization of local society are linked to the network of social relations covering the nation. One writer puts it as follows:

"In the four centuries during which Guatemala had no national State but a plurality of cultures, the various stages of its history obliged the indigenous inhabitants to behave in a particular manner and, at the same time, produced various degrees of attraction resulting in the desertion of the local societies by some indigenous inhabitants ...

"However, in addition to the political structure constituting the nation-State, Guatemala's political apparatus must, in order to govern its indigenous population, be extended to the local societies, which in population and size alone account for more than half of the inhabitants of the national territory. Technically, the indigenous municipalities are governed by organizations similar to those governing any municipality; in practice, the

municipal organization is a compromise between the internal social organization of the local indigenous inhabitants and the wider political system in which they live. From the point of view of the National Government, the municipal administrations in the indigenous communities link the local society to the nation. For the indigenous person, that is only part of its functions. From his point of view, the municipal organization is considered a different structure.

"For indigenous communities, the main feature of political life is one kind or other of a civil and religious hierarchy ...

"Typically, the indigenous inhabitants organize their local communal life around a number of offices forming two series: one consisting of religious posts and the other, of civil posts. The two series, however, are connected by common symbols, by virtue of the fact that persons in authority alternate between posts in each of the series. The indigenous inhabitants tend to think of them as one system, and the term 'civil religious hierarchy' recognizes this fact of interrelationship.

"The ordinary functioning of the civil and religious hierarchies determines the limits and the number of members of the local society. A person is a Panajacheleño, Chimalteco, Cantelense or Maxeño only if he has the right to participate in the hierarchy. In any community, persons of mixed Spanish-Indian descent can regularly reach the highest posts of the hierarchy but do so for a salary and are outside the system. Forest Indians, born in another municipality, who do not know the customs of the local society and are not under the protection of its patron saint, are not part of the system. A secretary of mixed descent, normally a very powerful individual locally, is a familiar part of the hierarchy, but more necessary as a scribe than as a participant. The hierarchy constitutes virtually the entire social structure of an indigenous municipality ...

"The hierarchy is the link between the local community and the super-local institutions with which the members of the society must deal. It is the intermediary between the society and the nation on the one hand and between a vision of the world, religion, and the Catholic Church on the other. From its beginnings, the hierarchy has acted as the agent of order and organization of the local society within a network of nation-wide social relations.

"High-ranking indigenous employees often have a thankless and unrewarding role. But the hierarchy serves the community as a defence organization. It not only unites the community to the nation but at the same time protects the members of the community from direct contact with national representatives and institutions. A familiar scene of the past was that of a delegation of indigenous notables in a government office explaining why government demands were unreasonable or could not be satisfied.

"In the political role of the hierarchy, two important social conditions are necessary: (1) the officials of the hierarchy act on behalf of the community and maintain themselves as passive agents of the nation; and (2) the nation does not sidestep the hierarchy and appeal to the individual indigenous person directly. These conditions have long been characteristic of Guatemala. It is this combination - the indigenous community both as a local corporate body and as a defensive organization within a nation - which finds it

advantageous or convenient to limit the political nucleus and deal with the Indians indirectly; and it is this that has helped the hierarchy to survive on its local social base." 70/

175. In one group of countries there is de jure recognition of indigenous communities as local or regional politico-administrative entities. 71/

176. According to a publication in Colombia:

"Act No. 89 states that any parcialidad shall be governed not by the normal system prevailing throughout the country but by a cabildo or council appointed by the Indians themselves in accordance with their traditional customs. In all matters relating to the financial administration of the community the cabildo has all the powers conferred upon it by its particular statutes and by tradition. The cabildo may take steps to annul or cancel any sale which constitutes an infringement of existing legislation and apply for the invalidation of contracts mortgaging community land and of any other transaction which may be prejudicial to the community as a whole. Disputes between Indians over community affairs must be submitted to arbitration and dealt with by ordinary law." 72/

177. The Government of Canada has stated that:

"On the local level, an evolving system of Band management is increasing the autonomy of Indians on reserves. The Band Council system was introduced in 1871, and the procedure for democratic election is contained in the Indian Act. It is anticipated that the local autonomy of the Band Councils on reserves will become roughly equivalent to that of municipal councils in other communities in Canada.

178. The Government of the United States of America has stated that:

"Indian tribes are encouraged to have a constitution that is ratified by the Secretary of the Interior. The Government thus officially formed by such a constitution is then recognized as a local and regional political entity in that it establishes courts of law, policing or policing authority on the Indian reservation, and passes ordinances that are the reservation law."

179. The self-determination of indigenous populations in the United States of America has gone through a complex process of evolution from the 1770s to the present time. There was a treaty-making period, with recognition of self-determination and treaty-making power, up to 1871 when an Act was passed indicating that thereafter "no Indian Nation or Tribe within the territory of the United State shall be acknowledged or recognized as an independent nation, tribe (or power) with whom the United States may contract by treaty." 73/ A period of reduction of the relevant powers of indigenous peoples followed and continued into the 1920s when United States citizenship was conferred on indigenous people (1924, as discussed above, see para. 25). In 1928 the publication of the Meriam report marked a reversal of this trend and a beginning of the reinstatement of certain powers,

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70/ Manning Nash, "Relaciones Políticas", Integración Social en Guatemala, Publicación No. 3 del Seminario de integración social guatemalteca, Guatemala, C.A. Tipografía Nacional, 1956, pp. 140-142.

71/ E.g. in Canada, Colombia and the United States of America.

72/ International Labour Organisation, op. cit., p. 482.

73/ Indian Appropriation Act of 3 March 1871 (16 Stat. 544, 25 US C.71).

although with interference in internal organizational aspects. This period culminated in the early 1950s with a very negative attitude towards jurisdictional powers on reservations and the announcement of a terminationist approach in policies towards indigenous populations.

180. The following has been written concerning two measures which have had a profound effect on the jurisdictional powers in the Indian reservations and implied the denunciation of the treaties and the termination of the special relationship established therein between the indigenous populations and the Federal Government:

> "Two measures adopted by Congress in the summer of 1953 prepared the way for almost a decade of turmoil that paralysed community action, destroyed two major tribes, and both frightened and angered Indians throughout the nation.
>
> "The first was an act (Public Law 280) transferring jurisdiction over criminal and civil law to certain specified states and authorizing all other states in which Indian reservations were located to assume similar jurisdiction, without reference to the views of the Indians.
>
> "Prior to enactment, state law did not apply within an Indian reservation, and except for certain major crimes, Indian tribes exercised police powers within reservation boundaries. State jurisdiction had been requested in good faith by tribes lacking the resources to maintain law enforcement agencies among their own people, but the Congress, without seeking the views of tribes, not parties to the request, replied with legislation of general application. The Indians protested, since they saw the action as a threat to one of the remaining areas in which they exercised local autonomy, and beyond that lay the possibility that the states would want to tax Indian lands, a power the states had sought for some time. The protest brought no relief.
>
> "The second measure produced even greater alarm. This was a policy statement (Concurrent Resolution 108 of the Eighty-third Congress) declaring it to be 'the sense of Congress that, at the earliest possible time', Indians should be freed from federal supervision and control. Going still further, the Resolution directed the Secretary of the Interior to review existing laws and treaties and recommend what amendments or nullifications were needed to release the United States.
>
> "A suggestion that their treaties might be denounced brought consternation to the Indians, for the treaties, like the land base itself, had acquired a symbolic value with which the tribes could associate their continuing existence. The treaties made them a distinctive people, and their abrogation would cut them off from their own past. Even the threat of such action was enough to create anxiety throughout the Indian population." 74/

181. In the 1960s the presidential election platform contained measures to reverse the policy of termination and presidential messages to Congress in the late 1960s and early 1970s promised that the new policies would encourage self-determination without threats of termination and reverse the policy of erosion of jurisdictional powers of indigenous peoples on reservations. An American Indian Policy Review Commission was established in the mid-1970s and recommended self-determination policies with a clearer intent. Presidential messages to Congress in the early

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74/ McNickle D'Arcy, Native American Tribalism (New York, Oxford University Press, 1973), pp. 105-106.

1980s have ratified the intention of following a policy of self-determination. However, indigenous communities and their representatives have repeatedly stated that the authorities invoke these statements as policy-guiding "intentions" which, according to indigenous people, are not subsequently carried into effect in the form of concrete measures of actual implementation, for instance regarding several aspects of the American Indian Religious Freedom Act.

182. Basic issues today appear to include the interpretation of treaty provisions on many issues, the continued existence and legal enforcement of bilateral treaties despite their unilateral abrogation, the treaty-making power of indigenous nations today, the affirmation of the existing indigenous land-base, the protection of sacred lands from encroachment, abuse and dispossession, the restoration to indigenous communities of lands of which they have been illegally divested, control over the resources contained in indigenous lands and jurisdictional and self-government powers on indigenous reservations, as well as several aspects of self-determination in concrete spheres of action. Also see paragraphs 215 and 216 below.

183. On the problems which have to be solved, a writer states:

> "There must be a concerted effort to define a new status for Indian lands today, and it must come as a generation of new legal and social concepts.
>
> "... One of the most needed things today is a definition of the jurisdictional question. At the present time, it is a jungle of conflicting claims and counter-claims which produces a great deal of heat but hardly any light.
>
> "There is a very simple solution to this problem and it follows the line of reasoning we are using in the treaty defence of the Wounded Knee trials. Unless a state or the Federal Government can show a specific grant of jurisdictional powers from the Indian tribe concerned to that government, there is no state or federal jurisdiction that can be exercised against the Indian tribe. Perhaps the best way that we could bring this issue to the fore would be to push for the creation of a special Indian court, and all suits involving an Indian tribe would have to be filed in this court. The Court would have its own staff of experts or consultants who would prepare exhaustive materials on the background of an issue prior to the court attempting to resolve the issue. At the least, such a court would eliminate the constant harassment suits which states are using to plague tribal governments.
>
> "Such a court was originally visualized by John Collier in his original draft of the Indian Reorganization Act, but when the tribes in different areas demanded so many changes in the bill and Collier had to compromise, the idea of the court was lost. One of the major weaknesses of the operation of the present IRA statute has been that its enforcement is incomplete without the presence of such a court to guarantee tribal governments relatively hassle-proof protection from state and federal encroachments.
>
> "The final reformation that must be made is the complete overhaul of the Indian Claims Commission. The ICC has become an arena in which tribal rights are daily compromised because of the pressing necessity of finishing the large caseload quickly, and because the Indians of too many tribes have lost hope of receiving a just deal from the Government, and are willing to take whatever dollars the Government dangles in front of them to avoid a prolonged conflict within the tribe." 75/

75/ Vine Deloria, Jr., "The future of Indians", Akwesasne Notes, vol. 7, No. 5, 1975, p. 37.

184. Numerous allegations are contained in various parts of the summary of information relating to the United States of America, its appendices and annexes to the effect that election of officials (tribal councils) under the principles embodied in the Indian Reorganization Act of 1934 means the introduction in Indian nations of new authorities that come to have a parallel existence to that of the traditional authorities despite the small percentage of voters that have elected them. The rejection of these procedures is expressed through the systematic and consistent boycotting of these elections by traditional people. This abstentionism is then interpreted by the non-Indian authorities as acceptance and legitimation of the new authorities. It is reported that despite the fact that such spurious officials are considered by the vast majority of the members of these nations as having been imposed from the outside by an alien power and in direct opposition to the traditional procedures and officials, they are recognized by the Government and ultimately replace the traditional authorities in these nations' relations and dealings with the Federal Government.

185. In response to a request, contained in the above-mentioned summary, for information on those allegations, the Government furnished the following statement:

> "There are a vast number of books, articles, studies and surveys which deal with the Indian Reorganization Act (I.R.A.) of 1934. Their treatment of the Act and conclusions drawn cover the entire spectrum of the Act's desirability and probably are reflective of the authors' philosophical leanings. However, all would agree that the I.R.A. was one of the most significant pieces of legislation to its time and to the present. It constituted a major reversal of government policy and approach toward Indian affairs and with the passage of the legislation in the 1970s forms the basis for the current self-determinationist approach to Indian affairs.
>
> "During the period in which votes were taken on whether the Indian Reorganization Act should apply to the reservations, which extended from 1934 to 1936, 258 elections were held. The Oklahoma and Alaska Indians were not concerned in these elections as they were automatically brought under the law. In this balloting, 181 tribes (representing 129,750 Indians) voted to accept the law and 77 tribes (86,365 Indians) rejected it. About half of the latter were members of the Navajo Tribe (45,000) which rejected the Act by a close vote.
>
> "Today, in only a few of the modern tribal entities is there considered to be a parallel existence of traditional authorities. In most instances the traditional form of government has ceased to function. That is not to say however that traditional viewpoints are not considered for, in all probability, the elected tribal leadership possesses the knowledge of traditional ways which are taken into account in every decision which is made.
>
> "To say that the boycotting of tribal elections by traditional people constitutes a rejection of the legitimacy of tribal government and therefore the entire system is faulty is not to recognize reality. It is agreed that the ideal system would be one in which there is 100 per cent participation in the democratic processes of electing a leadership or in decision-making. However, this is never the case when the vagaries of the individual inclination or disinclination to participate are considered, for people choose not to participate whether or not they are traditional. And, in most cases traditionalists do participate. The spuriousness of the officials elected under the present system then becomes a matter of personal viewpoint." 76/

76/ Information provided in January 1982.

(iii) Autonomy, self-government and self-determination of indigenous populations

186. The information available in this regard is incomplete and fragmentary and allows for only a very limited comparative analysis, if any.

187. No information was available in this respect in connection with many countries. 77/

188. The data relating to the countries on which some information is available, falls into three main groups. The first group would consist of countries on which there is information to the effect that no autonomy or special autonomy is enjoyed by the indigenous populations. 78/ Those countries on which only de jure information is available would form the second group. 79/ The third group would comprise countries on which there is de jure information, with some insight into what the legal provisions actually mean de facto. 80/ Other countries are special cases. 81/

189. There is strictly negative information regarding certain countries. Thus, the Government of Norway has stated that the Lapp municipalities (i.e. those where Lapps constitute the majority) are not accorded more autonomy than other municipalities.

190. The Government of Costa Rica simply answers "Does not apply", to the question on this subject.

191. In some cases this negative information nevertheless contains positive aspects concerning certain specified activities. Thus the Government of Sweden has stated that "there is no autonomy or self-government for the Lapps except as regards the prerogatives of the Lapp villages in regard to reindeer breeding".

192. The information available on other countries stresses in particular the de jure aspects of this question, whether in plans for the future or in provisions that have already been incorporated into constitutional or statutory law.

193. An example of this group, where enactments are planned is Australia, since the Federal Government has stated its intention of promulgating legislation to enable Aboriginal communities to exercise a measure of self-government that would be equal to that of general Australian local authorities.

77/ Argentina, Bangladesh, Bolivia, Brazil, Colombia, Denmark (Greenland), Ecuador, El Salvador, France (Guyanne), Guyana, Honduras, Indonesia, Japan, Lao People's Democratic Republic, Panama, Paraguay, Peru, the Philippines, Sri Lanka and Venezuela.

78/ E.g. Australia, Costa Rica, Norway and Sweden.

79/ E.g. Suriname and India.

80/ E.g. Finland, Malaysia, Mexico and New Zealand.

81/ E.g. Canada, Pakistan and The United States of America.

194. In certain other countries in this group legal provisions enable some communities to be established on the basis of a certain measure of self-government with specified powers. The Special Rapporteur had at his disposal the texts of those provisions only and was unable to obtain information on their actual implementation.

195. India and Suriname are examples of this approach in law. The Constitution of Suriname provides:

> "Article 150. The division into administrative districts shall be effected by statute. Administration within such districts shall be regulated by or pursuant to statute.
>
> "Article 151. Self-governing communities may be established and dissolved by statute".
>
> "Article 152.
>
> 1. The organization of self-governing communities and the composition, duties, powers and obligations of their governing bodies shall be regulated by statute.
>
> 2. The supervision of such governing bodies shall be regulated by statute. Their Ordinances and other decisions may be suspended or rescinded, in a manner to be prescribed by statute, if they conflict with higher statutory regulations or with the general interest.
>
> "Article 153. Where representative bodies are established by statute for self-governing communities, the suffrage and the responsibility of the executive governing bodies to the representative bodies shall be regulated by statute."

196. The Government of India has communicated the following:

> "In so far as the indigenous organizations and communities are concerned, they function in their own traditional spheres. For example, in the tribal areas village councils continue to exercise their own conventional authority particularly in the social sphere. In some areas the traditional Nyaya Panchayats or local people's courts function. There has been no interference in the working of the traditional bodies". 82/

197. According to information furnished by the Anti-Slavery Society the scheduling of tribals is manipulated to reduce the number of reservations for tribals in some state legislatures. The Society reports that:

> "In states where the tribal population forms a large percentage of the total it is obviously in the interests of the powerful non-tribals who control the state to reduce the number of reserved tribal seats in the state legislature, thereby reducing the potential political power of the Adivasis. This has been achieved by reducing the number of tribals who are officially scheduled and therefore to be taken into account in deciding the size of the tribal quota. For example, prior to the reorganization of states in 1956 in what was later to become Madhya Pradesh, the political power of the Adivasis was reduced by not scheduling over 600,000 in the Vidarbha region ... " 83/

82/ Information provided on 30 May 1983, in connection with the study.

83/ Information provided on 31 March 1977, in connection with the present study.

198. It has been contended that scheduled tribal populations could well have obtained a large measure of autonomy within the federal structure of India with the creation of a tribal state comprising Southern Bihar and nine other districts in adjoining states. In the 1950s the Jharkhand party called for the creation of such a state but contrary interests prevailed, particularly those concerning the possible exploitation of the mineral deposits and forestry resources which abound in the region. 84/

199. The Constitution of India contains, among the directive principles of state policy, the following provision on local autonomous or self-governing entities:

> "40. Organization of village panchayats - The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government".

200. Responding to a request by the Special Rapporteur, the Government of India has forwarded the following information:

> "The Special Rapporteur desires information as to how the provision for organization of village panchayats has been developed and implemented. Statutory panchayats have been constituted by the state Governments. Though the statutes vary from state to state, by and large, wards of panchayats return members to the gram panchayat which is usually composed of one large revenue village or a number of revenue villages. Thus, a ward may be a part of a village or one revenue village. Several gram panchayats have been aggregrated to form a Panchayat Samiti for a development block normally covering about 100 or 150 villages. The Panchayat Samiti is an advisory body for execution of development work through the development block. At the district levels, Zilla Parishads have been constituted. The scheduled tribes have been involved in the ward membership, gram panchayat, Panchayat Samiti and Zilla Parishads. These local elective bodies function in some spheres as deliberative and decision-making bodies and in some other spheres as advisory bodies.
>
> "There is no distinction between local and regional entities apart from the aforesaid bodies. The indigenous communities enjoy the same measure of autonomy or self-government in these bodies as a non-tribal in a non-tribal area of the country. In other words, there is no distinction in the matter between the two sections". 85/

201. In some countries a limited measure of autonomy is actually being exercised by indigenous communities and leaders. In this connection reference should be made to Finland, Malaysia, Mexico and New Zealand.

202. The Finnish Government has stated:

> "In order to bring about a separate administration for the Lapps in matters concerning their interests, a Government Committee arranged an experimental election for a particular Lappish Parliament designed for this purpose. The experiment succeeded so well that the Committee will make a

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84/ See paras. 168 and 169, above.

85/ Information furnished on 30 May 1983, in connection with the present study.

proposal on the legalization of such an institution. The task of a separate Lappish administration would be to control and to promote the interests of the Lapps in legal, economic, social and cultural spheres, to take care of the common affairs of the Lapps and to participate in Nordic co-operation. This administration would also support research work and draw up a programme with specific objectives. Moreover, it would make proposals and give opinions on matters concerning the establishment of mines, hydro-electric power stations, tourist centres and the like, and on measures relating to forestry, fishing and hunting, and education. Later on, the Lappish administration would be authorized to make final decisions and to take action accordingly".

203. Subsequently the Government stated that:

"The plans for a separate administration have now been implemented by Decree No. 824 on the Lapp Delegation of 9 November 1973."

204. In Malaysia, according to the Aboriginal Peoples Ordinance, section 4, second paragraph, "nothing in this section shall preclude any headman from exercising his authority in matters of aboriginal custom and belief in any aboriginal community or any aboriginal ethnic group".

205. The Aboriginal Peoples Ordinance provides for the recognition of hereditary headmen of aboriginal communities and for the confirmation of headmen selected in aboriginal communities in which they are not hereditary. However, the Ordinance also empowers the Minister to remove any headman from his office as well as to make regulations providing for the appointment of headmen and prescribing the qualifications and methods for their appointment as follows:

"16. (1) The hereditary headman of an aboriginal community shall be the headman thereof, or in the case of an aboriginal community in which the office of headman is not hereditary, a person selected to be headman thereof, subject in each case to confirmation by the Minister.

"(2) The Minister may remove any headman from his office.

" ...

"19. The Minister may make regulations for carrying into effect the purposes of this Ordinance and in particular for the following purposes -

" ...

" (c) providing for the appointment of, and prescribing the qualifications of and the method of appointing, any headman;

" ... "

206. In this connection it has been stated that "it should be noted that there is no tribal government/administration in the sense of the Orang Asli ruling themselves". 86/

86/ J. B. Idris, A brief note on the Orang Asli of West Malaysia and their administration, (Kuala Lumpur, Department of Orang Asli Affairs, Ministry of National and Rural Development, March 1972), p.8

207. According to the same writer, 87/ headmen of the different groups have no political power and exercise restricted authority in social matters. In this connection he states, however, that the major ethno-linguistic groups exercise a certain measure of autonomy:

Negrito

"The six tribal sub-divisions are territorial and linguistic units. Each sub-division is practically autonomous. Each group shows egalitarian tendencies with the leader having: (i) no real power; (ii) no material gain; (iii) no emblem of office; (iv) no executive power; (v) the ability to rule through his own personality.

Senoi

"Traditionally the Senois are ruled by a group of elders, and the society has strict taboos on violence, with sanctions by verbal persuasion (verbal ability equals intelligence). The criterion of leadership is therefore neither economic power nor a generous distribution of wealth.

"Nowadays each group needs a 'spokesman' for its contacts with the outside world, hence the 'Headman'.

Proto Malays

"The Social Organization of the Proto-Malays differs from that of the Senoi. The Temuan, for example, recognize no less than seven degrees of leadership. Each tribe is generally endogamous and descent is bilateral, with the exception of the Temuans in Negeri Sembilan who have characteristics of matriarchy and matriliny".

208. In New Zealand, the Government points out that:

"The New Zealand Maori Council and its constituent District Maori Councils and Maori committees have statutory recognition. The constitutional functions of these bodies are set out in the Maori Welfare Act 1962. They have certain powers to regulate the conduct of Maori people within their districts. For example, they have power to impose fines for unruly behaviour at Maori gatherings and to appoint wardens to control the abuse of alcohol by members of their community. It must be borne in mind that the overwhelming majority of Maori people nowadays live scattered through the whole community and that it is not very practical to have two sets of rules operating within one area". 88/

87/ Ibid., pp. 3-6.

88/ Information furnished during the Special Rapporteur's visit to New Zealand in 1973. See para. 64 and footnote 25/ above.

209. The Citizen's Committee for Racial Equality states, in this connection:

> "Apart from the exceptions of Maori councils mentioned above, Maoris have not been granted any form of local autonomy, despite the pleas of the King and Kotahitanga movements for this. Likewise no special courts have been permitted, except the very limited warden's courts permitted recently".

210. The Government of Mexico states with reference to this particular aspect:

> " ... it must be pointed out that articles 39, 40 and 41 of the Constitution clearly indicate the form of government which the people of Mexico decided to adopt.
>
> "Moreover, under article 115 of the Constitution, the states shall adopt, for their internal regime, a republican form of government, which shall be representative and of the people, having free municipalities as the basis of their territorial division and political and administrative organization, in accordance with the basis specified in the same article.
>
> "Consequently, for the purposes of the present document, account should be taken of situations which have made it possible to reconcile the constitional political order with the customary rules of the populations, as is the case of the mentioned indigenous municipalities in southern Mexico".

211. In Pakistan, the autonomy granted to certain community leaders is said to be gradually diminishing. A writer has stated that "the tribal leaders in some of the sensitive West Pakistan frontier regions are given a measure of autonomy, though gradually diminishing, in return for their co-operation in the maintenance of civil order". 89/

212. The measure of autonomy assumed by indigenous communities, i.e. "Indian Bands", in Canada, seems on the contrary, to be on the increase. In this respect the Government has stated that:

> "At present the Band Management Division of the Department of Indian Affairs and Northern Development continues to supervise the administration of local affairs on many reserves, but the number of those which have assumed local responsibility in fund-raising and administration is increasing to about half the total number of Bands. Councils have been assisted in acquiring administrative offices, and training courses in local administration are provided".

213. Reference has been made above (see paras 178-185) in very general terms to the evolution of the treaty-making powers, the jurisdictional powers and the self-determination policies and claims in the United States of America.

214. Since it has often been stated that indigenous populations are all seeking recognition as independent nation-states in the world of today, it should be indicated here that although some indigenous nations and peoples are indeed claiming maintenance of their sovereign powers and recognition as sovereign nations, not all have exactly the same broad approach to this important question. To illustrate the variety of approaches in this respect, a recognized indigenous writer may be quoted as follows:

89/ Richard F. Myrop and others, Area Handbook for Pakistan, (Washington DC, Foreign Affairs Series, The American University, 1971) pp. 270-271.

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

"The assumption of many non-Indians is that independence of a nation implies that it stands in the same position as does the United States toward the rest of the nations of the world. People visualize a standing army, a massive import-export business, tariffs, gigantic administrative bureaucracies, international intrigue, and the ability to wage wars on distant nations with relative impunity. Such indeed are the characteristics of a superpower, but not of the average nation which has recognition as a self-governing community with inherent rights to its own existence.

" ...

"The oldest independent states ... are the mini-states of Europe; Monaco, Andorra, Liechtenstein, San Marino and the Vatican City. Each exists in substantial sovereign independence, yet each has also negotiated certain agreements, understandings, and treaties with its larger neighbours. These larger countries have been willing to fully recognize the small states as sovereign entities and contract with them on specific issues, an example the United States might well examine when deciding how to deal with the Indian demand for sovereignty". 90/

215. As has already been indicated, as a result of the United States emphasis on the "dependent character" of the "domestic-nation" status of the Indian nations and tribes, they only exercise a minimum of self-determination, if any. As has also been stressed, this situation is not compatible with express provisions of treaties entered into with the United States.

216. According to the information contained in numerous paragraphs of this study, some of the basic American Indian concerns have revolved around existing treaties and their interpretation, self-determination, the treaty-making powers of the Indian Nations and the restoration and/or protection of the Indian land-base and of Indian control over their land and the resources to be found therein. Treaties and self-determination in particular have been very prominent among the aims of the Trail of Broken Treaties demonstration, as contained in points 1-8 and 13B, inter alia, of the 20 Points position paper. These were also central issues in the events of Wounded Knee in 1973 (See paras. 217-219, below), as well as the situation of the Hopi Nation discussed below in paras. 220-224. They are basic issues, also, in the cases on which information is contained in annexes I, II, III and IV to the summary of information relating to the United States of America.

90/ Vine Deloria, Jr., Behind the Trail of Broken Treaties, (New York, Dell Publishing Co., Inc., 1974), pp. 162-163, 176.

217. With reference to the events of Wounded Knee, an author concludes that:

" ... the Wounded Knee siege dwelt on the provisions of self-government and undisturbed use of the Sioux lands and not specifically the restoration of lands already taken. While the people at Wounded Knee wanted a total restoration of lands in western South Dakota, they based their contentions on the political recognition of the Sioux Nation as contained in the treaty and not upon any clause of the treaty which gave them the power to reclaim lands. It is therefore the history and meaning of treaties that has become important to Indians today, the manner in which the treaties limited exercise of self-government or eroded the power of the tribe to deal with other nations and not particularly the redefinition of tribal land titles.

" ...

"The contemporary demand of American Indians for a restoration of the treaty relationship must be seen in this historical setting. Few tribes would have signed treaties with the United States had they felt that the United States would violate them. The promises of self-government found in a multitude of treaties, the promises of protection by the United States from wrongs committed by its citizens, the promises that the tribes would be respected as nations on whose behalf the United States acted as a trustee before the eyes of the world, were all vital parts of the treaty rights which Indians believe they have received from the United States.

" ...

"The Indian treaty ... according to the courts of the United States, did not establish the wardship relationship with it. The only valid interpretation of tribal political status which this decision leaves is that of dissenting Justice Thompson, that the Cherokees, and by extension the other Indian tribes, remain in a very real sense foreign nations with respect to the United States. It is this tradition that the current Indian movement seeks to support. And if the wardship status was not established in the treaties, the only documents in which the Indian tribes contracted with the United States government on a legal basis, then the international basis of Indian existence must still be good legal doctrine". 91/

218. According to another writer:

"Many Indian people today think that a return to the treaty relationship, and the accompanying recognition of sovereignty, is the only way to keep non-Indian governments from interfering in the affairs of Indian governments. For example, in November 1972, the Trail of Broken Treaties Caravan presented a paper to the United States Government in which a call for the restoration of the treaty relationship was made. Central to the demands made in the 20 point paper was the insistence that the United States reopen treaty negotiations with Indian nations. The leaders of the Caravan pointed out that

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91/ Ibid., pp. 114, 136, 138.

there was no valid reason why Indian nations could not make treaties or reach agreements with the United States Government today. Treaty-making could start again if Congress repealed the 1871 Act. And Congress has never specifically prohibited the making of "agreements" with Indian governments. Both the United States Government and Indian governments today have the legal capacity to reach new agreements which would clarify or redefine their relationship to each other. New treaties or renegotiated old treaties would form the basis for a legal relationship in which Indian sovereignty would be preserved.

"...

"Congress and federal agencies have prevented Indian governments from exercising all their powers. To overcome this, many Indians have argued that, since Indian tribes are nations, relations with the United States should be governed by principles of international law. Under international law, Indian governments would be accorded a higher political and legal status than they now have. The right to nationhood would be recognized and protected by other nations of the world. New treaties or agreements could guarantee continued economic assistance without federal dominance. More federal monies would go directly to Indians rather than to bureaucratic agencies. And the United States Government would fulfil its trust responsibility by providing the resources necessary for strengthening Indian sovereignty". 92/

219. In 1975, it was written that:

"In the two years since Wounded Knee, [almost two dozen] Indians have been killed on the Pine Ridge Reservation in South Dakota. Yet the Government has almost uniformly refused to investigate these killings or other charges of brutality. The usual statement is that federal agencies do not have any evidence available which would enable them to do anything about the oppression at Pine Ridge. When two FBI agents were killed recently, however, the reservation was flooded with agents. Armed helicopters are still seen swarming over the land and screams of law and order are heard.

"Throughout America, Indians continue to slip behind the rest of the population in nearly every category of social progress. The Federal Government responds by issuing reorganizational plans for the Bureau of Indian Affairs every time the outcries of Indians become annoying. Indian programmes have become primarily public relations operations, existing mainly in press releases without any visible changes occurring in local Indian communities.

"Exploitation of minerals on Indian reservations from Arizona to Montana continues unabated and the Bureau of Indian Affairs refuses categorically to assist the tribes with these very complex problems. Its contention is that since it is a federal agency, it therefore has a conflict of interest if it attempts to assist Indians whose lands contain minerals which figure prominently in governmental energy policies". 93/

92/ Curtis Berkey, Indian Sovereignty (Washington D.C., Institute for the Development of Indian Law, 1976), pp. 23, 102.

93/ Vine Deloria, Jr., "Who knows what violence we can expect", Akwesasne Notes, vol. 7, No. 4., 1975, p. 19.

220. It has been reported that the Hopi tribal council, although unrecognized for about 75 per cent of the 8,000 Hopi people 94/ continue the traditional way of life 95/, has made several lucrative deals with industrial plants 96/ which lead to destruction of the traditional life of the Hopi. 97/

221. According to a source:

"In the 1971-72 period, the Four Corners Power plants and the strip-mining of Black Mesa were major environmental issues. The traditional peoples of both nations [Hopi and Navajos] were totally opposed to strip-mining, particularly of sacred areas, for coal worth as much as a hundred billion dollars. In addition, signs of oil, natural gas and uranium are evident. The progressive Hopis, as well as the corporations and legal interests allied with them, would profit greatly through partitioning.

"Still another faction objected - but for far different reasons. They had no objection to the development itself, but they said the native people should have a bigger cut of the pie, or should run the strip-mining themselves.

" ...

"The media has characterized the dispute as being simply Hopis vs. Navajos. However, both peoples are divided into factions, the "traditionals" vs. the "progressives". Both groups of traditional peoples say this is a dispute among the progressives over wealth, and that the traditional people, left alone, would be able to peacefully resolve this problem among themselves instead of giving in to United States forced settlement. The progressives tend to be Christian, tend to regard themselves as United States citizens, and while they give some honour to the traditions of their people, according to the traditional viewpoint they do not live by the traditional values.

"The traditionals ... say they have a responsibility to protect the land and the lives of the unborn generations, and they follow the system of government given to them. Especially among the Hopi, they do not believe in voting, which acknowledges the right of a majority over a minority.

"Instead they decide by consensus, the way of natural peoples.

"While the Hopi Tribal Council has been pressuring for partitioning, Hopi and Navajo traditionals have worked for reconciliation". 98/

94/ "Doomsday ... " TECHQUA IKACHI, No. 9, November/December 1976.

95/ Elizabeth Dunbar, BLACK MESA: the effect of development, Pasadena American Friends Service Committee, Pacific Southwest Regional Office, 1974, p.5.

96/ Ibid., p.6; "Traditional Hopi Meeting - October 10, 1976", TECHQUA IKACHI, No. 9, November-December 1976; "Navajo-Hopi Dispute", Akwesasne Notes, vol. 8, No. 4, 1976.

97/ "Hotevilla village commemorates founding", and "Cutting the Hopi lifeline" TECHQUA IKACHI, No. 8, August/September 1976.

98/ "Navajo-Hopi Dispute", loc. sit.

222. Another publication contains information to the effect that:

"With the signing of the Treaty of Guadalupe Hidalgo in 1848, the United States acquired from Mexico vast portions of land that now comprise much of the American Southwest, including the ancient tribal lands of the Hopi. The treaty stipulated that the United States would 'Honour forever the Indian reservation boundaries (previously) established by the "Government of Mexico"'. Since that time, a series of Executive orders and other governmental actions have reduced the Hopi reservation to less than 1,000 square miles, one sixth of its size in 1882". 99/

223. An author writes:

"The Hopi have never signed a treaty with the Government of the United States. They are still a sovereign nation and wish to continue as such. Yet despite the truthfulness of the Hopi's independence, they have never been free from the federal government's continual imposition. Despite their protests to the Government that if left alone they could live a full and prosperous life, the United States Government refuses to withdraw its influence.

" ...

"The Indian Reorganization Act of 1934 provided each tribe with its own government and constitution, modelled on the "successful" Anglo way. Each tribe was asked to vote for the adoption or rejection of this new form of government. When the Hopi were approached with the idea, only 755 Hopis out of about 4,500 cast ballots. Even when the votes were counted, many of them were found to be in the names of deceased Hopi and Hopi who no longer lived on the reservation. Nonetheless, the Council and its constitution became incorporated into the Hopis' lives". 100/

224. According to another publication:

"The Hopi Tribal Council and 229 Hopis voted on 30 October 1976 to accept a $5,000,000 land settlement (Indian Claims Commission Docket 196) which involves the aboriginal land rights of 8,000 Hopis. The Indian Claims Commission (a non-Indian Commission) has accepted this as being 'in accordance with the law'; and now Indian Claims Commission Docket 196 goes before the House Committee on Appropriations to pay the Tribe off for nearly 2 million acres; henceforth, the Hopi Tribe shall have no further claims, demands or counterclaims on the United States Government in relation to lands stipulated in Docket 196.

"The Hopi traditional leaders have opposed this land settlement and are seeking support in having it halted.

99/ "Hopi Tribal Council", Akwesasne Notes, vol. 4, No. 2, 1972.

100/ Elizabeth Dunbar, op. cit., p. 5.

" ... on 30 October 1976 the Tribal Council held a vote during a religious ceremony. Out of approximately 8,000 Hopis only some 250 voted on this land settlement - 229 for and 19 against. On that same day some 2,500 Hopis attended the Locon Ceremony. Again the Tribal Council was in violation of its own Constitution: "Article VI, Section 1, (c) was violated by the action of the Hopi indian agent, the Hopi tribal council has only a negative authority on land, to wit: "to prevent the sale, disposition, lease or encumbrance of tribal lands, or other tribal property. It has no authority to make affirmative decisions on land because that authority belongs to the Kikmonguis of the Hopi sovereign villages".

" ...

"Since the Tribal Council Chairman and BIA Superintendent refused to meet with the traditional leaders, the Kikmongwis (Traditional heads of the sovereign villages) replied with a letter stating their position and intention. Following is one of the six statements made in the letter sent to the Tribal Council Chairman and BIA Superintendent:

"It is your responsibility as servants to the Hopi People to do what Hopi People want and not what you want. Since you both have refused to face our people face to face on this vital issue we will now take action to have both of you resign or removed from your positions. You have failed to fully inform the Hopi people on things that concern the very land, way of life and religion of our people. Instead of obtaining the aboriginal land of our people, the Tribal Council and Bureau of Indian Affairs went along with Attorney John S. Boyden to make our land-base smaller and smaller. Both the Hopi Tribal Council and John S. Boyden are getting rich while the Hopi people are becoming very poor moneywise. This must stop NOW!

"We demand that you both inform all Hopi People everywhere that there will be no voting on this proposed settlement on 30 October 1976. This is our decision and the decision of our One-Horn and Two-Horn Religious Society Leaders".

"A memo dated 5 November 1976 recounting violations of the Constitution was presented to the Tribal Council on behalf of the Traditional people. Evidently the Tribal Council ignored the memo for on or about 11 November an eight-member Hopi delegation sent by the Tribal Council travelled to Washington, D.C. to attend the hearing on the land settlement, Docket 196 before the Indian Claims Commissioners. Testimony was given to the effect that the Hopi Tribal Council explained and publicized the "Land Settlement" to the Hopi people. It was further stated that a vote was held in accordance with the Law.

"The Hopi Tribal Council has funds allocated for travel, per diem, etc, while the traditional people do not. Consequently the traditional people had to rely on a telegram to make their statement known. The telegram was sent on behalf of all Hopi traditional Kikmongwis, religious society Mongwis and all the Hopi people who follow the old traditional Hopi way. They expressed their disapproval of the proposed settlement in Docket 196, and stated they did not accept the authority of the Hopi Tribal Council and had never authorized the contract of Mr. John S. Boyden. They also stated that the publicity given for only one week and the hearing held regarding the

proposed settlement inadequate to inform all the Hopi people or to allow them to express their opinions, and that many of the Hopi people were deeply involved in a religious ceremony which conflicted with the hearing on the land settlement at the Tribal Council's headquarters. They stated that the vote of some 250 Hopis out of a Tribe of 8,000 is not truly representative of the opinions of the majority of the Hopi people. They further stated that their religious traditions and prophacies prohibited the Hopi people from giving up any claim to their ancestral lands for mere monetary considerations, and that letters and petitions from hundreds of Hopi people who opposed the proposed settlement and supported their message would follow shortly.

"The Indian Claims Commission, when asked, stated it had heard the Tribal Council's testimony, and had also received the telegram from the traditional people and that it was all a matter of record. The Indian Claims Commission, nevertheless, accepted the Land Settlement, Docket 196, and made the decision official on 2 December 1976 and discussed how the money would be handled. The Claims Commission did this in view of the fact that only the traditional leaders have the authority to relinquish their land". 101/

101/ "Hopi tribal council accepts $5 million land settlement, Hopi traditional reject land settlement", News Release, American Friends Service Committee, Pasadena 1976, pp. 1 and 3-5.