

***STUDY OF THE PROBLEM
OF DISCRIMINATION AGAINST
INDIGENOUS POPULATIONS***

by José R. Martínez Cobo

*Special Rapporteur of the Sub-Commission
on Prevention of Discrimination
and Protection of Minorities*

VOLUME V

CONCLUSIONS, PROPOSALS AND RECOMMENDATIONS



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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

The opinions expressed in the present report are those of the Special Rapporteur:

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Study of the problem of discrimination against indigenous populations

*Final report (last part),
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ABBREVIATIONS

FAO	Food and Agriculture Organization of the United Nations
ILO	International Labour Organisation
OAS	Organization of American States
UNESCO	United Nations Educational, Scientific and Cultural Organization
WFP	World Food Programme
WHO	World Health Organization

NOTE

The present publication contains only chapters XXI and XXII of the study by the Special Rapporteur. References to chapters I to XX are in italics, as for example: see *chapter I*, paras. 1-13.

INTRODUCTION

(a) The Sub-Commission on Prevention of Discrimination and Protection of Minorities, by resolution 4 B (XXIII) of 26 August 1970, recommended, through the Commission on Human Rights, that a complete and comprehensive study of the problem of discrimination against indigenous populations be undertaken. Acting on this recommendation, the Economic and Social Council, in paragraph 7 of its resolution 1589 (L) of 21 May 1971, authorized the Sub-Commission

to make a complete and comprehensive study of the problem of discrimination against indigenous populations and to suggest the necessary national and international measures for eliminating such discrimination, in co-operation with the other organs and bodies of the United Nations and with the competent international organizations.

(b) In resolution 8 (XXIV) of 18 August 1971, entitled "Complete and comprehensive study of the problem of discrimination against indigenous populations", the Sub-Commission, recalling the Council resolution, decided to appoint Mr. José R. Martínez Cobo as Special Rapporteur to carry out the study.

(c) At various sessions between 1973 and 1980, the Sub-Commission considered progress reports by the Special Rapporteur and between 1981 and 1983 it examined chapters of the final report. In 1984 the Sub-Commission had before it the full report. Subsequent to recommendations made by the Sub-Commission (resolution 1984/35 A of 30 August 1984) and the Commission (decision 1975/103 of 11 March 1985), the Economic and Social Council, by decision 1985/137 of 30 May 1985, expressed its appreciation for the report prepared by Mr. Martínez Cobo and requested the Secretary-General to issue the full report of the Special Rapporteur in a consolidated form and to disseminate it widely to Governments, specialized agencies, regional intergovernmental organizations, non-governmental organizations and other academic and research institutions, and decided that the conclusions and recommendations of the report should be printed, with a suitable introduction to be prepared by the Secretary-General.

(d) The full report, entitled "The Study of the Problem of Discrimination against Indigenous Populations",¹ contained the following chapters (with the original documentation numbers in brackets):

FIRST PART

- Chapter I. Measures adopted by the United Nations (E/CN.4/Sub.2/476/Add.4)
- Chapter II. Action taken by the specialized agencies (E/CN.4/Sub.2/1982/2/Add.1)
- Chapter III. Action taken by the Organization of American States (E/CN.4/Sub.2/1982/2/Add.2)
- Chapter IV. Other international action (E/CN.4/Sub.2/476/Add.5)

SECOND PART

- Chapter V. Definition of indigenous populations (E/CN.4/Sub.2/1982/2/Add.6)
- Chapter VI. Composition of the population (E/CN.4/Sub.2/476/Add.1)
- Chapter VII. Basic principles (E/CN.4/Sub.2/476/Add.2)
- Chapter VIII. General measures for the prohibition, prevention and elimination of discrimination (E/CN.4/Sub.2/476/Add.3)
- Chapter IX. Fundamental policy (E/CN.4/Sub.2/1983/21/Add.1)
- Chapter X. Administrative arrangements (E/CN.4/Sub.2/1982/2/Add.4)
- Chapter XI. Health, medical care and social services (E/CN.4/Sub.2/1983/21/Add.5)
- Chapter XII. Housing (E/CN.4/Sub.2/1982/2/Add.5)
- Chapter XIII. Education (E/CN.4/Sub.2/1983/21/Add.2)
- Chapter XIV. Language (E/CN.4/Sub.2/476/Add.6)
- Chapter XV. Culture and cultural, social and legal institutions (E/CN.4/Sub.2/1983/21/Add.3)
- Chapter XVI. Occupation, employment and vocational training (E/CN.4/Sub.2/1982/2/Add.3)
- Chapter XVII. Land (E/CN.4/Sub.2/1983/21/Add.4)
- Chapter XVIII. Political rights (E/CN.4/Sub.2/1983/21/Add.6)
- Chapter XIX. Religious rights and practices (E/CN.4/Sub.2/1982/2/Add.7)
- Chapter XX. Equality in the administration of justice and legal assistance (E/CN.4/Sub.2/1983/21/Add.7)

(e) Chapter XXI of the report, which is reproduced in the present publication, can be read as an accessible and comprehensive summary of the concerns and issues raised in the report as a whole. The Special Rapporteur, drawing on the bulk of the study, endeavoured in particular to comply with the request made by the Economic and Social Council in its resolution 1598 (L), concerning national and international measures to eliminate discrimination against indigenous populations, as stated at the thirty-seventh session of the Sub-Commission, held in 1984.²

(f) In the same statement, the Special Rapporteur, Mr. Martínez Cobo, observed that the concluding chapter clearly showed that the social conditions in which the majority of indigenous populations lived were favourable to the specific types of discrimination, oppression and exploitation in various fields described in the study. In many countries they were at the bottom of the socio-economic scale. They did not have the same opportunities for employment and the same access as other groups to public services and/or protection in the fields of health, living conditions, culture, religion and

¹ Issued in a consolidated form, in English and Spanish only, under the symbol E/CN.4/Sub.2/1986/7 and Add.1-3.

² E/CN.4/Sub.2/1984/SR.27, para. 56.

the administration of justice. They could not participate meaningfully in political life. Indigenous populations had long been resigned to this situation. Even more regrettably, they had, in many cases, attempted to become part of other cultures as the only apparent means of achieving a better life.³ In his concluding

³ *Ibid.*, para. 58.

remarks to the Sub-Commission, the Special Rapporteur stated that the report should be regarded as an appeal to the international community to take heed of the painful discrimination practised against indigenous peoples, one of the largest but weakest sectors of the world's population.⁴

⁴ E/CN.4/Sub.2/1984/SR.32, para. 48.

Part III

CONCLUSIONS, PROPOSALS AND RECOMMENDATIONS

Chapter XXI

CONCLUSIONS

A. United Nations

1. It has been pointed out in the relevant section of this study that the basic United Nations texts contain no explicit or specific mention of indigenous populations. However, reference has been made to the various provisions of the Charter relating to human rights and the promotion of social progress for everyone, in the context of which action has been taken by the Organization in this area.⁵

2. It has also been stated in the main body of the study that the United Nations, in its activities on a number of issues relating to human rights and fundamental freedoms in general, has concerned itself with some of the aspects of these which affect indigenous populations as groups of human beings. This has been the case in the drafting, adoption and implementation of texts of conventions, agreements and recommendations on a number of subjects,⁶ and also in the action and initiatives of special committees and commissions concerned with such issues as slavery, servitude⁷ and forced labour.⁸ Reference has been made to the work and initiatives of special rapporteurs of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.⁹

3. Consideration has been given to the problems of indigenous populations as part of the broader study of human rights problems by a number of committees and working groups, such as the Working Group to inquire into the situation of human rights in Chile (and the Special Rapporteur who continued that work),¹⁰ the Working Group on Slavery,¹¹ the Human Rights Committee on procedures for the implementation of the International Covenant on Civil and Political Rights,¹² and the Committee on the Elimination of Racial Discrimination.¹³

4. It should also be mentioned that the two World Conferences to Combat Racism and Racial Discrimination (Geneva, 14-25 August 1978 and 1-12 August 1983, respectively) have concerned themselves with certain aspects of discrimination against such populations and have included them in their action programmes (the first Conference in any case). In the context of the Decade for Action to Combat Racism and Racial Discrimination, two seminars were held, one in Geneva¹⁴ in 1979 and the other in Managua¹⁵ in 1981. The latter's conclusions¹⁶ deserve further study.

5. As regards specific measures relating to the indigenous populations of independent countries which are States Members of the United Nations, it may be noted that an initiative was submitted by the delegation of Bolivia during the third session of the General Assembly.¹⁷

6. Although the aim of this initiative was the creation of a sub-commission to study the social problems of aboriginal populations, it was soon transformed into a proposal for a study of the situation of indigenous populations, and finally became a resolution for assistance and study which was not translated into practical measures except for the eradication of the chewing of coca leaf in Bolivia and Peru.¹⁸

7. It was not until 1971 that one of the chapters in a study on *Racial Discrimination*, prepared by the Sub-Commission and entitled "Measures taken in connection with the protection of indigenous peoples", recommended a broader study of the subject.¹⁹ This led the Economic and Social Council to authorize the Sub-Commission, in its resolution 1589 (L), to make a complete and comprehensive study of the problem of discrimination against indigenous populations, in relation to which the Sub-Commission now has before it a final report contained in 24 documents submitted between 1981 and 1984.²⁰

⁵ *Chapter I*, paras. 1-13.

⁶ *Ibid.*, paras. 14-28.

⁷ *Ibid.*, paras. 30-35.

⁸ *Ibid.*, paras. 36-42.

⁹ *Ibid.*, paras. 43-50.

¹⁰ *Ibid.*, paras. 51-53.

¹¹ *Ibid.*, paras. 54-62.

¹² *Ibid.*, paras. 64-69 and E/CN.4/Sub.2/1983/21, para. 11.

¹³ *Chapter I*, paras. 70-74.

¹⁴ *Ibid.*, paras. 80-82 and annex, sect. B.

¹⁵ E/CN.4/Sub.2/1982/2, para. 8.

¹⁶ ST/HR/SER.A/11, chap. IV.

¹⁷ *Chapter I*, paras. 11-13.

¹⁸ *Ibid.*, paras. 83 and ff.

¹⁹ United Nations publication (Sales No. E.71.XIV.2), para. 1102.

²⁰ E/CN.4/Sub.2/476 and Add.1-6, E/CN.4/Sub.2/1982/2 and Add.1-7 and E/CN.4/Sub.2/1983/21 and Add.1-8.

8. Among the measures directly or indirectly resulting from this study, special mention should be made of the establishment of the Working Group on Indigenous Populations pursuant to Economic and Social Council resolution 1982/34, of 7 May 1982. In that resolution, the Council authorized the establishment of a working group made up of five members of the Sub-Commission which was to meet each year for up to five working days immediately preceding the session of the Sub-Commission in order to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations and give special attention to the evolution of standards concerning the rights of such populations.

9. In 1982 the Working Group held its highly successful first session (9-13 August)²¹ and in 1983 its second session (8-12 August).²²

10. The creation of this Working Group thus completed the sequence of actions begun 34 years earlier by the Bolivian initiative of 1948 mentioned above (para. 5) regarding the creation of a sub-commission which would concern itself with the problems of indigenous populations. As a result, specialized machinery now exists to devote attention exclusively to such problems on an annual basis and in the manner set out by the Council in resolution 1982/34.

B. Specialized agencies

11. ILO has been taking measures with regard to indigenous populations for many years now,²³ particularly during the period 1953 to 1957, which culminated in the adoption of two basic texts, the Convention on indigenous and tribal populations (No. 107) of 1957 and Recommendation 104 of the same name.²⁴ In recent years, Convention 107 has increasingly been a target for criticism by both indigenous populations and other persons concerned with such matters. As a result, ILO is now tending towards the revision of these texts as far as possible, which would seem to be the right approach.

12. UNESCO has done important work in the areas of its competence which have an impact on the clarification and assertion of the rights of indigenous populations; it has recently held international expert meetings of great importance on ethnocide and ethno-development which merit praise and firm support.²⁵

13. FAO and WFP have collaborated with ILO in implementing ILO Convention 107 and have undertaken the action described in *chapter II*.²⁶

14. WHO has collaborated with ILO in the implementation of Convention 107 and has undertaken the action referred to in *chapter II* of the study.²⁷

C. Organization of American States

15. *Chapter III* contains data on the measures taken by this regional intergovernmental organization, in whose area of jurisdiction, and in nearly all the countries which constitute it, indigenous populations are to be found. The chapter contains the few data available to the Special Rapporteur for the purposes of preparing the present study.

16. Chapter XXII below contains some observations on the Inter-American Commission on Human Rights and the Inter-American Indian Institute, in connection with United Nations activities regarding indigenous populations.

D. Non-governmental organizations

17. *Chapter IV* and *chapter X* (paras. 95-130), set forth information on the emergence of non-governmental organizations constituted by indigenous peoples and their international conferences and on conferences of non-indigenous non-governmental organizations concerned with the situation of indigenous populations. *Chapter IV* also contains information on the international conferences organized in 1977 and 1981 by the Special NGO Committee on Human Rights and its Sub-Committee on Racism, Racial Discrimination, *Apartheid* and Decolonization, which were contributed to and attended by a large number of indigenous and non-indigenous organizations. Mention is made of the extremely important non-governmental work on the rights and freedoms of the world's indigenous populations.

18. *Chapter I* should be read in conjunction with the resolutions and decisions of the Third General Assembly of the World Council of Indigenous Peoples and the International NGO Conference on Indigenous Peoples and the Land referred to in *chapter IV*, section A, sub-sections 5 (d) and (e), respectively.

E. Countries covered in the study

19. The Special Rapporteur is very much aware that the list of 37 countries on which the present study is based is far from exhaustive. Many countries in which indigenous populations live today have not been covered by the study. This was not the result of arbitrary selection of any kind but of the accessibility or inaccessibility of appropriate information for the preparation of the basic materials needed to give the study a solid foundation. All requests for information were sent to all States Members of the United Nations, and the list of countries covered was based only on the availability of adequate information for the preparation of the basic materials. In this respect, the absence of African countries is to be noted in particular.

20. The Special Rapporteur has always considered that certain population groups in several African countries or regions should be considered as indigenous in those countries or regions. It was, however, impossible to cover them in the present study because of the lack of sufficient information on the populations which could

²¹ E/CN.4/Sub.2/1982/33.

²² E/CN.4/Sub.2/1983/22.

²³ See *chapter II*, paras. 31-134, and annex I.

²⁴ *Ibid.*, paras. 64-99 and annexes II and III.

²⁵ *Ibid.*, paras. 135-193 and annexes IV-VI. Annex VI contains the text of the San José Declaration (11 December 1981).

²⁶ *Ibid.*, paras. 2-30.

²⁷ *Ibid.*, paras. 194-197.

be considered as indigenous in the relevant countries. This was unavoidable, particularly since the data furnished to the Special Rapporteur in reply to requests for information for the study either denied the existence of such populations or stated that all groups in those countries were indigenous, or both. It is therefore suggested that a corresponding study might be undertaken to cover African countries, perhaps with a slightly modified working definition. It should in any case be conceived as a more streamlined exercise, possibly prepared on the basis of supporting materials that would not correspond to the idea of "country monographs" but another kind of summary of rigorously verified information on those countries, so that the study can be prepared and finished in a short period. The study or report could perhaps concentrate on major relevant issues as determined on the basis of appropriate material.

F. Definition

21. *Chapter V* contains data on the range of criteria and formulae for the definition of indigenous populations in use in the various countries studied. It can be seen that both in definitions in legal texts and in those proposed by other means, great importance has been attached to objective elements (ancestry, culture, language, etc.). It may also be seen that subjective elements (self-identification and acceptance) are gaining ground as important criteria for definition. It must be asked whether pure objective and subjective criteria exist, particularly in the formulations proposed at various levels on that basis. In any event, it should be established that the indigenous populations themselves must be consulted about the criteria they consider valid, since it is their right to determine who belongs to those populations, and who does not.

22. With regard to the study, the criteria and formulations proposed must be acceptable as valid elements for a possible definition of indigenous populations for international purposes. Part of the proposals and recommendations put forward in connection with this study will be devoted to that subject.

G. Structure of the population

23. The difficulty of making calculations and estimates with regard to indigenous populations should not be an obstacle to doing so with increasing accuracy. As far as possible, the classification criteria accepted by the indigenous populations themselves should be used, since otherwise there is a risk of obtaining only approximate and imperfect results.

H. Basic principles and elimination of discrimination

Basic provisions

24. It is obvious that the State could theoretically provide a more systematic and consistent means of action through clearly defined and co-ordinated legal channels, within a specific body of laws. Effective and

systematic State action can be achieved, however, with or without this special legal régime, and conversely, the absence of such action does not necessarily derive from the lack of such a régime.

25. The existence of situations of scattered or concentrated legal evolution can be observed.

26. In some countries, a systematic body of legal provisions has been established (laws, regulations, administrative and executive decisions and court decisions) which constitutes a legal régime applicable to the indigenous populations of the country. In other countries, there are only isolated provisions covering specific aspects which remain *ad hoc*, and are not interrelated except in the case of amendments. Nowhere do these systems seem to exist in a "pure" form. While some countries have gone over from a system of isolated provisions to a systematic body of laws, in others the broad-based and comprehensive legal régime which once existed had disappeared in the course of time, to be replaced by a situation in which only a few measures and provisions on specific issues still exist.

Constitutional provisions

27. The information for some countries shows that their constitutions contain no provisions regarding indigenous populations. Some Governments have provided specific information on this point. A number of other countries seem to have considered issues concerning their indigenous populations so basic that provisions regarding them have been included in their constitutions. While the provisions of some of these constitutional texts are very brief and abstract, others address themselves more explicitly to the need for special measures in favour of indigenous populations, although there are marked differences in the approach adopted and the scope of such provisions. (See *chapter VII*, paras. 60-89.)

Basic legal status

28. The countries which supplied information susceptible of analysis with regard to basic legal status fall into two main groups. Some countries have created a special legal status which seeks to protect the indigenous inhabitants and absolve them of a number of obligations, but at the same time restricts their exercise of certain rights until they attain what is considered to be a necessary level of development which could place them on an equal footing with the rest of the population. Other countries have accorded to their indigenous peoples all the rights and obligations of citizens. Some have also enabled them to benefit from certain special provisions on their behalf, considered necessary since such peoples tend to be the underdogs in society for as long as they continue to suffer from the circumstances of that position.

29. The situation is not completely clear when it comes to determining whether a special legal status actually does or does not exist for indigenous populations. The information available could be interpreted in both senses, and for this reason the Special Rapporteur had to make an *ad hoc* classification and sometimes to include data on a single country in both groups thus established.

30. In extreme cases, the special legal status is similar to a *capitis diminutio*, in that the indigenous inhabitants do not enjoy all the rights or have all the obligations of other nationals of the country. This obviously goes beyond mere restrictions on the transfer of indigenous land and affects their legal capacity in many respects until they achieve a given level of integration in the national community.

General measures for the elimination of discrimination

31. Traditionally, constitutions and fundamental laws are permeated with recognition of equality before the law, closely associated with its natural complement, the right to the equal protection of the law. In the constitutions of a number of countries these provisions are combined with declarations which forbid discrimination for the reasons specified in them, and sometimes, too, with other provisions which proclaim equality of opportunity for all. These principles are then developed in provisions inserted in various legal texts and regulations. In some countries, special laws have been promulgated which are directed at ensuring that there is no discrimination of this kind, particularly racial discrimination.

32. In order to ensure the effective practical application of these precepts, a number of countries have an official *ombudsman*, who is responsible for dealing with complaints of alleged acts of discrimination. In other countries there are commissions or councils for the protection of human rights, inter-group conciliators and agents for community relations.

33. Fundamental or other laws also include provisions guaranteeing everyone equal access to public places and services.

34. Generally speaking, this right may be taken to be guaranteed by the general provisions on non-discrimination and equality before the law and equal protection of the law; some Governments state as much in the information provided. Problems have arisen primarily in access to housing, means of transport, industrial or commercial establishments, and public education establishments and institutions. As a result, the measures adopted in several countries have been considered necessary to eliminate the discrimination which has occurred in those areas.

35. Provisions have also been introduced into fundamental laws and other precepts, with a view to eliminating the obstacles which exist or could arise, and promoting harmony among the various groups which co-exist in the countries concerned.

36. This is seen primarily in a number of aspects of education and in the campaign against groups and propaganda based on ideas of the superiority of one race or group over all others.

37. In many States, concrete acts of discrimination or incitement to specific forms of discrimination have been classified as offences punishable by fines or imprisonment, or both, and by much severer penalties in the case of acts of extermination or incitement to the extermination of groups. This last-mentioned case has arisen in particular with regard to genocide, with the incorporation into national legislation of specific provisions defining such actions in the light of the Conven-

tion on the Prevention and Punishment of the Crime of Genocide.

38. Other States which have ratified international instruments containing provisions prohibiting discrimination, or wholly devoted in some respects to that purpose, have systematically promulgated laws to prohibit and eliminate discrimination and at the same time have repealed provisions or articles in existing laws considered to be discriminatory.

39. In this regard, particular mention should be made of genocide and racial discrimination. *Chapter VIII*, section G, gives an overall view of the ratification of some basic texts such as the International Covenant on Civil and Political Rights and its Optional Protocol, and the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Prevention and Punishment of the Crime of Genocide, adopted under the aegis of the United Nations; ILO Convention No. 107 on indigenous and tribal populations (1957); the UNESCO Convention Against Discrimination in Education (1960); the American Convention on Human Rights, the International Convention relating to the Inter-American Indian Conferences and the Inter-American Indian Institute of 1940 of the OAS (1940).

I. Basic policy

40. It is clear that, in this regard, there is a considerable diversity of criteria. There are many approaches to the theoretical aspects of the question. There are complex and delicate social and cultural aspects. Complicated social and legal problems arise. The theoretical possibilities which emerge include at least policies of segregation, assimilation, integration, amalgamation, pluralism, self-reliance, self-management and ethno-development.

41. *Chapter IX* contains a brief review of these criteria and aspects; it should be stressed that the importance of the fact that policies of pluralism, self-reliance, self-management and ethno-development seem to provide for better opportunities and means for direct participation by indigenous populations in the formulation and implementation of the policies officially adopted by the State.

42. The historical development of the processes of formulation and evolution of such policies shows the extent of the out-and-out domination and imposition which accompanied the early stages of conquest and colonization, and developed into a less heavy-handed domination with the stabilization of colonial subjugation, subsequently evolving into "indigenism"—i.e. policies drawn up without the participation of indigenous populations—and later into "indianism", or the taking of control of those processes by the indigenous inhabitants themselves, and indigenous policies of pluralism, self-reliance and self-management and ethno-development.

43. The organs and procedures by means of which official policy towards indigenous populations is applied in practice vary widely from one country to

another and even between regions of the same country, in some cases becoming essentially casuistic. This may be the result of many factors and be due to a large number of reasons which can be variously explained.

44. The policies actually followed are described quite differently by Governments, indigenous populations and other relevant non-governmental sources. The latter, as well as the indigenous inhabitants themselves, stress that none of the forms of autonomy and self-determination which the indigenous populations require as essential to their adequate development is applied satisfactorily in practice and that Governments often assert that they apply and respect them.

45. Measures must be taken for the control, review and periodic revision of the policies officially adopted, so that they can be constantly brought into line with the changing circumstances of contemporary societies. The same applies to the action undertaken by non-governmental organizations of any type. In all this, it must be borne in mind that it is the genuine interests of the indigenous populations, as described by themselves, which must guide any change or adjustment made in those policies and measures, so as always to give the broadest and fullest participation in such processes of the population affected.

J. Administrative arrangements

46. In a few countries, the special importance of the indigenous populations has been recognized by the creation of a ministry or body at cabinet level to plan and co-ordinate policy and programmes directed at those groups.

47. Many Governments have created offices or agencies within the pertinent administrative or governmental areas in order to ensure that the formulation and implementation of policy towards the indigenous populations receive appropriate attention and consideration.

48. A number of countries have established sub-cabinet bodies to co-ordinate the efforts of the various governmental and private entities concerned with policy *vis-à-vis* indigenous populations.

49. Others have set up advisory or consultative bodies to assist in the formulation and implementation of policy.

50. Under some parliamentary systems, legislative committees or sub-committees have been formed to ensure that matters affecting indigenous populations will be seriously discussed and decided upon.

51. The selection and tenure of personnel who serve in administrative bodies concerned with the indigenous population is usually subject to the general rules applicable to civil servants. Some Governments, however, have demonstrated a greater sensitivity than others in recruiting specially qualified personnel including members of indigenous groups, in the belief that such measures are essential to the success of administrative efforts. Where specially qualified personnel is for some reason unavailable, in-service training programmes have been created in an attempt to compensate for that shortcoming.

52. In most cases the principal source of funding is by appropriations from the general budget, additional sources often being seen as unreliable and supplementary in nature. Nevertheless, in selected cases, some projects or activities undertaken by administrative bodies have become a source of some importance for funding the general operations of those entities.

53. Some Governments have promoted the establishment of non-governmental organizations and encouraged their participation in the policy-making process.

K. Special areas for action

1. HEALTH

54. Like other segments of the population, indigenous peoples have special health needs which reflect their physical and socio-cultural environment.

55. In most countries, health facilities and services are not equally accessible to indigenous peoples, in so far as they form part of the rural population; these services and facilities are not adapted to the conditions prevailing in the areas where they live and do not cater to their special health needs.

56. Health services and institutions are largely concentrated in urban areas, with the result that—particularly in developing countries—the rural areas, which is where the indigenous peoples live, have fewer such services and institutions. Measures must be taken to correct this imbalance as rapidly and as effectively as possible, since this has very severe effects on the health of indigenous communities.

57. Morbidity and mortality rates are much higher among indigenous populations than among other groups living in the same areas. Appropriate and effective measures must be developed to bring down these rates, and in particular the rates for children, at least to the levels prevailing among other population groups in the various countries.

58. Some examples of *de jure* discrimination are found in areas related to health and social services, such as in restrictions with regard to the sale or consumption of alcohol or eligibility for government assistance.

59. Indigenous medical practices and medicines have not been studied enough and have in the past been repudiated and excluded from State efforts to promote basic health services.

60. Although the indigenous nutritional diet was often adequate and balanced at the time of initial contact with the ancestors of the sections which currently predominate in society, the situation is very different today and has been so in the recent past. Now indigenous diet is more deficient than that of other segments of society and leaves much to be desired, both in quality and quantity.

2. HOUSING

The present housing situation

61. The unsatisfactory housing situation existing in the world today has been outlined in *chapter XII*.

62. A housing shortage exists almost everywhere. Overcrowding and inadequacy of essential services (running water, electricity and lavatories, trash collection) are even more serious problems.

63. In general, the quality of rural housing is still very poor everywhere, but that of indigenous rural housing is even worse as it is generally inferior to the rural housing of the poorest sector of the dominant group.

64. It should be remembered that the majority of indigenous persons and families are to be found in rural areas and in the slums of the urban centres.

65. The great majority of the problems which affect rural indigenous housing arise from the economic impotence of indigenous peoples within the market economy that surrounds them, their socially and culturally oppressed position, and their lack of political and social power to bring about desired changes in their housing conditions.

66. Although indigenous populations have some special housing problems which are attributable to their way of life, their traditions and their customary economic occupations, other problems they face can be attributed to neglect, lack of the necessary action or discrimination by public authorities or by non-indigenous persons or groups.

67. Much the same situation prevails from one developing country to another and from one industrially developed country to another.

68. In general there are also notable similarities in housing located outside indigenous areas in all countries, in the sense that everywhere, indigenous housing constitutes the lowest level and is in the worst state, with a high degree of overcrowding.

69. Housing in indigenous areas is found as a general rule to be equal in condition, with no discrimination, although its quality leaves much to be desired. This still applies today, despite improvement and building programmes undertaken in the field in many countries. Inadequate housing, generally in poor condition, and overcrowding in existing units means that indigenous housing presents a dual problem, both quantitative and qualitative, in all countries. There are, of course, features which are either accentuated or of lesser importance from country to country or even among different regions of the same country.

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

Housing schemes and programmes

71. Nowhere in the countries covered by this study have the housing programmes and schemes applied been

fully successful. They have always been frustrated to a greater or lesser degree.

72. In the developing countries, as noted (*chapter XII*, paras. 68-84), the demand for housing has been excessively acute, owing in large measure to population growth and migration from the countryside to urban centres, on a scale beyond what they can normally cope with. In addition, insufficient funds have been allocated for efforts to solve housing problems. As a result, the housing situation has got worse.

73. In the industrially and economically developed countries, efforts have been made to solve the housing problems that exist, but they have not been vigorous enough and due account has not been taken of the particular situation and growing needs of the indigenous populations. As a result, the amount of housing available has become still more inadequate, and the overcrowding in existing dwellings has worsened (*ibid.*, paras. 85-92).

74. There are basically two major approaches to this question: either measures on indigenous housing are included without distinction in the plans and programmes for housing in general, as part of the overall plans and programmes or as part of those designed particularly for rural areas, but without being given special features (*ibid.*, paras. 130-147); or special programmes and plans are drawn up and applied for the housing of indigenous groups, taking into account their differing requirements and particular traditions, and the fundamental difficulty they have in financing in the usual way that part of the building costs which they are to cover under the arrangements made (*ibid.*, paras. 148-176).

General housing schemes—the same for all

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

76. Other information refers to rural housing, albeit with no further details, while in other cases, it is explicitly stated that the measures adopted apply equally to indigenous and non-indigenous peoples (*chapter XII*, paras. 131-147).

Special housing schemes for indigenous populations

77. Special legislation has been passed and policies formulated for the development of programmes and schemes with a view to granting indigenous populations building land and assistance for building homes. The programmes and schemes developed to implement them have failed to take into account the real requirements of these populations, as well as important economic and socio-cultural aspects. In some cases, houses have been built but people would not live in them.

78. Housing loans have come from money-lenders and other sources which exact high rates of interest and require that the land and the house be mortgaged to guarantee the loans under circumstances that made indigenous borrowers hesitate and ultimately decide against such risks. In certain rural programmes, in-

indigenous communities are reluctant to sign the agreements proposed for fear that, in case of default, they could result in alienation of indigenous land (*chapter XII*, paras. 148-176).

79. Special experiences such as those of the Pasokan Penbena or Orang Asli Work Brigades in Malaysia (*ibid.*, para. 158) or the "pepper-potting" policy of distributing Maori housing throughout urban communities in small groups, State rental houses and help for establishing maraes in different areas, coupled with the building of apartment blocks for aged Maori near established maraes in New Zealand (*ibid.*, paras. 163-165), and housing projects and schemes in Australia, Canada, the United States of America and Mexico for the building of houses for indigenous communities and families, some of which are under "mutual help" schemes, should be examined to determine possible useful elements applicable elsewhere, with adaptations.

80. The situation of indigenous housing outside the traditional or reserved areas is deplorably bad in most developing and developed countries alike. General housing and sanitary conditions are far below accepted standards (*ibid.*, paras. 104-111).

81. The situation regarding indigenous housing in traditional or reserved areas does not appear good either, although in certain respects and in some countries it seems to be better than in others (*ibid.*, paras. 115-123).

Imposition of non-traditional patterns of housing on indigenous populations

82. The desire on the part of public authorities and private enterprises in many countries to impose non-indigenous housing patterns on indigenous people has often resulted in marked failure, particularly where these changes are not warranted by circumstances.

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

83. It is obvious that more indigenous input is needed if indigenous housing is to improve. Consultation with and contributions by indigenous populations are clearly needed in order to ascertain the situation and needs as they themselves see them, as well as to give control of indigenous housing, or significant participation in it, to indigenous populations so that it conforms to their own traditions and plans. Indigenous personnel should be increasingly involved in and trained for the necessary operations.

84. There is need for a serious and thorough study of the housing problem, especially as it affects the indigenous population.

85. Although the information acquired for the present study shows certain basic aspects of the problem, it is not adequate for a detailed study of housing problems.

86. Indigenous populations have a right to a clean, healthy and satisfying environment and to adequate housing of a standard which will meet the needs of families in the communities of their choice. They are prepared to contribute a fair share of the resulting costs

in common with other sectors of society. Thus, indigenous housing should in no case fall below the minimum standard set for other rural populations, with the necessary adaptations dictated by the socio-cultural factors invoked and accepted by the indigenous populations themselves.

87. At present the housing policies adopted by States do not recognize the nature of the Indian housing problem, and do not take sufficiently into account the legal, economic and social conditions which govern indigenous existence, nor the essential incompatibility between provisions in housing laws, policies and programmes on the one hand, and these conditions on the other.

88. Within a larger context of related community needs, the housing needs of indigenous populations are acute and worsening.

3. EDUCATION

General criteria

89. The right of indigenous populations to education has not been duly guaranteed and is not really observed.

90. States frequently do not recognize traditional indigenous education based on autochthonous educational processes and often deliberately aim at doing away with it and replacing it by formal, alien and alienating educational processes.

91. Although there has been a significant improvement in the effective access of indigenous persons to public education of all kinds and at all levels, such education continues to be characterized to a greater or lesser extent by a marked tendency to deprive indigenous pupils of everything indigenous.

92. This unmitigated aggression against indigenous culture and life-style can in no circumstances be justified, particularly in contexts and environments of cultural and linguistic pluralism, which States nowadays espouse, or to which they at least pay lip service.

Access to education

93. There was no information on *de jure* discrimination in this regard; on the contrary, all the countries for which information is available have adopted the principles of non-discrimination in access to all types and levels of public education. In some countries, the tendency to include this particular principle of non-discrimination in the constitution has become more marked. In some countries, too, legal penalties have been expressly provided for acts of discrimination in this regard.

94. The aspects which *de facto* restrict free and equal access to education of all types and at all levels include problems of inadequate geographical distribution due partly to the fact that indigenous groups live in isolated and scattered communities and that some groups are nomadic or semi-nomadic; the lack of adequate assistance plans to permit school attendance in many countries; language problems; differences of cultural background and the high rates of general illiteracy, due partly to the foregoing factors, and partly to socio-economic considerations of various types.

95. Everywhere it seems that increasingly effective steps are being taken. However, they do not succeed completely in solving existing problems. It should be noted that some countries have started to recognize the right of certain groups to establish and run their own educational institutions. There are also reports of the determination of indigenous populations to formalize alternative systems of education, stressing traditional forms, which will be discussed below.

96. There is insufficient information to develop these aspects, except for those which have been included under the activities discussed in *chapter XIII*.

Notable shortcomings in present educational arrangements

97. The following shortcomings are currently to be found in all countries, although to varying degrees:

(a) In a very large number of cases, there are still no schools in or near indigenous communities;

(b) There are either no, or far too few, teachers with the necessary knowledge of the relevant indigenous language and culture;

(c) In a great many cases, it is still not possible to learn to read and write in the indigenous mother tongue or in the predominant vernacular of the area where the community has settled;

(d) The necessary stress is not laid on teaching or instruction in the indigenous culture;

(e) Insufficient efforts are made to avoid the alienating effects of the presence in the indigenous school of the predominant non-indigenous culture and, in many cases, deliberate attempts are still made to replace the indigenous by the non-indigenous culture;

(f) In teaching the pupil the official language, insufficient care is taken to prevent him from being cut off from his mother tongue, and in many cases this continues to be a deliberate objective;

(g) The aid programmes for indigenous students in the form of fellowships, allowances, subsidies, accommodation, transport, adequate clothing, etc. are inadequate.

Educational materials for indigenous persons

98. The avowed purpose of these materials was, until very recently, the deliberate assimilation of indigenous populations into the mainstream of society as a whole by making them abandon their own cultural patterns in favour of those of the prevailing sectors of society. In one country this is still the explicit purpose of some of the materials and programmes applied to one of the sectors into which the indigenous population are classified.

99. These materials have been developed in most cases in the capital or other cities and for urban populations. In some cases, they have been prepared in foreign countries and use terms and expressions that are unintelligible to the local population, including the indigenous population concerned.

100. Efforts have been made in certain countries to develop special programmes and materials for indigenous education, but they have been found to be either utterly ill-adapted to the purpose, not fully ad-

equate or unsuited to the specific needs of the recipient population groups.

101. In a few countries materials and programmes have now been developed with the direct participation of ethnologists, the indigenous leaders of the communities involved and other experts, and they seem to be much better adapted to the needs in question. Their long-term suitability is, however, in most cases still to be carefully verified.

102. In some cases, the materials prepared for the education of indigenous populations are used for those purposes, together with materials prepared for the population at large.

103. Indigenous culture, traditions, history and institutions are transmitted orally and not by the written word, and until recently have not been recorded either in writing or by other means. There is a risk that the authenticity of these cultural expressions will not survive when attempts are made to put them down in writing or transcribe them from memory, notes or recordings made by persons without a proper understanding of the subject.

104. An important element in the education of indigenous populations in the broader framework of society is to teach them to assert and protect their rights and obligations as groups and individuals within that society. Their own internal means and methods of creating that awareness must be respected, supported and complemented by means which can be used within society as a whole for the protection of their rights and the assertion of their obligations.

105. The necessary stress has not been laid on the virtues of friendship among the different segments of the population, nor has understanding and appreciation been encouraged of all the cultures within societies, particularly indigenous cultures.

Educational materials for non-indigenous persons

106. Not enough is being done to combat and eliminate misconceptions and prejudice against indigenous populations.

107. Recently measures have begun to be taken in some countries, but they are not sufficient to eliminate all the offensive references from school textbooks and have also failed to orient such materials towards accurate information on indigenous groups and their traditions, history and culture.

Participation in the founding and operation of educational institutions

108. Very little is being done in many countries to ensure that indigenous populations participate adequately in, and are given the opportunity to collaborate in, the founding and operation of educational establishments and institutions that are active in indigenous communities.

109. In some countries indigenous people are beginning to be really involved in the decision-making process regarding educational arrangements in their communities. Their participation in that process is being increasingly sought through education councils or special committees involved in school administration.

Independent indigenous educational institutions and establishments

110. Information on several countries shows that they have no independent indigenous educational facilities or institutions.

111. In all countries, however, traditional indigenous educational processes are continuing to transmit indigenous ancestral traditions, history, legends, arts and techniques in an organized manner.

112. In a few countries, experiments are being developed with one or more schools run by indigenous people. In some of these countries the approach seems to incline towards local control and parental responsibility as originally recommended by the indigenous people themselves. In at least two countries, Canada and the United States of America, indigenous schools on reserves are being operated by indigenous communities, part of the funds being provided by official sources.

113. In this connection, the Native American alternative educational programmes and schools, particularly the Native American Controlled Survival Schools described in *chapter XIII* (paras. 393-399) deserve special mention.

Scope of educational efforts and extension to the community as a whole

114. In most countries for which there is information on these aspects, educational efforts also comprise adult education programmes. Attempts are being made to involve the whole community and focus on community needs.

115. Community colleges operated by indigenous communities aim at serving the whole community in some countries.

Preparation of indigenous teachers and proper use of their services

116. In some countries indigenous teachers seem to be finding it difficult even to practise their profession in the appropriate communities or schools.

117. In other countries teachers are recruited, as far as possible, from the indigenous communities and special training is provided for them in order to enable them to teach in their own communities.

118. Indigenous persons are being trained as teachers in their own communities on an increasing scale in several countries. Special teachers' schools have been established for that purpose.

119. There is little information on the actual placing of these trained teachers in positions corresponding to their training.

4. LANGUAGE

120. On the basis of the ideas set out in the introduction to *chapter XV* of the study, the following conclusions emerge:

121. The policies followed in a great many States were based on the assumption that indigenous populations, cultures and languages would disappear naturally or by absorption into other segments of the population and the "national culture". It was expected that the in-

igenous languages would disappear, perhaps even before that, in the face of the dynamism, the quality and the attraction of the official languages—international languages which were assumed to have real or imaginary advantages of all kinds, and were considered particularly suited to science, technology, art and civilization. For that reason, no stress was laid on State plans to teach the indigenous languages or use them as languages of instruction for some of the initial phases of education. That was assumed to be contrary to the best interests of those societies and involved danger for national unity, since it was feared that it would lead inevitably to linguistic insularity and excessive social and political fragmentation.

122. It is believed today that these policies, which in some cases have prevailed for centuries, do not seem to have been well-grounded, to judge by their effects. Although some peoples and their languages have disappeared for a variety of reasons, the great majority are still with us. The vigorous presence of indigenous peoples and languages in many parts of the world is an established fact. Defence by these groups of their languages is determined and tenacious. The linguistic *impasse* remains practically the same as in the past. Many contemporary experts question and deny the supposedly undesirable effects of promoting the indigenous languages in terms of antagonistic insularity and micronationalism.

123. Public schooling oriented towards doing away with indigenous characteristics and the policies of marginalization, relegation and elimination of indigenous languages followed by most States, many of which inherited them from the colonial period, have been questioned and utterly rejected. There is increasing acceptance of the need to recognize, once and for all, the plurilingual and pluricultural nature of the countries where indigenous populations live and to adopt unequivocally policies which permit and promote the conservation, development and dissemination of the specific ethnic nature of those populations and its transmission to future generations.

124. The argument that a single prevailing language leads directly to unification has not been proved in practice.

125. It is obvious that the choice of one national or official language necessarily puts at a disadvantage persons whose mother tongue is not the one chosen and privileges those who speak the chosen language. If such policies are not applied with great care, they may constitute a factor for division, rather than unification.

126. The opinion that the use of a multiplicity of recognized languages in a country constitutes an obstacle to national unity has no firmly established factual bases anywhere.

127. The claim that there are languages which lend themselves more readily to culture, science, art or civilization is not based on fact. All languages which provide a suitable means of communication are capable of everything the others can do.

128. For all these reasons, many countries question the merits of the methods followed until recently and are preparing to approach those questions from the standpoints of cultural and linguistic pluralism.

129. The use of indigenous languages often means that they must be developed as modern languages and this, according to the assertions of the experts, as is noted in *chapter XIV*, is neither technically difficult nor expensive. Literacy training and early education in indigenous languages for pupils who speak them is easier and more economical and has longer-lasting effects, as was also observed in that chapter. In the light of all this, perhaps the time has come, as some States have recognized, to recast linguistic and cultural policies in countries where large groups of persons speak indigenous languages, in order to orient them more firmly towards recognition of, respect for and use of those languages.

130. In offering the replies and recommendations contained in the relevant section, no attempt has been made to prescribe, or even hint at, linguistic policies for individual States, which must determine such policies on the basis of a cool assessment of their own situations.

5. CULTURE AND CULTURAL, SOCIAL AND LEGAL INSTITUTIONS

131. In the vast majority of cases, the situation of indigenous populations in cultural matters is a special one, in the fullest sense, within the societies of the countries in which they live.

132. The diametrical opposition between the "modern", impersonal and rationally oriented *Weltanschauung* of the "scientific" world and the "traditional" and personal *Weltanschauung*, imbued with magical-religious notions, is a useful point of reference. It should be mentioned that these conceptions of the cosmos are not found in the pure state anywhere, since there are always "rational" and magical-religious elements in both (see *chapter XV*).

133. Some sectors resort to an ideology of colonial origin which preaches the need to "civilize" groups with a "primitive" conception of the cosmos, based on the assumption that "modern" culture is superior to "primitive" culture and on notions of social Darwinism, which underpin the prevalence of "strong" groups over "weak" groups. This commonly forms the part of the conceptual scheme of predominant groups in areas of close co-existence, involving the construction of *ad hoc* frameworks of disdain, hostility and aggression.

134. In multi-ethnic societies, action must always be based on criteria which, at least in principle, assert the equality of the cultural rights of the various ethnic groups. The State has the obvious obligation to formulate and implement a cultural policy which will, among other things, create the necessary conditions for the co-existence and harmonious development of the various ethnic groups living in its territory, either under pluralist provisions which guarantee that one group will not interfere with another, or under other programmes which guarantee equal and genuine opportunities for all.

135. It has been recognized that a balance is needed between the promotion of economic development, which must be endogenous and in keeping with the relevant cultural patterns, and the conservation of the forms of social cohesion of the indigenous groups and communities which make up the society. *Chapter XV*

quotes a number of statements made in this regard, either at international conferences or in the writings of various authors.

136. Sometimes Governments are pleased to accept those who abandon their distinctive culture, while at the same time allowing or promoting discrimination against those who insist on preserving and even developing their own customs, practices and traditions. Where such measures may be described as deliberately designed to eliminate a group's culture by acts of systematic destruction and obstruction, they might even be regarded as constituting clear cases of ethnocide or "cultural genocide".

137. No cases have been found of denials or legal restrictions on the right of indigenous populations to equality with other segments of the population of the country in access to cultural institutions and activities.

138. In fact and indirectly, problems arise in connection with the economic capacity and geographical distribution of centres devoted to cultural activities.

139. Written materials are inaccessible to persons who cannot read or write.

140. The low cost of small transistor radios and the fact that they are portable has partially neutralized difficulties of an economic nature and those caused by uneven geographical distribution. As a result, the radio has remained "accessible". Television and audio-visual media are direct and complete means of communication, but indigenous peoples find them inaccessible because of their high cost. Generally speaking, they are only accessible to indigenous persons through the apparatus and materials of others, with the consequent restrictions and dangers of manipulation and pressure.

141. When the language used is unknown or inadequately known by the indigenous people, it continues to represent an obstacle or disadvantage. This problem can be overcome by using indigenous languages in the preparation of programmes and materials.

142. Even without adopting a policy of assimilation and without deliberate intent in that direction, there are here definite phenomena of cultural influence which are not always desired by the indigenous populations or which should perhaps be presented in a different form.

143. Such means have been used for the purposes of political indoctrination, religious conversion and the elimination of indigenous characteristics.

144. Frequently, too, radio and television broadcasts and the press contain advertisements and other means of exerting pressure on the consumer which may be harmful.

145. The presence of the indigenous culture (languages, traditions, history, customs, cultural contributions, music, plastic arts, crafts) should also be reflected in the State's cultural dissemination media. This will help to create an awareness of the existence and importance of the indigenous peoples or their contributions to the dissemination of the culture of the non-indigenous peoples and thus make for a better understanding and wider dissemination of the cultures existing in the country. This will widen the framework in which the cultures of the various communities com-

prising the nation are disseminated and promoted and will give fuller meaning to the right to take part in the country's cultural life.

146. States can use various means to stimulate the feelings of national unity which are considered indispensable to the process of nation-building and the maintenance of nationalistic sentiments. Such processes sometimes involve acts of imposition and cultural intolerance, and even "forced" conversion to the religions of the dominant groups and pressure or intimidation to abandon the practice of certain rites and ceremonies.

147. Not only have religious objects and relics disappeared, but also documentation or records of enormous cultural importance to the indigenous population and to mankind as a whole. Subsequently, however, in some countries, measures have been adopted to protect archaeological sites because of their religious and cultural importance to present-day indigenous populations.

148. Some customs, such as the practice of polygamy, have been energetically opposed by missionaries who considered them offensive to their cultural principles. There has also been a tendency to do away with the services of medicine-men and "witch-doctors".

149. In some matters indeed, an indiscriminate implementation of the law in general could restrict the freedom of indigenous peoples to follow their traditional practices. For example, there are questions of marriage, family relationships, the burial of the dead, and so on, in which indigenous persons or groups continue to follow traditional practices and customs. Some concessions must be made in such matters.

150. State policies aimed at inducing the indigenous populations to abandon their traditional culture and adopt the culture of the dominant segments are legitimate only when applied with the acquiescence of large sectors of the indigenous populations concerned.

151. The effects that will result from the steps considered should be clearly understood.

152. Conversely, when the indigenous populations have expressed their determination to preserve their traditional culture, this desire should be respected and appropriate measures taken in consultation with the indigenous populations and with their participation.

153. It is not sufficient, therefore, to prevent or sanction the abuses involving cultural penetration or imposition. The right of indigenous populations to preserve, develop and perpetuate their culture and their cultural, social and legal institutions by transmitting them to future generations, when they have clearly expressed the desire to do so, must be recognized and protected.

154. According to the information provided, in some countries this question does not arise because the indigenous populations no longer observe the norms of traditional law which previously governed their lives. Consequently, it is asserted that no measures of any kind are needed, since the same provisions apply to everyone.

155. Where traditional law continues to be observed by indigenous populations, the question of legal systems

arises. While some countries do not recognize the validity of indigenous laws and customs, in the face of the undeniable fact that such legal norms continue to exist, other countries have recognized their existence for some purposes.

156. Among the countries which recognize the validity of traditional indigenous customary law, there are two types of approach; some proceed on the basis of ideas of personal authority in respect of persons involved in the application of such rules. Where relationships between indigenous persons are involved, the traditional law common to them is applied; however, if the matter involves both indigenous and non-indigenous persons, conditions are determined for applying the traditional indigenous law or the general law of the country. In other cases, following a simple principle of precedence, customary norms which are not contrary to the law of the country are recognized.

157. Generally speaking, either there are no limitations or restrictions on the civil or commercial activities of indigenous peoples, or they exist only with respect to the disposal of indigenous or communal land (mortgage, transmission, alienation), and in all other matters the indigenous people are recognized as having full legal capacity. Sometimes a few limitations or restrictions exist on acts disposing of the resources of such land.

158. In some countries, however, the limitations or restrictions apply to all acts of disposal of land in general by indigenous people, whether the land is "indigenous" or "non-indigenous", or a broad-based tutelage régime is established to include all personal property, acts of administration of funds and provisions of wills by indigenous persons, their representation in civil and commercial acts, as well as a broad legal representation by public authorities or officials.

159. There was no information on any *de jure* or *de facto* prohibitions or restrictions on marriage between indigenous and non-indigenous persons. In some countries, however, certain provisions may indirectly produce restrictions; for example, an indigenous woman who marries a non-indigenous man loses her status as an indigenous person, and the children of such marriages also lose their status.

160. In some countries, marriages celebrated according to indigenous rites and customs are considered valid, in the same way as *de facto* unions, which only in a few countries have all the effects of a civil marriage.

161. Adverse effects appear with the introduction of aspects of city life and technology into rural areas and populations. Such effects include the loss of land, lifestyle, traditional occupations, exhaustion of funds received as compensation, unfair competition from immigrants, frustration and general alienation. Generally speaking, the indigenous people become dependent on the supply of consumer goods, with the loss or replacement of their traditional tools and work, which were as effective as those just introduced, or more so.

162. The changeover from rural to urban life is never easy. Adjustment and changes are inevitable. Indigenous rural groups who come to urban centres must be helped to find housing and employment and to become familiar with the services and other aspects of urban life. The creation of assistance and friendship

centres, the provision of vocational training programmes, pre-employment schemes and hostel accommodation and the organization of courses on city life have proved useful in the few countries which have introduced them.

6. EMPLOYMENT

Occupation

163. An important area where abuses and impositions have occurred is in the constant hostility towards, and lack of recognition of, the traditional occupations of indigenous populations. Efforts to make indigenous populations abandon such occupations for others or become incorporated into the working patterns, employment practices and workers' associations of non-indigenous segments of the population have afflicted indigenous populations constantly since early colonial times.

164. Hunting, fishing and agriculture as traditionally practised by indigenous populations have been denounced as primitive, ineffective and even harmful practices that should be abandoned. Indigenous settling and farming, or stock-raising, have been said to be prejudicial to the national economy because they perpetuate subsistence economy patterns.

165. The system of tenant farmers bound to the estates of non-indigenous groups by long-standing semi-feudal systems embodying a number of personal obligations to the landowners has, on the contrary, been tolerated or even endorsed in practical terms, while—officially—legislative and administrative measures were seeking its elimination or modification to meet more acceptable standards.

166. The only occupation that seems to have been encouraged, and even assisted in some way, has been that of traditional handicrafts, but without efforts to reduce in any way the considerable share of the profits accruing to middlemen.

167. All these trends have recently begun to be reversed, with some tolerance and acceptance of traditional occupations and with official encouragement and even financial assistance being given to handicraft producers to help them establish independent marketing systems which would increase their earnings.

The colonial background

168. In some areas, early colonial concerns quickly led to the exploitation of indigenous labour in extractive undertakings. Later the colonist's attention shifted to the control and use of land and agricultural resources, and compulsory services continued to be exacted from the indigenous populations in the agricultural and cattle-raising enterprises that followed. In other areas, the exploitation of indigenous labour only existed in some parts while in others it came later, introduced together with the initial forms of agricultural settlement largely cultivated by the newcomers' own labour. When a plantation economy was later developed, labour input was shared in varying degrees in different areas between indigenous peoples and imported labourers, often an imported slave population.

169. These labour exploitation practices have pervaded colonial and later independent institutions and

practices and form the background of certain abusive practices which persist today, in spite of more enlightened legislation and more respectful administrative practices.

170. The conditions of work of indigenous populations have thus, to a large extent, been determined by the degree of their incorporation in the national and international economy.

171. Employers have made use of "cheap indigenous labour" in commercial agriculture or mining and other extractive industries. It has often proved difficult to enforce strict implementation of labour legislation with regard to recruitment practices, effectiveness of minimum wage provisions, real contractual relations and termination.

172. Eliminating forms of compulsory personal services and establishing legal provisions aimed at limiting payment in kind and providing safeguards against coercive recruitment practices were major concerns during the first half of this century in many areas. In practice, however, compulsory labour systems, various forms of bondage of indigenous labourers and widespread exploitation of indigenous workers in mining and plantation economies continue to exist in all parts of the world. The incidence and gravity of such practices vary and are cause for serious concern.

The development of international standards

173. The various provisions of the international instruments mentioned in *chapter XVI* were developed during this century in an endeavour to bring conditions for indigenous labour and employment into line with acceptable standards as they have evolved to date.

174. The limited measure of success which has been attained by these efforts make it imperative to review all of these texts and the endeavours made to enforce them with a view to the adoption of a really effective policy comprising provisions, practices and enforcement procedures that would result in improved labour and employment conditions for indigenous populations.

Employment situation

175. In the information provided, several Governments only discussed legal texts and the good intentions behind their adoption, which may be undeniable. There is, however, little government reference to the *de facto* situation in the respective countries. Information provided by non-governmental organizations refers to *de facto* conditions of employment in quite different terms.

176. The acts of discrimination discussed are the result of prejudice and the desire to get hold of indigenous land in order to obtain indigenous labour. Much abuse stems from the indigenous populations' weaker and disadvantaged position in the economy, in part because of their adherence to subsistence economy ideals in a market economy situation.

177. While *de jure* discrimination against indigenous peoples in the choice of employment was not shown in the information provided, *de facto* inequalities of opportunity were reported to be widespread. In some countries, in sectors of the economy where labour con-

ditions and remuneration are exceedingly poor and below the national average, there is a tendency for the labour force to be comprised almost exclusively of indigenous workers. Though in theory their conditions of work should be regulated by labour law, in practice the provisions of both national and international labour legislation are regularly violated.

178. The problems of underemployment and unemployment, which are now affecting developed and developing countries alike, are having a particularly severe effect on indigenous populations. The underemployment and unemployment rates for indigenous groups tend uniformly to be well above the national average.

179. Specific studies are needed to deepen insights into actual conditions, their causes and impact, as well as the way to overcome such unacceptable situations.

Coercive labour systems

180. By law, exploitative labour systems such as serfdom, debt bondage and the numerous types of compulsory personal services have generally been abolished. Despite legal provisions, however, there is evidence that such practices still continue today and that the victims very frequently include indigenous people. Information was available to the Special Rapporteur concerning "unfree labour", provoked or forced migrations, inadequate recruitment systems, and working conditions incompatible with human dignity.

181. The Working Group on Slavery has recognized that a "special problem exists in countries with indigenous populations who might be vulnerable to exploitation, such as debt bondage and other slavery-like practices ...".²⁸ That Working Group has also dealt in particular with debt bondage or bonded labour, forced labour, abusive and exploitative labour practices, and non-enforcement of minimum-wage provisions. All these aspects should be thoroughly examined in the light of existing international standards and in that of the international standards that are to be developed by the Working Group on Indigenous Populations, with special reference to the problems faced by indigenous populations in different parts of the world.

Vocational training

182. In several countries vocational training schemes have been established, either as part of an overall national programme with no specific provisions for indigenous workers, or aimed more precisely at the needs of indigenous peoples. While such programmes have undoubtedly proved of some benefit to the participants, their overall effect has often been criticized by both civil rights and indigenous peoples' organizations on the grounds that the number of indigenous beneficiaries has been small.

183. Inequities exist in the access to vocational training programmes and activities for certain groups, including indigenous populations; the location of the pertinent facilities in non-indigenous areas and the use of non-indigenous languages raise additional problems

which should be solved when establishing new programmes or modifying existing ones.

184. To be effective, vocational training schemes must be accompanied by job-creation schemes, in the planning and implementation of which trained members of the indigenous populations are personally involved. In urban areas, to which a large number of indigenous peoples may have migrated in search of work for lack of adequate subsistence opportunities in their home areas, affirmative action programmes are an important part of any employment policy designed to benefit both indigenous peoples and other underprivileged minority groups.

185. Follow-up activities are essential as, otherwise, the reversal of the benefits obtained is inevitable. Help in placement once training is finished is a necessary complement of training programmes, without which their usefulness is limited and easily lost.

186. Reported additional opportunity aspects are useful in this connection because they guarantee a certain percentage of student posts, lower pass marks, as necessary, and introduce flexibility in the age limit for admittance.

Protection of handicrafts

187. Measures for the protection of indigenous handicrafts have been found to exist in several countries.

188. The elimination of middlemen is a very important aspect here as is any financial help and technical assistance that may be needed and requested by the indigenous populations.

189. The authenticity of the products has rightly become a matter of concern and protection in several countries.

190. The difference between the high prices paid by indigenous populations for the materials they need and the low prices paid for the handicrafts they sell is indicative of the measure of abuse and exploitation in this regard, which must be corrected.

7. LAND

191. There are national and international norms which recognize the right of ownership. There was no report of any system which excluded indigenous persons from enjoying the right of ownership, since they qualify as "persons", "nationals", or "citizens", as required by different legislations in order legally to acquire the right to own land.

192. Where the free administration of property is concerned, restrictions are found in some systems. While in some there are general restrictions on the administration of movable and immovable property and on some personal rights, a number of countries impose restrictions only on acts disposing of real estate, in particular, land and, more especially, "indigenous land".

193. Land, particularly indigenous land, is subject to a special system of protection set up in accordance with the relevant provisions or declarations of Governments to protect indigenous peoples themselves and ensure that they are not deprived of their land without a

²⁸ See *chapter I*, para. 57 (a).

definite interest on their part and unless there is a good reason. In some systems, this is linked with the ownership of the land by indigenous communities or groups, or with the fact that the power to dispose of that land is vested exclusively in communities or groups, whose members have only the temporary and specific usufruct of a parcel of land within the communal property.

194. In some systems where such restrictions existed, efforts are now being made to abolish them and to accord to the indigenous people individualized and unrestricted private ownership of land. Opinions vary considerably, as can be seen from an analysis of the viewpoints of Governments which have instituted such measures or adopted practices of this kind and those of the indigenous communities and organizations affected.

195. All these institutions and practices are dealt with in *chapter XVII*.

196. It is essential to know and understand the deeply spiritual special relationship between indigenous peoples and their land as basic to their existence as such and to all their beliefs, customs, traditions and culture.

197. For such peoples, the land is not merely a possession and a means of production. The entire relationship between the spiritual life of indigenous peoples and Mother Earth, and their land, has a great many deep-seated implications. Their land is not a commodity which can be acquired, but a material element to be enjoyed freely.

198. Indigenous peoples have a natural and inalienable right to keep the territories they possess and to claim the land of which they have been deprived. In other words, they have the right to the natural cultural heritage contained in the territory and freely to determine the use to be made of it.

199. No proper or really effective guarantees exist regarding the right of indigenous populations to the land which they and their forefathers have worked from time immemorial, the forms of land tenure, the use of the resources traditionally generated, or the resources which that land contains. In some countries, the plunder of land is effected by means of legal instruments, promulgated by the Governments on which landowners still have a significant influence.

200. Large-scale violations of the rights of indigenous populations to their land and its resources have occurred systematically for many centuries.

201. The experiences of indigenous peoples are full of well-documented cases of what happens when their rights to religious freedom and culture are violated by the expropriation of the land with which they have been linked, as nations, for thousands of years. One cannot really speak of respect for indigenous cultures when powerful States and gigantic companies are allowed to destroy that relationship whenever they wish to exploit the resources of indigenous lands.

202. The information available contains data on measures of general application. There are, however, enactments referring to specific land areas and specific indigenous communities in some countries. In a few cases, there are enactments or measures intended for use as a model to be adjusted to other similar circumstances.

203. The guarantees proclaimed even in constitutions for the possession by indigenous communities of their lands are rendered inoperative by stipulations allowing intervention by the public authorities in their areas and even providing for the removal of entire communities elsewhere on specified grounds that are broadly defined. In other cases certain public authorities have been empowered to take possession or retain, sell, or dispose of indigenous property where they deem it "necessary for the preservation of the property". Other public authorities have power to declare that a portion of territory is, or ceases to be, an indigenous area. They may also unilaterally change the boundaries of these areas.

204. The authorities charged with furnishing indigenous communities with titles to their territories have spent inordinately long periods "delimiting" the lands attributed to the indigenous communities or have not issued the titles while "extensive surveying work" has been continuing for many years. From a legal point of view, this has led the indigenous communities to be considered as squatters on their own lands.

205. In other cases, in order to obtain as "concessions" their traditional rights such as gathering forest produce and cultivating foodcrops, indigenous people were and are forced to live in forest villages. In exchange for this privilege they have to agree to work at very low wages for the relevant public authorities whenever they are required to do so, even if it conflicts with crucial periods in the production cycle. They are not allowed to take other paid work without the permission of these authorities and they have no tenure rights in the villages. They are thus subject to summary eviction if they fail to comply with the authorities' demands. In the absence of recognized legal title to land, persons holding land according to indigenous customary law will invariably fail to receive compensation for the loss of their land because negotiations will be conducted by officials from outside the communities.

206. At times, the very state agency charged with the protection of indigenous lands has alienated indigenous land or allowed non-indigenous persons to settle on indigenous land without any compensation or redress in the face of claims against such actions.

207. Certain areas have been reserved, by treaties and other agreements or by legislative acts or executive orders, for indigenous possession and use. It is, however, possible to reclassify specified areas of reserved land and not only through judicial acts. They can be forced out of existence through a variety of pressures and harassment that are as effective as legislative, executive, or any other formal legal action, if not more so.

208. In many countries there are not special provisions in this respect and general rules apply. In others, special rules do exist, but there are many loopholes in them, which are exploited by non-indigenous persons, groups or authorities. The usual methods are collusion between public authorities and interested non-indigenous persons or groups to gain control of lands while they still remain the "property" of the indigenous persons, falsification of documents to acquire in-

indigenous land when such land is alienable, and execution of mortgages for unpaid debts.

209. Suggested remedies include: making mortgages possible only in favour of indigenous co-operatives; providing for longer delays and less strict enforcement clauses; returning illegally alienated indigenous land to its rightful owners.

210. These measures are only palliatives. There are not enough co-operatives and those that exist have limited resources. The money-lenders move in with usurious interest rates and difficult conditions. The implementation of what little legislation exists in this area is slow or ineffective. In addition, land that has been resold to subsequent buyers is frequently irrecoverable, because of the legal complications involved.

211. In some systems, it is the State which assigns the land which, in principle, belongs to it. The administrative, judicial or quasi-judicial authorities have been made responsible for establishing and registering titles to land, including indigenous land. In some cases, the same legislation which established the authority and empowered it to carry out registration, also established that that land could be sold to non-indigenous persons. It has been alleged that, in practice, the main effect of this has been to regularize the title legalizing the transfer of the land to non-indigenous persons.

212. There are cases in which the assignment and establishment of title to land as individual private property are the result of partition proceedings which may be initiated before civil courts from outside the indigenous communities, either by Government officials or by one of the interested parties. The concept of "occupier" has been introduced and extended to any person who individually and independently develops a parcel of land in an indigenous area, whether or not he has community rights, and thus is merely a tenant. This is held to apply even if requested by only a single occupant of the indigenous land, instead of this power being attributed to the absolute majority of the members of the community, as is the case in other legislations, and sometimes even in earlier laws of the same system in some countries. The possibility of opposing such petitions is restricted by provisions which require the fulfilment of formalities and funds to finance the necessary actions. Any occupier, indigenous or not, may acquire ownership of a piece of land which previously belonged to the community. There are limits to the area which may be acquired. Embargos and mortgages on indigenous land, previously forbidden, are now permitted. Delimitation and surveying operations have taken an unusually long time in many countries where this is a requirement for granting land to indigenous populations or recognizing their title, even when special procedures have been foreseen.

213. Negotiations and settlement are presently much favoured in some countries as a way of arriving at a fair and just solution of the cases that arise. The parties concerned participate fully in the negotiation process and the settlements that result. It is, however, evident that not all parties will have the same bargaining position, irrespective of how well founded their claims and contentions may be. It is too early to say whether this will ultimately be a successful procedure. It is

definitely an improvement in the sense that it gives the affected population groups a better chance to state their case. It is uncertain whether their arguments will be accepted only on their real weight and importance. All appearances are favourable, though.

214. It is obvious that before the coming of the invaders from abroad, the indigenous peoples occupied and claimed as their own vast areas of the territories on which they had developed as peoples and nations. Recognition of "original occupation" as "aboriginal title" was one of the major considerations in early accords, agreements and treaties concluded with indigenous peoples, which gave relevance to the prior physical and economic occupation of those areas.

215. The recognition and protection of land rights is the basis of all indigenous movements and claims today in the face of the continuous encroachment on their land.

216. Millenary or immemorial possession should suffice to establish indigenous title to land, official recognition and subsequent registration, in the absence of specifically applicable legislative or executive measures explicitly extinguishing aboriginal rights. As these rights are not "created" by legislation, neither should they be extinguished by unilateral acts.

217. Recognition here means acknowledgement of a *de facto* situation that provides a basis for the existence of a right. Official recognition and subsequent registration should follow as a matter of course, once possession and economic occupation are proved.

218. Not all systems provide for a protective régime for indigenous land. In some systems there are provisions to the effect that indigenous land is inalienable in the terms established by law and, accordingly, may not be the object of leasing or renting, with or without the option to buy, or any other juridical act of disposition that may restrict the full exercise of ownership or the direct possession of such land by the indigenous communities or some of their members.

219. The interpretation given to this stipulation has often worked to the disadvantage of the indigenous communities, and has frequently been denounced by indigenous representatives. The agency charged with the defence of indigenous possession and use has entered into agreements resulting in restrictions or dispossession.

220. In other systems, the protective régime, which is said to be "substantively operative and functional", came into effect when there was little indigenous land left to protect, since by the time it was introduced most of the indigenous land had already passed to non-indigenous hands.

221. Land rights are dependent on political relationships between community representatives, local governments and authorities and national Governments.

222. Illegal alienation of indigenous land, even when there is a protective régime, is often achieved through various forms of inducement, pressure or abuse. Not infrequently there is collusion between police, government and powerful non-indigenous interest groups, resulting in the forced eviction and terrorization of indigenous groups, physical coercion,

beatings, destruction of crops, falsification of documents and the placing of fingerprints on documents while the persons concerned are intoxicated by alcohol or drugs.

223. Further, in some areas, new enactments have made indigenous land alienable, with all the known consequences of such action. In other areas, it is not indigenous land which is protected, but land used for certain purposes, including occupations largely identified with the indigenous populations, but not exclusive to them. The routes traditionally used by indigenous populations may also be protected.

224. Use of land is temporarily assignable to individual members of the community, but upon the expiration of the term or other termination of the assignment, land reverts to common use. No alienation is involved in any way here.

225. In other systems, indigenous land is negotiable only among indigenous people. Non-indigenous persons or concerns may not acquire land, but other indigenous people may.

226. The Governments of a number of countries assert that there are neither authorities nor special rules to control the distribution of the land possessed by indigenous populations.

227. In other countries, the distribution of land is controlled internally in the indigenous communities, but an external authority must give prior authorization or subsequent approval for it. In some cases, the data supplied by the Government directly contradicted that provided by the leaders or representatives of the populations in question and other sectors of non-governmental opinion.

228. In other situations the basic decision remains dependent on the free will of those affected and only when the acts agreed upon by the indigenous persons involve the alienation of their land does the need arise for external approval. When, in some systems, the indigenous peoples themselves are left in charge of the administration of their land or reserves, it is the basic decision-making capacity of the indigenous authorities which is called upon. In order to determine whether the decisions taken emanate from within the indigenous community, the authentic or spurious origin of the authorities who actually decide on such matters must be investigated in each case.

229. In any case, even when the provisions are clearer, the authenticity of the authorities and of the processes set in motion will continue to be essential.

230. In a number of countries, there do not seem to be any special measures in this area. Co-operation and mutual aid are traditional forms of organization of labour among indigenous peoples in all parts of the world. With the financial and technical assistance which have sometimes been placed at their disposal it has been possible successfully to set up agricultural and industrial operations related to the land and using the resources available.

231. Some countries stipulate that the individuals making up a community to which land is given, or who form pastoralist or crop-farming units, must establish a co-operative for such purposes.

232. Others allow the mortgaging of indigenous land only to indigenous co-operatives. In some countries, the organization of indigenous co-operatives has been very successful. Such co-operatives have found useful ways of farming the land or of co-operating in credit, production, consumption or product-marketing bodies so as to be less vulnerable to the attacks of sectors ready to take over those important areas of the economy, to the detriment of the interests of the indigenous population. The economic and financial aspect is one of the most difficult and state institutions have been called upon to help these associations or societies to reduce interest and costs as far as possible.

233. In the main body of the study some examples are given of the invasion of indigenous lands by non-indigenous persons or companies, frequently multi-nationals. It is an undeniable fact that such invasions have occurred and are still occurring, throughout the world and that government authorities have not acted with the necessary firmness and effectiveness to avoid or mitigate the disastrous consequences for the indigenous communities affected. In addition to the actual development of resources, there are other forms of development and many aspects of penetration and alienation which have devastating effects for all such communities. While it is not always possible to avoid or put an end to the exploitation which occurs in each specific case, means of palliating the adverse consequences can and must be found, as part of a growing movement to provide the communities affected with a more direct and effective voice in all aspects of licensing or leasing and a greater share in the profits.

234. As a general norm, it may be asserted that the natural riches of indigenous land belong to the indigenous people, and it is they who can develop it. Often, they lack the equipment and the technical and administrative know-how to do so adequately when the purpose of this development is to meet the requirements of the market economy. The basic decision as to the form and scale of the development of the natural resources of their lands should devolve on the indigenous peoples alone.

235. In many legal systems, mineral and hydrocarbon deposits belong to the State, so that the granting of licences for the exploration and mining of deposits is handled mainly by the government authorities. As the land belongs to the indigenous communities, they must be allowed to share in the profits resulting from such mining activities. They must also be compensated for damage caused. Still more important, they must be allowed to participate in the process of granting exploration and mining licences and to examine all the potential consequences of the proposed exploration and mining activities. Particular care should be taken to ensure that the licences or concessions granted by the State are not of such a kind, or awarded in such quantities, or so extensive that they negate the right of the indigenous peoples to enjoy the use of their land.

236. Sacred land or land of historical and spiritual significance for indigenous peoples must in all cases be excluded from licences or concessions and protected from intrusions of all kinds.

237. In general, no special measures seem to exist in this respect, general rules apply without modification. In some countries interdictions or restrictions may be imposed on certain persons or groups regarding access to indigenous areas, or all actions and provisions that would affect indigenous areas and their fauna and flora may be declared null and void. Examples are given of the invasion of indigenous territories by agri-business enterprises and of the impact of certain hydroelectric projects on indigenous lands and their fauna and flora, thereby affecting the lives and indigenous populations in vast regions.

238. Some of the relevant resolutions of the First Inuit Circumpolar Conference have been quoted to illustrate the issues on which this important Conference placed special emphasis.

239. The land requirements of indigenous populations have seldom been taken into account in the agrarian reforms carried out to date. On the contrary, in many cases, part of the land assigned under agrarian reform provisions has been land to which the indigenous peoples believed they had a right or which they actually possessed before the reform.

240. The criteria of available land and "occupation" should be examined very carefully. In no case should any of the lands possessed by nomadic or semi-nomadic indigenous populations be considered "vacant" for the purposes of agrarian reform.

241. It is essential that true occupation of land and the needs of established communities be duly taken into account before classifying any land as assignable or not assignable under agrarian reform schemes.

242. The "conversion" of pastoral or hunter-gatherer populations into settled farming groups is not always justified and is seldom based on the necessary supporting evidence. In any case, it is always questionable whether the communities affected have really been consulted and allowed to participate.

243. Whenever the removal of populations is necessary for any exhaustively justified reason, they should be moved to areas that resemble their ancestral land as closely as possible, with fauna and flora of the same type. The suffering of these populations has to be reduced to an absolute minimum.

244. The information available almost always refers only to general plans and programmes and, where special reference is made to indigenous populations, it appears as a description of legal provisions, without further reference to the actual situation. The funds earmarked for implementing some of these plans have obviously been inadequate in some cases and appallingly inadequate in others. In any case, these funds have borne no relation to the income produced, which has led to the assertion that this is a form of domestic colonization of indigenous areas in those countries by the non-indigenous population.

245. Some principles adopted with regard to this matter (see *chapter XVII*, para. 389) seem to provide suitable theoretical criteria to follow. The Special Rapporteur, however, did not have enough information on how these criteria have worked in practice.

246. The many conditions and the slow pace of the various processes have been invoked as obstacles in granting land to indigenous communities, even under theoretically adequate plans. Criteria requiring the exploitation of the land in a "rational and productive manner" have usually been applied to the disadvantage of indigenous populations.

247. The additional cost of expropriation when the land adjudicated is not publicly owned has also militated against the acquisition of such lands by indigenous populations.

248. Whenever indigenous groups settle on non-indigenous land that may have been granted to them, they become dependent upon the people who "control" these lands, whether they used to own them or not. The settlement of non-indigenous groups or individuals on land adjudicated to indigenous communities has always created problems which the authorities do not seem able or ready to solve.

249. Data available on several countries consisted solely of legal provisions and the good intentions behind them. No information whatsoever on the *de facto* situation was provided.

250. The information available on some other countries referred only to economic and financial assistance schemes to help individual indigenous farmers and not to action regarding communities or extended groups.

251. There was no satisfactory information on agrarian reform programmes aimed at obtaining land for indigenous populations and means for developing the land they already possess. For a large number of countries, there were only general data or information on legal provisions generally applicable, without any indication of their specific use to obtain land for the indigenous population. The information on certain official plans and programmes gives no specific indications of what is being done in this regard.

252. The reasons adduced for the failure of the few specific programmes for which information is available include the poor quality of the land available, the lack of adequate and accessible loans and the complications and formalities necessarily involved in acquiring land and such loans as exist, as well as inadequate knowledge of the regulations governing such operations.

253. There is no lack of cases in which better facilities were extended to foreigners than to indigenous persons under plans to encourage the immigration of "suitable" groups. It has thus become almost impossible to obtain "non-indigenous" or public land which can be assigned to needy indigenous populations. Other groups apparently are more successful in their applications.

254. There is a shortage of land for purchase. In some cases, indigenous land previously usurped from the communities which owned it has been returned to them, but very little non-indigenous land is available to indigenous persons. What has been done in this regard is generally considered insufficient and inadequate. This is said to be part of the reason for migration to urban centres.

8. POLITICAL RIGHTS

255. Various factors, economic and social ones for the most part, everywhere influence the effectiveness of political rights.

256. In the case of indigenous peoples, the effective exercise of political rights is conditioned by a large number of complex circumstances which transcend the abstract, formal recognition proclaimed in international instruments, in the constitutions and other fundamental legislation of the various countries, and in the agreements, conventions and treaties concluded between such countries and indigenous communities and peoples as contracting nations.

257. There are increasingly few provisions which discriminate against indigenous peoples in the sphere of political rights, and it is therefore in the *de facto* state of affairs that the reasons why indigenous peoples cannot effectively exercise their legally recognized rights must be sought.

258. In some systems, there are still provisions whereby it is necessary to be able to read and write in order to exercise the right to vote and to hold public office. While this requirement is justified for persons holding public office, whether elective or not, where reading and writing are called for in order to be able to discharge the obligations and responsibilities involved, it is not justified for voting, in view of the various procedures which have been established to enable people who cannot read or write to vote.

259. Likewise, unsatisfactory arrangements continue to exist with regard to the demarcation of electoral districts and the location of ballot boxes, but in general there has been an appreciable improvement, with some well-known exceptions. Manipulative practices must be halted, the relevant arrangements made just and fair, and discriminatory practices and unfavourable treatment eliminated.

260. Everywhere there has been growing participation by indigenous persons in elections, both as voters and as candidates. In several countries, the vote received by indigenous candidates has risen sharply, a trend also found among non-indigenous electors, who increasingly vote for indigenous candidates.

261. However, the representation of indigenous peoples remains inadequate and is sometimes purely symbolic. The necessary measures must be taken to ensure that their representation in public office is genuine and just.

262. To this end, in a number of countries arrangements have been made to ensure the representation of indigenous peoples in some public offices, both elective and non-elective. This guaranteed access to some posts has generally been well received and had good results. For example, a number of posts have been set aside in parliaments and in provincial and municipal assemblies. Other arrangements concern non-elective posts, with a specific number being reserved for indigenous persons. This is particularly the case with bodies dealing with indigenous affairs. There are complaints, however, that such provisions are not fully implemented.

263. Another aspect which must be considered, albeit in a preliminary manner, is the self-determination and autonomy demanded by indigenous groups, peoples and nations.

264. It has been stressed that indigenous peoples, by their very existence, have the natural and original right to live freely on their own territories.

265. It is beginning to be acknowledged that indigenous peoples have their own national identity based on historical realities that transcend mere solidarity *vis-à-vis* discrimination and exploitation.

266. Respect for the forms of autonomy called for by indigenous peoples is the necessary condition for guaranteeing and ensuring these rights.

267. The specific forms of internal organization of these peoples are an inherent part of their cultural and legal heritage, which has contributed to their cohesion and to the maintenance of their social and cultural tradition.

268. Respect and support for the internal organization of indigenous peoples and their cultural expressions constitute an essential consideration for any arrangement aimed at securing appropriate participation by indigenous communities in all affairs which affect them. Consequently, Governments must abandon their policies of intervening in the organization and development of indigenous peoples, and must grant them autonomy, together with the capacity for controlling the relevant economic processes in whatever way they themselves consider to be in keeping with their interests and needs.

269. Self-determination, in its many forms, is thus a basic pre-condition if indigenous peoples are to be able to enjoy their fundamental rights and determine their future, while at the same time preserving, developing and passing on their specific ethnic identity to future generations.

270. Broadly speaking, indigenous peoples have the right to self-determination which will enable them to continue to exist in dignity, in keeping with their historic right as free peoples.

271. The right to self-determination exists at various levels, and includes economic, social and cultural, as well as political factors, which must be studied in each case so that the level and type required can be determined.

272. In the widest sense of its "external" connotations this right means the right to constitute a State and includes the right to choose various forms of association with other political communities.

273. With regard to its "internal" connotations within the national society, however, this right to self-determination means that a people or group possessing a definite territory may be autonomous in the sense of possessing a separate and distinct administrative structure and judicial system, determined by and intrinsic to that people or group.

274. The right to self-determination is also a right of individuals, in the sense that every person has the right to self-expression and to fulfil his or her human potential as he or she thinks best.

275. In the latter sense, reference is made to the right to be different, which is both an individual and a collective right, as recognized in the Statement on Race and Racial Prejudice adopted by UNESCO in 1978 (reproduced in *chapter II*, annex IV).

276. As far as it applies to indigenous nations and peoples, the essence of this right is the right to free choice, and therefore the indigenous peoples themselves must to a large extent create the specific content of the principle.

277. In this connection, it should be mentioned here that the international NGO Conference on Indigenous Peoples and the Land (Geneva, 15-18 September 1981) requested the Sub-Commission 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".

278. At international meetings such as the Second General Assembly of the World Council of Indigenous Peoples (Kiruna, Sweden, 1977), the International NGO Conference on Indigenous Peoples and the Land mentioned above and the 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 (Managua, Nicaragua, December 1981), the indigenous representatives or participants stressed that the indigenous cause would achieve better results if it could keep its distance from right-wing and left-wing ideological groups pursuing aims which do not always coincide with those set for themselves by indigenous groups, peoples and nations. They also said that indigenous peoples should rather continue to analyse the world from the standpoint of their own traditions and needs.

9. RELIGIOUS RIGHTS AND PRACTICES

279. The concept of religion must include not only what have been considered the "world's great religions" but also other beliefs or creeds which essentially fulfil the same function. Within this wider view of religious rights and practices, recognition and protection must be given to all forms of religion which seek the moral improvement of human rights and foster understanding and brotherly love among them.

280. As is clear from the contents of this report, despite intensive campaigns of proselytization and catechization over a number of centuries, the indigenous peoples have to a large extent retained their own religions or religious beliefs, sometimes in combination with other creeds. Under the protection of one of the major churches, this has given rise in some countries to the so-called "indigenous churches", which have to some degree retained the indigenous religious beliefs and rites.

281. Indigenous populations should not be subjected to systematic campaigns of forced conversion, which have had the results described in *chapter XIX*, to the partial extent possible on the basis of the available data. A thorough study should be made both of the subjection of indigenous populations to the system of religious missions in a number of countries and of such conversion, which has not always been attempted by

peaceful means. The view has been taken, however, that such a task goes beyond the scope of the present study.

10. EQUALITY IN THE ADMINISTRATION OF JUSTICE AND LEGAL ASSISTANCE

282. Despite the increasingly marked endorsement of provisions relating to equality before the law and the equal protection of laws and stipulations concerning the equal administration of justice for all, the principle of equality in the administration of justice is not at present actually applied to indigenous people.

283. In compliance with one of its basic functions, the official language is used in all court proceedings. Consequently, both in the courts and outside them, in the client-lawyer relationship, interpretation and translation services are required for the sake of fairness when the person concerned is not sufficiently familiar with the official language.

284. In all the countries studied in this regard, therefore, arrangements are made to permit the use of the language which the accused, plaintiff, witness or expert who is insufficiently familiar with the official language understands and in which he can express himself adequately. In few countries have the appropriate arrangements been made to facilitate adequate communication between the lawyer and his client, which is as necessary for proceedings in the courts and the preparation of briefs and the relevant evidence as it is during the hearings and giving of evidence where their participation is required.

285. In most countries, a disadvantageous situation still exists and, while it has become less acute, it continues to be serious and to affect indigenous persons in such situations. Often these vital services are provided only for criminal cases. Their use in other proceedings depends on the ability of the interested parties to pay for them.

286. Furthermore, while it is relatively easy to obtain the efficient interpretation services in foreign languages which are taught systematically in the appropriate institutions, this is not the case with the indigenous languages, which are not taught systematically. In addition, in large urban centres, the services of the respective consular officials are available to the interested parties and may even be provided free of charge to the nationals of the country in question.

287. Other factors are the cultural differences which are important and basic in this regard.

288. The relations between the lawyer and his client or defendant are also made considerably more difficult when they do not understand each other because of a difference in their assessments and evaluations of the various aspects of a given case. Sometimes they do not understand each other when discussing aspects which seem relevant or of the utmost importance.

289. There was no report of systematic efforts to give students of law or lawyers even basic instruction in the principles of indigenous customary law as it exists in various countries, which means that lawyers have no grounding in these matters.

290. A basic reference should be made here to the fact that the administration of justice takes very little account, or none at all, of traditional customary indigenous law and applies the law which corresponds to the predominant sectors of the population. This means that the indigenous population has imposed on it an alien legal system which it has never voluntarily accepted since it has preserved in practice its own customary legal system which has developed in the course of history.

291. It should be mentioned, however, that some legal systems provide for the appointment of joint indigenous judges or special advisers in indigenous law, who form part of the court for the relevant cases.

292. In areas where the indigenous population is very numerous, mixed or indigenous courts should be set up, or existing indigenous courts in such areas recognized.

293. It has been reported that, in all countries, there exists to varying degrees a lack of understanding between indigenous persons, police officers and other law-enforcement officials and that this is often interpreted as open animosity on the part of officialdom.

294. It has also been pointed out that the number of indigenous prisoners in prisons, penitentiaries and other types of detention centres far exceeds those from other segments of the population.

295. In this regard, it has been mentioned that a number of countries have encouraged the formation of panels and the holding of seminars and round tables for discussions between indigenous persons and officials to improve mutual understanding. These countries have also promoted the entry of indigenous persons into the police, law-enforcement and ancillary services, and into the various social assistance services.

296. The creation of joint associations of indigenous and non-indigenous persons has also been encouraged, with a view to monitoring the behaviour of officials and members of the indigenous community.

297. All legal systems provide for some form of legal assistance to those members of the population who have to deal with the administrative or legal authorities. Some countries have set up systems of legal aid which involve the provision of legal services proper and the economic and social assistance needed in order to ensure equal treatment before the courts and the public authorities.

298. The plans and programmes drawn up in many countries include lawyers' services, which are furnished free of charge or at low rates, and exemption from, or the reduction of, legal costs. In many systems, this can only be obtained on proof of indigence or extreme economic difficulty in paying the relevant costs and expenses. In others, assistance is given to any person who needs it, and the relevant costs deferred or cancelled in cases of proven incapacity or difficulty.

299. There are also systems in which the law schools operate one or more "popular legal offices" in urban centres to give free legal assistance to those who need it and to provide law students with an opportunity of acquiring the necessary experience and practice by taking on specific cases under the guidance and supervision of university professors of procedural and substantive law, depending on the nature of the case (civil, commercial, criminal, administrative, etc.).

300. The linguistic and cultural difficulties referred to above again emerge as relevant in any study of the legal assistance arrangements which exist under the various systems.

301. One of the most direct and simple ways of obviating such linguistic and cultural problems is to promote and subsidize programmes for the training of indigenous lawyers. In some countries, there exist plans and programmes for training indigenous students for accelerated entry into law faculties and access to the best law schools. Programmes of this type exist in the United States and Canada and have met with real and mounting success in this area of "pre-legal" training.

Chapter XXII

PROPOSALS AND RECOMMENDATIONS

A. Countries covered in the study

302. The Special Rapporteur recommends the careful consideration of the idea that a separate study dealing with the indigenous populations in African countries or regions be undertaken. This study should be more streamlined than the one now before the Sub-Commission but it should still be based on accurate and verified material to be determined by the Sub-Commission in the light of information gathered to that end from its members, particularly those from African countries, and on such other reliable sources as may be deemed appropriate for the purpose.

303. The Special Rapporteur is confident that any other omissions and gaps in the present study will in due course be corrected by the Working Group on Indigenous Populations, which will also extend its action to cover those groups in Africa which may be identified as falling within its mandate.

B. United Nations

1. WORKING GROUP ON INDIGENOUS POPULATIONS

304. The Working Group on Indigenous Populations, which, as its name indicates, was set up with a mandate to deal exclusively with problems concerning the observance of the rights and freedoms of indigenous populations throughout the world, must be supported and assisted in performing to the full its important and difficult task, and must be accorded full freedom of action, the necessary financial resources and access to all sources of information.

305. It should be supported and assisted in carrying out the specific functions assigned to it, which are, it is worth repeating: firstly, to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested annually by the Secretary-General from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples. The Working Group is required to analyse such materials and submit its conclusions to the Sub-Commission, bearing in mind the report of the Special Rapporteur to the Sub-Commission. Secondly, to devote special attention to the evolution standards concerning the right of indigenous populations, taking account of both the similarities and differences in the situations and aspirations of indigenous populations throughout the world.

306. The Special Rapporteur explicitly supports the wide approach taken by this Working Group in accepting the representatives of indigenous organizations not officially in consultative status as indispensable for full execution of its mandate.

307. All United Nations organs and bodies which concern themselves with matters which may be of interest to the indigenous populations of the various countries should take due account of the work, conclusions and proposals of the Working Group in dealing with such questions and furnish the Working Group with such information and assistance as it may need to carry out its important duties more effectively.

308. The Secretary-General should be asked to provide continuous and decisive support to the Working Group in the form of staff and resources, so that it can carry out its task as fully as possible.

309. It would be worth while to have continuous reciprocal representation, at least between the Working Group and the Commission on Human Rights, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, to ensure that each of these bodies is always kept fully informed and up to date regarding the activities of each of the others. For this purpose, a formal invitation should be made to each of the interested bodies through the Secretary-General of the United Nations and recorded in the report of each session.

310. The Special Rapporteur firmly supports the idea of a fund to ensure genuine indigenous representation at the sessions of the Working Group; this should take the form of financial and information assistance to indigenous representatives entitled to such aid in accordance with the relevant standards so that they can be informed of what the Working Group is doing and can attend its sessions, wherever they are held.

311. In view of resolution 1983/23 of the Commission on Human Rights, to the effect that the Sub-Commission should "suggest appropriate means designed to ensure that the activities of the Working Group shall be better known in every country so as to ensure the broadest possible participation of representative observers from indigenous populations", attention should be given to:

(a) Promoting and encouraging as wide a presence as possible of the information media during the Working Group's sessions;

(b) Supplying to the press, radio and television, information, films and video-tapes on the activities of the Working Group;

(c) Promoting the preparation of materials to inform the public on the work of the Working Group;

(d) Issuing lists of main points, or any other system adopted, reflecting the daily discussions of the Working Group and the topics submitted to it during its sessions, in English and at least in Spanish as well, since, in the absence of summary records, this is the only means available to the Group and its secretariat of giving an initial view of its appreciation of the important aspects of the Group's work and conveying a preliminary idea of the probable content of its draft report;

(e) Issuing the draft report of the Working Group in English and at least in Spanish as well—as was expressly requested at the end of the first session and agreed to by the Group—and, if possible, during the session or during the five working days following its conclusion. Many of the indigenous organizations which attend the sessions of the Group cannot remain longer and this text is all they can take with them in reporting to their bases on what was done during the session;

(f) Giving the widest possible distribution to the report of the Working Group among the indigenous populations and the public in general; it should also be sent, in the relevant languages, to the institutions and persons who formally request the secretariat for it.

312. The Working Group should, pursuant to its mandate as contained in paragraph 2 of Economic and Social Council resolution 1982/34, on the evolution of standards, formulate a body of basic principles, based on those to be duly formulated in the text of a draft declaration, and propose in due course a draft convention on the subject for the competent bodies of the United Nations.

313. The work on indigenous populations should be considered as a multi-disciplinary task involving at least FAO, ILO, UNESCO and WHO, as well as the United Nations itself, and requiring technical co-ordination. It is therefore proposed that the periodic consultations and co-ordination of the work of all the bodies involved, including the United Nations itself, should be institutionalized at the level of the competent organs within the various organizations and among the respective secretariats.

2. ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

314. The programme of advisory services in the field of human rights drawn up under General Assembly resolution 926 (X) of 14 December 1955 is considered to provide definite possibilities of great importance for the study and solution of the problems currently facing indigenous populations in various regions of the world and in determining State policies and activities designed to deal with them. The three main elements of this programme—seminars, fellowships and expert advisory services—will certainly be of great use in this regard, since action is taken at the request of the interested governments or pursuant to the resolutions of the General Assembly, the Economic and Social Council and the Commission on Human Rights. The training courses subsequently added to these activities will also be very useful.

315. These four activities will be referred to separately and then a minimum programme of activities

proposed and recommended for the indigenous populations of the world.

(a) *Regional and international seminars*

316. It was pointed out in the main body of the study that, in Geneva in 1979 (para. 81 and annex, part B) and in Managua in 1981,²⁹ regional seminars were held on recourse procedures and other forms of protection available to the victims of racial discrimination and activities to be undertaken at the national and regional levels within the context of the Decade for Action to Combat Racism and Racial Discrimination (1973-1983). Much of the discussion at the second of those seminars was devoted to the problems facing indigenous populations in the countries of the western hemisphere. The conclusions reached by the participants at that seminar were concerned with such populations.

317. The Decade for Action to Combat Racism and Racial Discrimination ended in 1983, with the closure of the Second World Conference on the subject (Geneva, 1-12 August) immediately prior to the thirty-sixth session of the Sub-Commission (15 August-9 September).

318. Seminars are also held, however, as part of the programme of advisory services in the field of human rights. The seminars bring together key persons in their respective countries for short periods of two weeks, with a view to stimulating their thinking by providing them with an opportunity for an exchange of ideas, experiences and know-how in solving, or endeavouring to solve, problems of human rights and fundamental freedoms. This creates a broader awareness of such problems and contributes to a better understanding of the problems studied and possible solutions to them. The conclusions and recommendations stemming from them have always been extremely useful in the respective areas and are a source of inspiration to all States, since problems with different features arise in the various regions of the world and are best analysed in terms of the region in question.

319. In the opinion of the Special Rapporteur, it would be worth while to hold regional seminars which would deal exclusively with the problems of indigenous populations in various regions of the world.

320. The Special Rapporteur also wishes to suggest that such activities might culminate in a world conference on the subject which could be held in 1992 in a country with a large indigenous population and the necessary facilities for such an important event.

(b) *Granting of fellowships*

321. Under the advisory services programme, human rights fellowships are also granted to candidates nominated by Governments and selected by the Secretary-General in accordance with established procedures.

322. A programme of fellowships on the protection of human rights and fundamental freedoms of indigenous populations, the encouragement of applications or a favourable review of the applications submit-

²⁹ E/CN.4/Sub.2/1982/2, para. 8.

ted, would most certainly contribute to greater awareness of, and better solutions for, the problems which arise in this respect in the countries of origin, as well as those in which the fellowship is granted, in the light of what has been achieved in various countries. It would be desirable to encourage Governments to support the applications of persons spontaneously proposed for fellowships by organizations and communities in those countries.

(c) *Training courses*

323. As a variant and combination of the programmes of study fellowships and seminars, these courses have consisted in giving fellowships to government officials with wide experience (up to 20 persons in each of the courses held to date) to meet for a few weeks (on average three, to date) at the headquarters of an institute specializing in the subject of the course so as to exchange viewpoints and experiences, making use of the premises and staff of that institute and receiving lectures and guidance from two or three experts and one or two United Nations officials.

324. The discussions among participants in such courses under the guidance of experts and officials have been frank and meaningful and have been supplemented by visits to local institutions connected with the subject of the course, and the additional exchange with the staff of such institutions has helped considerably to widen the scope of the discussions.

325. The Special Rapporteur considers it very important for courses of this type to be held, with the participation of high-level officials from the government departments concerned with indigenous affairs or the corresponding institutions in each country, every two years for the next 10 years, in order to cover the five geographical areas which have been established as a basis for the membership of the Commission on Human Rights and this Sub-Commission.

(d) *Expert services*

326. Again under the programme of advisory services in the field of human rights, it is planned that, at the request of interested States, the Secretary-General may provide the services of experts to assist them in the sphere of human rights for which they have requested such assistance. It is proposed that a list of recognized experts in the area of human rights should be prepared and kept up to date. Such experts should also be familiar with the current international standards and proposals on the subject, so that the Secretary-General can suggest candidates to the interested States on that basis in response to the requests received.

(e) *Programme of action*

327. Owing to the lack of work done to date on a world scale for the elimination of discrimination against indigenous populations and the introduction of concrete measures for the efficacious protection of those vulnerable groups, there is now a genuine and urgent need to place the experience obtained by a few at the disposal of all.

328. International technical assistance and advisory services programmes are designed basically to transfer know-how and experience from one area of the world to another.

329. A programme of activities to be undertaken in the immediate future is therefore suggested, precisely so that, in addition to fulfilling an urgent need, it will also support the work of the Working Group on Indigenous Populations, and of the Sub-Commission and the Commission, through the exchange of information and the comparative assessment of achievements in this area, at the same time, partially preparing indispensable basic materials for the subsequent work of the United Nations.

330. In this regard it is proposed that various events should be held for the exchange of know-how and experience including:

(a) Multiperson meetings to which each person will contribute his own experience and where everyone will have an opportunity to learn directly from the rest by means of group-discussions, seminars, symposia, lectures, etc.;

(b) Panels of officials of the appropriate government departments of various countries for the purpose of collecting new experiences;

(c) A combination of the above-mentioned processes of exchange of information and experience.

331. Programmes of this kind could include at least the following immediate activities:

(a) Encouragement of applications for and granting of fellowships for extended studies to candidates who choose subjects connected with assistance to and protection of indigenous populations;

(b) Arrangements required to make available the advisory services of recognized experts to countries which so request;

(c) Organization of training courses, possibly of the type already held in Fuchu, Tokyo, Japan, in San José, Costa Rica and in Canberra, Australia, since 1972, pursuant to Commission on Human Rights resolution 17 (XXIII) of 22 March 1967 which requests the Secretary-General to consider organizing such courses as from 1969;

(d) Holding of regional and world seminars, or series of seminars, on important topics among those considered in the data collection system, the respective chapters of the study, the areas of interest identified by the Working Group on Indigenous Populations and those determined by the competent organs and authorities of the United Nations;

(e) Holding, in due course, of a world conference on the protection of indigenous populations, attended by representatives of all countries with such populations.

332. Specifically, these projects could be financed with funds earmarked respectively for human rights advisory services, other aspects of United Nations technical assistance, and technical assistance supplied by UNDP, UNICEF, and the specialized agencies, particularly FAO, ILO, UNESCO and WHO.

333. For the period 1984-1993, the Centre for Human Rights would be asked to try to organize three

types of activity under the general heading of advisory services in the field of human rights: regional seminars or symposia on relevant topics, which could be decided at a later date; regional training courses for officials, the first of which could be held in 1985, with Mexico or another country of the Western hemisphere as a possible venue, under the auspices of the Inter-American Indian Institute as the technical body; and, in 1992, a world conference, attended by those persons concerned with indigenous affairs in the various countries and regions of the world and internationally, on a topic which would also be determined later by the Centre for Human Rights and which could be entitled "Presence and historical contributions of the indigenous populations of the world".

334. The Special Rapporteur wishes to suggest to the Sub-Commission that it may wish to recommend to the organs to which it is responsible the formal organization of a decade of action to encourage observance and protection of the human rights and fundamental freedoms of indigenous populations, beginning in 1984 or 1985, and similar in form to the Decade for Action to Combat Racism and Racial Discrimination.

C. Specialized agencies

1. INTERNATIONAL LABOUR ORGANISATION

335. Convention 107 has not proved very effective in protecting and developing the human rights and fundamental freedoms of indigenous populations in countries which are parties to it, since today, more than 25 years after its adoption, there is little difference between the countries which are and which are not bound by it, and such differences as exist are not always in favour of the States parties to it.

336. ILO should be supported in its efforts to effect a revision of Convention 107 and Recommendation 104, both dated 1957, so as to take into account the wishes and demands of indigenous populations, and at the same time to work, if the competent bodies of the United Nations so decide, towards the adoption of a United Nations convention on indigenous populations, as has already been suggested.

337. More suitable and precise substantive provisions and more practical and effective procedural principles are needed. Particularly in substantive terms, stress must be placed on ethno-development and independence or self-determination, instead of on "integration and protection". Where standards of implementation are concerned, more effective methods must be developed, including ways and means of inspecting and supervising the actual execution of the relevant provisions, instead of dealing with the question in supplements to periodic reports, to be considered by the Committee of Experts on the Application of Conventions and Recommendations. In any case, more careful attention should perhaps be paid to the results of the action undertaken in effectively complying with the pertinent norms.

338. ILO should perhaps concentrate its efforts in areas where it is particularly competent, namely, oc-

cupation, work, employment, and the relevant vocational training. Despite the existence of Convention 107 and Recommendation 104, no specific ILO policy has yet been developed in these areas which is both coherent and has been tested in practice in the various adopting countries.

339. It might be worth while, therefore, to capitalize on the specific competence of this specialized agency to develop, through the competent organs and the means established for the purpose, a policy concerning occupation, work, employment, vocational training and encouragement and protection of handicrafts in respect of indigenous populations.

340. The area of occupation should include, in particular, traditional indigenous occupations, characteristic of the various types of population (hunter-gatherers, pastoralists, farmers, or combinations of these); employment should cover the types of work and employment in which indigenous communities integrated in the market economy of the rural and urban areas of the countries concerned are engaged. Such a policy must necessarily give attention to the conditions under which such occupations, work, employment and vocational training are conducted, and the standards and policies which must be adopted to raise them to a level of respect and efficiency, through the methods of implementation used in the various countries members of ILO, and not only in countries bound by Convention 107 and Recommendation 104, as revised.

341. ILO should be asked to co-operate in the study of such phenomena as debt servitudes, serfdom or the sale of children for the exploitation of their persons or labour. Such studies would be undertaken jointly or separately by the Working Group on Slavery and the Working Group on Indigenous Populations with a view to presenting to the Sub-Commission and the Commission on Human Rights coherent proposals for the elimination of these unacceptable practices involving the exploitation of man by his fellows.

2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

342. The study shows that it would be necessary to solve a large number of problems in order to achieve the full and universal implementation of the right of indigenous populations to conserve and develop their culture and transmit it to future generations. Many problems also arise in education, technology and information. UNESCO, which has always shown itself to be very active in initiating programmes relating to the right to culture, has recently included in its action plans the specific problems facing ethnic groups. Consequently, the Sub-Commission may consider it appropriate to recommend to the competent organs of the United Nations that they should encourage UNESCO to go on with its study of ethnocide and ethno-development and to broaden its approach to include aspects of the cultural and educational problems of ethnic groups, with particular emphasis on the problems of indigenous population.

343. The Special Rapporteur wishes to place on record that, in his opinion, this is what should be done.

344. The Special Rapporteur enthusiastically supports the UNESCO programme on ethnocide and ethno-development as negative and positive aspects of awareness-building regarding the proper protection of the identity and integrity of ethnic groups in various parts of the world and of indigenous populations in them, not only as ethnic groups but also as communities, peoples and nations.

345. It is to be hoped that this important series of regional activities will continue and will culminate in a final meeting in which all those who took part in the regional exercises will participate with a view to pinpointing the general factors common to all regions of the world where such problems exist.

346. In the opinion of the Special Rapporteur, where indigenous education, culture, science and technology are concerned, the views, collaboration and active involvement of UNESCO as a United Nations agency specializing in such matters, should be requested whenever aspects of such questions are discussed. UNESCO should be involved in all activities relating to the information media and ways of disseminating data in connection with the problems of indigenous populations.

3. WORLD HEALTH ORGANIZATION

347. WHO should be formally requested to continue with renewed energy the studies of indigenous medicine and pharmacology begun and developed so capably by Dr. R. H. Bannerman and his collaborators in this specialized agency, and to apply the data and know-how acquired to the improvement of basic health services provided to all segments of the population in countries throughout the world.

348. Close collaboration should continue with the competent bodies of WHO in matters of medicine, pharmacology and the provision of health services and related social services.

4. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

349. Action should always be taken in consultation with FAO as regards the allocation of land and agrarian reform affecting the indigenous populations in the various countries concerned.

350. It might be advisable to provide FAO with available information on the special needs of indigenous populations as regards land and its resources and their protection, as well as the allocation of land and due respect for indigenous land in any process of agrarian reform. It is suggested that FAO should be asked to study the best means of ascertaining what belongs to the indigenous populations before any process of agrarian reform is begun, and always to bear in mind indigenous land requirements in drawing up agrarian policies and carrying out the reforms needed in the various countries.

351. It would be useful to make an in-depth study of the system of the inalienability and non-distrainability used to try to protect the actual possession of land by indigenous populations, analysing in particular the advantages and disadvantages of that system, not only from

the theoretical point of view, but, first and foremost, with regard to its practical application and operation in contemporary societies. Should the conclusions be negative, FAO should be asked to propose alternative procedures and systems which will be more effective in ensuring this necessary protection against sectors of society in general which are economically, socially and politically stronger.

352. In particular, financing alternatives which do not entail taking land as guarantee of payment should be studied, since the payment of a loan may be ensured on the basis of other pertinent criteria, such as the honesty and industriousness of indigenous populations and the length of time for which they have occupied their ancestral lands, from which they will not migrate unless natural phenomena or outside pressures force them to do so.

D. Organization of American States

353. The system of mutual information and participation in meetings between organs and agencies of the United Nations and those of the OAS should be improved. There should be close co-ordination between the United Nations Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, on the one hand, and the Inter-American Commission on Human Rights on the other hand, and between the Working Group on Indigenous Populations and the Inter-American Indian Institute in matters concerning indigenous populations.

354. In addition to the note which, pursuant to Economic and Social Council resolution 1982/34, was to be sent to the Secretary-General of the OAS, the Inter-American Indian Institute should be formally and explicitly invited every year to send representatives to the sessions of the Working Group on Indigenous Populations and to maintain continuous contact with the members of the Working Group as regards activities on behalf of the indigenous populations of the Americas. The same procedure should be followed in respect of other similar institutes in other parts of the world.

E. Non-governmental organizations

355. Action in regard to the rights and freedoms of indigenous populations should be based on close contact, consultation and the fullest measure of co-operation with non-governmental organizations, particularly those established by indigenous populations themselves.

356. It is gratifying to note the granting of consultative status to three more indigenous organizations, bringing to six the present number of organizations having such status, namely, The International Indian Treaty Council, the World Council of Indigenous Peoples, the Indian Law Resource Centre, the Indian Council of South America, the Inuit Circumpolar Conference and the Four Directions Council. It is hoped that the applications of other indigenous organizations for consultative status will be successful.

357. Consultative status should be accorded to any indigenous organization which meets the relevant conditions and represents indigenous groups not already represented at the United Nations.

358. It is suggested that a list of organizations concerned particularly with the question of indigenous populations should be drawn up to enable the closest possible contact to be maintained with them regarding matters falling within the specific competence of the Working Group on Indigenous Populations.

359. In accordance with the guidelines established by the Working Group on Indigenous Populations at its first session regarding the receipt of documentation from indigenous organizations which are not in consultative status with the Economic and Social Council,³⁰ a list of such organizations from which the Working Group on Indigenous Populations accepts information and documents for consideration during its sessions should be established, updated and periodically revised.

360. Action in respect of the rights and freedoms of indigenous populations should be taken in the closest co-operation with any institution specializing in such matters.

361. It is recommended that, during the 10-year period from 1984 to 1993, a number of international conferences of non-governmental organizations should be held to consider issues of importance to indigenous populations throughout the world, with the extensive participation of representatives of such populations. Such conferences would help to highlight the problems and possible solutions existing in this area, and to focus the attention of the international community on the most serious or most urgent issues and on the measures which might be taken by the United Nations, the OAS and other regional intergovernmental organizations and their appropriate specialized bodies.

F. Ideas for the definition of indigenous populations from the international point of view

362. The preliminary report on the study³¹ announced the four stages of the work to be done with regard to the definition of "indigenous populations". The first three of those stages are now complete. The first, that of the formulation of a guideline or working definition, was undertaken in the document containing the above-mentioned preliminary report. The second, involving the identification of the definitions employed in each of the 37 countries covered by the study, was dealt with by the inclusion in the summaries relating to those countries³² of the various terms employed, when these had been indicated. The third stage, involving the comparative study of all these definitions, was undertaken in *chapter V*. It is now time to embark on the fourth stage, that of formulating, as far as possible, a definition of indigenous populations from the international point of view.

363. This is, of course, an extremely complicated, difficult and delicate task.

364. The "working definition" combined the four elements that were considered essential to its purpose.³³ *Chapter V*, concerning the definition of indigenous populations, contained the objective and subjective elements discernible in the definitions employed in the countries covered by the study.

365. The Special Rapporteur has felt tempted to say nothing more, feeling that he has already presented all the elements at his disposal on this particular subject. However, as the preliminary report spoke of a fourth stage in the process of definition within the context of the study, he feels that he must do his duty by providing the Sub-Commission and its Working Group on Indigenous Populations with a purely provisional formulation.

366. The succeeding paragraphs offer only tentative concepts and criteria for placing on the table as merely preliminary and provisional efforts on the basis of what are felt to be the relevant criteria. They are for use as a point of departure and for criticism and modification in the approach to more precise draft definitions of the concept of indigenous populations.

367. The following lines are intended, therefore, simply to stimulate reflection and analysis leading to the formulation of more formal proposals for definitions. The latter should, in turn, ultimately give rise to a universally acceptable definition of indigenous populations. This definition can and should be used as a guide when seeking to develop concrete rules defining the specific rights and indispensable freedoms of indigenous populations, for it will be essential to know which population groups are meant when action is taken to enforce those rules.

368. The Special Rapporteur wishes to begin by expressing a number of basic ideas that will provide the intellectual framework for this effort. It must be stated in this respect that the question of a definition is one that must be left to the indigenous communities themselves. The fundamental assertion must be that indigenous populations must be recognized according to their own perception and conception of themselves in relation to other groups; there must be no attempt to define them according to the perception of others through the values of foreign societies or of the dominant sections in such societies.

369. The right of indigenous peoples themselves to define what and who is indigenous must be recognized.

370. The correlative of this faculty is, obviously, the faculty of defining or determining what or who is not indigenous.

371. No State may take, by legislation, regulations or other means, measures that interfere with the power of indigenous nations or groups to determine who are their members.

372. Artificial, arbitrary or manipulatory definitions must, in any event, be rejected.

³⁰ E/CN.4/Sub.2/1982/33, para. 23 (ii).

³¹ E/CN.4/Sub.2/L.566, para. 19. See also *chapter V*, paras. 1-3

³² See the list of these countries in document E/CN.4/Sub.2/476, para. 9, and the corresponding descriptive table.

³³ See E/CN.4/Sub.2/L.566, paras. 24-45.

373. As regards the circumstance that gave rise to the notion of indigenous populations, it must be said that the special position of indigenous populations within the society of nation-States existing today derives from their historical rights to their lands, as well as from their right to be different and to be considered as different.

374. Much of their land has been taken away and whatever land is left to them is subject to constant encroachment. Their culture and their social and legal institutions and systems have been constantly under attack at all levels, through the media, the law and the public educational systems. It is only natural, therefore, that there should be resistance to further loss of their land and rejection of the distortion or denial of their history and culture and defensive/offensive reaction to the continual linguistic and cultural aggressions and attacks on their way of life, their social and cultural integrity and their very physical existence. They have a right to continue to exist, to defend their lands, to keep and to transmit their culture, their language, their social and legal institutions and systems and their way of life, which have been illegally and unjustifiably attacked.

375. It is in the context of these situations and these rights that the question of definition should arise. Social scientists have reached the conclusion that ethnic groups can be characterized only by the distinctions which they themselves perceive between themselves and other groups with which they have to interact. They exist as such ethnic groups as long as they consider themselves different from those other groups. Ethnic groups determine their rules concerning membership, contemplating inclusion or exclusion of individuals whom they may accept or reject as members, or those they will adopt or ostracize, and those who may or may not represent them. On an individual basis, belonging to such groups depends on two main factors: self-identification as members of the group (group consciousness) and recognition by the group that those given individuals belong to it (acceptance by the group). Thus the group may, under its own rules governing membership, and inclusion and exclusion of individuals, accept or reject some persons as its members, while adopting or ostracizing others. It may, further, keep these rules unchanged or modify them as it wishes, without any outside interference.

376. It is clear that indigenous peoples consider themselves to be different from the other groups that form the society of present-day nation-States in which they now find themselves included. They consider themselves to be the historical successors of the peoples and nations that existed on their territories before the coming of the invaders of these territories, who eventually prevailed over them and imposed on them colonial or other forms of subjugation, and whose historical successors now form the predominant sectors of society. It is also abundantly clear that indigenous peoples consider themselves different from those other peoples and demand the right to be considered different by other sectors of society and by the international community.

377. Indigenous peoples wish to keep whatever territory has been left to them and to regain land illegally

taken from them, so as to have an adequate land base for their existence as different peoples. They also want their culture, language, social and legal institutions, which they consider essential for their own organization and existence, to be respected and recognized in those nation-States. They wish to keep, develop and transmit to future generations their territories, social and legal institutions and systems, their culture and their language.

378. Indigenous populations may, therefore, be defined as follows for the purposes of international action that may be taken affecting their future existence:

379. Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

380. This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors:

(a) Occupation of ancestral lands, or at least of part of them;

(b) Common ancestry with the original occupants of these lands;

(c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, life-style, etc.);

(d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);

(e) Residence in certain parts of the country, or in certain regions of the world;

(f) Other relevant factors.

381. On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group).

382. This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.

G. Composition of the population

383. In making statistical calculations of any kind regarding indigenous populations, it should be remembered that the use of criteria and definitions foreign to those populations does not provide an accurate picture of their size.

384. In making estimates or conducting censuses of indigenous populations, account should be taken of the fact that the decision as to who is, or is not a member of an indigenous community, constitutes not only a right which must be exercised exclusively by the community itself, but also the most effective means of determining the number of indigenous persons within the national population.

385. It is recommended that statistics of indigenous populations should be compiled conscientiously and meticulously, taking into account, as far as possible, the subjective criteria of self-identification and acceptance, as described in *chapter V*.

H. Basic principles and elimination of discrimination

1. INTERNATIONAL INSTRUMENTS

386. The Special Rapporteur suggests that the Sub-Commission may wish to recommend the ratification³⁴ and strict application of the various international human rights instruments (appeal addressed explicitly to all Governments which have not yet done so).

387. Among such instruments are the following:

(a) Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948),³⁵ which entered into force on 12 January 1951;

(b) Slavery Convention (25 September 1926), amended by the Protocol amending the Slavery Convention (7 December 1953).³⁶ The amended Convention entered into force on 7 July 1955;

(c) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (7 September 1956),³⁷ which entered into force on 30 April 1957;

(d) International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965),³⁸ which entered into force on 4 January 1969;

(e) International Covenant on Civil and Political Rights (16 December 1966),³⁹ which entered into force on 23 March 1976;

(f) International Covenant on Economic, Social and Cultural Rights (16 December 1966)⁴⁰ which entered into force on 3 January 1976;

(g) Convention against Discrimination in Education (14 December 1960)⁴¹ which entered into force on 22 May 1962;

³⁴ The term "ratification" is used to denote an act binding a State to comply with the provisions of the instrument in question; it may take the form of an act of ratification proper, or of "accession", "notification of succession", "acceptance" or "final signature", as the case may be.

³⁵ *Human Rights—a Compilation of International Instruments* (United Nations publication, Sales No. E.78.XIV.2), p. 56.

³⁶ *Ibid.*, p. 60.

³⁷ *Ibid.*, p. 62.

³⁸ *Ibid.*, p. 23.

³⁹ *Ibid.*, p. 8.

⁴⁰ *Ibid.*, p. 9.

⁴¹ *Ibid.*, p. 33.

(h) American Convention on Human Rights (22 November 1969),⁴² which entered into force on 18 July 1978.

2. STUDY OF TREATIES CONCLUDED WITH INDIGENOUS PEOPLES

388. During the preparation of this study, it became clear that, for indigenous peoples and nations in various countries and regions of the world, the treaties concluded with present nation-States, or with the countries acting as colonial administering Powers at the time in question, are of paramount importance.

389. A thorough and careful study should be made of areas covered by the provisions contained in such treaties and conventions, the official force of such provisions at present, the observance, or lack of effective observance, of such provisions and the consequences of all this for the indigenous peoples and nations concerned.

390. In so doing, account must necessarily be taken of the points of view of all parties directly involved in such treaties, which requires examination of a large volume of documentation. For that reason, the Special Rapporteur considered that such an undertaking could not be satisfactorily carried out within the framework of this study.

391. It is felt, therefore, that only through a thorough study devoted exclusively to this subject can the present status of such international agreements be determined with the necessary accuracy.

392. It might be worth while conducting a study of these aspects, in the light of prevailing principles and norms, exercising the care and attention which such delicate matters require. This would entail examining the relevant documentation and obtaining opinions and data from the various sources concerned, primarily the Governments and indigenous nations and peoples which have signed and ratified such treaties.

3. FUNDAMENTAL LEGAL STATUS AND CONSTITUTIONAL PROVISIONS: SOME GENERAL CONSIDERATIONS

393. The régime of special protection restricting the disposition of indigenous lands is considered justified, as long as it is intended to ensure that indigenous communities are not wrongly deprived of their lands.

394. It is not considered right, however, to impose general restrictions on indigenous populations regarding the management of their property and its transfer *mortis causa* with a view to ensuring the retention of such property by indigenous populations. Nor is it advisable to impose a *capitis diminutio* having more drastic effects on the full enjoyment and exercise of civil and political rights and obligations by indigenous populations, because they are unable to express themselves in the official language, or are unable to read or write that language, and because they are not integrated into national society.

⁴² OAS, *American Convention on Human Rights*, "Pact of San José, Costa Rica", Treaty Series No. 36 (Washington, D.C., 1970).

395. Without attempting to dictate policies to any sovereign State, the Special Rapporteur recommends that such provisions should be carefully reviewed and maintained under constant review in order to determine whether it is appropriate to retain them or to change them for others more in keeping with the times in which we live and with the changing circumstances which obtain in the modern world.

396. Careful consideration should be given to the advisability or otherwise of incorporating basic provisions on indigenous populations in constitutions and, if so, the nature of such provisions. To this end, it must be borne in mind that such norms, while enjoying the special status accorded to fundamental norms of the constitution, through actions and remedies affording special protection, will at the same time be affected by the relative inflexibility of constitutional provisions, which will make it much more difficult to amend them.

4. ELEMENTS WHICH MIGHT BE TAKEN INTO ACCOUNT IN FORMULATING BASIC PRINCIPLES

397. In revising policies, programmes of action and relevant legislative and administrative provisions, it would be advisable for Governments to take due account of the principles proclaimed in the various resolutions, decisions, recommendations and final declarations of international conferences in which the representatives of indigenous populations have participated, as reproduced in *chapter IV* and annexes. These texts contain the basic elements of the position of indigenous populations with regard to the important issues dealt with therein.

398. It is also suggested that due account should be taken of the San José Declaration, reproduced in *chapter II*, annex VI, and of the discussions and conclusions of the 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.⁴³

I. Basic policy

399. The Special Rapporteur is fully aware that each country will determine its ethnic, cultural, linguistic and religious policies on the basis of prevailing conditions and other criteria which it deems pertinent. The suggestions put forward in this regard are based on the existing alternatives and the preferences which the needs of indigenous populations and current world thinking appear to demand. While the recommendations do not represent any attempt to dictate policies to any sovereign State, a number of suggestions can nevertheless be made.

400. States should seek to gear their policies to the wish of indigenous populations to be considered different, as well as to the ethnic identity explicitly defined by such populations. In the view of the Special Rapporteur, this should be done within a context of socio-cultural and political pluralism which affords such populations the necessary degree of autonomy, self-determination and self-management commensurate

with the concepts of ethnic development described in *chapter IX* and *XV*.

401. The unity which is a legitimate concern of many States, particularly those which have most recently acceded to independence, can be achieved most fully and profoundly through a genuine diversity which respects differences between existing groups aspiring to a distinct identity within society as a whole. The desired unity will be achieved more fully if it is based on diversity, rather than on an imposed uniformity inconsistent with the genuine feelings of the population. Within that diversity, each group would participate more fully since it would do so on the basis of its own conceptions, values and patterns, rather than attempting to use modes of expression which are foreign to it.

402. Diversity is not, in itself, contrary to unity, any more than uniformity itself necessarily produces the desired unity. Indeed, there can be weakness and hostility within artificially produced uniformity, just as there can be strength in diversity co-ordinated within a harmonious, yet many-faceted whole, based on respect for the special nature of each component part.

403. Pluralism, self-management, self-government, autonomy and self-determination within a policy of ethnic development, as defined in the San José Declaration, appear to be the formula called for by the times in which we are now living and to do justice to the aspirations and desires of indigenous populations, which have for so long been subjected to interference and imposed conditions of all kinds. The Special Rapporteur is convinced that, following these guidelines would not be promoting artificial distinctions or separatist aspirations where such feelings do not exist, but would simply be recognizing the multiform nature of the societies of States with indigenous populations. It is essential not to prevent such groups from fully regaining a historical awareness of their own existence as such and to enable them to control their future according to their own aspirations and traditions. To do otherwise is to prolong the subjugation and oppression of groups and cultures capable of making a significant contribution to mankind, today as in the past. They should be afforded that opportunity like any other people on our planet, if frictions and conflicts caused by lack of understanding and injustice are to be avoided.

J. Administrative measures

404. Countries with indigenous populations should review periodically their administrative measures for the formulation and implementation of indigenous population policy, taking particular account of the changing needs of such communities, their points of view and the administrative approaches which have met with success in countries where similar situations obtain.

405. Governments which have not yet done so should consider establishing institutions, machinery and specialized administrative procedures, since entities with specific and clearly defined mandates are in a better position to accord due attention to solving the difficult and complex problems currently facing indigenous populations in the countries in which they live.

⁴³ ST/HR/SER.A/11.

406. Governments which have divided responsibility for indigenous population affairs among a number of ministries, departments or institutions should consider the advantages of setting up a special body to co-ordinate such efforts. They should also consider the possibility of authorizing that or some other body to co-ordinate and harmonize private programmes with government policy.

407. Governments with parliamentary systems should endeavour to set up legislative committees and sub-committees specializing in indigenous affairs, with a view to according more careful study and specialized consideration to legislation in this area.

408. Governments should consider setting up consultative or advisory bodies, either of a general or a specialized nature, and at the national or local level, to make use of the specialized knowledge of non-governmental experts and, in particular, to encourage the participation of authentic representatives of indigenous populations. This would ensure the greater involvement of those populations in the formulation and implementation of official policy and programmes, the revision and amendment of which should be based on their points of view.

409. The selection and immovability of the staff of departments concerned with indigenous affairs should be governed by the norms generally applicable to civil service or administrative personnel. Special measures should be adopted, however, to secure the services of specially qualified individuals and, in particular, of members of indigenous communities, to occupy such posts, with a number of key and decision-making posts being reserved for them. Pre-service or in-service training programmes on the problems of indigenous populations and possible solutions should also be regarded as essential for the effective preparation and utilization of available staff and resources.

410. Special efforts should be made to ensure the adequate funding of institutions and administrative programmes concerned with indigenous affairs at all times. Consideration should be given to the possibility of establishing trust funds to provide the necessary stability for certain budgetary provisions and to supplement regular appropriations in specific critical areas. Entities or undertakings which generate their own income should be subjected to annual reviews by joint consultative or advisory bodies (governmental and non-governmental, indigenous and non-indigenous), in order to ensure that the attainment of the proposed income targets does not conflict with general policy, which should constitute a compact and meaningful body of guiding principles serving the interests of indigenous populations, as they themselves conceive such interests.

411. Governments should consider ways of encouraging non-governmental organizations and, in particular, those established by indigenous populations, through normative measures and the necessary financial assistance, and of promoting the participation of indigenous communities in consultative and advisory bodies and proceedings.

412. Governments should recognize the pertinence and special competence of indigenous communities and organizations in this area and should increasingly incorporate them into policy-making and policy-implementing bodies and processes and programmes of fundamental importance to indigenous populations. The need for the participation of such communities and organizations in advisory and consultative procedures should be recognized explicitly, and increasing efforts should be made in daily life with regard to indigenous affairs.

K. Special areas of action

1. HEALTH

413. Because of the current situation concerning indigenous health, and in consideration of the particular socio-cultural environment of individual groups, special measures will be required to make health and other social services more accessible to indigenous populations and their needs.

414. Governments should do their utmost to see that health and other services are made more readily available to the indigenous population. Adequate health facilities should be established in areas where indigenous peoples are located. Modern means of communication should be developed in response to health needs in isolated areas. Where government facilities are not available, various forms of subsidies may be required to make private health care accessible.

415. The necessary measures must be taken, in consultation with the indigenous populations, to encourage the development of effective health measures among the indigenous populations, such action being aimed at combining traditional indigenous medical practices with modern medical practices and at achieving continuous reciprocal co-operation between traditional doctors and modern qualified doctors in order to provide these populations with primary health services which are as comprehensive and appropriate as possible.

416. Indigenous persons should also be given training, further training and refresher courses so as to be able to perform medical, paramedical, nursing and medical auxiliary duties within integrated programmes formulated, developed and implemented in active consultation and co-operation with the indigenous communities or groups concerned. The authorities should provide and improve health and medical services of a preventive, curative and rehabilitative character, and programmes relating to social security and social services adapted to the needs of the communities and groups concerned.

417. As an example of preventive medicine, and in view of the fact that certain indigenous groups who live in isolation from the rest of the population, such as forest dwellers, are particularly prone to diseases alien to their environment, the necessary measures must be taken to avoid the spread of epidemics which may decimate the indigenous population.

418. Any family planning programme or programme for the adoption or foster care of indigenous

children must be approved only after prior consultation and close collaboration with, and with the active participation and control of, the indigenous communities and groups concerned.

419. Governments should be responsive to socio-cultural and environmental factors which interfere with the provision of effective health and social services to indigenous populations; similarly, they must identify and take advantage of socio-cultural and environmental characteristics which may contribute to the success of such programmes and services.

420. In this regard special attention should be devoted to ascertaining how traditional medicine and practitioners may best be utilized. Indigenous medical practices and pharmacology should be studied in order to determine which aspects are positive and useful and can be combined with modern services and medicines.

421. Renewed recognition of the validity of traditional medicine and pharmacology would help to improve the quality and availability of medical services and to use medicines proven by their millenary use effectively as well as to raise the general level of basic health, while at the same time facilitating the reintegration of communities into their own cultures.

422. Governments should re-evaluate health-related legislation which has been criticized as discriminatory and abrogate those elements which are found to be objectionable under today's standards. Particular attention should be paid in this regard to legislation controlling the sale or consumption of alcoholic beverages and eligibility requirements for assistance to members of indigenous groups.

423. Programmes introduced to control and combat alcoholism and drug addiction among indigenous populations must be undertaken with the active participation of the communities or groups concerned and with full regard to the special forms which these afflictions assume among indigenous populations, and not merely as an unmodified extension of general programmes, which experience has shown to be ineffective.

424. Cultural barriers should be overcome through the training of indigenous personnel and the involvement of the indigenous community in the administration or distribution of services.

425. Governments must take a holistic approach to the problem of providing adequate health services. Simultaneous and co-ordinated efforts will be required in the areas of education, housing, sanitation, animal husbandry and economic development.

2. HOUSING

426. The Special Rapporteur recommends that:

(a) National and local Governments should expand indigenous housing programmes as a matter of urgency, in an attempt to satisfy demand;

(b) Where possible, Governments should implement their indigenous housing programmes through indigenous community co-operatives or housing associations;

(c) Governments should involve indigenous communities in the planning, location, design and construc-

tion of houses to be built in their communities; and should, therefore, establish appropriate procedures for so doing;

(d) Public and private housing entities should make every effort to use locally available materials and appropriate building methods to reduce costs and enable more houses to be built;

(e) A comprehensive study of the housing problem as it affects the indigenous populations in different parts of the world should be prepared;

(f) Special measures should be adopted to protect the legitimate property, rental and occupation rights of indigenous people in housing from illegitimate pressures intended to deprive them of such housing or to prevent them from acquiring these rights in housing;

(g) Statutes, policies and programmes should be amended to take into account the legal, economic and social circumstances which distinguish indigenous communities from other communities, if they intend to succeed;

(h) In discharging their responsibilities in this matter, Governments have to be prepared to consider a significant shift in housing policy orientations in order to include major adaptations in terms of organization, financing arrangements and delivery systems;

(i) Measures should be taken in all countries to deal with the existing housing situation, with a view to eliminating any discrimination there may be in this regard and adopting suitable policies aimed at strengthening the effectiveness of the indigenous persons' right to clean, healthy and satisfactory surroundings, with the type and standard of housing suited to their family needs in the communities chosen by them and with the services essential for present-day living.

427. In taking such measures, these aspects of indigenous traditions which the indigenous community concerned considers essential must be respected.

3. EDUCATION

General considerations

428. It is vitally important that attention should be given to non-academic or informal education, which is not even mentioned by the public education authorities of States, who appear to be concerned only with public education.

429. Policies designed deliberately to "de-indigenize" indigenous populations should be abandoned or discontinued as overall cultural oppression, which should be rejected *in toto*. The subversion of indigenous society and culture through educational methods and curricula is unacceptable. Indigenous communities should be guaranteed sufficient control over the form and content of their education to ensure that such subversion ceases immediately.

430. Educational infrastructure is inadequate and the general orientation of education policies does not reflect a proper appreciation of the real interests and needs of indigenous populations.

431. National, State, provincial and local education systems should be modified to ensure that the education provided to indigenous populations serves their interests and needs, thus setting aside conceptions and policies

whose aims are the simultaneous “integration” or “assimilation” of indigenous populations into the dominant culture and the obliteration of indigenous culture. In this regard, indigenous populations should be permitted to participate fully in the educational process and in the teaching profession, in the preparation of materials, plans and curricula and in the creation, administration and operation of educational institutions intended for them.

432. The new education policies must be oriented towards respect for ethnic identity and cultural integrity of indigenous populations and, to this end, the existing deficiencies in education services must be remedied.

Access to education

433. Decisive measures must be taken to overcome deficiencies in geographical distribution in ways which do not entail separating the pupil from his community or subjecting him to alienating influences, such as boarding schools outside the community. In the case of nomadic or semi-nomadic populations, every effort should be made to ensure either that the school travels with the community or that schools exist along the seasonal migration routes, established and maintained by the communities and subject to their direct control and supervision. The following paragraphs contain a number of suggestions, proposals and recommendations of ways of overcoming the other problems experienced by sedentary populations in such areas as language, culture, illiteracy and geographical distribution.

Special measures necessary for indigenous education

434. The ideal solution would be to establish, in each community, a school staffed by members of the community itself, provided with suitable materials to meet the needs of the community and open to the influence of the leaders and indigenous socio-cultural elements of the community. As a result, no alienating elements would exist; nor would they be occasioned by the need to travel to another environment. The establishment of such a system would call for the fulfilment of the conditions set out below.

435. Schools should be established in indigenous communities or in places having at least the stipulated minimum number of pupils and suitable as “post”, “seasonal halt” or “community” schools.

436. Teachers should have a knowledge of the mother tongue of pupils, or of the predominating vernacular of the area in which they live and in which the school is located, and should preferably be members of the indigenous community itself.

437. Pupils should be taught to read and write in their mother tongue, and instruction should be continued in that language throughout primary school. Instruction in, or teaching of, the mother tongue should continue as an optional subject even after the completion of primary school.

438. Instruction should be provided in the basic aspects of the indigenous culture of the pupils to enable them to strengthen their links with the culture of their

respective communities and to protect them against deliberately alienating intrusions.

439. Indigenous pupils should be acquainted with the essential aspects of the predominant culture, to equip them adequately for society in general, while taking care not to alienate them from their own indigenous cultures.

440. Indigenous pupils should be taught to speak, read and write correctly in the official language of the country in which they live, as an acquired language; and care should be taken to ensure that they are sufficiently familiar with it to use it correctly and effectively.

441. Plans should be made to provide aid, scholarships, allowances, subsidies, accommodation, transport, adequate clothing, and other assistance to indigenous children attending school.

Educational materials in general

442. States should develop programmes which will prepare children more adequately for life within multicultural societies, by eliminating all racial prejudice and aggressive ethnocentrism in the interpretation of history, and should promote broader understanding of indigenous culture. Positive measures must be taken to create a climate of informed perception of the need for just treatment of all ethnic groups, particularly indigenous communities, and to promote mutual acceptance within a pluralistic framework.

443. In education in general, great importance should be attached to the virtues of friendship between the various population segments and understanding and appreciation of indigenous and non-indigenous cultures should be promoted.

Education materials for indigenous populations

444. Indigenous persons must participate fully in the formulation and execution of indigenous education policies, in the preparation of plans, programmes, materials, curricula and syllabuses, and in the effective introduction of indigenous languages and culture into school curricula and of indigenous subjects and teaching methods into the educational process.

445. Curricula and materials for indigenous education must be based on appropriate ethnological studies and place proper emphasis on indigenous cultures, traditions and customs, as conceived by the indigenous communities themselves, by whom such activities must be directed and controlled.

446. Efforts must be made to preserve authentic indigenous tradition, history and institutions by compiling written records.

447. Educational materials for indigenous populations must be developed by the populations themselves, or with their extensive and effective participation, and, like materials prepared for non-indigenous populations, should promote the full development of the human personality, strengthen respect for human rights and fundamental freedoms of all peoples and promote understanding, tolerance and friendship among all groups. Such materials must contain appropriate information on the rights and obligations of the indigenous

groups themselves, as well as on those of other groups within the society as a whole.

Educational materials for non-indigenous populations

448. Properly respectful co-existence within a pluralistic society cannot be based on ignorance of, or contempt for, the culture of some groups by others. This is particularly true in the case of groups which, until now, have been mistakenly regarded as "inferior" or "primitive" or as "obstacles to development", although this attitude does not always manifest itself openly.

449. Systematic, persistent and wide-ranging campaigns must be developed and conducted against all forms of misconceptions, ingrained prejudices, and mistaken or distorted ideas regarding indigenous populations. Textbooks for non-indigenous populations must place the necessary emphasis on the need to respect the rights of indigenous populations in everyday life.

450. Efforts must be made to eliminate inaccurate, prejudicial and distorted information and to replace it by accurate and verified information on the history, traditions, customs, culture, arts and crafts of indigenous populations and on their contributions to the cultural environment of non-indigenous populations in present-day societies. Accordingly, more determined and effective efforts must be made to introduce the necessary corrections into educational and informative materials in order to eliminate offensive elements from textbooks and other basic educational materials and to include information on indigenous groups, their history, traditions, practices and customs, and their contributions to the cultural development of other groups within the existing population of the country or region concerned.

Contributions, autonomy, self-management and self-determination in education

451. Indigenous persons must participate more fully in the setting up and operation of educational establishments and be more widely represented on the teaching bodies of such establishments.

452. The authorities must aim at ensuring control of indigenous education by indigenous persons, on the same basis as in other segments of the population. Action must be taken against a background of increasing indigenous educational autonomy until the point of self-determination is reached in the education of indigenous populations, such education being integrated within the educational systems of the various countries.

453. The participation or co-operation of indigenous communities, or their leaders or representatives, and of individuals, groups or organizations in the setting up and operation of education establishments and institutions in the indigenous communities should be promoted and guaranteed in the most decisive and categorical manner, so that they may be oriented towards serving the genuine aspirations of such groups and communities.

454. Impetus and support must be given to traditional indigenous education through which the culture inherited from their forebears, with the changes in-

duced by succeeding generations, is passed on to the young. Decisive support should be extended to this form of education through the establishment and operation of schools which provide an alternative to the public or private schools established within or to serve indigenous communities, or which complement them with a view to keeping alive traditional approaches to education. This includes indigenous survival schools which must be provided with support, particularly since they make possible the eventual assumption, by the indigenous communities, of full responsibility for education, through either public subsidies and assistance or private aid. Governments should provide adequate funding to schools and programmes set up by indigenous communities for the teaching of indigenous culture and traditions.

455. The extension of education to the entire community should be promoted by encouraging the educational activities of the indigenous communities themselves, including both young people and adults, in the form and to the extent desired by such communities.

456. Teachers and instructors of indigenous communities should be recruited, as far as possible, in close co-operation and contact with the communities and from among their members, on the basis of their comprehensive knowledge of indigenous languages and cultures and of the customs and internal organization of such communities. In this way, linguistic and cultural needs can be met without alienation from the respective physical and socio-cultural environments.

457. Serious consideration must be given to the possibility of assistance in the establishment of the indigenous universities which the indigenous peoples have repeatedly called for. This might perhaps be done by establishing higher education institutions in regions in which there are indigenous persons capable of benefiting from the existence of such institutions.

4. LANGUAGE

458. States must accord to indigenous languages a legal status corresponding to the number of inhabitants who speak those languages within the national population. This status may be that of one of the official or national languages. In no circumstances should it be less than that of an auxiliary language in public education and other specific functions that may be established.

459. In areas and regions of the country where there is a high percentage of indigenous persons, the corresponding indigenous languages must be used as official languages, like any other language enjoying this privilege, and even in preference to other languages if circumstances so require.

460. In any event, the authorities must establish libraries, reading rooms, tape and record libraries and other depositary institutions, in order to preserve materials in the major indigenous languages of the country concerned.

461. Indigenous peoples must be guaranteed access to the communications media in order to publicize their cultural values, traditions and institutions and to be able to contribute to, and participate in, the life and historical development of the country.

462. Indigenous languages must be used in all the communications media, which must place themselves at the disposal of indigenous groups and persons to an extent appropriate to the latter's needs and to the media's possibilities.

463. It is considered essential that works should be published in these languages. They may be original works or translations from other languages. Indigenous languages may appear in reviews and periodicals, in specific sections or articles, or on specific pages.

464. According to circumstances, recordings are particularly appropriate as means of preserving stories, anecdotes, traditions, history, various cultural activities, theatrical performances and any other event at which indigenous languages are used.

465. Radio and television must broadcast programmes, news bulletins, short general information programmes and educational programmes in these languages, in accordance with the needs of the indigenous populations.

466. The use of indigenous languages spoken by a large number of inhabitants must be permitted in all State activities, particularly when the inhabitants in question do not know the official language, or do not know it well.

467. Indigenous persons must be allowed to use their native language in their submissions or statements before legislative chambers; authorization must be explicitly granted in the relevant procedural rules for the use of his mother tongue by any member who is unable to express himself adequately in the official language.

468. If the use of the indigenous mother tongue is not provided for in administrative procedures, provision must be made for the right to the assistance of a competent interpreter remunerated by the State. Communications to the authorities drafted in an indigenous language must not be rejected. Conversely, any translation that may be necessary must be provided at public expense.

469. In the courts, provision must be made for the use of the indigenous mother tongue when the person concerned does not know the official language, or does not know it sufficiently well. When indigenous languages do not enjoy the status of official languages, the use of interpreters and translators becomes essential, not only in the court proceedings themselves, but in the preparation of briefs and other documents which must be presented in the official language in order that the counsel and his client may understand each other perfectly. The expenditure and charges incurred must be borne by the State.

470. The unsolicited attribution of names and the arbitrary replacement of traditional names by alien names belonging to other cultures and deriving from other regions of the world constitute at least acts of cultural encroachment and aggression. The abolition of traditional indigenous place names and the attribution to indigenous persons of names which are alien to indigenous culture and have not been requested or authorized by the indigenous persons concerned, must be discontinued. Efforts must be made to encourage the revival of traditional indigenous place names and per-

sonal names, as far as possible by removing extraneous elements added to them, provided that the indigenous persons concerned so request.

471. The use of indigenous languages in public education may vary at the primary level and at the higher levels (secondary and above).

472. Bilingual education must consist in education in the indigenous mother tongue, as far as possible by indigenous teachers of the same ethnic and linguistic group, until such time as a knowledge of the mother tongue, including ability to read and write, is firmly established. This process should in general last at least throughout primary education, and only when a solid basis has been established should the authorities go on to teach the official language as a second or acquired language. Education in the official language may be undertaken only at a stage following the stages described above.

473. The State must make an effort to provide, at the primary level sufficient facilities for the teaching of the mother tongue of indigenous children; in all circumstances it must teach them to read and write in their mother tongue and consolidate this knowledge before teaching them any other dialect or language as a second or acquired language.

474. Most indigenous languages are written languages which have survived by oral tradition from generation to generation despite centuries of linguistic aggression resulting from academic education and lack of recognition.

475. In order that these languages may be in a position to fulfil the important objectives assigned to them in view of their possible recognition as official, national or auxiliary languages, alphabets must be created, improved and put into final shape for formal approval and use in writing.

476. The essential materials must be prepared for the fulfilment of the purposes indicated and their functions in public education (in spelling books, reading and exercise books, etc).

477. In addition, bilingual teachers will have to be trained and the necessary materials prepared in order to be able to impart the necessary knowledge to non-indigenous teachers or teachers of a different linguistic group who wish to train as teachers in a particular indigenous language.

478. The teaching of the official language to indigenous pupils must not be imposed by force as an act of linguistic aggression or in an attempt to establish the domination of a supposedly superior language. Rather, it must be viewed as a means of assisting indigenous persons to escape from possible linguistic isolation and providing them with a *lingua franca* in the national and international contexts.

479. Emphasis must be placed on the correct teaching of the official language, since a badly learned second language will create more difficulties and problems than advantages.

5. CULTURE

480. State cultural policy must be developed within a context of recognition of the existence of indigenous cultures, and on the basis of the rules of respect for the manifestations of indigenous cultures and, where it is the clearly expressed desire of the indigenous populations, respect for their right to preserve, develop and pass on such cultures to their descendants.

481. Government policies of intervention in the organization and development of indigenous populations should be immediately abandoned and the autonomy of such populations recognized, as well as their capacity to become involved in the economic process to the extent that they themselves deem appropriate to their interests and needs.

482. Obviously, a pluralistic policy must be adopted to ensure respect for the fundamental rights of indigenous populations which clearly express the wish to preserve, develop and pass on their culture to future generations and thus assert their right to be different within the overall society of the country in which they live. The development of such a policy calls for the adoption of a series of measures designed to make possible this different way of life freely chosen by the groups in question, and to render it compatible with the way of life of other segments of society. Consequently, whereas, in the case of groups which wish for total assimilation with the dominant groups, all that is required is to set about participating unreservedly in the cultural life of the country, in the case of other groups, a number of other measures are essential.

483. No sector of the population must be deprived of the right to participate freely in the cultural life of the community. However, it must be recognized that, beyond specific deprivations of that right, and even denials or restrictions of other kinds which, while not intended to achieve that specific end, nevertheless do so, there are circumstances which do not entail phenomena of privation, yet directly or indirectly result in limitations or restrictions.

484. Violence or intimidation, coercion, material incentives and the explicit and violent condemnation of indigenous culture as a whole must be considered as unlawful means of exerting influence and provoking cultural or religious changes. Their use leads directly to ethnocide.

485. Ways must be found to prevent violent attacks and wrongful impositions of culture. It is also necessary to channel, as far as possible, the influences of one culture on another towards positive cultural change which do not merely culminate in the distortion and cultural alienation of some segments of the population. This is imperative, whatever the final goal of the policy chosen by the State, if the destruction of indigenous communities is to be avoided.

486. The fundamental right of indigenous populations to the free development of the personality, within their own cultural patterns, must be respected. The cultural institutions and activities of the dominant segments of the population must in no way be imposed on those who do not desire such intrusions, and in fact reject them. All action must be based on respect for the

cultural heritage of such groups and the intimate relationships of indigenous individuals, groups or communities with it. The destructive effects which improper cultural intrusions produce within indigenous societies must be understood, or at least perceived.

487. Governments can and must take a series of measures to protect activities undertaken in favour of this right and to promote respect for them.

488. Given the coexistence of a national legal order and other customary legal orders which govern the lives of indigenous populations, it is recommended that:

(a) Indigenous legal orders should be respected, and the existence of a pluralistic legal system, without any unjustified pre-eminence on the part of the national legal system, should be accepted;

(b) The criteria of individual rights and geographical-demographical considerations should be accepted for the application of existing legal systems, according to circumstances;

(c) The limits of legal pluralism should be defined, the cultural areas into which the national legal order must not intrude should be demarcated and those aspects which must inevitably be governed by the national legal order, to the extent that they relate to the force of values and rights internationally considered at present as fundamental and essential to contemporary life in society, should also be identified;

(d) The use of the national legal order by indigenous populations should be facilitated, as well as the prompt administration of justice in conditions of equality, for the protection of their rights and freedoms and without prejudice to observance of their own legal procedures. To this end, the principles of the national legal order should be publicized, appropriate legal assistance provided and economic and procedural measures adopted to ensure the real, rather than the merely formal, nature of the right to such use.

489. Any limitation or restriction unrelated to indigenous or communal land should be maintained only if the indigenous populations themselves so desire and explicitly request, and to the extent that they indicate. Interference in civil and testamentary acts and representation which has not been freely requested must be abolished and replaced by legal or other assistance freely solicited by the indigenous persons concerned.

490. Under no circumstances must prohibitions or restrictions be imposed on marriage between indigenous and non-indigenous persons, nor must the legal status of mixed couples or of the descendants of mixed marriages or unions be affected.

491. An in-depth examination should be conducted of the legal provisions of systems in which an indigenous woman loses her status as such upon contracting marriage with a non-indigenous person and the indigenous status of the descendants is thereby affected.

492. Marriages celebrated in accordance with indigenous rites and customs must be recognized as having full legal effect and as wholly equivalent to civil marriage ceremonies for the purposes of registration.

493. Although it is not always possible or desirable to prevent or halt the processes of contact when

elements of urban culture reach a rural indigenous population, they can and must be planned in order to protect the land tenure, the way of life, the existing forms of social cohesion and the fundamental interests of indigenous groups.

494. Assistance should be provided to rural indigenous persons arriving in the city, either by assistance and friendship centres, or by the relevant public services, in matters such as access to housing, vocational, pre-employment and employment programmes and familiarization with urban resources and other facets of urban life.

6. EMPLOYMENT

Occupation

495. Respect for the life-styles and traditional occupations of indigenous populations should prevail in all countries. Ways and means of providing a place for them in economic development programmes should be found, account being taken of their contribution to the development of positive patterns that have withstood the test of time.

Labour and employment—coercive labour

496. The use of “cheap indigenous labour” should be rejected and replaced as soon as possible by real employment opportunities for indigenous workers. Strict enforcement of provisions governing recruitment practices, the minimum wage and termination of contractual relationships at the time and in the manner in which they were meant to end should be forcefully and categorically sought.

497. Measures should be taken against violations of the prohibition of forced and compulsory labour. These abusive practices, to which indigenous populations have been and continue to be subjected, should be rejected and eliminated in practice as they have been prohibited in law.

498. Ways and means should be sought and found to contribute to the elimination of serfdom and debt bondage in all their forms. Noting that indigenous peoples have suffered particularly from these servile practices at the hands of money-lenders and landowners, the Special Rapporteur strongly endorses the request made by the Sub-Commission on Prevention on Discrimination and Protection of Minorities in paragraph 13 of its resolution 6 B (XXXI) of 13 September 1978 that the Secretary-General should undertake, together with the specialized agency concerned, “a world-wide study of debt bondage, taking into account all the relevant economic, social and legal aspects and the interconnections with other slavery-like practices, and for this purpose to make use of any information from reliable sources made available to him”.

499. The Special Rapporteur also recommends that special attention be paid to ways to exercise adequate control over independent labour contractors, who have taken advantage of induced indebtedness in order to procure a cheap labour supply for seasonal work on commercial plantations. He notes that adequate protection of the indigenous labour force is best served when

indigenous workers form their own organizations to negotiate for better living and working conditions. He recommends accordingly that governments pay more attention to permitting, facilitating and promoting the establishment among indigenous workers of their own trade union and co-operative organizations.

500. Development programmes in indigenous reserves and communities should always be explicitly accepted by the indigenous populations concerned at large and, as far as possible, should involve the training of indigenous workers in indigenous areas, in the local language, and be based on a thorough analysis of employment conditions and opportunities in each area. It should be noted, however, that most work opportunities come from secure tenure of land and unrestricted access to natural resources. In order to guarantee this essential protection of land and resources, all training should include instruction about the land and labour rights of these populations under national and international law.

501. Ways and means should be found to prevent and eliminate the constant violation of the provisions of national and international instruments, with a view to enhancing their effectiveness, and to reduce the rates of underemployment and unemployment among indigenous workers so that they at least correspond to the rates affecting other segments of the population.

Vocational training

502. Vocational training programmes should be revised to ensure greater equality in their development and application by eliminating any *de facto* barriers to access by indigenous peoples; such programmes should, as far as possible, be conducted in indigenous areas or near them and use the indigenous language of the participants or beneficiaries.

503. “Additional opportunity” provisions should be introduced whenever possible, by guaranteeing a certain percentage of the jobs allocated to students to indigenous applicants, lowering—where necessary—the prescribed minimum marks to be obtained in qualifying examinations and introducing the necessary flexibility in entrance requirements, broadly along the lines that already exist in some countries.

504. Vocational training programmes should be combined with follow-up action including efforts to place persons who finish the courses.

505. When a large percentage of the indigenous population is engaged in permanent or seasonal wage-earning activities, thorough and complete knowledge of their legal rights as regards recruitment, remuneration and contract termination is essential if they are to further their interests. This could be ensured by public authorities or by non-governmental groups.

506. Training schemes in rural areas should be considered as part of integrated rural development schemes planned in consultation with the local indigenous populations and conducted with their participation. If this does not occur, and if training programmes are planned without adequate knowledge of local circumstances and with no indigenous input, then they may well be counter-productive.

Protection and handicrafts

507. Measures should be taken to eliminate middlemen, protect the authenticity of products and reject imitation products and to bring the prices paid for handicrafts to a realistic level in the context of real market conditions.

508. Consultation and participation are essential in the areas of employment and vocational training as well as in respect of the production and marketing of handicrafts and the protection of their authenticity. This is particularly important in present-day societies owing to the increase in international links and contacts.

7. LAND

509. It must be understood that, for indigenous populations, land does not represent simply a possession or means of production. It is not a commodity that can be appropriated, but a physical element that must be enjoyed freely. It is also essential to understand the special and profoundly spiritual relationship of indigenous peoples with Mother Earth as basic to their existence and to all their beliefs, customs, traditions and culture. Accordingly, the necessary information must be disseminated.

510. It is also essential to increase understanding of the profound sense of deprivation experienced by indigenous populations when the land to which they, as peoples, have been bound for thousands of years is taken away from them. No one should be permitted to destroy that bond. Systematic violations of the rights of indigenous peoples to land and its resources should cease.

511. It must be recognized that indigenous peoples have a natural and inalienable right to retain the territories they possess, to call for the return of land of which they have been deprived and to be free to decide as to their use and development.

512. Genuine guarantees should be provided and full effect given to the right of indigenous populations to the land which they and their ancestors have worked since time immemorial and to the resources which such land contains, as well as to traditional forms of land tenure and resource exploitation.

513. Indigenous peoples have a natural and inalienable right to keep the territories they possess and to claim the lands which have been taken from them. In other words, they are entitled to the natural and cultural patrimony contained in the territory and to determine freely how to use it and benefit from it.

514. Recognition must be given to the right of all indigenous nations or peoples, as a minimum, to the return and control of sufficient and suitable land to enable them to live an economically viable existence in accordance with their own customs and traditions, and to develop fully at their own pace. All possible efforts should be made to ensure that State governments give legal recognition to the indigenous people's right to land. States that do not have indigenous land rights legislation should review their policies towards indigenous people and make an early commitment to enacting such legislation.

515. Since there are consuetudinary forms of acquisition of land by indigenous people, special laws recognizing these forms in an explicit manner should be enacted. No loopholes should be left in those texts as they could be used to render them ineffective. Non-indigenous peoples, should recognize the prior ownership of their countries by the corresponding indigenous people and act accordingly to respect the established rights that subsist today.

516. Millenary or immemorial possession and economic occupation should suffice to establish indigenous title to land so occupied as well as official recognition and registration in acknowledgement of the existence of a factual situation of possession and occupation that forms the basis for the existence of an established right.

517. National governments, whether federal or central should use their powers under the constitution to override inadequate local legislation, particularly in regard to land rights.

518. Since negotiation and settlement seem to afford indigenous populations the requisite participation in the relevant processes designed to solve land rights disputes, these procedures should be adopted, unless better ones are found to exist, provided that the parties bargaining positions are on an equal footing; this implies the recognition of indigenous traditional law and usage patterns.

519. Ownership of indigenous land by the respective indigenous populations should be immediately recognized by all States. Land occupied and controlled by indigenous populations should be presumed to be indigenous land. In case of doubt or dispute the *onus probandi* of the ownership of land should not fall on the indigenous populations who descend from the original inhabitants of these territories, but rather on the non-indigenous populations who claim to have acquired a right to part of the land.

520. All indigenous reserved areas should be immediately handed over to the respective indigenous groups, and the land should be effectively controlled and owned by the indigenous peoples in that area under their law and customs.

521. Public land which is sacred or of religious significance to the indigenous populations should be attributed to them in perpetuity.

522. All sites of an historical or traditional significance to indigenous peoples that are located on private non-indigenous or public land, should be maintained in their original condition and must be open to the use of the indigenous peoples without fees or constraints.

523. All steps should be taken to protect, in law and in practice, the lawful property rights of indigenous populations by investigating, establishing, and obtaining registration of titles to land and water resources acquired by consuetudinary legal procedures.

524. Indigenous land ownership and control should be legally protected and regarded as inviolable. No intermediary institution of any kind should be created or

appointed to hold the lands of indigenous peoples on their behalf.

525. Legal measures should be taken guaranteeing the indigenous populations more comprehensive protection in the possession and effective control of their territories.

526. A protective régime should cover indigenous land in order to prevent outright dispossession, provoked expropriation and forced alienation of indigenous land. This régime should at least include restrictions on alienation, encumbrance, attachment and proscription, and should be conceived as a preventive measure, since it would be of little use if the land had already been lost. Since land cannot be given as a guarantee of payment, appropriate rules should be adopted for granting financial help.

527. No validation of acts violating that régime should be possible under any circumstances, otherwise the door is open to fraud, false pretences and pressures, rendering the protective régime inoperative.

528. All illegal acquisition of indigenous land should be null and void *ab initio* and no rights should be vested in subsequent purchasers or acquirers of the land. No person may invoke the fact that he is a third or more remote acquirer as a pretext for not returning the land so usurped.

529. Partition of communal indigenous lands should only be undertaken at the explicit reiterated petition, resulting from a clear and verified consensus, of the "co-owners" acting through their traditional institutions. In those situations in which indigenous communities proceed on the basis of a majority vote (whether absolute or qualified), no partition should occur unless the petition has been approved or verified by the traditional authority in the community. The right of opposition to the proposed partition should be guaranteed in a firm and broad manner. In any case, the community has a continuing interest and no alienation should occur without the informed and verified authorization of the community made through the appropriate traditional procedures as above.

530. Effective technical and financial assistance should be given to indigenous communities seeking to protect their lands against the activities of multinational corporations whose activities have not been authorized in accordance with the traditional ways and means of the community concerned.

531. Special measures should be taken to protect indigenous persons or groups from abuse in case of transfer, rental or encumbrance of their land, including in certain cases the establishment of prior authorization or subsequent approval by the competent communal authority.

532. Indigenous populations should be compensated for the loss of all designated reservations or reserved areas, indigenous lands and other lands that have been or may be taken.

533. Legal, technical and financial assistance should be provided in appropriate cases to help indigenous peoples to acquire the land they require for their continued dignified existence.

534. Legal services should be made available to indigenous peoples to assist them in establishing their rights to land and their territorial rights.

535. Recognition and support should be given to the authorities and procedures used within indigenous communities to control attribution of the use of land among its members. These internal authorities and procedures should not be interfered with under any circumstances.

536. There should be international and national recognition and full protection by law of the right of indigenous populations to own their land communally and to manage it in accordance with their own traditions and culture.

537. Acts involving the alienation or other disposal of indigenous land must in all cases, originate from the indigenous community through genuinely endogenous procedures.

538. In such cases, in response to an explicit request by the indigenous communities themselves, proceedings may be instituted for the verification, by an impartial and independent authority, of the authenticity of such acts.

539. As far as possible, support must be provided to organizational structures and co-operative functional aspects, either traditional or contemporary, provided they are authentically indigenous. Technical and financial assistance must be prompt and effective. Such structures must under no circumstances be imposed from outside. They must always be the result of internal decision-making and action processes. Non-indigenous manifestations of co-operativism must be used only when the indigenous communities concerned freely so decide.

540. The principle of unrestricted ownership and control of land, including all natural resources, by indigenous peoples should be recognized. The lands, land rights and natural resources of indigenous peoples should not be taken, and these rights should not be terminated or extinguished unilaterally or without the full and informed consent of the indigenous peoples concerned.

541. As regards the development of their lands and resources, the right of indigenous peoples to proceed in accordance with their own values, social structures and rules and at their own pace should be recognized, supported and protected.

542. The natural resources of indigenous land are entirely the property of the indigenous communities. Only they should be competent to take the basic decision regarding the manner and scale of exploitation of those resources.

543. Where possible within the prevailing legal system, the resources of the subsoil of indigenous land also must be regarded as the exclusive property of indigenous communities. Where this is rendered impossible by the fact that the deposits in the subsoil are the preserve of the State, the State must, in so far as the resources existing on indigenous lands are concerned, allow full participation by indigenous communities in respect of (a) the granting of exploration and exploitation licences; (b) the profits generated by such operations; (c) the procedures for determining damage

caused and compensation payable to indigenous communities as a result of the exploitation of the resources of the subsoil of indigenous land and in the consideration of all the consequences of such exploration and exploitation activities.

544. No mining whatsoever should be allowed on indigenous land without first negotiating an agreement with the indigenous people who will be affected by the mining, guaranteeing them a fair share of the revenue that may be obtained.

545. Since indigenous rights to land should include the right to all natural resources contained therein and it is the communities concerned that will suffer all the consequences of mining and prospecting, current mining and prospecting should be suspended until negotiations are held with the indigenous populations concerned.

546. Grants of prospecting and mining licences in certain areas should be frozen, to allow the indigenous populations concerned enough time fully to understand any past or future changes and their consequences, so that they can establish the means and procedures to protect their interests.

547. The protection and preservation of existing indigenous land bases from exploitation by multinational corporations without the explicit consent of the communities concerned should be guaranteed.

548. The exploitation of natural resources located on indigenous communal lands should be carried out by the indigenous owners themselves. Existing laws and criteria for the adjudication of priorities, which currently favour non-indigenous people and transnational corporations, should be studied and revised so as to arrive at more just arrangements that would fully recognize indigenous land rights.

549. Care should be taken, in particular, to ensure that the licences or concessions granted by the State are not such that they involve quantities or areas of such extent as to render meaningless the right of indigenous populations to enjoyment of their lands. Lands which are sacred or have a historical and spiritual significance for indigenous populations must in all cases be excluded from licences or concessions and protected from incursions of any kind.

550. Appropriated legislation should be enacted to ensure that no prospecting is allowed on indigenous sacred or religiously significant areas without the written permission, duly registered in an appropriate court of law, of the indigenous community that is the custodian of the sites and other communities legitimately concerned. Such permission should be confirmed by the authentic representatives of the communities appearing in person before an independent and impartial judicial authority before any exploration may begin.

551. Arrangements should be made so that indigenous peoples can fully share in mining royalties produced by mines located on their land that are already operating without this benefit accruing to the indigenous communities concerned. A percentage of State mining royalties should be allocated to the indigenous communities concerned for their development plans and programmes.

552. Governments should provide adequate funds for the authentic indigenous land authorities, without compromising their independence.

553. Compensation must be paid for all damages and prejudice caused and all losses and privations suffered by indigenous communities as a result of such invasions and operations which, while they may have been unavoidable, must nevertheless be condemned, terminated and penalized.

554. The environmental impact of the exploitation of non-renewable natural resources on indigenous land, especially water which is so vital for survival, should be seriously and urgently investigated.

555. In the case of communities whose ecological equilibrium has not been destroyed, the territory they occupy should be recognized as their property. Where ecological equilibrium has been destroyed, the communities should be offered new opportunities for activities compatible with the respect due to their cultural identity. Plans should be made to rescue communities in such a situation, without ignoring their right to their ancestral land; existing reserves should be maintained, protected and extended and new territories should be given to indigenous communities which lack, or have insufficient, land.

556. The Special Rapporteur recommends drawing attention to the destruction of the ecological balance formerly maintained by indigenous populations, which has occurred in various indigenous communities when traditional ways are abandoned.

557. The prohibiting and halting of any action with respect to the territories of indigenous communities which will directly or indirectly result in the pollution of earth, air or water, or which in any way depletes, displaces or destroys any natural or other resources owned, occupied by, or vital to the livelihood of, any indigenous nation or group, is explicitly recommended.

558. Whenever the removal of populations is necessary for an exhaustively justified reason, the indigenous populations involved should be moved to areas that resemble their ancestral lands as closely as possible with fauna and flora of the same type. The suffering of these populations should be reduced to an absolute minimum and any losses compensated. Unless natural phenomena make it impossible, their return to their ancestral lands should always be an essential part of any such plan.

559. In planning any land reform programme, account must be taken at all times of the land needs of indigenous populations.

560. Lands appropriated in accordance with land reform measures must under no circumstances include land to which indigenous populations have a right and which they actually possessed prior to the reform.

561. The criteria of "available land" and "occupation" must be considered very closely. In no circumstances must any of the lands possessed by nomadic and semi-nomadic indigenous populations be considered as "vacant land" for the purposes of land reform.

562. It is essential that true occupation of land and the needs of established communities be taken duly into account before classifying any land as assignable or not assignable under agrarian reform schemes.

563. Special efforts should be made to obtain land for indigenous persons or groups and to provide them with the means for working their land under programmes of agrarian reform.

564. It is necessary to revise the application of criteria requiring the exploitation of the land in a "rational and productive manner" since they have usually worked to the disadvantage of indigenous groups and communities.

565. The dispossession of indigenous people from their lands and policies of forced assimilation have led to a loss of identity, urbanization, and untold social misery. Restoration of the indigenous land base under agrarian reforms which would return ownership of the land to the indigenous peoples without either purchase or taxation are crucial. It is also essential that indigenous lands be contiguous in order to preserve the unity of the people.

566. In no case should indigenous populations be provided with fewer facilities than other groups under land-reform programmes. Every effort must be made to obtain "non-indigenous" land or public land for allocation to needy indigenous populations.

567. Relevant applications from indigenous populations must receive favourable consideration and, in any event, should be accorded preference over those submitted by groups foreign to the region.

568. Full priority must be given to the return of land seized from indigenous communities.

569. The land needs of indigenous populations should always be taken into account when land distribution questions are under review.

570. Governments should be encouraged to appoint commissions of inquiry to establish how lands can be obtained for the indigenous communities that need them and how land rights can best be granted and protected once restored to those indigenous populations which have been deprived of them.

571. All Governments should grant recognition to the competent communal authorities or to organizations of indigenous peoples constituted to defend their right to land and their land rights, and should enter into meaningful negotiations with them to solve their land problems.

572. Legal provisions and the good intentions behind them should be carried out in practice with effective measures of implementation and follow-up action.

573. Conditions for the acquisition of land by indigenous communities should be reduced to a minimum and the relevant processes should be expeditious and simple.

574. Substantial funds should be allocated to the indigenous land authorities, to enable them to purchase land for indigenous communities.

575. The ability to read and write should not be a requirement for the exercise of the right to vote, since it would be unjustified in view of the various procedures which have been introduced to facilitate voting for those unable to read and write. Manipulative practices in the demarcation of electoral districts and the location of polling stations must be discontinued to ensure justice and fairness, and discriminatory practices and unfavourable treatment in electoral matters must be eliminated.

576. Non-indigenous voters should be encouraged to vote for indigenous candidates. Appropriate measures should be taken to ensure genuine and just, rather than merely symbolic, indigenous representation in public offices and other posts, elective or otherwise. Such access to certain functions could be ensured by reserving a number of seats in parliament and in provincial and municipal assemblies for indigenous candidates. This approach could also be adopted in respect of some non-elective positions, a specific number of which could be reserved for indigenous persons, particularly in bodies concerned with indigenous affairs.

577. Suitable measures must be taken to ensure that these provisions are faithfully complied with and that, when necessary, adjustments are made so as to fairly reflect the proper proportions.

578. It must be recognized that indigenous populations have their own identity rooted in historical factors which outweigh the phenomena of mere solidarity in the face of discrimination and exploitation, and that, by virtue of their very existence, they have a natural and original right to live freely on their own lands.

579. Any measures designed to achieve the proper participation of indigenous communities in all matters influencing their lives must respect and support the internal organizational structures of such populations, since those structures form part of their cultural and legal heritage and have contributed to their cohesion and to the maintenance of their social and cultural traditions. Accordingly, Governments must abandon their policies of intervening in the organization and development of indigenous peoples and must grant them autonomy, together with the capacity for managing the relevant economic processes in the manner which they themselves deem appropriate to their interests and needs.

580. Self-determination, in its many forms, must be recognized as the basic precondition for the enjoyment by indigenous peoples of their fundamental rights and the determination of their own future.

581. It must also be recognized that the right to self-determination exists at various levels and includes economic, social, cultural and political, factors. In essence, it constitutes the exercise of free choice by indigenous peoples, who must, to a large extent, create the specific content of this principle, in both its internal and external expressions, which do not necessarily include the right to secede from the State in which they live and to set themselves up as sovereign entities. This right may in fact be expressed in various forms of autonomy within the State, including the individual and collective

right to be different and to be considered different, as recognized in the statement on Race and Racial Prejudice adopted by UNESCO in 1978 (reproduced in *chapter II*, annex IV).

582. In preparing this study, the Special Rapporteur became involved more deeply with the concept of self-determination invoked in various circumstances by population groups as a basic and underlying concern, as indicated in *chapter XVIII* and in the conclusions on this question. All this leads the Special Rapporteur to conclude that the suggestion put forward by the Conference referred to in paragraph 277 above could result in a clarification of important aspects of the concept of self-determination as it relates to the present situation of many indigenous populations.

583. Consequently, the Special Rapporteur unequivocally expresses his admiration for the excellent overall quality of the studies submitted by Mr. Hector Gros Espiell and Mr. Aurelio Cristescu on the subject of self-determination and wishes to make clear his agreement with, and firm support for, that suggestion by recommending: the appointment of a Special Rapporteur to prepare a study on self-determination, with particular attention being focused on the right of indigenous nations and peoples to self-determination.

584. In this connection, it is also recommended that a careful study should be made of the draft declaration of principles for the defence of indigenous nations and peoples of the western hemisphere, proposed at the International Conference of Non-Governmental Organizations in 1977 (reproduced in *chapter IV*, annex IV, part A).

9. RELIGIOUS RIGHTS AND PRACTICES

585. It is recommended that a study should be made of the subjection of indigenous populations to the system of religious missions and processes of systematic conversion to religions foreign to them. The study should be undertaken by the bodies and with the means deemed necessary in order to gain a clear and exact understanding of the aspects of human rights involved in such situations and processes.

586. Much the same should be done with other institutions or entities which, according to the persistent reports of many indigenous and non-indigenous persons and organizations, under the pretext of religious activities or with titles suggesting other functions, penetrate indigenous groups or communities and prepare them for exploitation by centres of interest alien to the groups or communities in which they carry on their activities.

587. The necessary measures must be taken to prevent any act or practice of interference, disruption or prohibition of indigenous religious rites, practices and ceremonies, and to punish those which it has been impossible to prevent.

588. Indirect or incidental interference in indigenous religious rites and ceremonies must be avoided and, when detected and the causes identified, eliminated by appropriate means, in a climate of fairness, respect and understanding.

589. Indigenous religious holidays must be placed on an equal footing with, and receive the same consideration as, those of other religions.

590. Every effort must be made to enable practising members of indigenous religions to observe their days of rest and celebrate their holidays and ceremonies in accordance with their religions or beliefs, at the proper time and for the periods prescribed by the corresponding provisions.

591. This means enabling them to attend or take part in indigenous rituals and ceremonies, in the case of persons employed by non-indigenous employers, inmates of health institutions or penal establishments, and children who are far from their indigenous communities or groups, in adoptive or foster homes, or in boarding schools.

592. Every effort must be made to solve the problems and difficulties of formalities for crossing borders for the purpose of attending religious rites and ceremonies or taking part in them.

593. Funeral and burial ceremonies, customs and practices must be respected as the religious acts they are, and not merely tolerated. They must receive the same status and consideration as are given to other ceremonies for the burial of the dead.

594. Until the sacred lands, places and sites of indigenous populations are returned to them so that they may keep and care for them in accordance with their norms, such populations must be guaranteed access to the sacred lands and places and to the natural products of such places which are necessary for their religious practices. Access to such products must be facilitated and exempted to the greatest possible extent from the effect of limitations, restrictions or controls imposed on such areas for other justified reasons.

595. In the places which are sacred for indigenous peoples, any practice which endangers the continued supply of the natural products of holy or sacred lands or which entails a risk of altering the natural state of sites must be avoided.

596. When in exceptional cases it is not possible to return such lands to the indigenous peoples, measures must be taken to protect access to the sacred lands or places and to their natural products, and to preserve the natural state of such places and the privacy of the indigenous persons when they are present on such lands.

597. Agreements must be concluded to guarantee the required access to sacred lands and their products and privacy on them.

598. Access to, respect for and protection of traditional burial places, must be guaranteed by States through formal acts proclaiming them to be sacred places in the regulations of administrative bodies and in the policies adopted on such matters.

599. Effective access to sacred objects, and their availability, preservation and protection, as well as the sacred nature of such objects, must be safeguarded.

600. Conservation laws must, as far as possible, take into account supplies necessary for religious uses.

601. Border officials or guards must refrain from any conduct or practice which unnecessarily profanes the sacred objects carried across frontiers or which affects their spiritual force. When crossing international borders, indigenous persons carrying articles for use in their traditional religions must be treated with respect and dignity and, as far as the relevant legal provisions allow, in accordance with their own religious laws.

602. When banning the use of controlled substances (coca, peyote, hallucinogenic mushrooms, etc.), due account must be taken of the supply of such substances needed for use in connection with traditional indigenous religions.

603. In cases where the use of hallucinogenic substances forms part of religious ritual and traditions, the controls necessary to prevent the misuse and sale of such substances must be established with the support of the indigenous communities and, if possible, through them.

604. Museums must refuse to purchase for their collections objects which are known to be of current religious significance for traditional indigenous religions, and must inform the indigenous religious leaders concerned that the presence of such objects on the market or in non-indigenous hands has come to their attention.

605. Museums must return such objects in their possession to the original communities or groups, provided that such communities or groups so request on the grounds that the objects are necessary for their current religious practices. Until such objects are returned, or if their return is not requested, museums must consult indigenous religious leaders for guidance in their practices relating to the exhibition, labelling, conservation and storage of sacred indigenous objects in their possession.

606. At the request of practising members of the religion, museums must make it both possible and easy for them to give the necessary ritual treatment to the sacred objects in their possession.

607. In order to avoid any possible profanation of an area sacred to indigenous people in cases where it is intended to proclaim a site as being of archaeological interest, or to undertake specific restoration work, or to open such an area to the public, the traditional leaders of the indigenous communities or groups concerned must be consulted concerning these specific aspects and concerning any possible violation of the norms relating to such lands, sites or objects as a result of those activities.

608. In any matter concerning religious rites and lands and objects sacred to indigenous peoples, the traditional religious leaders of the communities or groups concerned must be consulted.

10. EQUALITY IN THE ADMINISTRATION OF JUSTICE AND LEGAL ASSISTANCE

609. When, for reasons of equity, the use of indigenous languages is required in courts of justice, appropriate arrangements must be made to ensure that, in all types and at all stages and levels of proceedings, accused, plaintiffs, witnesses or experts who are of indigenous origin and do not have a command of the of-

ficial language are afforded the opportunity of participating fully in those capacities by permitting them to use the indigenous language in which they are able to express themselves with sufficient facility and in which they will understand what is said or communicated to them or asked of them.

610. It is also important that appropriate arrangements should be made to facilitate the close contact that should exist between the client and his lawyer and the experts and witnesses in the case, so as to permit the proper preparation of submissions and appropriate responses to the various circumstances that arise in the course of proceedings.

611. Both within and outside the courts, interpretation and translation services are needed in meetings between client and lawyer when the individuals concerned do not have an adequate command of the official language. Such services must be made as accessible and must be performed with the same degree of efficiency as in the case of other unofficial languages for which such services are provided.

612. It is suggested that, in order to overcome the problems of inadequate or non-existent professional training of interpreters and translators in indigenous languages, the curricula of the interpreter and translator training schools which exist in various countries should be expanded to include the main indigenous languages of the country or region in question, in order to provide sufficient numbers of adequately trained interpreters and translators to meet existing needs.

613. With regard to the cultural differences and difficulties referred to, it is suggested that efforts should be made to give practical effect to indigenous legal institutions by using them to supplement ordinary and criminal courts in cases where circumstances so require.

614. The indigenous legal system should also be represented by indigenous co-judges or special advisers in indigenous law, serving as members of courts in relevant cases, branches of law and areas. In areas with large indigenous populations, the establishment of joint or indigenous courts should be encouraged, if they do not already exist, and indigenous courts existing in such areas should be accorded recognition.

615. Where differences between legal systems are invoked, it should be recognized that, in some cases, differences exist in applicable laws, depending on the parties involved in a litigation or case, in that an indigenous person may invoke provisions and institutions of his customary law which are unknown to his lawyer.

616. Efforts should be made to facilitate contacts between the lawyer and his client or the defendant. Considerable difficulties can arise when they are unable to agree between themselves as a result of different appreciations or assessments of the elements presented in specific cases and the legal traditions invoked.

617. In order to overcome linguistic and cultural problems, efforts should be made to establish or strengthen programmes for the training of indigenous persons as lawyers and their entry into the judicial profession or their integration in the judicial system of the country in question, in various forms and at various levels.

618. It would also be useful to set up programmes for the preparation of indigenous students prior to their admission into faculties of law, so as to enable them to derive greater benefit from faculty courses, to aspire to study fellowships and to have access to the best universities.

619. It is recommended that non-indigenous lawyers should be instructed in the appropriate indigenous language, culture and law to enable them to work with indigenous clients.

620. It would be worth while organizing meetings, seminars, round tables and other similar encounters between indigenous communities and police officers and other law-enforcement officials, to enable them to get to know one another better and to seek ways of improving mutual understanding. It would also be worth while encouraging the entry of indigenous persons into such professions and functions and into related ancillary services.

621. Where police officers and other law-enforcement officials in contact with indigenous populations are not themselves indigenous, it would be useful to set up joint associations of indigenous and non-indigenous persons to monitor the conduct of such officials and of the members of the relevant communities in their relations with the officials in question.

L. Retention of the item

622. The Sub-Commission may also wish to consider the advisability of formally retaining the question of indigenous populations in its programme of work. The study of the present situation would appear to suggest the need, from every point of view, for continued vigilance regarding the enjoyment by indigenous populations of their rights. In this regard, it must be borne in mind that, by setting up the Working Group of Indigenous Populations, which is to hold annual sessions, the Sub-Commission will receive yearly reports from the Working Group and will consequently have to retain on its agenda the appropriate item, which could be entitled "Problems and rights of indigenous populations", or simply "Indigenous populations".

M. Distribution of the study

623. Efforts to keep the international community informed and to shape international public opinion are very effective means of drawing attention to problems of indigenous populations. In this study, a systematic examination has been made of the situation of indigenous populations in various countries. The Sub-Commission may wish to decide, as in the case of earlier studies, that this study should be printed for use by Governments, specialized agencies, research centres, non-governmental organizations and all interested individuals, and that it should also be given the widest possible publicity.

N. Adoption of principles and instruments

624. The content of this study demonstrates clearly that the principles proclaimed in existing international instruments concerning human rights and fundamental freedoms are not fully applied in all countries. It is essential that all aspects of the provisions in force in various countries should be fully complied with and that the binding nature of all existing instruments relating to human rights and fundamental freedoms should be universally accepted as soon as possible. Accordingly, it will be necessary to ensure, in particular, the increasingly rigorous implementation of those provisions.

625. It is also clear that the provisions contained in the instruments in question are not wholly adequate for the recognition and protection of the specific rights of indigenous populations as such within the overall societies of the countries in which they now live.

626. It is essential, therefore, that all the consequences of existing provisions should be made clear, together with the measures entailed in ensuring effective observance of the rights recognized in them, as well as the additional provisions which would have to be formulated and observed. In the view of the Special Rapporteur, specific principles should be formulated for use as guidelines by Governments of all States in their activities concerning indigenous populations, on a basis of respect for the ethnic identity of such populations and for the rights and freedoms to which they are entitled.

627. Such principles must necessarily contain any additional and specific provisions which, following careful study, may be deemed necessary for the fuller recognition and protection of the indispensable rights and freedoms of indigenous populations. The Special Rapporteur wishes to suggest that, as has been done in similar circumstances relating to other issues, when the ideas and measures considered fundamental have been organized into a set of principles, the Sub-Commission may deem it advisable to recommend to its subsidiary organs the need to prepare a declaration of the rights and freedoms of indigenous populations as a possible basis for a convention on that question.

628. For the purpose of preparing the draft set of principles, the draft declaration and the draft of a future convention, the Sub-Commission can call on the Working Group on Indigenous Populations, in whose work authentic representatives of the world's principal indigenous organizations participate directly. The Sub-Commission is thus excellently placed to carry out this work on the basis of specific suggestions made by the Working Group, with due regard for the points of view of the populations concerned.

629. The Special Rapporteur considers that this study and, in particular, the present third part, contains a number of observations and suggestions of cardinal importance which could form the basis of a number of principles which underlie, or are implicit in, them. In a number of cases, some of the principles could be regarded as explicit.

630. It should be noted that, by virtue of the specific mandate assigned to it for this purpose by the Economic

and Social Council, the Working Group on Indigenous Populations is called upon to contribute to the preparation of texts which may be submitted as initial recommendations to the main human rights bodies. It is explicitly requested to do so in the second part of its mandate concerning the special attention which it is to give to the evolution of standards in this area.

631. Finally, it should be pointed out that, as requested by the Working Group at its first and second sessions, held in 1982 and 1983 respectively, and in accordance with requests made in resolutions of the Sub-Commission, the Group has already been provided with a number of basic ideas in the areas of health, education, language, political rights and religious rights and practices (1982) and on the delicate and complex issue of the definition of indigenous populations from the international point of view (1983).

632. The third part of the study is now available to the Working Group.

O. International Year of the World's Indigenous Populations (1992)

633. The Special Rapporteur recommends that the proclamation of an International Year of the World's Indigenous Populations should be proposed to the United Nations General Assembly. This might take place in 1992, to coincide with the 500th anniversary of the establishment of the historic contact, in the middle of this millenium, between the indigenous populations of America and the populations of Europe, and subsequently with those of other regions of the world. This is without prejudice to any earlier contacts that may have existed between America and other regions of the world, which are as yet to be scientifically established. The contacts between various regions of the world from 1492 until the present have been continuous and intense. In this regard, there have been exchanges of goods and cultural influences, to which the indigenous populations of the various parts of the world have made a particularly important contribution.

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