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Provisional English version.STUDY OF THE PROBLE OF DISCRIMINATION AGAINST INDIGENOUS  
POPULATIONS

## WORKING GROUP ON INDIGENOUS POPULATIONS

Note by the Special Rapporteur

Initial expression of some of the basic ideas - although not all of them or only them will have to be included - that ought to be taken into account when drafting the systematic text of conclusions proposals and recommendations that will constitute the third part of the final report in connexion with the study. <sup>1/</sup> It should be pointed out further, that for the time being only five of the relevant substantive areas are covered in this document.

This text is circulated to the Working Group at its request, since the Group deemed it useful to consider it when undertaking some initial work in connexion with the "evolution of standards relating to the rights of indigenous populations" to which the Working Group is to give special attention.

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<sup>1/</sup> See document E/CN.4/Sub.2/1982/2, particularly paras. 19 and 20.

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HEALTH

Health services and institutions are largely concentrated in urban areas, with the result that - particularly in the developing countries - the rural areas, which is where the indigenous peoples live, have fewer of these services and institutions. Measures must be taken to correct this imbalance as rapidly and effectively as possible.

The morbidity and mortality rates are much higher among indigenous populations in comparison with those of the other populations living in the same areas. Appropriate and effective measures must be developed in order 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.

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 appropriate reciprocal co-operation between traditional doctors and modern qualified doctors in order to provide for these populations primary health services in the most comprehensive and appropriate manner possible.

Indigenous persons should 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 make available and make improvements in 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.

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 forestry workers, 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.

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.

Any 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 consideration for the particular features which these vices assume among indigenous populations, and not merely as an unmodified extension of general programmes, whose ineffectiveness has been demonstrated by experience.

EDUCATION

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 their indigenous features.

This unmitigated aggression against indigenous culture and life-styles can in no circumstances be justified, particularly in contexts and environments of cultural and linguistic pluralism, a doctrine which States nowadays claim to espouse.

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 concern themselves only with public education.

Indigenous persons must ~~be permitted to play~~<sup>have</sup> a full part in the formulation and execution of indigenous education policies, in the preparation of materials, curricula and syllabuses, and in the effective introduction of indigenous languages and culture into school programmes and of indigenous teachings and educational techniques into educational processes.

Indigenous persons must ~~be given~~<sup>have</sup> a greater ~~opportunities~~<sup>participate</sup><sup>in</sup> in the setting-up and operation of educational establishments.

The authorities must set the goal of ensuring control of indigenous education by indigenous persons, on the same basis as in other population sectors. 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. Governments should provide appropriate funds for schools and programmes initiated by indigenous persons for the teaching of indigenous culture and traditions.

States should develop programmes which will prepare children more appropriately for life within multicultural societies, 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 alert perception of the need for justice to be done to all ethnic groups and to promote mutual acceptance within a pluralist approach.

Special measures must be taken to ensure that educational programmes are appropriate to the promotion of friendship and understanding by eliminating

prejudice and misconceptions and promoting appreciation of indigenous culture, history and traditions and the right of the indigenous populations to keep their traditions, further develop them and hand them on to future generations.

The necessary emphasis must be placed on the education of the dominant non-indigenous sectors of society in order to ensure that in their daily lives they constantly respect the rights of the indigenous population. Texts and general educational materials must be rid of distortions, misconceptions, fixed ideas and prejudice concerning indigenous populations and must include appropriate information on indigenous history, traditions, customs, culture, arts and crafts and on the contributions of indigenous persons to national culture.

Education in general must attach great importance to the virtues of friendship between the various populations sectors and promote understanding and appreciation of indigenous and non-indigenous cultures.

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 may perhaps be done by establishing advanced educational institutions in regions in which there are indigenous persons capable of benefiting from the existence of such institutions.

## LANGUAGE

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 ~~languages~~ or national languages. In no circumstances should it be lesser than that of an auxiliary language in public education and other specific functions that may be established.

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 just like any other language enjoying this privilege and even in preference to other languages if circumstances so require.

In all circumstances the authorities must establish libraries, reading rooms, tape and record libraries, and other depositary institutions in order to preserve materials in the important indigenous languages of the country concerned.

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.

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.

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.

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

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.

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.

Indigenous persons must be allowed to use their native language in their submissions or statements before legislative chambers; authorization must be

explicitly granted for the use of his mother tongue by any member who is unable to express himself adequately in the official language.

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.

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 proceedings of the courts 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.

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

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

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.

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, in other words, as a second language or acquired ~~language~~.

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

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.

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).

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.

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.

The teaching of the official language must rather 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.

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.

RELIGION, RIGHTS AND PRACTICES

The concept of religion must include not only what have been considered the "world's great religions" but also 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 other forms of religion which seek the moral improvement of human beings and foster understanding and brotherly love among them.

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. Sometimes, 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.

Indigenous populations should not be subjected to systematic campaigns of forced conversion, which have had the results described in the chapter on religious rights and practices, 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. Consequently, it is recommended that the study should be undertaken by the necessary bodies and means in order to gain a clear and exact understanding of the aspects of human rights involved in such situations.

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 activity 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.

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 avoid.

Indirect or incidental interference in indigenous religious rites and ceremonies must be avoided and when detected, eliminated, when their causes and the means of overcoming them have been determined, in a climate of fairness, respect and understanding.

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

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.

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 foster homes <sup>adoptive or</sup> ~~with their~~ ~~parents~~ or in boarding schools.

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.

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.

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, they 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. They must be protected and unencumbered to the greatest possible extent ~~against~~ <sup>against</sup> limitations, restrictions or controls on such areas based on other grounds.

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.

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.

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

Access to traditional burial places, and respect and protection for them, must be formally guaranteed by States through official ~~action~~ <sup>action</sup> proclaiming them to be sacred places in the regulations of administrative bodies and in the policies adopted on such matters.

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

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

~~Border~~ <sup>Border</sup> officials or guards must refrain from any conduct or practice which unnecessarily profanes the sacred objects carried across frontiers or affects their spiritual force.

When crossing international ~~frontiers~~ <sup>borders</sup>, 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.

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.

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

Museums must refuse to purchase for their collections objects which are known to be of current religious significance for the 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.

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 they <sup>objects</sup> 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.

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 the museum's possession.

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.

In any matter concerning religious rites and lands and objects sacred to indigenous peoples, the traditional religious leaders of the communities or

## POLITICAL RIGHTS

Various factors, chief among which are usually economic and social ones, everywhere influence the effectiveness of political rights.

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 and 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.

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 rights recognized de jure must be found.

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 occupy public office. While this requirement is justified in the case of holding public office, whether elective or not, as carrying out the functions will call for reading and writing in order to be able to discharge the obligations and responsibilities of the office, this requirement 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.

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 well-known exceptions. Forms of manipulation must be halted in the interests of justice and fairness, and discriminatory practices and unfavourable treatment in these areas must be eliminated.

There has been everywhere a 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.

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.

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. By way of example, mention may be made of the setting aside of some posts in parliament and in provincial and municipal assemblies. Other variants concern non-elective posts, with a specific number being reserved for indigenous persons. This should be the case above all with bodies dealing with indigenous affairs. There are complaints, however, that such provisions are not fully implemented. Suitable measures must be taken to ensure that these are faithfully complied with and that, when necessary, adjustments are made so as fairly to reflect the proper proportions. This aspect will be dealt with more fully in the formal, systematic conclusions, proposals and recommendations.

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

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

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

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

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.

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 cease their policies of intervening in the organization and development of the indigenous peoples, and must grant them autonomy, together with the capacity for managing the relevant economic processes in whatever way they themselves consider to be in keeping with their interests and needs.

Self-determination, in its many forms, is thus the basic precondition for indigenous peoples 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~~<sup>identity</sup> to future generations.

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.

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.

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.

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.

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.

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.

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.

In this connection, it should be mentioned here that the International NGO Conference on Indigenous Peoples and the Land in 1981 requested the Sub-Commission to appoint a special rapporteur to study yet further the right to self-determination, focusing in particular on this right in relation to indigenous nations and peoples.

This request is fully endorsed here, and will be submitted to the Sub-Commission as a formal recommendation of this study in the section on recommendations.

In this connection, it is recommended that a careful study should be made of the Declaration of Principles for the Defence of Indigenous Nations and Peoples of the Western Hemisphere proposed at the International NGO Conference on Discrimination against Indigenous Populations in 1977.

At international meetings such as the Second General Assembly of the World Council of Indigenous Peoples (Kiruna, Sweden, 1977), the International NGO Conference of Indigenous Peoples and Land (Geneva, September 1981) 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 their own needs.