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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Second session
Items 5 and 6 of the provisional agenda

REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION
AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS OF INDIGENOUS POPULATIONS

CONSIDERATION OF THE EVOLUTION OF STANDARDS CONCERNING
THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from non-governmental organizations

Addendum

This document contains the information received from Amnesty International. 1/

1/ A copy of the full text of this paper is available for consultation at the Secretariat.

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AMNESTY INTERNATIONAL

[Original: English]
[25 July 1983]

Amnesty International plays a specific role in the international protection of human rights, as defined in its statute. 1/ It seeks the immediate and unconditional release of men and women who have been imprisoned, detained or otherwise restricted by reason of their political, religious or other conscientiously held beliefs or by reason of their ethnic origin, sex, colour or language, provided that they have not used or advocated violence (hereinafter referred to as "prisoners of conscience").

Amnesty International advocates fair and early trials for all political prisoners and works on behalf of such persons who are not tried within a reasonable time or who are subjected to any trial procedures that do not conform to internationally recognized norms. Amnesty International also opposes the imposition and infliction of death penalties, the carrying out of extrajudicial executions, and the torture or other cruel, inhuman or degrading treatment or punishment of prisoners without reservation.

Amnesty International actions are frequently initiated in response to torture, extrajudicial execution, detention of prisoners of conscience and imprisonment without charge or trial of members and leaders of Indian 2/ communities and

1/ Article 1 of Amnesty International's Statute states the object of the organization's work:

CONSIDERING that every person has the right freely to hold and to express his or her convictions and the obligation to extend a like freedom to others, the object of AMNESTY INTERNATIONAL shall be to secure throughout the world the observance of the provisions of the Universal Declaration of Human Rights, by:

(a) irrespective of political considerations working towards the release of and providing assistance to persons who in violation of the aforesaid provisions are imprisoned, detained or otherwise physically restricted by reason of their political, religious or other conscientiously held beliefs or by reason of their ethnic origin, sex, colour or language, provided that they have not used or advocated violence (hereinafter referred to as "Prisoners of Conscience");

(b) opposing by all appropriate means the detention of any Prisoners of Conscience or any political prisoners without trial within a reasonable time or any trial procedures relating to such prisoners that do not conform to internationally recognized norms;

(c) opposing by all appropriate means the imposition and infliction of death penalties and torture or other cruel, inhuman or degrading treatment or punishment of prisoners or other detained or restricted persons whether or not they have used or advocated violence.

2/ The term Indian is presently used to describe indigenous peoples of the Americas by such organizations as the South American Indian Council (Consejo Indio de Sud América - CISA), an affiliate of the World Council of Indigenous Peoples. Amnesty International currently uses the term interchangeably with the term "indigenous peoples" in its work on the Americas.

organizations, or the threat of such action, in many countries of the Americas. These basic human rights are in many areas severely and regularly violated among members of indigenous, Indian peoples.

Indian peoples which experience the violation of the rights to life, physical integrity, fair trial and freedom from detention as prisoners of conscience - rights within Amnesty International's mandate for action - also often face special problems of the violation or restriction of other basic human rights. Indian peoples may not enjoy the full exercise of rights enjoyed by other non-Indian population sectors in their countries, even where these too are limited, much less the full range of rights established in international human rights law.

Certain provisions of international law for the protection and promotion of human rights are of particular relevance to the special human rights problems of Indian, or other indigenous peoples. These include provisions establishing civil and political rights, as well as those defining social, economic and cultural rights. Extracts from some of the pertinent instruments of international law are appended to this paper.

An outline of some of the principal areas of concern in the human rights situation of indigenous peoples was prepared in the first report of the United Nations Working Group on Indigenous Populations. The Working Group, set up in 1982 under the auspices of the United Nations Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, included as its principal concerns the right to life, to security of person and to physical integrity of indigenous populations, all of which relate directly to Amnesty International's mandate for action.

Basic human rights of concern to the Working Group which in themselves fall outside Amnesty International's mandate were the right to self-determination, including the right to develop or preserve indigenous culture, tradition, language or way of life; the right to freedom of religion and traditional religious practices; the right to land and natural resources; the rights to education and health care; the rights to social security and labour protection; the right to legal assistance and to the full protection of the law in administrative and judicial affairs; and the right of political participation. While these rights do not fall directly within the mandate of Amnesty International, it is frequently in the context of Indian peoples' efforts to win recognition and enjoyment of these basic rights that Amnesty International acts to prevent or respond to cases of detention of prisoners of conscience, deprivation of fair trial, torture or extrajudicial executions.

Torture, killings, detention of prisoners of conscience, and imprisonment without charge or fair trial of members of Indian populations may relate to disputes over national policies or practices of importance to Indian peoples as a whole. Detention of prisoners of conscience, imprisonment without charge or fair trial, and killings may occur in the context of disputes with State economic enterprises engaged in mining or petroleum exploitation, or grievances with national officials indifferent or antagonistic to the interests pursued by Indian communities or organizations. Such human rights violations may follow protests over such matters as the lack of health care or the failure to consult Indian peoples over educational policies, or objection to proposed public works projects which affect Indian lands - such as the construction of roads or reservoirs, or the refusal or neglect of authorities to demarcate the formal boundaries or to issue title deeds to the lands of Indian communities or territories.

Torture, extrajudicial executions, detention of prisoners of conscience, and imprisonment without charge or fair trial also frequently occur in the context of land and labour disputes between Indian communities or organizations and private landowners, mining companies, and other enterprises pursuing specific economic interests. Leaders of Indian organizations may be detained solely for their non-violent leadership activity and become prisoners of conscience in the course of disputes, in some cases through actions by local or national government authorities which arbitrarily favour the party to the dispute which represents the dominant groups in society. Extrajudicial executions of members of Indian organizations may be carried out by government security services or by agents of private landowners operating with government authorization or acquiescence; such killings may be intended to intimidate the Indian population as a whole, or to neutralize the influence of a particular leader. Decisions by local or national authorities to order the detention of Indian leaders or to order repressive measures may be consciously arbitrary and without basis in law, motivated by political expedience or, when such actions favour specific individuals or enterprises, by corruption.

Torture, executions, detention of prisoners of conscience, and imprisonment without charge or fair trial of members of Indian organizations frequently take place when the land or water rights of Indian communities are challenged by large private landowners, and claims by these landowners are arbitrarily supported by local authorities. Indian land rights may be jeopardized through appeals by large private landowners to local courts, which may be biased, and where Indian interests may be further disadvantaged by a lack of resources with which to sustain prolonged legal action. An Indian community may be unable to hire effective legal counsel, or even to have its leaders attend hearings in a court which might be extremely distant from the community in question. Indian representation in such hearings may be further hampered by the arbitrary detention of a community's elected legal representatives in the course of a dispute, making legal representations on behalf of the community impossible. While some land disputes involve opposing claims to legal title to the land, other cases brought to the attention of Amnesty International have involved the use of force alone to dispossess and evict Indian communities from the land, without court orders, by armed employees of private landowners acting with government assistance or acquiescence. In some cases private landowners have, without recourse to law, obtained the assistance of military or police personnel to evict members of Indian communities who may have cultivated the land in question for many years, even when those communities, in fact, hold clear title to the land. Indians have been driven off the land through intimidation by systematic, arbitrary detention of Indian residents selected at random, their torture with beatings or whipping, the burning of houses, the destruction or theft of crops and livestock, or the killing of community leaders. While Amnesty International does not draw conclusions in specific cases on the relative merits of conflicting land claims, it makes every effort to ensure that Indian peoples who press claims to own or to work the land should not suffer detention as prisoners of conscience, imprisonment without charge or trial, killing, torture or other forms of cruel, inhuman or degrading treatment or punishment for asserting these claims.

While detention without charge or trial, imprisonment as a prisoner of conscience, torture or extrajudicial execution may occur in the context of Indian land or labour disputes with private enterprises, or in disputes with Governments over broader issues, a high incidence of these phenomena also

occurs in situations of insurgency and counter-insurgency warfare. In such situations, members of Indian communities or organizations may be held responsible as a group for alleged collaboration in insurgent activities, whether or not such collaboration has been proven. As a consequence, the entire community or entire population may be the object of generalized repression, including mass arrests or extrajudicial executions.

The pattern of repression affecting indigenous peoples in South and Central America relates closely to the way in which their communities and societies are organized within each country's larger society. Most Indian peoples in the region share in common characteristically close-knit and largely autonomous community structures, and depend on a largely communal exploitation of existing resources for their livelihood. The violations of the rights to life, physical integrity, fair trial, or freedom from detention as a prisoner of conscience within Amnesty International's mandate for action frequently occur in the context of efforts to defend the resources held in common by Indian communities or federations, including lands and territories held and utilized communally.

Many South and Central American countries have legislation that gives a particular legal status to traditional Indian communities, including communities of peasant farmers of primarily Indian origin who may no longer speak indigenous languages, but which have maintained traditional Indian forms of social organization. The varying forms of this legislation may distinguish between Indian communities engaged in sedentary agricultural activity (whose members may also be considered peasant farmers), and others whose members live through the exploitation by traditional means of a broad range of natural resources within a relatively large territory, not limited to farming in permanent agricultural settlements. In general, such legislation provides a legal basis for the maintenance or expansion of communal landholdings belonging to the community as a whole or groups of communities which cannot then be sold out of the community. Such legislation provides for community leadership to be elected and to function with considerable autonomy. Many countries in the region provide a legal framework recognizing and protecting these characteristic forms of indigenous community, but apply slightly different terminology: some of the terms used for broadly similar community structures include comunidades indígenas (indigenous communities), comunidades nativas (native communities) and comunidades campesinas (peasant communities).

The consistent restriction or violation of the basic human rights of members of Indian populations may stem from a variety of factors. Indian peoples, even when they are a majority within a national population, may be denied the enjoyment of fundamental human rights because of overt discrimination by reason of race, language, culture and economic status, or even the geographical isolation of their population centres. The particular forms of close-knit social, and economic, organization of Indian communities may mean too that the repression of Indian peoples takes a generalized form, affecting entire communities or peoples, although the characteristic communal organization and solidarity of Indian communities may also provide the basis for a strong defence of basic rights.

The restriction or violation of the basic human rights of members of Indian peoples may in pattern resemble the human rights problems of other population sectors, notably those of the non-Indian peasantry in parts of South and Central America. Other population sectors may suffer the regular restriction

or violation of basic rights by reason of social or economic status, political or religious convictions, or other characteristics. The discriminatory treatment of members of Indian populations, however, is particularly consistent and severe, and contributes directly to the high incidence of torture, extrajudicial executions, detention without charge or trial and detention as prisoners of conscience among members of these populations which demand the action of Amnesty International.

The rights to equality before the law, and to the equal protection of the law without discrimination are fundamental principles of international human rights law, and apply directly to the particular human rights problems facing Indian peoples. Article 2, paragraph 1 of the Universal Declaration of Human Rights states:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The same principle of non-discrimination is restated in article 2 of the International Covenant on Civil and Political Rights; article 26 of the Covenant states moreover that:

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

But members of Indian peoples in many countries may remain unequal before the law and outside the effective protection of the law, denied in practice equal status or representation before the courts in conflicts over land, labour or other rights; denied legal means of redress against arbitrary State or private actions; and denied the protection of the law from actions which may be both arbitrary and illegal under national and international law. These denials may range from the expulsion by force or violence of communities from land to which they hold title, to the liquidation through mass extrajudicial executions of entire rural populations in counterinsurgency campaigns in which all Indians are as a group liable to execution as suspected insurgents. Rather than receiving less protection under law than other sections of the population, indigenous communities require greater protection because of their communal and traditional characteristics.

Working for victims of human rights violations in indigenous communities has often proved difficult; a principal problem is lack of information. People living in indigenous communities and in rural areas often have little contact with the communications network of their own countries or with international agencies interested in their welfare. In any case, these indigenous communities and rural areas are often remote and hard to reach for people in the cities. In some cases, language and cultural differences are a barrier and mutual distrust or suspicion may further hamper communication.

In Amnesty International's work on the Americas, it seeks to monitor and take action against detentions of prisoners of conscience, unfair trials, the practice of torture, and extrajudicial executions affecting members of Indian communities and organizations. Amnesty International has made this work a priority both because of the prevalence of those acute violations of human rights among members of Indian populations, and the special problems faced by Indian peoples in making these violations of human rights known, and in seeking remedy or redress for human rights violations through national and international institutions. By taking preventive action, and responding to individual or collective cases of human rights violations within the organization's mandate, and by reporting on the general situation of these violations, Amnesty International seeks to support the rights of Indian peoples to enjoy equality before the law, and to the full protection of all human rights set out in their own national laws and in the instruments of international law.