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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities

Working Group on Indigenous Populations
Fourth Session
Geneva

29 July - 2 August 1985

Items 4 and 5 of the provisional agenda

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

STANDARD-SETTING ACTIVITIES:

EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS
POPULATIONS
DRAFTING OF A BODY OF PRINCIPLES ON INDIGENOUS RIGHTS, BASED
ON RELEVANT NATIONAL LEGISLATION, INTERNATIONAL INSTRUMENTS
AND OTHER JURIDICAL CRITERIA

Material received from Governments

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Introduction

1. In resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. In resolution 1984/35 B of 30 August 1984, the Sub-Commission requested the Secretary-General to circulate the report of the Working Group (E/CN.4/Sub.2/1984/20), and the conclusions, proposals and recommendations of the Special Rapporteur, Mr. José R. Martínez Cobo (E/CN.4/Sub.2/1983/21/Add.8), to Governments, specialized agencies and United Nations bodies concerned, organizations of indigenous peoples and other interested non-governmental organizations for comments and suggestions, in anticipation of the fourth session of the Working Group in 1985.

3. In accordance with these resolutions, appropriate communications requesting information, comments and suggestions were addressed by the Secretary-General to Governments and the organizations referred to.

4. The present document contains the replies received from Governments up to 23 April 1985. Additional replies, if any, will be included in addenda to this document.

BAHAMAS

[Original: English]

[4 February 1985]

The Government of the Commonwealth of the Bahamas attaches the utmost importance to the preservation and protection of the dignity of the indigenous population of the Bahamas and indigenous populations the world over.

The Government of the Bahamas would like to commend the United Nations, specialized agencies and many members of the world community of States for the steps taken to ensure that indigenous populations the world over enjoy the right to life, to physical integrity and to security, the right to autonomy or self-determination and political institutions and representation and also the right to land and to natural resources.

It is the Bahamas' concern that indigenous populations in various parts of the world are suffering because of apartheid, military, economic and political domination and oppression. The Bahamas calls upon all States Members of the United Nations system to protect and ensure that indigenous populations the world over enjoy the fundamental rights and privileges enshrined in the relevant international instruments pertaining to human rights, inter alia:

The right to life, liberty, and security of persons;

The right to freedom of movement and residence;

The right to social security;

The right to a nationality;

The right to freedom of worship;

The right to freedom of expression and of peaceful assembly;

The right to take part in the Government of one's own country;

The right to hold public office;

The right to seek and be granted asylum;

The right to own property.

The Government of the Bahamas believes that if these rights can be extended without discrimination to all peoples of the world, there would be no problems of discrimination against indigenous populations.

The Bahamas thus supports the positive action of the United Nations, various specialized agencies and other Member States in their efforts to seek and implement effective and essential measures to eradicate the problems of discrimination against indigenous peoples.

COLOMBIA

[Original: Spanish]

[16 August 1985]

[The Permanent Mission of Colombia to the United Nations at Geneva submitted three publications, 1/ the titles and tables of contents of which are reproduced below.]

Implementation and projections of the policy of the Colombian State in favour of the indigenous population ("indigenist" policy), Ministry of the Interior, Bogotá, D.E., March 1985.

"The indigenist policy of Colombia over time

The indigenist policy at present

Achievements

- (a) Land and natural resources
- (b) Health and education
- (c) Socio-economic development
- (d) Support for cultural development

Medium-term and long-term projections of the indigenist policy".

The indigenous inhabitant, core of our national identity, Ministry of the Interior, Department of Community Integration and Development, Indigenous Affairs Division, March 1984, containing the thinking of Belisario Betancur, President of the Republic;

Indigenous rights: legal provisions, national, departmental and district (comisarial), judicial decisions and concepts. Summary and texts: Roque Roldán Ortega, Chief, Indigenous Affairs Division, and Alfonso Florez Esparragoza, Adviser, Ministry of the Interior, Department of Community Integration and Development, Indigenous Affairs Division, Editorial Presencia, Bogotá, Colombia, 1983.

"Foreword

Introduction

1. Brief historical outline of indigenous legislation: definitions - indigenous legislation and indigenous rights - background - Indian law - the meetings (cabildos) - historical phases: reserves phase - integration phase - phase of autonomy and ethnic development.

1/ These publications are available for consultation in the Secretariat files.

2. Limitations encountered in the application of indigenous legislation: land - health - education - inapplicability of Western legal reasoning - indigenous rights are based on the community - the law of the majority society has as its foundation private property - the inadequacy of the indigenous legislation
3. Need for a new approach to the understanding and application of indigenous law or rights: an exact notion of indigenous law or rights: societal control - the verdict of our jurisdictional courts - the ways, customs and methods of societal control and the constitutional system - basic principles of indigenous law - the thinking of President Betancour and the new indigenous law

- I. National laws, decrees and resolutions
- II. Departmental and district decrees and regulations
- III. International agreements and conventions
- IV. Judicial decisions

- IV.1 Social and legal organization: the indigenous reserves (reducciones) - first period of Spanish colonization - the factions or communities - the reserves (resguardos) - the cabildos are public bodies
- IV.2 Societal control: the Penal Code does not include any legal categories for dealing with the situation of the indigenous inhabitants - savages are not mentally retarded - the thinking of primitive man - magic
- IV.3 Land: the reserves (resguardos) belong to the indigenous inhabitants - the transfer of the reserves - proof of ownership - the Council of Tolú Viejo - the Spanish laws - what is meant by "reserve affairs" - collective ownership of land - the status of usufructuaries - reserves (reservas or resguardos) and improvements on common land

V. Concepts

- V.1 Social and legal organization: rural organization - assistance, development and training - the traditional authorities and the State programmes - the Communal Action Boards and the cabildos
- V.2 Land: the sale of land forming part of reserves - the reserve of San Andrés de Sotavento - Araracuara Development Corporation - Guajiran indigenous rights - the improvement tax and the reserves - obligations of municipal mayors - upper and middle Guajira Reserve: territorial reserve - forest reserve - reserves for public services - sea-salt recovery reserves - national coasts and beaches - national tourist resources - the land of the indigenous inhabitants
- V.3 Natural resources - indigenous reserve of the Arhuacos and "protection of renewable natural resources - forest work permits and the indigenous reserves"

QATAR

[Original: Arabic]

[2 January 1985]

[The Permanent Mission of the State of Qatar to the United Nations Office at Geneva stated that no change had been made in the legislation of Qatar concerning this subject and that, accordingly, reference could be made to the report previously transmitted (E/CN.4/Sub.2/AC.4/1984/2, pp. 17-20).]