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Discrimination and Protection of  
Minorities

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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

Material received from specialized agencies and  
other bodies within the United Nations system

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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 1985/22 of 29 August 1985, the Sub-Commission requested the Secretary-General to circulate the Working Group's report and its annexes (E/CN.4/Sub.2/1985/22 and Add.1) 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 fifth session of the Working Group.
3. In accordance with this resolution, appropriate communications requesting information, comments and suggestions were addressed by the Secretary-General to Governments and the organizations referred to.
4. By the same resolution, the Secretary-General was also requested to prepare an analytical compilation of the comments and suggestions received, and to make it available to members of the Working Group, Governments, organizations of indigenous peoples and other non-governmental organizations well in advance of the Working Group's fifth session. In this regard, the Secretary-General would like to point out that the very few substantive comments made did not afford the basis to prepare an analytical compilation thereof. The Secretary-General considered it appropriate, therefore, to compile the information received rather than to analyse it.
5. The present document contains replies received from specialized agencies and other bodies within the United Nations system up to 20 April 1987. Additional replies, if any, will be included in addenda to this document.

CENTRE FOR SOCIAL DEVELOPMENT AND HUMANITARIAN AFFAIRS

[Original: English]  
[24 July 1986]

The question of discrimination against specific population groups has always been a primary concern in the work of CSDHA. In recent years, the Centre has been responsible for major international events to promote the principles of equality and non-discrimination. Among these are the 1981 International Year of Disabled Persons, the 1982 World Assembly on Aging, the Decade of Disabled Persons (1983-1992) and in 1985 the International Youth Year, the World Conference to Review and Appraise the United Nations Decade for Women, and the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. All of these events have led to international instruments which set specific standards for this purpose.

We have noted that the report of the Working Group as well as the proposed Plan of Action and the Draft Principles (Annexes I and II) contain no specific provisions nor refer to specific population groups, within indigenous populations, which suffer from double discrimination. Consequently, the attached comments contain some pertinent information on standard-setting activities carried out at the international level, regarding youth, aging, disabled persons and women, as well as crime prevention and criminal justice, which could be of interest to the Working Group in its consideration of the principles of equality and non-discrimination.

CSDHA is also sending copies of the Guidelines for Further Planning and Suitable Follow-up in the Field of Youth, the Vienna Plan of Action on Aging, the World Programme of Action concerning Disabled Persons, the Milan Plan of Action and the report of the 1985 World Conference on Women which contains the Nairobi Forward-Looking Strategies. 1/

Youth

With reference to youth, the 1985 International Youth Year served to increase global awareness of the situation, needs and aspirations of sub-categories of youth, particularly young people in marginal situations.

The concept of marginality is a wide one, encompassing a variety of situations and cases. It is not merely a problem of economic underdevelopment, but of social underdevelopment as well. It is a multidimensional concept, and must be seen as such. Young people who are marginal are poor, incompletely urbanized, culturally unassimilated, spatially segregated and often peripheral to much of society. Politically, it means no participation in party, electoral, local or other modes of decision-making.

Psychological marginality is caused by a lack of personality attributes appropriate to life in modern society, from work habits and consumption orientation to scientific ways of thought and rational conceptions of self and society. Cultural marginality happens when people come to accept the values of the dominant culture, but lack the means to achieve them, or are prevented from doing so by various kinds of social constraints.

Often, marginality is caused by situations of cultural transition which resulted in inadequate adjustment: migration, unemployment, educational mobility, marriage or external influences across boundaries of any kind of social group - one locality to another, one country to another, one occupation to another, even one generation to another. Youth, by its very social nature, has to make such cultural transitions frequently and becomes marginalized as a result.

Young people in marginal situations are thus in a position that is as difficult to categorize as it is to ameliorate. They are not socially functional because they often derive less from the society and economy than they contribute to it. Neither are they in a dysfunctional position, because the societies in which they live could well integrate and support them. They are not even afunctional because their role, which may be insufficiently appreciated, is still significant to the functioning of the social system in one way or another.

There are many subgroups of youth in marginal situations. Young migrants and refugees face a situation of inadequate cultural and educational transmission in an alien environment. Young workers, who struggle on the margins of the labour force, hired or fired as needed, are meagrely paid when they do work. Disabled young people face a perpetual social stigma as they attempt to participate more fully in the society which spawns and then rejects them. Young people are often driven by social circumstance into an increasingly articulated machinery of crime and deviance. In many situations, students are also a marginalized subgroup. Though they may be integrated into the formal educational structure, they are often victims of the disjunction between education and the world of work, as well as of an increasingly inadequate socialization process.

The problem of indigenous youth is quite prevalent in Latin America and the Caribbean for example. In several ECLAC countries which still contain a strong traditional rural presence, indigenous youth live in an extreme situation of a growing gap between their socio-economic level and that of the urban population. Nevertheless, the gap is somewhat smaller than that of previous generations. The indigenous population is decreasing as a proportion of the total population, but growing in absolute terms and tending to grow or maintain itself as components of the rural population in countries where it constitutes a strong presence, and especially as part of the critical-poverty stratum. Not only are they generally the poorest in the rural population and those who migrate least to the urban area, but they also run up against language barriers, cultural barriers and discriminatory treatment, a situation which is associated with the persistence of a semi-colonial type of relationship. Due to language difficulties and deficiencies in the educational services in the indigenous rural areas, many of them do not acquire functional reading, writing and arithmetic skills, although they are attending school for a longer period of time.

A major accomplishment of the International Youth Year was the creation of five Regional Plans of Action on Youth as well as the formulation at the global level of the Guidelines for Further Planning and Suitable Follow-up in the Field of Youth. These international instruments deal, *inter alia*, with the problems of indigenous youth which is subsumed under the category of marginal youth.

The Guidelines for Further Planning and Suitable Follow-up in the Field of Youth, endorsed by the General Assembly at its fortieth session, provides the contours of a global, long-term strategy on youth. It focuses attention on specific subgroups of youth and considers it important to consider the manner particularly in which disadvantaged young people can be integrated fully into society. It is noted in the Guidelines that a large proportion of youth do not enjoy benefits of full participation and integration in the social and economic sectors of their countries because of unequal or inadequate access to opportunities.

It is also noted that there are young people who are relegated to the margins because the philosophies, practices and laws governing life in their societies discriminate against people on the basis of race and colour, e.g., young people living under the apartheid régime. The Guidelines, in dealing with the multidimensional aspects of the issue of youth marginality, invite Governments to initiate, among other things, the following actions:

- To promote the concept of culture as something that permeates all aspects of life and encourages young people to be actively involved in the protection and development of cultural heritage, and to preserve and reinforce national cultural identities;
- To promote the wider access, participation and contribution of youth in cultural life; and to take into consideration the cultural aspirations of each youth group;
- To review the situation of migrants and refugees, particularly the young among them, and attempt to improve their opportunities for security, housing, health, education, training, employment and social welfare;
- To review existing legislative and administrative regulations with regard to the situation of young second-generation migrants, as well as potential problems such as linguistic barriers, lack of education and training, inadequate cultural transmission and alienation.

#### The Aging

With reference to the Aging, special attention has to be given to the difficult situation of the indigenous elderly. Infringement upon the rights of indigenous population, especially in terms of standards of living, health, adequate housing, culture, etc., is even more severe in the case of the elderly. Rights of indigenous people to protect and develop their own cultural traditions, language and religious practices should be necessarily connected with the role of the elderly as keepers of traditions and national spiritual values.

In setting up plans and programmes for standard-setting activities in the field of indigenous people, it may be useful to bear in mind some recommendations in the Vienna Plan of Action on Aging, which have direct relation to the issue of discrimination against indigenous populations.

### Disabled Persons

With reference to Disabled Persons, the Declaration on the Rights of Mentally Retarded Persons and the Declaration on the Rights of Disabled Persons give specific expression to the human rights of disabled persons, the principles of which are further developed in the World Programme of Action concerning Disabled Persons, adopted by the General Assembly in 1982.

The right of disabled persons to live within a family, and to receive services within the community, is of particular importance in the case of disabled persons from indigenous populations, as is their right to education, employment, and participation in religious and cultural activities.

In developing standard-setting activities for disabled persons, the World Programme of Action contains guidelines for the realization of the goals of "full participation" and "equalization of opportunity", which are also relevant for disabled persons in indigenous populations.

### Crime Prevention and Criminal Justice

In the area of crime prevention and criminal justice, the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 1985) dealt with the question of discrimination against indigenous populations in the context of social marginality and inequality. The Congress, in adopting the Milan Plan of Action and a set of Guiding Principles, considered that the establishment of genuine social justice in the distribution of material and spiritual goods among all members of society, the elimination of all forms of exploitation and of social and economic inequality and oppression, and the real assurance of all basic human rights and freedoms represent a principal hope for the successful combating of crime and its eradication from the life of society in general. Accordingly, Guiding Principle No. 35 stipulates that in view of the staggering dimensions of social, political, cultural and economic marginality of many segments of the population in certain countries, criminal policies should avoid transforming such deprivation into likely conditions for the application of criminal sanctions. Effective social policies should, on the contrary, be adopted to alleviate the plight of the disadvantaged, and equality in sentencing and treatment should be ensured so as to avoid discriminatory practices based on social, economic, cultural, ethnic, national or political backgrounds, on sex or on material means.

On traditional forms of social control, Guiding Principle No. 31 provides that when new crime measures are introduced, necessary precautions should be taken not to disrupt the smooth and effective functioning of traditional systems, with full attention being paid to the preservation of cultural identities and the protection of human rights.

As regards the right to legal assistance and protection in particular, included in the list of preliminary priorities of the Working Group on Indigenous Populations, Guiding Principle No. 27 of the Congress, in dealing with unrestricted access to the legal system, recommends, inter alia, that legal systems should endeavour, through appropriate policies aimed at overcoming socio-economic, ethnic, cultural and political inequalities or disparities whenever they exist, to optimize access to justice for all

segments of society, especially the most vulnerable ones. Along the same lines, resolution 18 of the Congress on the role of lawyers recognizes that adequate protection of the rights of citizens requires that all persons should have effective access to legal services provided by lawyers.

#### Women

The Nairobi Forward-Looking Strategies for the Advancement of Women, adopted by consensus at the 1985 World Conference to Review and Appraise the Achievements of the United Nations Decade for Women, and endorsed by General Assembly resolution 40/108, have also identified "minority" and "indigenous women" as an area of special concern (paras. 302-304).

They identify these groups as being discriminated against in a compound manner: "indigenous" and on the basis of sex. A series of measures are recommended to guarantee the fundamental human rights and freedom of women to protect their rights and to assist them to overcome discrimination.

Furthermore, the Forward-Looking Strategies make reference to the work of the Committee on the Elimination of Racial Discrimination and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It also proposes that the General Assembly should "consider the advisability of designating an international year of indigenous and traditional cultures" (para. 304).

#### DEPARTMENT OF POLITICAL AFFAIRS, TRUSTEESHIP AND DECOLONIZATION

[Original: English]  
[9 June 1986]

The Department of Political Affairs, Trusteeship and Decolonization informed that the resolution 1985/22, together with the relevant section of the Working Group report and its annexes had been brought to the attention of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. Any action taken by the Special Committee thereon will be communicated at a later date. The documents would also be brought to the attention of the other intergovernmental bodies serviced by this Department, as appropriate.

#### ECONOMIC COMMISSION FOR ASIA AND THE PACIFIC

[Original: English]  
[17 June 1986]

As ESCAP does not undertake work related specifically to human rights issues, as indicated in the terms of reference of the Commission and the work programme of the secretariat, it has no specific views to enter on the report at this time.

ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN

[Original: English and Spanish]  
[13 June 1986]

With reference to the request for information on the problem of discrimination against indigenous populations and related topics, ECLA sent a study prepared by an outside consultant entitled "Transformaciones en la situación social de la Población Mapuche" (LC/R.458). 2/

It was ECLA's intention that this study was to be the first in a series of national studies on social problems in Latin America. Unfortunately, the current financial crisis affecting the United Nations has forced it to suspend this activity momentarily.

ECONOMIC COMMISSION FOR AFRICA

[Original: English]  
[19 June 1986]

While ECA has no comments to offer on the substance of the report on the Fourth Session of the Working Group on Indigenous Populations, it would like to draw the attention to the following:

1. It was noted that, among the participants to the Fourth Session of the Working Group, there was no participation from Africa. This might be attributable to the fact that the concept of "indigenous populations" is difficult to define, as far as the Africa region is concerned. In this respect, reference was made to the substance of ECA's letter of 2 January 1985. 3/
2. It may be appropriate to envisage inviting the African Liberation Movements to participate in the sessions of the Working Group, so as to record their views on the rights of their populations.

This suggestion emanates from, and relates directly to, the substantive issues to be considered during the fifth session of the Working Group (see para. 3 (a) and (b) of the Plan of Action from 1986 onwards, document E/CN.4/Sub.2/1985/22, Annex 1). It is also put forward because it could bring about substantive contributions to the standard-setting activities of the Working Group, and facilitate the elaboration of a "draft declaration on indigenous rights, which may be proclaimed by the General Assembly" (see Annex II of the Report of the Working Group).

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

[Original: English]  
[12 June 1986]

In view of the serious threat facing the indigenous and tribal populations in many parts of the world today, due to increasing pressure on land and the uncertainty of land possession, it is of the utmost importance that their rights to land and natural resources be safeguarded by adopting appropriate international instruments. These must address several important



questions which include ownership and control of land and its delimitation; rights to the subsoil and other natural resources; protection from removal of indigenous and tribal populations from the lands they occupy; and transmission of rights of ownership and control. It is felt that these land-related issues deserve a more detailed coverage than that given in the Working Group's report.

FAO endorses the view that the traditional rights and practices of indigenous populations should be safeguarded, and that economic considerations should not be the sole determining factor in development decisions which are likely to alter drastically the way of life and the system of land utilization of such peoples. Nevertheless, in certain circumstances, these rights and practices are bound to give way to pressing development needs which are given priority in what is considered to be the general interest. In such cases, it should be insisted that the State provide the affected indigenous communities with adequate compensation, preferably in the form of alternative land of suitable quality, in order to ensure their survival and prosperity as well as recovery from the ordeals of disturbance.

There is also a point calling for comment in paragraph 39 of the report, which contains criticism of "transnational corporations as well as international and national agencies ... that provided funds or expertise for development projects on indigenous land". The report suggests that "many such programmes negatively affected their land and natural resources and consequently their traditional way of life, including currently viable indigenous economies ...". It is quite possible that in certain cases such criticism may be well-founded. FAO is of the view that large development projects, e.g. major irrigation works, should always be preceded by a thorough study of the existing human settlement situation. The customary rights to land tenure, pasture and water should be ascertained and recorded as a matter of principle. Such a record should not amount simply to a generic account of so-called communal or collective rights in the area, but should serve to identify the respective customary rights by reference to the individual families or households concerned who should themselves be associated with the process of verification. If this principle were adopted as a prerequisite for the initiation of major development projects, in the same way as the feasibility studies are carried out in respect of the technical data, an effective safeguard of the legitimate interests of indigenous populations will have been established.

When preparing new standards and norms on the rights of indigenous populations, due consideration should be given to the establishment of supervisory machinery that will be used to monitor the implementation of the standards at the national level.

Finally, whatever the type of international instrument (Convention or Declaration) that will eventually be adopted to protect the rights of indigenous populations, due account should be taken of recent developments at the international level regarding the proposed revision of ILO's Indigenous and Tribal Populations Convention and Recommendation so as to ensure a better co-ordination of activities within the United Nations system and avoid duplication of efforts.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

[Original: English]

[15 July 1986]

1. Regarding the report of the Working Group, chapter II, "Review of developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations", covers extensively activities which fall within the fields of competence of UNESCO (right of indigenous populations to develop their own culture; right to education). In the next report, it might be useful to indicate UNESCO's specific activities in this field.

(a) Promotion of vernacular languages in education

In the context of UNESCO's project to develop educational materials for the teaching of mother tongues, UNESCO is preparing a Latin American and Caribbean regional meeting to prepare educational materials. The meeting will be organized in the Villa Ocampo in Argentina under direct responsibility of the UNESCO Regional Office for Education in Latin America and the Caribbean (OREALC), and will gather together 15 participants from Latin America. The meeting will elaborate a teaching guide for those teachers who are in charge of courses in vernacular languages and to realize in 1987 a pilot project to promote an Indian language in cross-road frontier areas covering a few countries. UNESCO is in the process of studying which Indian languages are to be chosen for this pilot project (22 C/3 Sub-programme IV.2.2).

(b) Social science research on the effective exercise of human rights in specific socio-economic situations

Pursuant to the Work Plan of the Approved Programme and Budget for 1984-1985 and within the framework of Sub-programme XIII.2.2 - The Effective Exercise of Human Rights in Specific Social and Economic Conditions, UNESCO organized an international meeting of experts on the ways and means of improving the effective exercise of human rights of disadvantaged social groups in Quebec, Canada, from 9 to 12 December 1985.

This meeting, which was organized in collaboration with the Canadian National Commission for UNESCO, brought together anthropologists, historians, lawyers and economists with a view to their suggesting means of improving the action taken in favour of disadvantaged groups such as ethnic minorities, the unemployed, refugees, migrants, handicapped persons and the elderly.

A series of studies have been carried out in preparation for this meeting, two of which are of a general character that have been prepared by the International Commission of Jurists and Laval University, Canada. In addition, eight case studies have been prepared on the unemployed and migrants in Italy and Syria, handicapped persons in Canada and in Yugoslavia, elderly people in the United States of America and in Ghana and the poor in India and in Argentina.

The experts recommended to increase UNESCO's action in this field and to associate disadvantaged groups in the action-oriented studies and research to be undertaken by the Organization.

The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities will be informed in due course of the work done under these sub-programmes.

(c) Encouragement to research on the causes of violations of those human rights which fall within the competence of UNESCO

(i) Within the Programme and Budget for 1986-1987, UNESCO envisages encouraging the development of social science research on the causes of violations of those human rights which fall within the competence of UNESCO. In 1986, UNESCO plans to encourage the International Sociological Association to create within the Association a working group on the right to education. The study of the right to education of indigenous populations could be touched upon.

(ii) A series of legal, historical, sociological and philosophical studies were undertaken to elucidate the concept of peoples' rights and its relationship to human rights. These papers were discussed at the expert meeting on peoples' rights which was organized by UNESCO in Harare, in December 1985.

(iii) A series of comparative studies were undertaken on the conception of human rights in different cultural and religious traditions in co-operation with the International Association of Sociology (IAS), the Latin American Council of Social Sciences (CLACSO), and several other national research institutes and universities. These studies were examined by an International Symposium which was organized by IAS under contract with UNESCO in Dubrovnik, in November 1985.

(d) Teaching material related to the diffusion and annotation of the Universal Declaration of Human Rights

1. In order to realize a human rights teaching programme in vernacular languages, the Centro de Estudios de la Realidad Economica y Social (CERES) of La Paz, Bolivia, prepared an annotated version in Aymara, Quechua and Guarani of the Universal Declaration of Human Rights.

2. Concerning Annex I, we wish the issues concerning the right to education and the right to culture of the indigenous populations to take more importance in the discussion.

3. Regarding Annex II, the specialized agencies are not invited to make comments on the draft principles. It seems however that the terms of the draft principles do not appear to be distinctive and specific rights pertaining to the indigenous people in the draft principles, compared to the text of the International Bill of Rights which grants human rights to all individuals and sometimes to minorities. A comparison with the text of the Convention against genocide will also be necessary.

WORLD HEALTH ORGANIZATION

[Original: English]  
[16 June 1986]

The WHO informed that it had taken note of Annexes I and II of the report. It was particularly pleased to see that the consideration of the right to health, medical care, other social services and adequate housing had been included in the agenda of the fifth session of the Working Group. It looks forward to receiving further information on the discussions.

Notes

- 1/ Copies of these documents are available for consultation in Secretariat files.
- 2/ Available for consultation in Secretariat files (in Spanish only).
- 3/ E/CN.4/Sub.2/AC.4/1985/WP.2, p. 3.