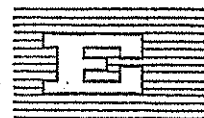


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STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST  
INDIGENOUS POPULATIONS

Final Report (Supplementary Part) submitted by the Special Rapporteur  
Mr. José R. Martínez Cobo

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## X. ADMINISTRATIVE ARRANGEMENTS

### A. Preliminary Remarks<sup>1/</sup>

1. Not all the countries included in the present study have special bodies charged with the formulation and implementation of official policy toward their indigenous populations, but most of the countries surveyed have made some type of administrative arrangement for that purpose. <sup>2/</sup> A few countries have created ministries or cabinet-level bodies whose sole function is the formulation and implementation of policy toward indigenous peoples. Most have established specialized offices, departments or divisions within one or more ministries which are responsible for indigenous policy in general or for the particular aspects of that policy which come within the more general functions of ministries as a whole. The nature of these specialized offices varies from country to country: some are primarily advisory, executory, co-ordinating, planning, or policy-making bodies, with a mixture of functions; others combine all those functions. Some give their full attention to over-all indigenous policy, whereas others are concerned with indigenous populations as related to national development, particular spheres of economic activity, or the provision of governmental services to those sectors of the population. A number of the countries under study have created administrative bodies for the purpose of co-ordinating governmental policy and programmes for indigenous populations. These entities generally include representation from the various cabinet-level bodies and other agencies whose programmes affect or involve indigenous populations: their primary role as a co-ordinating body is sometimes enhanced by the granting of the authority to make policy decisions and to design and carry out specific programmes. Several countries have established officially recognized bodies of a purely advisory or consultative nature, which are either made up of, or include, representatives of indigenous groups. On the basis of the information available to the Special Rapporteur, only one country has established an autonomous institution for the sole purpose of attending to one particular problem affecting the indigenous population, i.e., the distribution of land.

2. National institutions representative of the above types of administrative arrangements are described below under the following subheadings: Specialized Ministries or Cabinet-level Bodies; Specialized Administrative Arrangements within Cabinet-level Bodies or Attached to those Bodies; Inter-Agency Co-ordinating Bodies, Official Advisory Bodies, and Parliamentary Committees. The final subsection makes brief reference to those systems which have no specialized arrangements.

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<sup>1/</sup> On the basis of the information made available to him, the Special Rapporteur has referred to various aspects of national systems in order to illustrate the types of administrative arrangements established by countries with indigenous populations. Insufficient information was available to allow comment on whatever administrative arrangements may exist in Japan, Laos, Sri Lanka and Suriname.

<sup>2/</sup> It should be noted that the 17 American States which have ratified the 1940 Pátzcuaro Convention of 1940 (See Chapter I, para. 69 and foot-note 5) assumed international obligations to establish institutions for indigenous affairs.

B. Governmental Entities and their Functions

1. Specialized Ministries or Cabinet-level Bodies

3. Australia, Canada, Guyana, New Zealand and the Philippines are representative of those countries with ministries or cabinet-level bodies specialized in indigenous affairs.

4. In December 1972, the Government of Australia appointed a Minister solely responsible for Aboriginal Affairs and established a new Department of Aboriginal Affairs with regional offices in all States and the Northern Territory. This administrative re-organization represents the Government's assumption of full responsibility for policy, planning and co-ordination at the national level.

5. Canada's Federal Department of Indian Affairs and Northern Development, which administers the Indian Act and the Yukon and Northwest Territories Acts, has responsibility for native policy and programmes, extending to all registered Indians and Eskimos. It has a large staff throughout the country, and its annual budget for 1973-1974 was about \$400 million. Local administrative arrangements provided for under the Indian Act are described by the Government as follows:

"Under the Indian Act, Band Councils are recognized as local administrative bodies on Indian reserves. The Act provides guidelines for their election and structure, but approximately 166 out of 560 Bands choose their councils according to their traditions. Councils may enact local by-laws, and those which have reached an advanced stage of development may raise money and administer it for local purposes. Over \$6 million has been budgeted for the 1973-1974 fiscal year to cover necessary administrative costs (office expenses, salaries, and travel expenses) for some 465 Bands which have assumed the responsibility for operating such programmes as housing, roads, water and sewer installation. Other operating costs of these programmes are estimated as close to \$80 million annually. A number of Indian regional associations now administer community development programmes by agreement with the Federal Government."

6. New Zealand's Cabinet includes a Minister of Maori Affairs, and there is a separate Department of Maori and Island Affairs with nine district offices located in areas chosen to suit the Maori population. Each district office has suboffices. The functions of this Department are described by the Government as follows:

- (a) The recording of titles to Maori land and the servicing of the Maori Land Court.
- (b) The administration of the Maori Housing Programme.
- (c) Social Welfare work amongst the Maori population.
- (d) Some aspects of pre-school education and vocational training for Maoris.
- (e) The administration of the Maori Trustee (this is a statutory office set up to administer the estates of deceased Maoris and the administration of certain Maori Trust Funds).
- (f) The administration of the Maori Land Development programme.
- (g) A general "watching brief" to see that Maori interests are protected in dealing with other Government departments, and to ensure the co-ordination of government activities generally in respect of Maoris."

7. According to the Constitution of Guyana (Art. 36), "one Minister shall be charged with responsibility for Amerindian affairs," and a Parliamentary Secretary for Amerindian Affairs has been appointed in the past.

8. In the Philippines, policy toward indigenous peoples is developed and implemented by the Commissioner on National Integration, appointed by the President, who enjoys the rank and pay of a Secretary of Department and is a member of the Cabinet. <sup>3/</sup> "Provided with only 218 permanent and 20 casual employees, this Commission mans and maintains a central office, 6 regional offices and 27 field offices located all over the archipelago with the object of bringing the national Government and the national cultural minorities permanently close and accessible to each other." <sup>4/</sup> In general, the Commission on National Integration has the authority to promote the development of industrial and agricultural enterprise among the National Cultural Communities, to take the necessary steps to provide them with electrical power, public schools, and feeder roads. It is also charged with carrying out homesteading and resettlement projects, the promotion of community life, the training of National Cultural Communities and helping them to secure employment. Trial lawyers of the Commission may be authorized to assist indigent members of the Cultural Communities accused in criminal cases involving their landholdings. <sup>5/</sup>

2. Specialized Administrative Entities within Cabinet-Level Bodies or attached to those Bodies

9. Governments which have entrusted responsibility for indigenous affairs to specialized entities within cabinet-level bodies have often set up their administrative structure within ministries responsible for governmental affairs or some area of economic policy. In a few cases, the principal policy-making body is found within a ministry charged with social responsibilities, and in this instance it is a part of the Ministry of Education. Though these forms of administrative arrangements may reflect to some degree the Government's over-all approach to policy vis-à-vis indigenous populations as a matter of government, economic development or social welfare, they may represent nothing more than an attempt to achieve the most convenient means or organization, taking into account the existing governmental structure.

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<sup>3/</sup> See text of Republic Act No. 1888, as amended by Republic Act No. 3852, 9 May 1964.

<sup>4/</sup> Commission on National Integration Report 1973, prepared by the office of the Chairman, Quezon City, September 1973, p. 2.

<sup>5/</sup> Republic Act No. 1888, Section 4, as amended. (See foot-note 3, above). According to the Statement of the Anti-Slavery Society for the Protection of Human Rights to the Thirty-fourth Session of the Sub-Commission, the Commission on National Integration was replaced in 1975 by PANAMIN. That statement goes on to assert that "PANAMIN has no democratic or indeed any representation of tribal people in its decision-making bodies. The leadership is rather drawn from the ranks of the powerful in business and in the military." The Special Rapporteur has received no further information on PANAMIN.

10. Brazil's central body for indigenous policy is the National Indian Foundation (Fundação Nacional do Índio - FUNAI), attached to the Ministry of the Interior. Founded in 1967, its legal basis rests on the Federal Constitution, Law No. 5571 (5 December 1967), which provided for its creation, Law No. 6001 (19 March 1973) - known as the Indian Statute, and on Decree No. 68,638 (16 April 1980), entitled FUNAI Statute. According to Law No. 5571 (Art. 1), its objectives are the following:

- I. To lay down guidelines, and to guarantee the observance in regard to the indigenous population of a policy based on the following principles:
  - (a) Respect for the Indian's person and for tribal institutions and communities;
  - (b) Guarantee of permanent possession by the Indians of the land they inhabit and exclusive enjoyment of the natural resources and all services existing there;
  - (c) Maintenance of the Indians' cultural and biological balance in their contact with Brazilian social life;
  - (d) Supervision of the spontaneous acculturation of the Indians in order to protect them from sudden changes in their socio-economic evolution;
- II. To administer the property of the Indians with a view to protecting it, increasing it and enhancing its value;
- III. To promote surveys, analyses, studies and scientific research on the Indians and indigenous social groups;
- IV. To promote medical and health care for the Indians;
- V. To promote appropriate basic education for the Indians, with a view to their integration as individuals into the society of the Brazilian nation;
- VI. To stimulate public interest in the Indians' cause through the various publicity media;
- VII. To exercise a policing function in the Reserves in matters relating to protection of the Indians.

Single paragraph. The Foundation shall fulfil the function of representing the Indians or providing legal aid as an integral part of their protection, in accordance with customary civil law or special laws. 6/

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6/ See Diario Oficial, Republic of Brazil, vol. CV, section I, part I, No. 231, 6 December 1977, page 12,223.

11. FUNAI accomplishes its objectives through its Regional Delegations and numerous Indian posts which function under those delegations. 7/ An official report of 1976 estimated that FUNAI had extended its services to approximately 111,000 of the 200,000 Indians in Brazil. 8/ Between 1967 and 1973, those services were directed primarily to measures for the defence of Indian lands and protection of their health. Special medical teams were organized to provide health care at the Indian posts, and the effectiveness of this service was improved by the increased use of communications by air since 1971. Indian lands were protected by the creation of Indian Reserves. 9/ The Indian Statute added a developmental role to FUNAI's functions of protection and assistance, the overall goal being the integration of Indian communities into national life. 10/ According to an independent observer, the authority exercised by FUNAI has a direct impact on the lives of individual Indians:

"... [FUNAI] administers the tutelage of the Indians and has complete responsibility for them in law and control over all aspects of their lives. In addition to the usual role of such an agency, which includes programmes for the development, health, education, etc. of the indigenous populations, FUNAI also administers contracts of employment on their behalf, takes legal proceedings in their name and manages the land they occupy ... ". 11/

12. In addition to its Federal Department of Indian Affairs and Northern Development, the Government of Canada has identified the following sub-departmental agencies which deal with indigenous affairs:

"A second federal department which plays a large part in aid to the native population is the Department of the Secretary of State. Through the Native Citizens' Section of its Citizenship Branch, this department makes grants and supplies field officers to assist a number of native groups. A special charge on the department are the "Friendship Centres", established over many years in urban communities across Canada and staffed jointly by white Canadians and native people, which play a major role in the adjustment of native migrants to city and town life.

The Canada Health and Welfare Department administers directly to registered Indians and Eskimos through its Indian Health and Northern Health Services.

The Department of Regional Economic Expansion is responsible for a number of developmental programmes which are mainly or wholly of benefit to natives.

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7/ As of 1972, FUNAI had 9 regional delegations with offices in the cities of Manaus, Belem, Recife, Curitiba, Cuiabá, São Luiz, Goiânia, Porto Velho and Campo Grande, as well as 142 Indian posts. FUNAI in numbers, (Assessoria de Relações Públicas da Fundação Nacional do Índio.) Brasília, D.F., July 1972, pp. 1-2.

8/ Government of Brazil, Report to the ILO (1976).

9/ FUNAI, Informe da Ação Indigenista Brasileira, (Report of Brazilian Action in favour of the indigenous population), p. 18.

10/ Ibid., p. 19.

11/ Lee Swepston, "The Indian in Latin America: Approaches to Administration, Integration, and Protection", in Buffalo Law Review, vol. 27, No. 4, p. 724.

The Department of Justice has a programme of legal aid in the Northern Territories of special service to native people.

The National Museums of Canada, which include the National Art Gallery, have extensive programmes of research and exhibition of native arts and crafts.

While most of the activities of the Department of Agriculture are for the benefit of Canadian farmers in general, native peoples have benefited as well. The department's work on soils, plants and animals under the stress of cold might be expected to be especially important to the development of northern regions, where much of the native population lives."

13. Chile's administrative arrangements focus upon development. The Indigenous Development Institute, a dependency of the Ministry of Agriculture, deals mainly with the authorization of transactions related to Indian lands but is also involved to a lesser degree in such diverse activities as loans, school construction and legal and medical assistance. 12/ The Ministry of Agriculture includes another dependency - the Agriculture and Livestock Development Institute - which, according to government sources clears title to indigenous lands by granting individual deeds and furnishes credit and technical assistance to individual property owners. 13/ The Department of Indigenous Affairs, which operates under the Ministry of Lands and Colonization, provides technical expertise for the division of communal property. 14/

14. Founded in 1960, Colombia's Division of Indigenous Affairs (División de Asuntos Indígenas--DAI) has functioned within the Ministry of Government. As a result of the internal organization of that Ministry in 1968, DAI became a part of the Community Integration and Development Authority and was assigned the following duties:

"To carry out special integration and development programmes for the indigenous population, aimed at incorporating them into the national community.

To support, encourage and advise the indigenous population in the task of organizing itself properly and participating with proper awareness in the national integration and development process.

To ensure the individual and collective integrity of the indigenous people and direct the changes aimed at their integration and development.

To co-ordinate the participation of the public and private sectors in integration and development programmes for the indigenous communities, on a regional and local scale.

At regional and local level, to supervise the fulfilment of legal and statutory provisions relating to the indigenous population of Colombia. 15/"

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12/ Government of Chile, National Report for Chile, VIII Inter-American Indian Conference (Mérida, Yucatán, Mexico), 17-21 November 1980, OAS Doc. No. OEA/Ser.K/XXV.1.8, CII/doc.11, 12 November 1980, Original: Spanish, p. 8.

13/ Ibid.

14/ Ibid.

15/ Ministry of Government, Colombia, Historical account of the indigenous affairs policy in Colombia, VIII Inter-American Indian Conference, (Mérida, Yucatán, Mexico), 17-21 November 1980, OAS Document No. OEA/Ser.K/XXV.1.8, CII/doc.10, 12 November 1980, Original: Spanish, p.6.



15. These powers were widened by Decree 1741, 30 August 1973, which gave DAI authority to formulate educational policy in indigenous communities and to oversee associations that work with indigenous groups. In the course of its labours, DAI has developed programmes emphasizing legal aid, social assistance, health and sanitation, agricultural development and credit, the training of Indian leaders and the construction or improvement of public works related to the infrastructure. 16/ These programmes are carried out at the regional level through a number of Commissions for Indian Welfare and Protection (Comisiones de Asistencia y Protección Indígena), which are located in areas with a high tribal population density. At least seven major Training Centres (Centros de Capacitación) have been established, but training and other forms of assistance are administered at the local level by Indian Affairs Committees (Comisiones de Asuntos Indígenas). Other administrative arrangements include an inspection service for indigenous populations, 17/ and a National Council on Indigenous Policy, which advises the Ministry of Government. 18/

16. The Special Rapporteur has been informed that a bill relative to the indigenous peoples of the Department of Guyane was presented to the National Assembly of France in 1971-72. According to the draft, a Bureau of Tribal Populations - under the authority of the Assistant Prefect of Saint Laurent du Maroni - was to be established to carry out policies concerning the indigenous population. No further information with regard to this proposal has been received.

17. Guatemala's National Indigenous Affairs Institute (IIN) is attached to the Ministry of Education, as is also the Rural Socio-Educational Development Authority (Dirección General de Desarrollo Socio-Educativo Rural) which deals with bilingual education under programmes of "castellanización" (teaching the Spanish language). According to the Institute's regulations, approved (2 October 1945), its functions are the following:

"Research: to initiate, direct, co-ordinate and undertake scientific research and surveys applicable to the solution of indigenous problems or contributing to a better knowledge of them, even though the research may have no immediate practical application.

Consultation: to hold consultations with government departments on indigenous topics.

Promotion: to propose to the Government ways and means of integrating the Indian into the general culture of the country.

Liaison: to co-operate with the Instituto Indigenista Interamericano, scientific institutes and foundations in the co-ordination, development and administration of research projects related to the indigenous population."

18. Although IIN has produced a series of monographs and has participated in some advisory activities and promotional work, many critics note a lack of governmental concern for the work and objectives of the Institute and agree that it has not played a very significant role. This assessment finds some support in the Institute's budgetary problems, which are discussed under part D of this chapter. 19/

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16/ Ibid., 7.

17/ Created by Decree No. 062, 16 January 1976, as cited by Swebston, loc.cit., p.727

18/ Created by Decree No. 2122 (1971). See Swebston, loc.cit., pp. 727-728.

19/ See paras. 82-84, below.

19. In this regard, one observer, discussing the scarcity of funds available to governmental entities dealing with indigenous affairs in different countries, has discerned a trend towards the reduction of the funds available to the entities, to what is barely enough to cover the salaries of the staff and a limited amount of practical work. In the case of Guatemala's Institute, the over-all total of its budget allocated for staff and its operations have even been reduced. <sup>20/</sup> It should also be noted, however, that the same observer has stressed that the staff of the Institute make efforts to carry out useful research or social promotion projects, despite the very restrictive conditions under which they work. <sup>21/</sup>

20. Since 1953, Guatemala has had another administrative entity - the Service for the Promotion of the Indigenous Economy (Servicio de Fomento de la Economía Indígena). Attached to the National Institute for Promoting Production (Instituto Nacional de Fomento de la Producción - INFOP), its purpose has been stated as to raise the standard of living of the indigenous people by strengthening the economy in order to integrate them into the mainstream of national life. As of 1957, it enjoys technical and administrative autonomy within the structure of INFOP, and carries out its programmes on the basis of the following policy guidelines:

"(a) Respect for the dignity of the indigenous person and his communities, in an effort to raise economic, social and cultural levels without causing conflicts resulting in resistance to the proposed changes, the necessary adjustments in personal and communal life to be made on the basis of trust, understanding and appropriateness.

(b) Encouragement of action from within the community through the use of indigenous staff, combined with co-operation from local officials.

(c) A horizontal geographical approach, reaching all the ethnic groups in the country, beginning with a few strategic points and slowly and gradually extending to all communities. The vertical approach (model villages or regions) is inappropriate because: (a) it is unfair in itself; (b) it exaggerates differences with the surrounding milieu; (c) it does not take account of the variability of the indigenous inhabitants, and (d) it precipitates too rapid and complete a cultural change which may not be understood or desired by the indigenous population and which, if it is achieved, may lack foundation.

(d) Use of controlled credit, in keeping with local cultural conditions and granted in kind, in a series of amounts calculated to meet successive needs and composed of a complete range of elements.

(e) Technical advice furnished at the level of traditional knowledge and designed to steer the local economy towards better standards in keeping with natural and human conditions.

(f) Support for handicraft specialities in agrarian communities in order to reduce to some extent their extreme dependence on a single means of livelihood."

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<sup>20/</sup> See paras. 82, 83, below.

<sup>21/</sup> See para. 84, below.

21. Article 338 of the Constitution of India provides for a Special Officer for Scheduled Classes and Scheduled Tribes who is appointed by the President. It is his duty to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes and to report to the President on the working of those safeguards at such intervals as the President may elect. In 1967, the Office of Commissioner for Scheduled Castes and Scheduled Tribes (provided for in Art. 340 of the Constitution) was re-organized and set up under a Director-General for Backward Classes Welfare who is responsible for formulating schemes for the welfare of backward classes, watching over their implementation and maintaining liaison with the States. State governments and Union Territory Administrations have separate departments to look after the welfare of the scheduled castes and scheduled tribes and other backward classes, but administrative organization varies from state to state. In some states, separate Ministers have been appointed to look after tribal welfare as provided for in their respective Constitutions. In addition, there are some 11 Tribal Research Institutes whose activities are co-ordinated by a Central Research Advisory Council. 22/

22. Malaysia's Department of Orang Asli Affairs, within the portfolio of the Ministry of Home Affairs, is responsible for the administration, development and welfare of all Orang Asli in West Malaysia. The Department has its federal headquarters at Kuala Lumpur and branch offices at regional, state, district and village levels. Its internal structure reflects its six major areas of activity: general administration, education, medical and health services, social and economic development, research and planning, and communications and operations. 23/

23. In 1971, the Government of Indonesia established the Directorate for Development of Isolated Ethnic Tribes (Presidential Decree No. 45 of 1974) as a dependency of the Department of Social Affairs. Hierarchically, it is under the Directorate General for Social Development which maintains liaison with the National Planning Council (BAPPENAS). 24/ A non-governmental organization has asserted that the Directorate for Development of Isolated Ethnic Tribes "stresses the importance of the village as a way of organizing and controlling the activities of the group who would usually be scattered over a large area of forest." "What is not stressed," that report continues, "is the commitment renouncing any enforcement in the establishment of such villages and the principle that any such 'development' must proceed at a much slower pace ... pace ..." 25/ In the opinion of this organization, the result is that "over-all the Indonesian government policy, when articulated, is in no way committed to a policy of ethnic pluralism when such ethnicity comes into conflict with the 'normal' economic development programme." 26/

24. In 1943, the Nicaraguan Indigenous Affairs Institute was founded in Nicaragua as an affiliate of the Inter-American Indian Institute. The Special Rapporteur did not have access to any recent information as to whether it continues in existence. He notes, however, reports of the founding of an indigenous mass organization - MISURASATA - by the Government of National Revolution of Nicaragua. This organization represents the interests of various Indian groups and occupies a seat on the Council of State, which is the supreme legislative body. 27/

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22/ Government of India, India. A Reference Annual, 1974, pp. 102-104.

23/ Malaysia 1974 Official Yearbook, p. 272.

24/ Information furnished on 3 September 1976 and 24 April 1977 by the Anti-Slavery Society in connection with the present study.

25/ Ibid.

26/ Ibid.

27/ See Philippe Bourgois, "Class Ethnicity, and the State Among the Miskitu Amerindians of Northeastern Nicaragua" in Latin American Perspectives, 8: 2, Spring 1981, pp. 32-38.

25. Recently again, the Government of National Revolution has created the Atlantic Coast Institute (Instituto de la costa atlántica), which, in the words of one of the members of the Governing junta of National Reconstruction 28/ responds to the following ideas:

"... THE FACT THAT IN OUR COUNTRY THERE IS NO RACIAL DISCRIMINATION OR APARTHEID OR DISCRIMINATION ON GROUNDS OF RELIGION OR NATIONAL ORIGIN, OR FOR POLITICAL OR REGIONAL REASONS, DOES NOT MEAN, FIRST, THAT WE ARE TRYING TO INTEGRATE THE MINORITIES (SUMOS, MISKITOS, RAMAS AND CREOLES) INTO OUR CULTURE. OUR STRUGGLE IN RESPECT OF THESE ETHNIC GROUPS IS NOT A STRUGGLE TO BRIDGE A GAP, SINCE THERE IS NONE IN NICARAGUA IN THE RACIAL AND CULTURAL SPHERES. OUR STRUGGLE AS FAR AS ETHNIC PEOPLES ARE CONCERNED IS SIMPLY AND SOLELY TO INTEGRATE THEM INTO THE NICARAGUAN NATIONAL ENTITY THROUGH THE REVOLUTIONARY CULTURE.

IN ORDER TO DO THIS, WE HAVE SET UP THE INSTITUTO NICARAGUENSE DE LA COSTA ATLANTICA, WHICH IS TRYING TO DEVELOP, MAINTAIN AND GIVE SHAPE TO THE CULTURE OF OUR ATLANTIC ZONE, TO INCREASE PRODUCTION IN THE FISHING, FORESTRY AND MINING INDUSTRIES OF THAT ZONE, AND, FINALLY, TO REMEDY THE LOW ECONOMIC AND SOCIAL STATUS OF THE ETHNIC GROUPS."

26. The Government of Norway has communicated that the co-ordinating body for Lapp questions is the Ministry of Agriculture's Reindeer-Breeding Division which is also responsible for policy toward the Lapps in matters relating to reindeer husbandry. This Division "directs the Central government administration at the local level, which consists of six Commissioners for Lapp Affairs, each of whom administers his own country ..., the Counsellor for Reindeer-Breeding, who is in charge of the advisory service, and the State Reindeer research. The Government also noted that the Education Department and the Church had appointed a committee to deal with economic and social questions concerning the Lapps.

27. Another example of subministerial agencies concerned with development among indigenous populations is Pakistan's Planning and Development Department of the North West Frontier Territories. This Department, which functions under the Department of Government of the North West Frontier Territories, co-ordinates the development activities of all the provincial governments and prepares an annual development programme for the Federally Administered Tribal Areas, under the supervision of the Development Commissioner. Pakistan has also created a Federally Administered Areas Development Corporation which has promoted the development of power, agriculture, animal husbandry, forestry, public health, housing, industry and communications.

28. In the United States of America the principal policy-making body is the Bureau of Indian Affairs within the Department of Interior; however, additional specialized offices or divisions have been established within other Departments, as described in the following official report:

"The Federal Government's trust responsibilities and special relationship extends to Indian nations, tribes and individuals. The major federal departments with programmes relating to Indians are Interior; Health, Education and Welfare; Agriculture; Housing and Urban Development; and Commerce. The Departments of Labor, Transportation, Treasury, State and Defense also have programmes important to Indians. The Department of Justice handles most of the legal problems affecting Indian rights. Other agencies such as the U.S. Commission on Civil Rights and the Equal Employment Opportunity Commission have functions of consequence to Indians.

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28/ Rafael Córdova Rivas. Statement made on 14 December 1961 at the Inaugural Meeting 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.

The Interior Department is the agency which has the greatest impact on Indian affairs. Interior is explicitly charged with the task of protecting Indian lands and resources and has specific statutory responsibility for ensuring the continued well-being of Indian tribes and people. The Bureau of Indian Affairs (BIA) is the main agency within the Interior Department that deals with Indian affairs.

The dual role of the BIA as an advocate of Indian interests and principle agent of the trustee (the United States) has given rise to a large measure of Indian mistrust. The BIA has been accused of paternalism and mismanagement in the past. The present BIA administration has acknowledged past problems and has taken steps to resolve them, recognizing that it has often implemented negative policies too vigorously, while positive policies have been carried out less vigorously. The BIA is now improving its management structure and system, and it is moving to facilitate greater co-ordination and co-operation with the other agencies on programme and policy matters.

...

#### Role of the Justice Department

The Department of Justice has the responsibility to litigate Indian interests in the courts. Two sections of the Justice Department fulfil these functions: the Office of Indian Rights of the Civil Rights Division and the Indian Resources Section of the Lands Division.

The Office of Indian Rights was established in 1974 to enforce all federal civil rights provisions as they apply to Native Americans as well as the provisions of the Indian Civil Rights Act of 1968. This office was created as a result of a study of the Civil Rights Division which found that racial discrimination was a significant contributing factor to the social and economic problems faced by American Indians. Since its establishment, the Office of Indian Rights has engaged in litigation involving voting rights cases, discrimination cases concerning access to state and local services, and improvement of conditions in detention facilities with predominantly Indian inmates.

The Indian Resources Section of the Lands Division is responsible for Indian-related, non-civil rights litigation such as lands, natural resources, tribal government and treaty rights issues." 29/

29. Venezuela's principal organ for indigenous affairs is a dependency of the Ministry of Education. Between 1977 and 1980, it had existed within the Ministry of Justice as the Ministerial Office for Indigenous and Frontier Affairs (Oficina Ministerial de Asuntos Fronterizos e Indígenas - OMAFI). In 1980, as a result of an administrative re-organization it was renamed Indigenous Affairs Authority (Dirección de Asuntos Indígenas - DAI) and placed under the Ministry of Education. 30/ With an annual budget of Bs. 18 million and 240 employees, 31/ the DAI is involved not only in education, but in such diverse programmes as the provision of medical equipment, agricultural and stock-raising endeavours, and the construction of roads, sidewalks and streets. 32/ An official report has declared that the Ministry of Education will continue to assume all responsibility with regard to the integral development of the indigenous populations until such time as other administrative arrangements may be developed. 33/

29/ Fulfilling our Promises: The United States and the Helsinki Final Act. A Status Report. Compiled and edited by the staff of the Commission on Security and Co-operation in Europe. Washington D.C., November 1979, pp. 150-151; 153-155.

30/ Ministry of Education. Republic of Venezuela. Report on the Situation of the Indigenous Population in Venezuela. VIII Inter-American Indian Conference (Mérida, Yucatán, Mexico), 17-21 November 1980, OAS Doc. No. OEA/Ser.K/XXV.1.8. CII/doc.10, 17, November 1980. Original: Spanish, p. 5.

31/ Ibid.

32/ Ibid., p. 122.

33/ Ibid.

### 3. Inter-Agency Co-ordinating Bodies

30. In countries where responsibility for indigenous affairs is divided among several departments or ministries, some Governments have found it necessary or convenient to establish special bodies to co-ordinate those efforts. Though their announced purpose is co-ordination, some of these entities are more advisory in nature, others have authority to make policy decisions and even to carry out specific programmes. In some cases all of these functions have been combined in a single co-ordinating body.

31. In Costa Rica an autonomous body, the National Indigenous Affairs Commission (Comisión Nacional de Asuntos Indígenas - CONAI) co-ordinates official and private efforts on behalf of the indigenous population. <sup>34/</sup> It is composed of representatives from the following governmental offices and local organizations active in indigenous communities: The Office of the President of the Republic, the University of Costa Rica, the National University, the Ministries of Government, Culture, Health, Agriculture and Stockraising, and Public Security; the Mixed Institute of Social Assistance, the Institute of Land and Colonization, the National Service of Sewerage and Drinking Water, the National Housing and Urban Institute, the National Institute of Apprenticeship, and the National Service of Electricity; a representative from selected municipal councils; a delegate from each community development association found in indigenous communities and a member from each of the legally recognized Pro-Indigenous Associations. <sup>35/</sup>

32. The objectives of CONAI are established as follows in article 4 of Law 5251:

"(a) To promote the social, economic and cultural improvement of the indigenous population with a view to raising its living standards and integrating the aboriginal communities into the development process;

(b) To serve as a means of co-ordination between the different public institutions responsible for works projects and services for the benefit of the indigenous communities;

(c) To promote scientific research into the life style of the indigenous groups, with the aim of achieving a thorough knowledge of them, and thus to lay the groundwork for conducting programmes designed for their welfare, with a view to an objective appraisal of our native cultural traditions;

(d) To promote publicity on indigenous affairs so as to create an awareness of them and thus to stimulate interest in the study of Indian culture, especially with reference to indigenous languages, the use and study of which will be actively promoted;

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<sup>34/</sup> Ley de Creación de la Comisión Nacional de Asuntos Indígenas (Law Establishing the National Commission on Indigenous Affairs), No. 5251, 11 July 1973. Text supplied by the Government.

<sup>35/</sup> Taken from the text of art. 2 as amended by Law No. 5671, 14 April 1975.

(e) To ensure that the rights of the indigenous minorities are respected by stimulating State action to guarantee the Indian individual and collective ownership of his land, the timely use of credit, appropriate marketing of what he produces, and efficient technical assistance;

(f) To ensure the fulfilment of any current or future legal provisions for the protection of the cultural heritage of the indigenous population by co-operating with the institutions entrusted with these matters;

(g) To direct, stimulate and co-ordinate the co-operation of private enterprise in projects for the social, economic and cultural improvement of the aboriginal population;

(h) Through the development of training, to improve the qualifications of those practising professions or occupying posts in the areas inhabited by indigenous people;

(i) To organize agrarian co-operatives in the different indigenous communities, providing them with agricultural instruction, technical aid and appropriate financing;

(j) To establish health centres with well-trained personnel, and to try to train individuals in the different areas inhabited by indigenous peoples to carry out the relevant functions in the future;

(k) To establish local administrative boards to solve in principle the many problems of the indigenous communities; and

(l) To serve as an official liaison organ with the Inter-American Indian Institute (Instituto Indigenista Interamericano) and the other international agencies working in this field. 36/

33. Planning of indigenous policy and taking of decisions in that area are the exclusive province of CONAI and are carried out through its General Assembly, Directive Board, Special Committees and the local committees of indigenous communities. 37/

34. The Government of Finland has established a Commission on Lapp Affairs (Saamelaisasiain neuvottelukunta) for the co-ordination of measures aimed at the safeguard of the interests of the Lapps. This Commission consists of the Governor of the Lapp county, as chairman, and six members appointed by the Council of State. Three members represent the Council of State, the Ministry of Education, and the Ministry of Agriculture, respectively, and the three others represent the various Lapp organizations. The Government has described its functions as follows:

"In particular, the Commission is to prepare and to make proposals to the Council of State concerning measures to be taken in order to promote the culture of the Lapps and to improve their condition of life. Furthermore,

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36/ Law No. 5251. Text supplied by the Government. For more specific information on the functions of CONAI see also Ley Indígena (Indigenous Law) No. 6172, 29 November 1977 and the Reglamento de la Ley Indígena (Regulations governing Indigenous Law) No. 6172, Decree No. 8487-C, 26 April 1978.

37/ Information supplied by the Government.

the Commission shall follow the development of the economic conditions of the Lapps and the satisfaction of their cultural needs and make proposals concerning these matters to the appropriate Ministries. Finally, the Commission is to give opinions to the Council of State, to the Ministries and to the county Government of the Lapp County on matters concerning the Lapps."

35. The Commission on Lapp Affairs, which was formerly under the Ministry of Justice, has functioned under the Council of State since December 1970.

36. Mexico's Co-ordinating Board of the National Plan for Depressed Zones and Marginal Groups (Coordinación General del Plan Nacional de Zonas Deprimidas y Grupos Marginados - COPLAMAR) is the principal co-ordinating body for indigenous policy. Created in 1977 as a dependency of the Office of the President of the Republic, it carries out specific studies and advises the Executive in matters concerning policy and co-ordination. This administrative reorganization placed the following bodies under COPLAMAR's authority: Instituto Nacional Indigenista (INI), Comisión Nacional de Zonas Áridas (CONAZA), Patrimonio Indígena del Valle del Mezquital, La Forestal FCL, Fideicomiso del Fondo Candelillero, Fideicomiso para obras sociales a campesinos caneros de escasos recursos (FIOSCER), Productos Forestales de la Tarahumara (PROFOTARAH), Fidepal, Ltd. (non-profit making), Patronato del Maguey (now Promotora del Maguey y del Nopal), Fondo Nacional para el Fomento de las Artesanías (FONART) and Compañía Forestal la Lacandona (COFOLASA).<sup>38/</sup>  
All government agencies that have any impact on indigenous populations or marginal groups are obliged to co-ordinate their activities. For this purpose a System of Programmatic Co-operation for Depressed Zones and Marginal Groups was established based on the following three elements:

"1. Conclusion of programme agreements between the bodies belonging to the Co-ordinating Board and the rest of the departments and agencies of the federal government administration.

2. Territorial integration of projects through planning, execution and evaluation carried out in each zone by the different government institutions of the regional units of COPLAMAR working together, with the participation of the community, and with the supervision of the Committees to Promote Socioeconomic Development (Comités Promotores del Desarrollo Socioeconómico - COPROSE) under the chairmanship of the State Governors.

3. Announcement of non-transferable budgetary action designed to fulfil the agreed programmes."<sup>39/</sup>

37. The National Indigenous Affairs Institute which is included within the broad umbrella of COPLAMAR's authority, also has important co-ordinating functions and is more specifically concerned with the indigenous population. Established by law in 1948, its functions and administrative structure are defined as follows:

"Article 1. The National Indigenous Affairs Institute, with its own legal personality, is hereby established as a division of the Inter American Indian Institute, with headquarters in the capital of the Republic.

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<sup>38/</sup> National Report for Mexico, VIII Inter American Indian Conference (Mérida, Yucatán, México), 17-21 November 1980. OAS Doc. No. OEA/Ser.K/XXV.1.8. CII/doc.8, 12 November 1980, Original: Spanish, p. 8.

<sup>39/</sup> Ibid. pp 13-14.



Article 2. The National Institute shall perform the following functions:

- I. Investigation of problems related to indigenous groups in the country;
- II. Study of improvements needed by those indigenous groups;
- III. Representations with the Federal Executive with a view to the approval and implementation of these measures;
- IV. Active support in carrying out the measures once approved, and co-ordination and direction, as appropriate, of action by competent government agencies;
- V. Action as a consultative body for official and private institutions on matters which in accordance with the present Law are within its competence;
- VI. Publication, as and when it is deemed appropriate and through the proper media, of the results of its investigations, studies and promotion efforts; and
- VII. Execution of such works projects for the improvement of the indigenous communities as are entrusted to it by the Executive, in co-ordination with the Directorate-General of Indigenous Affairs.

Article 5. The Institute shall consist of the Director and a Board, and such technical and administrative staff as its activities require.

Article 6. The Director of the Institute shall be appointed by the President of the Republic from among those persons who have distinguished themselves in any of the technical activities related to the Institute's functions; he will be its legal representative and the executing agent for the agreements of the Board.

Article 7. The Board shall be presided over by the Director and shall be composed of representatives of the Departments of Public Education (Directorate of Indigenous Affairs), Health, the Interior, Agriculture, Water Resources, Communications and Public Works and Agriculture, and representatives appointed by the Common Lands Credit Bank (Banco de Crédito Ejidal), the National Institute of Anthropology and History, the National Autonomous University of Mexico and the National Polytechnic Institute, one representative appointed by the scientific associations concerned mainly with anthropological studies, and representatives of the largest indigenous groups who shall be appointed and participate in the manner and under the terms indicated by the rules laid down by the present Law.

...

Article 12. The government secretariats and departments shall give the National Indigenous Affairs Institute the co-operation necessary for achieving the plan of work approved by the Board."

38. Many of IILW's activities are implemented through regional "Indigenous Co-ordinating Centres" which have their own specialized personnel, including teachers and bilingual workers. According to the Government's 1976 Report to the ILO, these regional centres provided contact with two thirds of the Indian population 40/.

39. In Panama the Local Government and Indigenous Policy Section of the Ministry of Government and Justice co-ordinates programmes concerning the indigenous populations of the country 41/. The Special Rapporteur has no further information with respect to this entity.

40. In Paraguay the National Indigenous Affairs Institute - (INDI) has been created for the purpose of co-ordinating all governmental and private endeavours related to the indigenous population. The principal organ of INDI is its National Council, which is presided over by the Minister of National Defence, and includes the Ministers of the Interior, Public Health, Justice and Labour, Education and Religion, as well as the Director of the Rural Welfare Institute and a representative of the Armed Forces. 42/ The scope of INDI's authority is described as follows in the respective implementing legislation:

THE PRESIDENT OF THE REPUBLIC OF PARAGUAY  
DECREEES

"Article 1. The National Indigenous Affairs Institute (INDI) is empowered to control, direct and co-ordinate all projects and efforts promoted by official and religious bodies, and private individuals and entities, national or foreign, for the benefit of indigenous communities; to review the projects and operations in progress, with authority not to allow them to continue to introduce such corrective measures as it deems necessary, or to allow them to continue.

Article 2. All projects or operations to be carried out in the future shall without exception require the relevant authorization of the Institute." 43/

41. One author has pointed to INDI as an example of a "basic pattern of administration ... where central bodies supervise and co-ordinate activities relating to the indigenous populations but undertake few operational activities themselves." 44/

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40/ See Swepston, loc. cit., pp. 726-727.

41/ Swepston, loc. cit., p. 727.

42/ Ministry of National Defence, Paraguay. National Report for Paraguay, VIII Inter-American Indian Conference (Mérida, Yucatán, Mexico), 17-21 November 1980. OAS Doc. No. OEA/Ser.K/XXV.1.8. CII/doc.4. 12 November 1980. Original: Spanish, p. 12.

43/ Ibid. p. 14.

44/ Swepston, loc. cit., p. 726.

42. During his visit to Peru in 1974, the Special Rapporteur established contact with an autonomous organ called the National System of Support for Social Mobilization (Sistema Nacional de Apoyo a la Movilización Social - SINAMOS). SINAMOS is a co-ordinating, planning and executive body which assumed the functions of a number of organs such as the National Community Development Office (Oficina Nacional de Desarrollo de la Comunidad - ONDC), the Peasant Communities Authority (Dirección de Comunidades Campesinas) and the Rural Organizations Authority (Dirección de Organizaciones Rurales) of the Ministry of Agriculture. It undertakes development activities and is empowered to approve any educational or assistance programmes undertaken by private organizations or individuals with regard to indigenous populations. According to article 6 of Decree-Law 19352, its objectives are the following:

"(a) Encouragement of the people's creative abilities so that they may expend their energy and potential on action for their own development, with government support.

(b) Promotion of organization of the population into dynamic functional and territorial units of a communal, co-operative or other similar nature.

(c) Encouragement and stimulation of a dialogue between the Government and the population of the country, designed to guide the conscious participation of the people in making basic national decisions, in the light of the practical situation of the country and the people's interests and common goals.

(d) Incentives for activities involving popular contribution to better rural and urban development.

(e) Encouragement of systematic linkage between government activities and services, co-ordinated among themselves, and those of the organized population.

(f) Co-ordination of support for social mobilization with reference to participation by the people in public and private sectoral action, at national and regional, zone-wide and local levels, subject to the organizational rules of the State and national planning; and

(g) Assistance in making the public administration an instrument of service to the national community, fostering a change of attitude and behaviour on the part of the public services in view of the new role incumbent upon them and calling for a mystique, training and identification with the interests and aspirations of the people."

#### 4. Official Advisory Bodies

43. Some of the governmental systems covered in the present study have also established special advisory bodies as part of the administrative process. In most cases they are provided for by statute and give official recognition to certain non-governmental organizations whose representatives, along with independent experts and representatives of indigenous populations, are sought for their advice and counsel on matters concerning indigenous affairs. These bodies exist at both the national and local level and serve either in a general advisory capacity or in regard to specific areas such as housing employment, education and discrimination. Though some advisory bodies are entirely independent, others include representatives of the appropriate governmental agencies. Examples of this type of administrative arrangement are given in the following paragraphs.

44. An official publication describes development and structure of the National Aboriginal Conference, which acts as the principal advisory body on aboriginal affairs to the Government of Australia:

" ... In November 1975, an election was held by Aborigines throughout Australia to establish the first National Aboriginal Consultative Committee, a group of forty-one Aborigines and Torres Strait Islanders elected to advise the Government on Aboriginal needs. At the request of the Committee, the second election, which was scheduled for November 1975, was deferred for nine months. Subsequently, the Government established an independent inquiry into the role of the Committee. As a result of the findings of this Committee of Inquiry, a National Aboriginal Conference (NAC) has been established composed of thirty-five members who are elected for a period of three years. Members meet annually at the national level and at least four times each year in their State or Territory as State or Territory Branches of the NAC.

The executive which meets twice a year is comprised of 10 delegates; half are elected by the members and half are nominated by the Minister. The role of the NAC is to provide a forum in which Aboriginal views can be expressed at State and national level and, in particular, to express Aboriginal views on the long term goals and objectives which the Government should pursue, the programs it should adopt in Aboriginal affairs, and on the need for new programs in Aboriginal affairs. The NAC also participates, through its entitlement to choose five of the ten members, in the work of a new body, the Council for Aboriginal Development. This Council is the body from which the Government seeks formal advice." 45/

45. In Canada according to a 1976 report by the Department of Indian Affairs and Northern Development, a Joint National Indian Brotherhood-Cabinet Committee had been established at the national level as an advisory body on major policy issues of Government-Indian relations. The agenda of the Joint Committee consists of matters proposed by either side and is the subject of detailed consideration by Joint Working Groups. The internal organization of the Joint Committee is described as follows: "To expedite and facilitate the whole process, the Joint Committee has established (a) a Joint Sub-Committee of three Ministers and three Indian leaders, and (b) a Canadian Rights Commission. In addition, there are joint working groups on specific subjects (e.g. housing, economic development) whose work so far has not required the consideration of the Joint Committee. The objective of the Joint Committee process is to enable the Government and Indian leaders to work co-operatively toward the betterment of the Indian people through joint deliberation at the policy level."

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45/ Yearbook. Australia. No. 65, 1981 (Canberra, Australia: Australian Bureau of Statistics, 1981), p. 199.

46. In 1973, the Government of Finland established an official advisory body, the Lapp Delegation, to watch over the rights of the Lapp population and to promote their economic, social and cultural progress. The functions and organization of the Lapp Delegation are described as follows by an official report:

... it can take initiatives, make proposals and give its opinion to the appropriate authorities on matters concerning:

"(a) The protection of environment and the establishment of conservation areas in the Lappish region;

(b) The embarking upon mining enterprises, the establishment of tourist and camping centres, the construction of hydro-electric power plants and regulating reservoirs and the operation of logging and ploughing and draining of swamps and other such measures in the Lappish region;

(c) The use and care of waters, the establishment of areas for fishing as a sport and the arrangement of fishing and hunting conditions in the Lappish region;

(d) The reindeer economy;

(e) The preliminary, fundamental, secondary and adult education of the Lapps;

and in other matters whenever necessary for the achievement of the purposes of this Decree.

The Lapp Delegation consists of twenty members and its term of office is four years. The Council of State appoints as members of the Delegation those twenty persons who in the election arranged among the Lapp populations have received the most votes, however, with such a modification that there shall be at least two members from each one of the four rural communes of the Lappish region. The Lapp Delegation elects from among its members a President and two Vice-Presidents. The Delegation may also appoint a Secretary and, with the permission of the Office of the Council of State, other personnel.

The Lapp Delegation assembles in the Lappish region. The Delegation has a quorum when the President or one of the Vice-Presidents and at least ten members are present. The decisions are made by a majority vote. In the case of an even vote, the President's vote is decisive."

47. In New Zealand there are several types of advisory bodies. The New Zealand Maori Council is an independent statutory body, recognized by the Government as a consultative and advisory body representing Maori opinion. The members

of the Council are representatives of the Maori District Councils, who are named by members of regional tribal executives elected by local committees. According to the Government's report, the Council functions as follows:

"Since the formation of the New Zealand Maori Council, all proposed legislation is submitted to the Council before being debated in Parliament. In addition, the Council has the right, which it exercises from time to time, to appear before the Maori Affairs Select Committee of Parliament (see under VI below) to make its views known on proposed legislation. The Council also has fairly frequent meetings with the Minister of Maori Affairs to discuss matters of policy, including the revision of current laws. Considerable weight is attached, to the views of the Council by the Government."

48. Two specialized bodies are the National Advisory Committee on Maori Education and the Maori and Polynesian Health Committee, which advise the Ministry of Education and Ministry of Health, respectively. Appointed by the Minister of Education, the members of the Advisory Committee on Maori Education include the permanent heads of the Departments of Education and Maori and Island Affairs in addition to 14 members nominated by various non-governmental organizations. More than half the members are Maoris. This Committee meets twice a year. The Maori and Polynesian Health Committee includes representatives from the Health Department and the Maori and Island Affairs Department, Maori medical men - a Professor of Social Science, a representative of the University medical schools and of the Maori Women's Welfare League. According to the Government's report, six of the members are Maori and four of them are doctors.

49. The Government of Norway has set up the Norwegian Lapp Council as an advisory body on economic, social and cultural issues concerning the Lapps. The Council is made up of eight members - all Lapps - and it is funded through the budget of the Ministry of Agriculture.

## 5. Autonomous Entities

50. Preliminary Observations. Strictly speaking, autonomous entities are so defined by statute and are endowed not only with the authority to plan and carry out their own functions, but also with an independent source of income. This type of institution is designed to encourage initiative, particularly in the area of development, while minimizing the deleterious effects associated with bureaucracy and politics. Successful in some cases, this experiment at decentralization has been less effective in others due to the inefficient allocation of resources and lack of co-ordination with national policies. Though a number of the administrative arrangements concerned with indigenous policy function with some autonomy, the information available to the Special Rapporteur is insufficient in most cases to allow a particular institution to be labelled as autonomous in the strict sense. One example of the type of body officially described as autonomous is Venezuela's State Counsel's Office for Indigenous Agriculture (Procuraduría Agraria) which is discussed below.

51. In 1971, as a part of its over-all agrarian reform policy, the Government of Venezuela established the Procuraduría Agraria - an autonomous body which represents and advises indigenous communities and farmers in regard to matters related to their rights under the agrarian laws. 46/ In 1976 it was attached to the Presidency of the Republic. 47/ Its functions are set forth as follows in an official report: 48/

"1. To ensure the fulfilment of the provisions contained in the Law on Agrarian Reform for the protection of the Indian farmers as of right.

2. To ensure the fulfilment of the norms and procedures established by the Organic Law on Agrarian Courts and Procedures, in order to serve effectively the acquired rights of these citizens.

3. To intervene at the request of the country people and the indigenous communities in judicial and non-judicial proceedings when they seek it.

4. To seek the re-scheduling of trials for which no notification has been given, in accordance with the provisions of articles 17 and 29 of the Organic Law on Agrarian Courts and Procedures.

5. To act as representatives, without need for power of attorney or surety, in all trials where the individuals mentioned in article 25 of the Organic Law on Agrarian Courts and Procedures are defendants.

6. To take appropriate action when informed of violations or transgressions injurious to the rights of the individuals referred to in article 25 of the Organic Law on Agrarian Courts and Procedures.

52. In 1979, a Baniba Indian was appointed to the post of Procurador Agrario, and in the following year two Procuradurías Indígenas were established in the Venezuelan State of Zulia and in the Amazon Federal Territory in which areas most of the indigenous population is located. A third Procuraduría Indígena was to be created for the Delta Amacuro Federal Territory and the State of Bolívar in 1981. 49/

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46/ Government of Venezuela. Report by the Office of the Venezuelan State Counsel for Indigenous Agriculture. VIII Inter-American Indian Conference, (Mérida, Yucantán, Mexico). 17-21 November 1980. OAS Doc. No. OEA/Ser.K/XXV.1.8. CII/doc. 38, 17 November 1980. Original: Spanish p. 1.

47/ Ibid., p. 2.

48/ Ibid., pp. 3-4.

49/ Ibid., p. 4.

## 6. Parliamentary Committees

53. Though technically not an administrative arrangement, specialized parliamentary or legislative committees or subcommittees may have an important role in the formulation of policy toward the indigenous populations. Examples are found in the legislative assemblies of the United States and India.

In the United States the impact of this type of committee is underlined in the following excerpt from an official report which describes the policy-making function of Congress:

"Federal courts have consistently ruled that Congress has the plenary authority to fix the terms of the United States Government's trust relationship with the Indians. Indians assert, given the historical precedent; that the breadth of this Congressional plenary power to legislate in their regard carries with it the potential danger that such power will be misused to deprive Indians of their rights, since Indians are not as strong in numbers as the non-Indian voting public in the states.

It is not the existence of the power that should be the focus of the discussion but how and when it is exercised. More than one hundred measures expressly affecting American Indian and other Native peoples have been enacted since 1975. The 95th Congress alone created 79 new laws pertaining to Native Americans. While some of these laws affect only one or a few tribes or individual Indians, many Congressional acts during the past four years represent policy statements of major significance affecting Native governments and people in the United States. Two of these acts - one establishing the American Indian Policy Review Commission and the other setting forth an Indian self-determination operating policy - were passed in the first days of 1975. Subsequently, the Congress passed important legislation addressing basic human rights and needs of Indian people in the areas of health, education, child welfare, religious freedom, economic development, land and natural resources and tribal recognition and restoration. Legislation enacted during this period follows a consistent policy line repudiating terminationist and assimilationist policies of the 1950s, removing barriers to Indian self-determination and local level control and enhancing the basic quality of life of Native American peoples.

Balanced against this progress, the House Interior Committee, in January of 1979, voted to abolish its Indian Affairs Subcommittee, which can be credited with drafting and reporting legislation affecting Indian interests in recent Congresses. As a result, Indian legislation will now be one of the many contending areas of legislative responsibility of the full Interior Committee, increasing the likelihood that fewer Members of Congress will be well versed in Indian matters. The Select Committee on Indian Affairs of the Senate, established in the 95th Congress primarily to consider over 200 progressive legislative recommendations made by the American Indian Policy Review Commission, will continue to function in the 96th Congress. These recommendations, however, remain to be considered within this Committee, and the Committee's existence in the 97th Congress is uncertain". 50/

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50/ Fulfilling our Promises: The United States and the Helsinki Final Act ....  
op.cit., pp. 150-155.



54. During the period 1968-1973, the Government of India had special parliamentary committees to examine the implementation of constitutional safeguards for the welfare of the scheduled castes and tribes.

7. Countries where no Specialized Arrangements have been found to exist

55. A number of countries have no specialized administrative arrangements for the formulation of indigenous policy but the lack of such arrangements does not necessarily represent an absence of concern for indigenous populations. Some Governments feel, however, that the indigenous population is adequately heard and served by means of regular administrative structures available to them as members of social or economic sectors or as members of the population at large.

56. The Government of Bangladesh, for example, reports that "... no group of individuals are separately treated on the basis of religion, race, caste, sex or place of origin", but that for development purposes, some regions or groups have been identified as 'backward', and "special treatment is given to these groups or regions". Over-all policy in this respect "is made and co-ordinated at Government level and implemented through the respective channels of the concerned Ministries under the over-all supervision and co-ordination of Government machinery at Sub-division District and Divisional level ...".

57. The Government of Bangladesh has further stated that:

"Though there is no special law for this population, the Government policy undertaken by the Ministry of Local Government has been conscious about the necessity of laying extra attention for the improvement of social, economic and cultural development of the tribal and Indigenous Population in the country ... According to the first five-year plan, the Government has laid greater stress and importance in extensive development of the conditions of life, work and education of this population. Primary education has been introduced and wherever possible adult education centres on voluntary basis are being established".

58. According to one observer, Argentina has no co-ordinated national programme for indigenous affairs; however, there is an entity known as the National Service for Indigenous Affairs which functions under the Ministry for Social Welfare and acts upon requests by provincial governments for the funding of projects concerning the indigenous population. 51/

59. Neither Bolivia nor Ecuador have any special arrangements, though both have substantial indigenous populations. In the case of Bolivia, one author has written that the indigenous populations "are considered part of the general rural population and activities concerning them are essentially rural development projects carried out by the Ministry of Rural and Agricultural Affairs". 52/ The Government of Ecuador

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51/ Swepston, loc.cit.; p.727

52/ Ibid., p.729. Bolivia does, however, have a Bolivian Indigenous Affairs Institute and an office of the National Community Development Service, which deals primarily with socio-anthropological studies. Other governmental entities involved with indigenous affairs are the National Council for Agrarian Reform, the Bolivian Institute for Agricultural Technology and the National Colonization Institute. See "the report for National Bolivia", VIII Inter-American Indian Conference, (Mérida, Yucatán, Mexico), OAS Document No. OEA/Ser.K/XXV.1.8, CII/document 7, 12 November 1980. Original: Spanish.

reported to the ILO in 1977 that "no programmes exist which are exclusively for systematic and co-ordinated action to safeguard the tribal populations", 53/ and an independent observer affirmed in 1980 that in Ecuador "there is no body specifically concerned with action in this field ...". 54/

60. Likewise, the Government of Denmark has stated that "the special arrangements which the national authorities have introduced for Greenland apply to all Greenland rather than selected population groups". 55/

61. According to the Government of El Salvador in its report to the VIII Inter-American Indian Conference (1980) a similar situation exists in that country: "It can be said that in the State of El Salvador there is no institution whose task is basically to look after an indigenous population grouping, attending to its needs and solving its particular problems. Rather, any action on behalf of the indigenous population is undertaken through the general social and economic development programmes implemented in the country ...". 56/

62. There is no National Indian Institute in Honduras. The National Institute of Anthropology and History in Comayaguera works in Indian affairs. The Special Rapporteur has no further information with regard to this or any other specialized administrative arrangement in this connection in Honduras.

#### C. Staff of Governmental Entities

63. The efficacy of the administrative bodies established for the formulation, co-ordination and implementation of policy toward indigenous populations may well depend upon provisions for a capable staff. As a part of the study of administrative arrangements, the Special Rapporteur has attempted to gather information which would allow him to ascertain whether the existing arrangements do tend to guarantee a qualified professional or career staff, and whether governmental policies have promoted or encouraged the hiring of indigenous personnel. Of the few countries for which information is available on these questions most indicated an awareness of the need for qualified staff members and of the desirability of the participation of indigenous personnel.

64. As regards qualifications and requirements for appointment of staff to administrative bodies in Brazil, an official publication 57/ states that persons with proven knowledge of indigenous problems will be chosen. However, a private observer maintains that qualified personnel is not always at the disposal of the Government: 58/

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53/ Swebston, loc. cit., p.729.

54/ Ibid.

55/ Government of Denmark information supplied on 21 May 1981, p.9, for the purposes of the present study.

56/ Government of El Salvador, Indigenous Policies and Strategies in El Salvador since 1972, VIII Inter-American Indian Conference (Mérida, Yucatán, México) OAS Document No. OEA/Ser.K/XXV.1.8, CII/document 11, 19 November 1980. Original: Spanish, p.11.

57/ Ministry of the Interior, INDIAI, op.cit., p.38

58/ Alejandro Marroquín, Balance del Indigenismo, Inter-American Indian Institute, Ediciones Especiales, series no. 62, Mexico City, 1972, p.223.

The basic problem of FUNAI is that it holds practically no dialogue with anthropologists. It has sought to involve the few anthropologists with experience in dealing with the Indians in its work, but it has been unable to obtain their services, first of all, because the salaries offered are too low to tempt highly qualified anthropologists to leave their present posts and join FUNAI, secondly, because they are not in agreement with the approach adopted by FUNAI, and thirdly, because the experience of the Indian Protection Service (SPI) and FUNAI has shown that the officials in charge of indigenous affairs in Brazil do not take the anthropologists' opinions into consideration, but merely give them executive tasks to perform. In SPI, on the initiative of an outstanding anthropologist, many resolutions were taken unanimously; none of them were put into practice, with the exception of short courses for the staff. Today, with the highly centralized structure of FUNAI, an anthropologist would be a mere subordinate administrative officer, and would have to carry out a line of policy he can neither believe in nor justify.

...

Coelho dos Santos, commenting on the work of the Indigenous Posts, writes: "It cannot be said that the posts in Brazil have carried out or are carrying out today an efficient and rational indigenous policy, in the sense of putting applied anthropology systematically into practice ... . In the final analysis, the reason is that the national society has regarded the Indians, individually or collectively as an obstacle to its expansion". Furthermore, seeking the sources of bureaucracy, Coelho points out that because of the poor pay, those appointed as heads of Posts are persons with no technical training, who see the job as a godsend in their desperate economic plight. Frequently the attitude of these officials is one of contempt for the Indians and abject servility towards the landowners and senior government officers; and when the latter commit abuses against the Indians, they do not dare to confront them for fear of losing their jobs, so that they really serve the exploiters of rather than defend the Indians.

...

An empirical approach to the work of the Posts is easy to find. A chief of Post has the bright idea of making the Indians sow more, since the amount sown strikes him as small. He does not know that the Indians whom he describes as "loafers" are wonderful hunters, and since by cultural tradition the land belongs to the women, the men really have no interest in sowing it. This is what happens when the official proceeding empirically is acting in good faith; but there are cases where officials act with cunning to exploit the Indian. For example, one chief of Post had a plantation adjacent to the land belonging to the Post; his partner was actually the Post agronomist. Together they decided to employ the indigenous workers on the plantation, ostensibly so that they would learn modern cultivation techniques. In fact, they continued sowing in the traditional manner, and all the profits went to the landowners. Examples of this nature are legion, so let us leave it at that".

65. As regards training relevant to the problem of indigenous populations, an official source 59/ states that FUNAI has trained experts in indigenous affairs on the basis of two months' theoretical study and three month's local training in Indian settlements and that so far four courses had been successfully completed by 176 persons.

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59/ FUNAI em números, op.cit. p.2.

66. The Government of Burma has established an Academy for Development of National Groups which offers a four-year programme for the training of teenagers for service in their respective areas of ethnic origin. As of October, 1970, it had 425 students, representing 47 ethnic groups.

67. In regard to the staffing of administrative bodies concerned with indigenous affairs the Government of Australia reports that:

"All Commonwealth and State authorities are staffed by permanent public servants. The various public service boards normally require evidence of appropriate qualifications before the appointment, transfer or promotion of any public servant. Most Commonwealth and State authorities also make special provision for the employment of Aboriginal people in Aboriginal affairs areas. Special courses of training are provided for certain key categories of staff in the Northern Territory and some States". The Government has added that "In the expansion of the Office of Aboriginal Affairs into a Department, special attention is being given to arrangements for engaging a higher proportion of Aboriginal staff. (The main difficulty in this is that few Aboriginals have the academic qualifications necessary for entry into the Public Service at the administrative level). "

68. The Government of Canada has provided the following information:

"In the Northwest Territories, direct administration is through the Government of the Northwest Territories with increased authority vested in the elected Council of the Northwest Territories, which includes native representation. Similarly the administration of local matters in the Yukon Territory is under the Yukon Territorial government which is situated in the North and includes an elected Territorial Council. These northern Councils are rapidly assuming control of local administration.

In all of those administrations, there is an accelerating policy of employing native staff people, both in the field and in central administration offices. In the Federal Department of Indian Affairs and Northern Development in Ottawa, a number of sections are now headed by Indian staff officers and in the Native Citizens Programme Group of the Department of the Secretary of State, a number of positions are filled by Indian staff officers. The Public Service Commission has a special Native Employment programme, staffed by native peoples. There is also a policy of recruiting Indian students for summer employment in the administration".

69. The Government of Costa Rica has informed the Special Rapporteur that:

"The CONAI staff are of indigenous origin. They come under the country's labour laws and they have a background of general knowledge of the Indian situation in the country. Depending on the region, they tend to be bilingual in the vernacular language and Spanish, and the qualifications demanded of them depend on the level of the work to be done".

70. The Government of Finland notes that, although there are no special qualifications established by law, the candidate's background and experience is given special consideration as a matter of practice:

"No formal qualifications and requirements for the appointment to various official committees, commissions and working groups are provided for by law. However, it is self-evident that only such persons are appointed who have necessary knowledge and experience in the matter entrusted to the body in question. This is true also as regards official bodies dealing with Lapp affairs. Their membership varies from the Governor of the Lapp Country to a reindeer man. The tenure depends on the purpose of the bodies which often have an accurately defined task. When the work has been completed, the body is suspended. The responsibility of their members is the same as that of any Government official. As regards unofficial bodies, they are autonomous and, consequently, they admit their members and elect their officers in accordance with their own statutes".

71. Inadequate and unqualified staffing has been blamed for the failure of India's development programmes among indigenous tribes. In this respect, the following factors have been stressed:

1. Poor Staffing

The government 'development' workers are non-tribals who regard placement in a tribal area as a punishment, are technically incompetent of dealing with the problems of hilly, low productivity areas, have little knowledge of local values and practices and share the Hindu prejudices against the culturally inferior adivasis .... Not surprisingly they tend to side with the non-tribal landlords, traders and money-lenders - the very people responsible in large measure for tribal underdevelopment.

2. Paternalism

Government programmes have almost totally failed to mobilize the people for their own development and in fact because of the kinds of 'development' officers sent by State Governments have alienated the majority of the tribals. The very use of the term "uplift" demonstrates the Government's philosophy of 'development'. 'Development is something done to tribals by Hindus, not a process which the tribals are actively involved in and control'.

3. Inflexibility and Insensitivity

The programmes have been imported unselectively and without modification from the Plains areas and from other tribal areas. There has been little attempt to tailor them to suit the local ecological and cultural conditions. When such plans fail, as they invariably do, blame is placed on "tribal irrationality" or "traditional conservatism", when in fact it is the rationality of the outside planners that should be questioned. 60/

72. According to an official source 61/ approximately 62 per cent of the employees of the United States' Bureau of Indian Affairs in 1972 were of Indian ancestry.

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60/ Steve Jones. Report prepared for the Anti-Slavery Society's Joint Committee for Indigenous Peoples and transmitted to the Special Rapporteur by that Society on 31 March 1977 for the purposes of the present study.

61/ United States Department of Interior, Bureau of Indian Affairs, The American Indian. Answers to 101 Questions (Washington, D.C.: 1972), pp.11-12.

In contrast, however, a non-governmental publication states that the federal Government has failed to comply with a legislative mandate to give employment preference to Indian people within the Bureau of Indian Affairs in the following terms: 62/

"... According to a report prepared for Congressman Olsen and printed in the Congressional Record December 1970, there are striking differences between the GS level or salary level of Indian and non-Indian employees within the Bureau. On the basis of a data sample collected by the Bureau in each of the eleven area offices on or about 1 June, 1970, the following statistics were compiled:

- 31.8 per cent of the Indians were GS 4's while only 6.33 per cent of the non-Indians fall into this category.
- 9.20 per cent of Indians are employed at the GS 9 level while there are 33.64 per cent non-Indians at this level.
- 14 per cent of the Indians who are wage board employees earn between \$5,500 and \$5,999 while only two per cent of the non-Indians are in the same earning bracket.
- Only 7.5 per cent of the Indian wage board employees have reached a salary level of more than \$10,000 but more than 32 per cent of the non-Indians earn more than \$10,000.

Since the issuance of Congressman Olsen's report, the question of Indian preference in employment within the Bureau of Indian Affairs has been adjudicated by the federal courts on at least two separate occasions. Supportive of the inference drawn in Olsen's report that non-Indians are often promoted to supervisory positions when Indians are available, in the case of Freeman vs. Morton (Civil Action No. 327-71) the plaintiff party sought declaratory relief against the defendant party, Secretary of the Interior and others with responsibility for administering the BIA. The plaintiffs request asked the court to make a determination of whether or not she was entitled to preference in respect to promotion, reassignments to vacant positions within the BIA and assignments to available training programmes by virtue of her status as an Indian employee of BIA. Despite a decision favouring the plaintiffs position in regard to promotions and reassignments to vacant positions within the Bureau, the issue was raised again in the case of Mancari vs. Morton. Suing on behalf of herself and all other Bureau of Indian Affairs employees who are less than 25 per cent Indian blood and therefore do not satisfy the Bureau's definition of a member of the Indian race, Mancari contended that the expanded policy of Indian preference established under the Freeman case was violative of their rights under the Civil Rights Acts of 1964 and 1972. It was the holding of the circuit court in this later case that the preference statutes must give way to the Civil Rights Acts. On appeal to the Supreme Court the Indian preference was upheld on both statutory and constitutional grounds ..".

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62/ American Indian Law Newsletter, vol. 7, No. 11. Special issue containing the American Indian Response to the United States Government Response, pp. 47-49.

D. Funding of Governmental Entities

73. The success of any administrative entity depends to an important degree upon whether its funding is sufficient to allow it to carry out its functions in an effective manner. Within the limitations of the information furnished to him, the Special Rapporteur has examined the sources and control of funds at the disposal of administrative entities concerned with indigenous affairs, as well as the nature and quality of those resources. In the case of governmental or officially recognized bodies, the principal source of funds is the general budget, though in some cases a particular source of revenue has been earmarked for those purposes, and often provision has been made for the acceptance of private contributions. Programmes of the necessary complexity and required variety cannot, however, be sustained on the basis of private contributions alone, and rarely does a particular source of revenue provide for a stable programme or permit the steady growth of the programmes.

74. Most of the administrative arrangements examined in the course of this study were found to be organized under a particular government department or ministry and, as dependencies of those bodies, to be subject to the normal administrative and budgetary controls. Even where relatively recent figures are available, however, the quality of those funds is extremely difficult to judge. An increase in funding, for example, may be insufficient to cover the loss due to inflation: an apparent decrease in the amount made available to programmes affecting indigenous populations may be due to the completion of a seeding project included in the preceding budget. On the other hand, a steady increase in funding over a period of years would most likely reflect that Government's continuing or sustained interest in its indigenous populations, but the over-all amount says nothing about how effectively the funds are being utilized or whether those funds are being expended in the real interests of the indigenous population.

75. In some cases, non-governmental sources have complained of insufficient funding for projects they consider important or have criticized the employment of these funds. However, the Special Rapporteur has been able only to take note of such cases in view of the paucity of data at his disposal.

76. In the paragraphs that follow, the Special Rapporteur presents the information relevant to this portion of the study.

77. In several countries the funds assigned to the governmental entities dealing with indigenous affairs have never been sufficient, if account is taken of the magnitude of the work to be done.

78. Without wishing to imply in any way that this type of problem is limited to the examples given or to the countries mentioned below, the examples serve as useful indicators of the difficulties which exist.

79. In some cases the effective reduction in the Budget due to inflation and other factors have never been made up. In other cases, the adjustments that have been made have been utterly inadequate. The following paragraphs written by an author discussing these aspects of indigenous affairs in Peru are illustrative of this type of difficulty.

80. The writer says that the budget of the Peruvian Indigenous Affairs Institute is 10 million soles, which "is ostensibly the same as in previous years, but with the currency devaluation and the rise in the cost of living, the 10 million soles today are barely equivalent to 40 per cent of what they used to be worth." 63/

81. In other cases, the global amount of budgetary allocations and other funds available to the entities dealing with indigenous affairs have not been increased in time in due proportion and may have even been further reduced or limited, thus reducing even further the possibility of meeting the cost of salaries and the minimal number of essential projects.

82. In this respect, what an author has written regarding the budget of the National Indian Institute of Guatemala seems to illustrate this type of situation. He reproduces the following chart, which is indicative of the Institute's budgetary problems: 64/

BUDGET OF THE NII  
(in quetzales)

Year	Total amount	Salaries and wages	Percentage of total
1965	91 090.00	32 160.00	35.30
1966	86 410.00	30 480.00	34.09
1967	83 128.00	34 480.00	36.66
1968	55 480.00	30 480.00	54.93
1969	55 128.00	32 290.00	55.71
1970	56 495.00	32 400.00	57.35

83. In this regard, the same writer has discerned the following trends: 65/

"The finances of the Institute have not only been very scanty, but also subject to constant ups and downs. In the early budgets, posts were eliminated, others were created and the salaries and wages of the entire staff were reduced; in the more recent budgets, an over-all spending limit is set, and then reduced by more than 20 per cent.

"These data are quite revealing; for an indigenous population of at least 2 million persons, the State assigns the ridiculously low sum of about \$60,000. In addition, between 1965 and the present year, the budget has been reduced by 38 per cent. Currently, all the State does is keep up staff salaries and leave a mere 25,000 quetzales for office costs and so-called "practical tasks". Little, very little, can be done with such limited funds."

84. This writer adds on the same subject: 66/

"The NII budget is incredibly limited. But what is more serious is that NII does not have the security of knowing that the funds assigned to it at the beginning of a fiscal year will be maintained over the rest of the year. This situation calls for immediate change,

"If NII does not have sufficient funds to carry on a modicum of activities, it is inevitable that mere routine work and, along with it a bureaucratic attitude will emerge; nevertheless, it is gratifying to note that despite so many adverse factors the staff, who have not received a single salary increase for many years, make an effort to carry out a few useful activities, either research or social work."

64/ Ibid., p. 134.

65/ Ibid.

66/ Ibid., pp. 134-135.



85. In other countries, the bulk of the funds destined to financing the operation of the activities of the entities dealing with indigenous affairs comes from indigenous lands and other property, as administered for those purposes - in some cases - by the very same entity. The case of Brazil's FUNAI is considered to be illustrative of this type of arrangement.

86. In addition to the typical sources of income, such as government allocations, grants and donations, Brazil's FUNAI has a unique source known as the "renda indígena" which is explained and commented upon by an outside observer as follows: 67/

"... Article 42 places the administration of the Indigenous Patrimony in the hands of FUNAI, and article 43 gives FUNAI control over the application of the "renda indígena", the product of the economic exploitation of the indigenous patrimony referred to in article 24 above. Article 43, paragraph 1, reads:

'the "renda indígena" will preferably be reapplied in lucrative activities or in programmes of assistance to the Indian'.

"Into the obscure pot of the "renda indígena" go also the proceeds of the sale of Indian artefacts and handicrafts, sold by FUNAI through their network of shops in the Brazilian capitals and on the larger airports.

"Thus the product of the wealth of their own lands and labour is effectively removed from the control of the Indians, and there is no mechanism established in the law to put into practice the provisions of the "exclusive usufruct" and "full exercise of direct possession" referred to in articles 22 and 18 above. The "lucrative-activities" of article 43 may be defined freely by FUNAI.

"Furthermore, article 45 gives the Minister of the Interior the rights to the subsoil in indigenous territories, including the powers to allow third parties to research in the areas and exploit the wealth therein. Provisions in this article for compensation to the Indians is left vague, but it is stipulated that such compensation will go into the "renda indígena"

"the participation in the result of the exploitation, the compensation and the product resulting from the occupation of the land will revert to the benefit of the Indians and will form part of the renda indígena."

(emphasis mine).

"The internal contradictions of FUNAI on the structural level reflect the basic ambiguities in official government indigenous policy as revealed by the Indian Statute. In the first place, FUNAI has generated an enormous bureaucracy which is based in Brasilia and absorbs 80 per cent of its budget, leaving only 20 per cent for its 11 regional delegacies and es.175 local Indigenous Posts, the administration of its parks and reserves and work which would be of real importance to the Indian, such as in the field of preventive medicine - principally vaccination against introduced infectious diseases - relevant education according to the particular level of acculturation of the group, socio-cultural rehabilitation in the case of groups which have been dispersed and decharacterized by "white" encroachment, and of course its primary responsibility of preventing the invasion of Indian Lands through the demarcation and the subsequent protection of those territories.

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67/ Anna Presland, "Reconquest. An account of the Contemporary Fight for Survival of the Amerindian Peoples of Brazil", in Survival International Review, 4:1 (Spring 1979), p. 28.

"In the second place, this bureaucracy includes organs or entities which act in ways antagonistic to the Indians' interests and to the over-all objectives of FUNAI which are supposedly to protect and to promote those interests. Some, like the DGPI (Departemento General do Patrimonio Indigena) and PRODC (Programa de Rancioamento do Desenvolvimento de Comunidades) are funded by FUNAI's budget, while others, such as ASPLAN (Assessoria de l' Departamento de l' UNAI) and COAMA (Coordenacao de Amazonia) referred to by Padre Lasi as the Trojan Horse sent into FUNAI, operate with funds from PIN. All of these bodies are concerned exclusively with economic development in Indian territories, in which the participation of the Indian is restricted to the utilization of his labour in his own land, and which are based on national economic development criteria which as we have seen are antagonistic to the well-being of the Indian and indeed to his very survival."

87. Another observer provides further details with regard to FUNAI's income and the use to which some of it is put:

"The Brazilian Government considers that the Indians are not yet capable of managing the lands they live on. In the meantime, this function is carried out by FUNAI, which runs stock-raising and farming undertakings in these areas, with the Indians as labourers. The income produced from such activities and from other uses of these lands is administered by the Programme for Financing Community Development (PRODEC), which reinvests it in development projects in these areas.

"PRODEC also administers income resulting from the use of these lands by non-Indians, which indicates that the right of exclusive possession by the indigenous populations may be limited. Lands within the formal limits of reserved areas are under lease to non-Indians for stock-raising, although the Indian Statute states that 'native land cannot be the object of leasing or renting or any juridical act or negotiation that restricts the full exercise of direct possession by the native community or the forest-dwellers'. However, the Statute does allow such leases as are already in operation to continue to run 'for a reasonable time' at FUNAI's discretion. In its 1976 report, the Government stated that all such cases were under review.

"Lands reserved for Indians may also be leased by non-Indians for mining and extractive processes, though the Government has reported that only prospecting has been authorized so far and no extractive permits have yet been granted. Prospecting and mining may be licensed, but only if the cultural level attained by the Indians in the area concerned makes it permissible." 68/

88. In other countries the funds available come from a variety of sources. For example, in Costa Rica the Government reports that CONAI's funds are subject to the control of the Controller-General, the judicial system and the Law on Financial Administration. The sources of those funds are described in article 8 of Law No. 525:

"The patrimony of the National Commission on Indigenous Affairs shall consist of:

(a) The subsidy which was regularly given to the former Board for the Protection of the Aboriginal Races of Costa Rica under the Law of the Regular Budget of the Republic;

(b) Special contributions granted by the State and autonomous and semi-autonomous institutions of the Republic;

(c) The assets of the former Board for the Protection of the Aboriginal Races of Costa Rica;

(d) Donations by individuals, foreign States, international agencies and foundations, and any other bodies;

(e) Indigenous names, symbols and designs;

(f) Proceeds from the tax on the rights granted for the commercial use of the indigenous names, symbols and designs.

89. The funds for Mexico's National Indigenous Affairs Institute come primarily from budgetary allocations of the central Government, with some income from productive or commercial activities engaged in by the INI and resources provided by international organs. During the period 1962-1970, INI's share of the budget averaged approximately 2 million dollars per year with little change from one year to the next. <sup>69/</sup> According to one estimate, if the total amount of 26,275,000 pesos or of \$2,102,000 had been spent for the benefit of the Indian population in 1966, the expenditure per Indian would have been approximately 13.76 pesos or \$1.10. <sup>70/</sup> in 1970, some 51 per cent of the Institute's income was utilized for salaries. <sup>71/</sup> The table and graph below, however, show a considerable and steady increase of budget for the period 1972-1980. <sup>72/</sup>

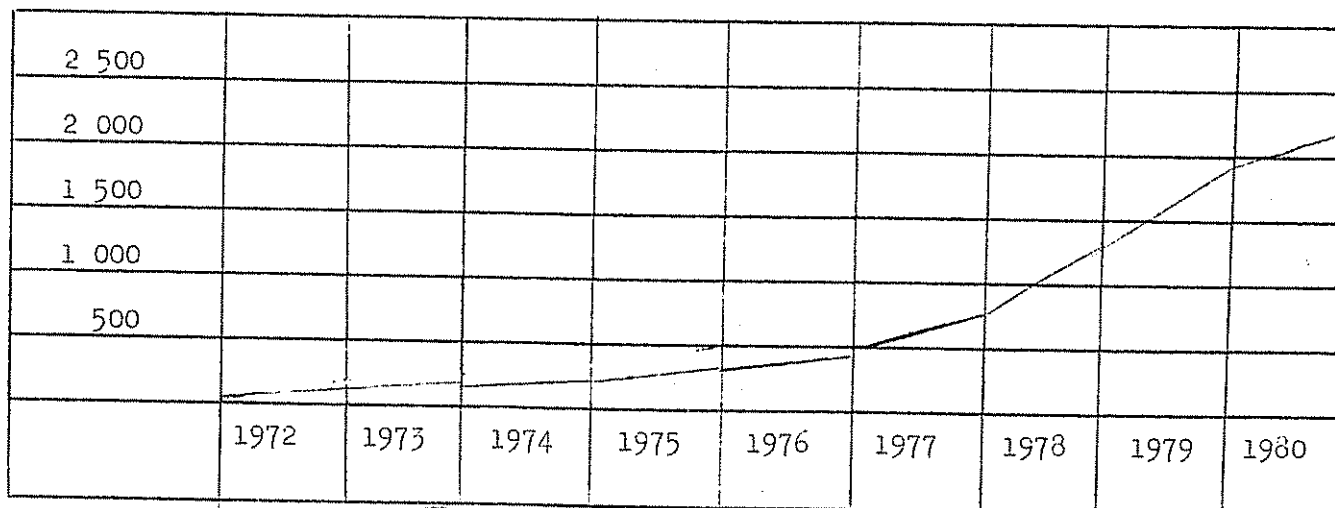
Total budgetary resources spent during the period 1972-1980

1972	1973	1974	1975	1976	1977	1978	1979	1980 *
85.7	147.7	198.2	367.6	466	755.3	1 265.0	1 902.6	2 046.4

Source: Programming and Budget Unit.

\* Authorized in millions of pesos.

Graph showing the increase in NII budgetary resources <sup>73/</sup>



<sup>69/</sup> Alejandro Marroquín, op.cit., pp. 103-105.

<sup>70/</sup> Ibid.

<sup>71/</sup> Ibid.

<sup>72/</sup> National Report for Mexico, VIII Inter-American Indian Conference, op.cit., p. 51.

<sup>73/</sup> Ibid., p. 53.

90. The Commonwealth Government of Australia has adopted a novel system for the sustained funding of State projects in aboriginal affairs. Its Aboriginal Advancement Trust Account, as well as normal sources of funds, are described as follows:

"Shortly after the referendum in 1967 the Commonwealth Government established an Aboriginal Advancement Trust Account, comprising initially \$10 million. Funds are appropriated to the trust Account annually through the national Budget. Each year a States Grants (Aboriginal Advancement) Act provides for the disbursement of funds from the Trust Account to the various States in support of their Aboriginal affairs activities.

"In addition, the Commonwealth has developed its own programmes in various fields, funding these either through the Aboriginal Advancement Trust Account or through the votes of the appropriate Commonwealth Departments. This financial year the budget appropriated some \$22.5 million to the Aboriginal Advancement Trust Account, of which \$14.5 million was disbursed to the States by the States Grants (Aboriginal Advancement) Act, 1972. On 10 January 1973 the new Government authorized the appropriation of an additional \$10.85 million to the Trust Account, increasing the total funds provided this financial year to some \$33.4 million.

"... \$24.5 million was provided in the 1973 financial year for expenditure on Aboriginal affairs in the Northern Territory, \$0.305 million (in the votes of the Department of Labour) for special employment programmes for Aboriginals (see Section VIII, 6, Employment), \$3.085 million (in the votes of the Department of Education) for Aboriginal Secondary and Study Grants and for special projects in the Northern Territory (see Section VIII, 5, Education); and \$0.15 million (in the votes of the Department of Health) for similar special projects in the Northern Territory. The total proposed Commonwealth provision in respect of Aboriginal affairs for 1972/73 was thus \$55.3 million, which the new Government has increased to \$66.150 million.

"... the various States provide funds towards their Aboriginal affairs programmes from their own resources. It is expected that in this financial year the States will provide some \$12 million of their own funds."

91. The Government of the United States has stated that the budget of the Bureau of Indian Affairs is "about \$550 million annually, the largest portion of these funds support educational programmes for indigenous children with 25 per cent or more indigenous blood. These programmes range from kindergarten through grants for college training, including post-graduate levels. They also include funding for dormitory operations for a large number of Indian children whose circumstances make it impossible to go to a local school. The Bureau of Indian Affairs administers programmes involving trust land and funds, welfare services (other than that provided by Federal and State social insurance programmes), vocational training and placement, housing credit, and services to improve the land resource, such as technical advice and services concerning roads, forests, range, irrigation, mines, and so on".

92. An official publication noted that in the 1974 fiscal year, of the total budget of \$310.9 billion, \$583,585,000 was appropriated for the Bureau of Indian Affairs. <sup>74/</sup> The Government has noted that this is not the total amount available, however, for

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<sup>74/</sup> United States Department of Interior, Bureau of Indian Affairs, op.cit., p. 11.

the Indian community. The Departments of Health, Education and Welfare, Commerce, Housing and Urban Development, as well as agencies such as the Farmers Home Administration, Office of Minority Business Enterprise and Small Business Administration have programmes specially directed towards the indigenous population.

#### E. Mixed Entities and their Functions

93. Within some systems there are administrative arrangements which may be described as "mixed entities", meaning that they include independent experts or members of the indigenous community as well as representatives of the Government. Some mixed entities whose function is primarily advisory, were referred to previously in this chapter under the subheading "Official Advisory Bodies". It is useful to note, however, that other mixed entities of an executive nature have been charged with the administration of trust funds or specialized programmes. The nature of these entities ensures that indigenous concerns will be heard at the policy-making level and institutionalizes indigenous participation in decisions which have a direct impact upon indigenous communities.

94. Six examples of this type of entity are the Board of Maori Affairs, the Maori Purposes Fund Board, the Maori Education Foundation, the New Zealand Maori Arts and Crafts Institute, the National Advisory Committee on Maori Education and the Maori and Polynesian Health Committee, which are described by the Government as follows:

##### "The Board of Maori Affairs

This is a statutory body which is responsible for laying down policy to be followed by the Department of Maori and Island Affairs in relation to Maori land development, Maori housing and other aspects of the work of the Department. The Board comprises both official and private members. The Chairman is the Minister of Maori Affairs and the official members are the Secretary of Maori and Island Affairs, the Director-General of Agriculture, the Director-General of Lands and the Valuer-General. There are three private Maori members who are appointed on the nomination of the Minister and one Maori member appointed on the nomination of the New Zealand Maori Council. This Board is an important decision-making body which at present has five Maori members (including the present Minister) and four official members.

##### "The Maori Purposes Fund Board

This is a statutory body which administers a fund set aside for the promotion of Maori arts, literature and social advancement. The Chairman is the Minister of Maori Affairs. The ex officio members are the four Maori Members of Parliament, the Secretary of Maori and Island Affairs, the Director-General of Education, the Director-General of Health and five appointed members who are experts in the Maori social and cultural field. At present, four of these are Maori, making a total Maori membership of eight out of twelve.

"Maori Education Foundation

The Maori Education Foundation was set up by statute in 1961. The funds of the Foundation were subscribed by the public with an equal contribution by the Government. In addition, all income of the Foundation receives a dollar for dollar subsidy from the Government each year. The present capital is about \$2.5 million. This fund is administered by a Board of Trustees comprising a Chairman appointed by the Government, the Director-General of Education, the Secretary of Maori and Island Affairs, the Officer in Charge of Maori Education in the Education Department and four other trustees comprising:

- (i) A Maori Member of Parliament nominated by the other Maori Members;
- (ii) A nominee of the New Zealand Maori Council;
- (iii) A nominee of the Maori Women's Welfare League;
- (iv) One other nominated by the Minister of Maori Affairs.

All these nominated trustees are Maoris. The Foundation and fund came into being because of a disparity in the achievement of Maori school children and because, until recently, a disproportionate number of Maori children were, mainly for economic reasons, leaving school at the end of the compulsory period of education (which is uniform for all children throughout the country). The fund is used therefore to overcome this problem and to encourage bright Maori children to proceed further in the education field. There has been a striking improvement since the Foundation began to make financial grants to enable Maori students to continue. The fund is also used to promote pre-school education and research. Its operations will be referred to later.

"New Zealand Maori Arts and Crafts Institute

This body was established by statute in 1963. The city of Rotorua in the North Island of New Zealand contains one of the world's outstanding thermal areas which is visited by up to 200,000 tourists every year. This area, comprising about 54 hectares, was owned by the Government. Under the statute of 1963 the whole area was vested, without payment, in a newly constituted Maori Arts and Crafts Institute. The income derived from the tourist industry is used by the Institute to maintain the thermal area and to operate an Arts and Crafts Institute in Rotorua where Maori youths are given a three-year course of instruction in traditional Maori woodcarving, and shorter courses of instruction are provided for women in weaving and textile arts. The Institute also proposes to establish a school of Maori music and dancing in the near future. The Board of Trustees who administer the

Institute comprise the General Manager of the Government Tourist and Publicity Department, the Secretary of Maori and Island Affairs, a nominee of the New Zealand Maori Council, a nominee of the local Maori community, a nominee of the Rotorua City Council (at present the Deputy Mayor, who is a Maori) and two others nominated by the Institute. At present there are four Maoris and three non-Maoris on the Board. The Director and the entire staff of the Institute are Maoris. Further comments on the work of the Institute are at pp. 39-40 below.

"National Advisory Committee on Maori Education

This Committee was established about 10 years ago by the Minister of Education to consider the shortcomings which were then found to exist in Maori education, and to advise the Government on the best means of improving the situation. The members are appointed by the Minister of Education and comprise the permanent heads of the Departments of Education and Maori and Island Affairs plus 14 other members nominated by various bodies concerned with the education of Maori children, such as the New Zealand Maori Council, the Maori Women's Welfare League, education boards and teachers' organizations. More than half of the members are Maori. The Committee meets at least twice a year and from time to time sets up ad hoc sub-committees to deal with specific aspects of Maori education. The only costs of the Committee are travelling allowances and accommodation expenses. These are met by the Government.

"The section on Education later in this paper gives some measure of the extent of improvement in education now brought about as a result of the work of the Committee and other causes.

"Maori and Polynesian Health Committee

This was set up by the Minister of Health some years ago to advise the Government on any health problems of particular relevance to and importance amongst the Maori and any resident Polynesian people in New Zealand. The Committee includes representatives of the Health Department and the Maori and Island Affairs Department, as well as Maori medical men, a Professor of Social Science, a representative of the University medical schools and a representative of the Maori Women's Welfare League. Six of the members are Maori, four of them are medical men.

"Co-ordination of the activities of the mixed governmental and non-governmental bodies described above is achieved by the fact that they are all responsible to the Minister of Maori Affairs, and that the Secretary of Maori and Island Affairs is an ex officio member of all of them."

F. Non-Governmental Entities and their Functions

1. Introductory Remarks

95. In most of the countries under study, non-governmental organizations (NGOs) participate to some degree in the policy-making or implementation processes. Though some have been incorporated into the formal structure by means of officially-recognized advisory or consultative bodies, others exert an influence on official policy by lobbying with governmental bodies, by shaping public opinion, or by assuming responsibility for concrete programmes, particularly those which the Government is either unwilling or unable to undertake. Some Governments have encouraged the development of these organizations by contributing to their funding on a regular basis. At the same time, it is generally accepted that the independence of these organizations must be assured if they are to be genuinely engaged in fulfilling their important role as spokesmen for indigenous concerns and as representatives of indigenous views, particularly when they are constituted on the basis of an indigenous membership.

96. These non-governmental organizations may be classified on the basis of their membership of the level at which they operate and of the scope of their activities or ultimate objectives. In the past, such organizations were usually composed of non-indigenous citizens who acted in what they considered to be the best interests of the indigenous population. In recent years, the most significant trend has been the emergence of non-governmental organizations which are entirely indigenous in their membership and which conceive their functions as the representation and promotion of indigenous views, interests and preferences. Although there are some organizations of mixed membership, it is now possible to speak of indigenous and non-indigenous NGOs.

97. Some are active only locally, but often such organizations are represented at the national and the international levels as well. The most recent development has been the representation of indigenous NGOs at the international level.

98. Some NGOs are involved in the full spectrum of indigenous affairs; others are formed for the attainment of a specific objective such as the preservation of an indigenous culture or the establishment of an educational fund. And finally, some organizations - particularly those of predominantly non-indigenous membership - may be distinguished on the basis of an underlying objective such as religious or political proselytization, humanitarian goals, or academic interests which may not reflect the concerns or the interests of the indigenous populations themselves.

99. It goes without saying that no effort has been made to identify or enumerate the thousands of different organizations active in the different countries, a task that would be beyond the scope of the present study. This part has been drafted to reflect as much information as the limitations of the data available to the Special Rapporteur would permit, and with the limited purpose of conveying an idea of the main types of entities and activities existing today.

100. Since the information at the disposal of the Special Rapporteur is incomplete, only some examples of non-governmental organizations and their participation in the relevant processes are set forth in the paragraphs below.

101. Two broad subdivisions have been made grouping together what have been called "secular entities" in order to differentiate them from organizations of an avowed religious character which have been grouped together under the heading "religious entities". The classification of the entities into groups has no special significance and serves the sole purpose of presenting the relevant material in an orderly fashion.



102. Attention will be focused first on secular entities, classified into two groups: those active inside a country only, which will be called "domestic organizations" and those active in several countries and having an international character on account of their organization and their activities, which will be called "international organizations".

103. The very scanty material on "religious entities" will be presented under three subgroups: "religious organizations active among society at large", those formalized into a "Mission system" and the "Summer Institute of Linguistics". These groups are, again, ad hoc groupings made only for the purpose of the presentation of the relevant material.

## 2. Secular Entities

### (a) Domestic Organizations. Some Examples

104. The Government of Canada has provided the following information with regard to three non-governmental organizations of indigenous membership which are active in native affairs in that country:

"By 1970, the National Indian Brotherhood was formed, uniting organizations of status Indians in the provinces and territories. The National Indian Brotherhood pursues an aggressive policy in pursuit of its aims to 'co-ordinate the efforts of the provincial and territorial organizations' and to 'provide a framework through which the Indian people of Canada may forcibly present their views on important subjects or issues such as Indian Treaties, aboriginal and other rights and seek solutions to common problems'.

"The Métis and non-status Indians pursued a policy of organizing ... [Indians] outside the Indian Act. Organizations were formed in most of the provinces and in the two Northern territories. In 1971 representatives of these groups formed the Native Council of Canada. According to its stated aims, 'the Council works with federal government agencies and departments, parliamentarians, the National Indian Brotherhood, Inuit Tapirisat of Canada (Eskimos) and all other organizations to achieve the goal of full native participation in the mainstream of Canada's social, cultural and economic life'.

"The Eskimos began organizing largely through help received from the (non-Indian) Indian-Eskimo Association, and has now formed Inuit Tapirisat with representation from across the northern region. It was incorporated in November 1971, and the membership is composed of individuals of the Eskimo race, including individuals of mixed Eskimo and white parentage. In addition, membership is extended to representatives of affiliated native associations. Its stated aims are to unite the Eskimo people, and its twofold objective is stated as follows:

To help preserve Inuit (Eskimo) culture and language and promote dignity and pride in Inuit heritage; and

to assist the Inuit in their right to full participation in the sense of belonging to Canadian society and to promote public awareness of those rights.

All three organizations are funded by the Department of the Secretary of State, but the impetus has come from vigorous leadership among the native groups themselves. In the fiscal year 1971-1972 total government appropriations provided \$1,334,000 for these associations".

105. An example of a non-governmental organization dedicated to economic and educational objectives and composed exclusively of members of the indigenous population is the National Association of Indigenous People of El Salvador (ANIS), founded in El Salvador in 1978: 75/

"According to field data, the Association comprises approximately 12,000 persons from the different zones of the country, West, Centre and East. The only requirement is that a person applying for membership should come from one of the population groups regarded as indigenous or be from 'indigenous' stock.

"One of the economic objectives of ANIS in 1978 was to obtain State financing for the purchase and cultivation of 512 manzanas of land, to be worked in the form of a co-operative. It also planned to foster skilled handicrafts through the work of production and marketing co-operatives, and to found a school where literacy programmes and teaching would be carried on in Nahuat.

"Towards the end of 1978 (30 October), ANIS found that a credit had been approved by the Banco de Fomento Agropecuario for the purchase and financing of 86 manzanas of land. The bank lent it 290,000.00 colones. This loan is expected to be reimbursed in 18 years, at the rate of 57,070.00 colones a year. ANIS has gathered together 120 persons for this economic scheme, officially called the 'Sensotate Agriculture and Animal Husbandry Production Co-operative, Ltd.'.

"The lands are now beginning to be worked. The co-operative receives technical assistance and advice from IISAFOCOOP (Salvadorian Institute for Co-operative Promotion), BIBECO, and above all, the Banco de Fomento Agropecuario.

"The handicrafts and Nahuat school schemes have not yet materialized."

106. Regarding private bodies active in Lapp affairs, the Government of Finland has reported that after registration they are recognized as juridical persons and have the possibility of receiving a State subsidy, as do all organizations having a public significance. As examples of non-governmental organizations, the Government notes the following:

"The oldest unofficial organization, the Cultural Association of Lapland was established in 1932 to promote the preservation of the Lappish language and culture. In order to improve the economic, social and cultural conditions of the Lapps, the Federation of the Lapps was established in 1945. Another economic organization for those Lapps who carry on reindeer breeding was established in 1970.

"...

"... every three years since 1955, the Lapps residing in the Nordic countries have had common conferences to deal with their problems. In 1956 they established a special body, the Nordic Lappish Council, which is convened at regular intervals to promote their common interests in all these countries. The Lapps themselves in each of these countries elect their representatives to the meetings of the Council."

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75/ Government of El Salvador. Indigenous Policies and Strategies in El Salvador since 1972, VIII Inter American Indian Conference (Mérida, Yucatán, Mexico), 17-21 November 1980, OAS Document No. OEA/Ser.K/XXV.1.8, CII/doc.44, 19 November 1980. Original: Spanish, pp. 15-16.

107. A specialized non-governmental organization, of indigenous composition, is The Maori Women's Welfare League, Inc., whose functions are described as follows by the Government of New Zealand:

"This is a Maori women's organization with branches throughout the country. It is an incorporated society completely independent of Government control, but receives some Government financial assistance towards administration costs. The organization is purely voluntary and is concerned with matters affecting Maori women and children and the general social welfare of the Maori people. The League is recognized by the Government as a body speaking for Maori women and is often consulted by the Government. The League also initiates discussions with the Minister of Maori Affairs on topics within its field."

108. The principal body active in Lapp affairs in Sweden is the Svenska Samernas Riksforbund (S.S.R. or National Union of Swedish Lapps). The members of the S.S.R. are Lapp villages and societies which elect their representatives to a National Congress. Its basic objectives are to promote and safeguard the economic, social, administrative and cultural interests of Swedish Lapps, with special regard to the continued existence and sound development of reindeer husbandry. The Government has stated that the S.S.R. has no official status:

"It is an association formed by the Lapps themselves. It is for the members ... to decide on the conditions for appointments for posts [within the organization], on responsibilities and training. Rules may be laid down in the internal rules of the [organization]. There is no state control ...

"The National Union of Swedish Lapps is partly financed from members' fees, but in addition to this, the Union receives financial support from the Government. During the last fiscal year, the State subsidy amounted to 400,000 Swedish crowns. The amount is taken from the Lapp fund, which is a special fund set up to promote the interests of the Lapps."

109. In the United States, non-governmental organizations of a specialized type include tribal interest law firms such as the Native American Rights Fund (NARF) founded in 1970:

"These organizations supplement the work of the Justice Department, which Indians assert has inadequately enforced and protected their rights. Furthermore, Indians assert that conflicts of interest arise within various departments with divergent agencies perspectives on Indian interests. For example, disputes over land and resources in Indian country sometimes bring into play the BIA, the Bureau of Land Management, and the Fish and Wildlife Service of the Interior Department. Moreover, in cases where there are no direct conflicts of interest, Indians assert that political factors and the personal biases of Justice Department functionaries against taking the Indian side in disputes hinder the enforcement of Indian rights." 76/

110. In response to a request by the Special Rapporteur and under the title "Information about National Indian Organizations", the Government of the United States sent a list of non-profit organizations that (1) serve a pan-Indian purpose or profession, (2) do not restrict services or membership to just part of the United States, and (3) consist of at least several different tribes. This list is reproduced below:

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76/ Fulfilling our Promises: The United States and the Helsinki Final Act, op. cit., pp. 151-152.

The American Indian Historical Society works to preserve the philosophy, human values, and languages of Indians and to promote their culture, education and general welfare. As the only Indian publishing house in the United States, it disseminates publications on the history and culture of American Indians.

The American Indian Lawyers Training Program, Inc. is an Indian founded and administered non-profit corporation. Since its inception in 1973 AILTP has designed and implemented programmes to promote tribal sovereignty and self-determination through provision of training resources to Indian attorneys, law students, and advocates committed to serving the legal exigencies of Indian people.

The American Indian Movement is an activist, grassroots organization for Native American people whose purpose is the survival of tradition, unity, and justice for everyone.

The American Indian and Alaskan Native Nurses Association's purposes are:  
(1) to promote optimum health among Indian people; (2) to encourage a more equitable number of American Indians within the nursing profession through recruitment and development in nursing education; (3) to educate both the Indian and non-Indian population about the specific health needs of Indian people; and (4) to recommend proper solutions to the health needs of Indian people.

The Americans for Indian Opportunity is a national Indian advocacy organization that assists tribes and individuals in areas such as natural resources development, justice, and education. It also acts as a liaison between tribes and government agencies, private industry, universities and the media.

Arrow, Inc., Foundation is a non-profit charitable and welfare organization dedicated to direct aid, training, and research for American Indians.

Association of American Indian Physicians facilitates an exchange of ideas and information about American Indian health matters and strives to preserve Indian culture and foster Native American medical practices. Their major emphasis is on health and medical careers recruiting.

The Coalition of Indian Controlled School Boards assists Indian groups that want to play a stronger role in the education of their children.

The Council of Energy Resources Tribes seeks to promote the general welfare of Indian people through protection, conservation, control, and prudent management of Indian-owned energy resources. CERT functions as a forum for 26 member tribes for sharing ideas and experiences as a mechanism for tribes to speak collectively on energy-related matters. It is a source of technical assistance to member tribes on energy-related matters.

The Indian Rights Association helps American Indians to secure the rights guaranteed to them by the United States Constitution, treaties, and statutes, and supports their right of self-determination.

The Institute for the Development of Indian Law is an Indian legal research and educational organization for all American Indians.

The National American Indian Court Judges Association seeks to improve and upgrade the American Indian court system throughout the United States through legislation, professional advancement, and continuing education.

The National Congress of American Indians is the oldest and largest Indian organization representing Indian tribes and the only one which can lobby Congress for Indian legislation.

The National Indian Council on Aging is a national advocacy organization for Indians that provides training and technical assistance to older Indians through tribal programmes.

The National Indian Education Association is an Indian education advocacy organization that focuses on technical assistance and information dissemination to the Indian population.

The National Indian Youth Council is involved in civil rights activities, operating education and employment programmes, and action research.

The National Tribal Chairmen's Association is an association that represents 190 federally recognized Indian tribes on matters relating to the Congress and the United States Government and Federal agencies.

The Native American Rights Fund is a national Indian legal programme serving Indian tribes, groups, and individuals in cases of major significance. Emphasis is placed on cases involving tribal sovereignty, tribal natural resources, and treaty rights.

The North American Indian Women's Association is a non-profit educational association and is organized to promote among North American Indians: (1) improved home and family life and community; (2) improved health and education; (3) inter-tribal communications; (4) awareness of Indian culture; and (5) fellowship among all people.

The United Indian Planners Association is a non-profit professional organization for individuals employed as socio-economic development planners by American Indian tribes and organizations. Their aim is to locate and overcome problem areas in planning that deter development among Native Americans.

111. Paraguay provides examples of several types of non-governmental organizations which are active in indigenous affairs. The Association of Indigenous Groups (Asociación de Parcialidades Indígenas - A.P.I.), of exclusively Indian membership, was founded to bring about greater unity among the indigenous populations of the country and to work for the protection of Indian rights as well as for socio-economic progress. Among its functions it is empowered to make proposals to the Government with regard to indigenous policy and to co-operate in the definition of that policy. <sup>77/</sup> Another private organization, controlled by non-Indians, but open to anyone who wishes to participate, is the Indigenous Association of Paraguay (Asociación Indigenista del Paraguay - A.I.P.), which is styled as a philanthropic entity for the purpose of promoting research and practical programmes for the benefit of the indigenous populations. Its Statute authorizes it to propose laws and programmes for the protection of indigenous tribes. <sup>78/</sup> The Anti-Slavery Society

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<sup>77/</sup> Ministry of National Defence, Paraguay. National Report for Paraguay VIII Inter-American Indian Conference (Mérida, Yucatán, México), 17-21 November 1980, OAS Doc. No. OEA/Ser.K/XXV.1.8 CII/doc.1, 12 November 1980. Original: Spanish, pp. 16-17.

<sup>78/</sup> Ibid., pp. 18-19.

reported in 1976 that "By governmental decree, the association owns 335 hectares of land occupied by some 500 Maita Indians near Asunción, and exercises administrative control and supervision of economic activities of the village". <sup>79/</sup> A third type of non-governmental organization is the Indian-Mennonite Co-operation Service (Asociación de Servicio de Cooperación Indígena Mennonita - ASCIM) which includes both Mennonite and indigenous leaders in its Administrative Council. According to its Statute, the general objectives of ASCIM are to promote the settlement of Indians into stable communities and to assist them in their social and economic development. <sup>80/</sup>

(b) International Organizations. Some Examples

112. Emphasis will be placed on international non-governmental organizations having consultative status with the Economic and Social Council of the United Nations among which there are many that have concerned themselves with the plight of indigenous populations and have made statements in that connection to several United Nations bodies dealing with human rights questions, mainly before the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Some examples would include: the Anti-Slavery Society for the Protection of Human Rights, the Minority Rights Group, the International Commission of Jurists, the Women's International League for Peace and Freedom, to name only some of the most active in this respect.

113. Very important in this context are the international NGOs directly representing the concerns, interests, views and preferences of the indigenous peoples of different countries in the different areas of human rights that have been under discussion in those bodies. Three such NGOs constituted exclusively on the basis of an indigenous membership having consultative status with ECOSOC are: the International Indian Treaty Council, <sup>81/</sup> the World Council of Indigenous Peoples <sup>82/</sup> and the Indian Law Resource Center <sup>83/</sup>. All three organizations have been very active at the international level and have represented the views of their constituent organizations and communities before different United Nations bodies dealing with human rights questions. They have actively participated in the two International NGO Conferences dealing with indigenous populations in 1977 <sup>84/</sup> and in 1981. <sup>85/</sup>

3. Religious Entities

(a) Introductory Remarks

114. In many of the countries included in this study, Catholic and Protestant missionaries are actively involved with the indigenous population either as individuals or as organizations, or as a part of a formalized system also involving civil administrative functions delegated by the State. It is important to distinguish between the missionary activities of religious groups or ministers who work among society at large and those who are part of a mission system.

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<sup>79/</sup> Anti-Slavery Society. Information provided on 3 September 1976 in connection with the present Study.

<sup>80/</sup> Ministry of National Defence, National Report for Paraguay, op. cit., p.20.

<sup>81/</sup> See chap. IV, para. 90 and foot-note 12 thereto.

<sup>82/</sup> Ibid., paras. 60 - 62 and 127 - 130.

<sup>83/</sup> An organization founded in 1978, now having consultative status, included in the Roster.

<sup>84/</sup> See chap. IV, paras. 31 - 113.

<sup>85/</sup> Ibid., paras. 151-154. The Final Statement and the Four Commission Reports will be included in a further annex to chapter IV in the printed version of the present study.

115. This section will be divided into three subsections dealing, respectively, with religious organizations and activities among society at large, the mission system and the Summer Institute of Linguistics.

(b) Religious organizations and activities among society at large

116. Although their principal objective is religious proselytization, religious groups who work among society at large often engage in varied activities which may range from the preparation of linguistic studies to the creation of programmes designed to promote health, education or socio-economic progress. As a general rule, their activities are subject to governmental authorization and are usually spelled out in a written agreement between the representatives of the missionary group concerned and the Government. Despite this formality, no civil functions are formally delegated by the State to these entities which are merely authorized to carry out specified activities under at least nominal State inspection and supervision.

117. Whether these arrangements serve the best interests of the indigenous community will vary from case to case, but again the critical factor would lie in whether such arrangements constitute an imposition upon the indigenous population. There is a large variety of examples of such groups and activities. The following organization has been chosen to show how they may come to approximate a kind of administrative arrangement in view of the nature of their non-religious activities and the need for governmental authorization.

118. The Maryknoll Fathers in Guatemala are one example of those religious groups who work in society at large. The following report on their activities shows how a broad approach to proselytization may have an economic and social impact in indigenous communities: 86/

"They have been carrying on their work for more than 27 years in the Department of Huehuetenango, where approximately 70 per cent of the population is indigenous. In this area they have 13 radio schools, 28 credit co-operatives, three farm co-operatives and two co-operatives for miscellaneous products. The work done with the Indians by the Maryknoll Fathers is somewhat different from the indigenous development work we have called official. Its basic objective, a logical one from the priestly point of view, is catechization and the saving of souls. Specifically with respect to the indigenous person, they try to kindle an awareness in him, in other words to make him feel he is a human being and that, therefore, he has certain rights and should fight to achieve them. The methodological approach in this case is educational. The Fathers maintain bilingual schools attended by Indian and Ladino-children. In this they differ from many State schools, which prefer the Ladino child because he has no Spanish language problems. They have also arranged boarding facilities for children, both Ladinos and Indians, who have to cover long distances, for upwards of five hours. Ladino parents hesitated at first to send their children, not wanting them to share sleeping quarters with Indian children; but because of the insistence of the Maryknoll Fathers, they had to agree to allow the two ethnic groups to live together. There are in addition two experimental schools where only the indigenous language is spoken.

"The co-operatives appear to have been successful, earning a good deal of money which they do not know how to invest. In actual fact, the success would appear to be due predominantly to sound advice and management, which are not

handled by Indians. However, since economic promotion and, in general, indigenous development work are not based on an anthropological knowledge and are conducted on the basis of an empirical knowledge of the area where the Fathers operate, the entire scheme has an air of superficiality and failure to tackle the most important social problems of the indigenous population."

(c) The Mission System

119. Under this system, a religious group is not only formally authorized by the State to proselytize among a particular indigenous population usually in an isolated area but is also given some degree of civil responsibility for that population. In some cases, Governments have delegated authority to missionaries, who have assumed certain lower level functions of government. It is this combination of civil and religious authority which gives this system its administrative character, in the sense discussed in this chapter.

120. Since the sixteenth century Catholic missionaries have been very active among indigenous populations in the Americas. With nationhood, those activities were continued in many countries, particularly in isolated areas by means of Concordats between the Holy See and the host Government.

121. These agreements provided for the co-operation of the Church with the State, which delegated certain important functions to Mission authorities in the Mission territory, without any consultation being undertaken at any time with the indigenous populations which inhabited that territory and thus would be affected by these arrangements.

122. Without entering into the complexities of the matter, which is worthy of special analysis which cannot be undertaken in the present study, it should be pointed out here that this type of arrangement may function and has indeed functioned in the past in such a manner as to impose a particular religious, cultural and socio-political orientation upon indigenous populations which have not requested it or agreed to it in any way.

123. It should be noted, however, that this system has been largely discontinued. Where it still exists, Governments have often been called upon to increase their supervision of the system in order to ensure co-ordination with governmental programmes and objectives. The questions of the basic freedom of indigenous populations to control their own lives and the lack of consultation with these populations, which are directly affected, remain open.

124. The denunciation of the historical failure of the missionary task as well as the analysis and the resulting characterization of the mission system made by the First Barbados Conference (Bridgetown, Barbados, 25-30 January 1971) must be borne in mind. <sup>87/</sup> The recommendation made by this Conference for the discontinuation of this system and the support of, and contribution to, the cause of indigenous

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<sup>87/</sup> World Council of Churches. The Situation of the Indian in South America. Contributions to the Study of Inter-Ethnic Conflict in the Non-Andean Regions of South America. Geneva, 1972, pp. 376-381. (English version.) The part relating to "The Responsibility of the Religious Missions", appears on pages 378-379. (English version.)



self-assertion and liberation from exocentric influences held to be necessary as interim measures should also be recalled in this connection. The relevant statements of the First Barbados Conference in this regard will be found in chapter IX dealing with fundamental policy towards indigenous populations.

125. Account must also be taken of the resolution of the XLII Congress of Americanists (Paris, 2-9 September 1976) concerning a new definition by the Churches of their position in relation to the indigenous communities and rejection by the latter of intervention of a missionary nature, "that is, paternalistic, catechizing and becoming involved in the life of the indigenous communities", the disappearance of the concept and word "mission" and the proselytizing, catechizing or expansionist schemes of the non-indigenous society (resolution 20, items 1 and 2). 88/

126. The following historical summary of the arrangements between the Church and the Government of Colombia exemplifies the nature of those agreements and underlines some of the problems of recent years: 89/

"In Colombia, the relevant statute provides that 'the general legislation of the Republic shall not apply to savages who are being brought to civilised life by the Missions. In consequence, the Government, in agreement with the ecclesiastical authority, shall determine the manner in which these developing societies shall be governed.' Section 2 provides that indigenous communities which are already civilised, but live on reservation lands, are also excluded from the scope of general legislation and are to be governed according to special laws. Under a second act, the Government delegated its civil, penal and judicial authority to the Catholic Church in regard to areas containing nonintegrated forest-dwelling Indians. A decision of the Supreme Court of Justice on May 14, 1967, held this provision unconstitutional, ruling that the Government could not thus surrender complete authority over a segment of its citizens, but confirmed that there was no legislation which did apply to the populations excluded under the 1890 Act. The legal status of the Indians is also affected by the successive 'mission agreements' which have been concluded between the Government and the Vatican since 1888 to regulate the manner in which the Church deals with the indigenous populations under its control. Earlier agreements had confirmed the delegation of authority to the Catholic Church, and had put what became known as the 'mission territories' exclusively under the educational, political and religious control of the missions. This had obvious implications for the opportunity of the indigenous peoples of these areas to enjoy fully the civil and political rights accorded to the rest of the country's citizens. The most recent agreement (the Concordat approved by the Congress in 1974) has somewhat modified the absolute control exercised by the missions, and the ILO Committee of Experts has asked the Government to clarify the legal and practical situation of these populations."

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88/ See chapter IV, para. 140, i and x, and the corresponding note 28.

89/ Svepston, loc. cit., pp. 723 - 724.

127. The following is another example in point. The Venezuelan Government promulgated a law in 1915 to regulate the functioning of religious missions among the indigenous population. The objective and development of this system in Venezuela have been described as follows: 90/

"The Venezuelan government appeared to be moving towards acceptance of responsibility in regard to the problem of the Indians when it promulgated the Ley de Misiones in 1915. In virtue of this law the Venezuelan nation delegated to the missionaries the task of 'converting and drawing into civil life the native tribes and groups which still exist in different regions of the Republic ...'. The rules for the implementation of this statute appeared in 1921. Successive additions to them gradually endowed the missions with even greater concessions regarding the control of native tribes and their territories and also regarding the course to be mapped out for them in order eventually to incorporate them in the national life. The missions were organized in vicariates to suit the regions of the country with Indian inhabitants, and the vicariates assumed direct responsibility to the national government. In 1922 the first contract under this law was concluded with the Caroni Mission. This comprises a large part of Eduardo Bolivar State and the Delta Ainaruro Federal Territory. On 20 April 1937 the second of these agreements was signed with the Pla Sociedad Salesiana, whose mission-centres cover the Amazonas Federal Territory. On 17 March 1944 the third agreement was signed with the Capuchin Franciscans for the regions of Perija and Goajira, in the State of Zulia.

"The delegation of protection and education of the Indians to the missions was the first concrete and practical step taken by the State during the whole period of the Republic's existence. Nevertheless very little control was effectively possessed by the missionaries over the vast Indian zone entrusted with its lands and inhabitants to their protection. In the first 38 years of the present century, for example, Amazonas Federal Territory suffered periodical invasions commanded by Creole leaders who captured Indians, reduced them to submission and took them to Creole villages as unpaid labour."

128. In this connection account should be taken of the resolution of the XLI Congress of Americanists (Mexico City, 2-8 September 1974), concerning the derogation from Venezuela's Missions Law (Ley de Misiones) (resolution III, item 5). 91/

(d) The Summer Institute of Linguistics (SIL)

129. The Summer Institute of Linguistics (SIL), a Protestant group connected with the Wycliffe Bible Translators, Inc., has worked with the indigenous populations of a number of the countries considered in this study. Its immediate objective is to translate the Bible into indigenous languages: its trained linguists establish contact with isolated tribes, study their language, develop a written alphabet, and translate the Bible into that language as a basis for further proselytization. As a result of its work, the SIL has entered into contractual relationships with some Governments to produce bilingual teaching materials. 92/ In at least two

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90/ Nelly Arvelo de Jiménez. "An Analysis of Official Venezuelan Policy in Regard to the Indians", in The Situation of the Indian in South America, op. cit., pp. 31-32.

91/ See chapter IV, para. 140, h and i.

92/ Swepston, loc. cit., pp. 741-742. The author cites as examples the Governments of Panama, Brazil and Bolivia.

countries, Bolivia and Peru, it has been given a more important role in the education of forest-dwelling Indians, becoming involved in teacher training in Bolivia and in the administration of the System of Bilingual Education for Indians in the forest regions of Peru. 93/ On the other hand, the Government of Panama terminated its relationship with SIL according to an official 1976 report because its work did not correspond to the Government's concepts of bilingual education needs. In 1977, a similar programme undertaken with FUNAI in Brazil terminated with SIL's expulsion from the Indian areas. 94/ At the same time, this organization has come under attack from some Indian groups. The report of Forum I of the VIII Inter-American Indian Conference asserted that the SIL functions characterized it as an imperialist instrument for penetration, espionage and repression of indigenous populations, which prepares the way for capitalist exploitation of natural resources. 95/

130. In this connection it should be noted that the XLII Congress of Americanists (Paris, 2-9 September 1976), accepted in a resolution the indigenous community's charge that some missionary groups and other supposedly scientific groups of various kinds devoted to religious activities or research, are agents seeking to infiltrate, ideologically influence and destroy the culture of the native peoples of the Americas (resolution 22, para. 3). 96/

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93/ Ibid., pp. 745-746.

94/ Ibid., p. 743.

95/ Ibid., p. 745, and "Forum: Indigenous Movements and Indian Studies" VIII Inter-American Indian Conference, p. 8.

96/ See chapter IV, para. 140, i and x, and in particular, the corresponding note 28.

