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### DISCRIMINATION AGAINST INDIGENOUS POPULATIONS

Report of the Working Group on Indigenous Populations  
on its sixth session

Chairman/Rapporteur: Ms. Erica-Irene A. Daes

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\*/ The outline is issued separately in document  
E/CN.4/Sub.2/1988/24/Add.1.

\*\*/ The list is issued separately in document E/CN.4/Sub.2/1988/24/Add.2  
(English only).

## INTRODUCTION

### Mandate

1. The creation of the Working Group on Indigenous Populations was proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 2 (XXXIV) of 8 September 1981, endorsed by the Commission on Human Rights in its resolution 1982/19 of 10 March 1982, and authorized by the Economic and Social Council in its resolution 1982/34 of 7 May 1982. In that resolution the Council authorized the Sub-Commission to establish annually a Working Group on Indigenous Populations to meet for up to five working days before the annual sessions of the Sub-Commission in order to:

(a) Review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions to the Sub-Commission, bearing in mind the report of the Special Rapporteur of the Sub-Commission;

(b) Give special attention to the evolution of standards concerning the rights of indigenous populations, taking account of both the similarities and the differences in the situations and aspirations of indigenous populations throughout the world.

### Participation in the session

2. By decision 1987/113 of 4 September 1987, the Sub-Commission decided on the following composition of the Working Group on Indigenous Populations at its sixth session: Mr. Kwesi B.S. Simpson; Mr. Miguel Alfonso Martínez; Mr. Danilo Türk; and Ms. Erica-Irene A. Daes. Due to changes in the membership of the Sub-Commission, the outgoing Chairman of that body, in consultation with the experts from the respective regional groups, appointed Ms. J.S. Attah and Mr. Tian Jin to join the Working Group. In the absence of Ms. Attah, the outgoing Chairman of the Sub-Commission in consultation with the members of the Working Group appointed Ms. Christy Mbonu, the alternate of Ms. Attah on the Sub-Commission, to serve on the Group at its sixth session.

3. The session was attended by Mr. Alfonso Martínez, Ms. Daes, Ms. Mbonu, Mr. Tian Jin and Mr. Türk.

4. The following States Members of the United Nations were represented by observers: Argentina, Australia, Bangladesh, Bolivia, Brazil, Burma, Canada, China, Cuba, Cyprus, Denmark, Finland, France, Greece, Guatemala, Honduras, Iceland, India, Indonesia, Japan, Mexico, New Zealand, Nicaragua, Norway, Perú, the Philippines, Senegal, Sri Lanka, Sweden, Turkey, the United Kingdom, the United States of America, and Venezuela. The Holy See was also represented by an observer.

5. The following national liberation movement was represented by an observer: Pan Africanist Congress of Azania.

6. The International Labour Office was represented by an observer.

7. The following non-governmental organizations (NGOs) in consultative status with the Economic and Social Council were represented by observers:

(a) Indigenous Peoples: Consejo Indio de Sud-América (CISA), Four Directions Council, Grand Council of the Crees (of Quebec), Indian Law Resource Centre, Indigenous World Association, International Indian Treaty Council, Inuit Circumpolar Conference, National Aboriginal and Islander Legal Service Secretariat, National Indian Youth Council, and World Council of Indigenous Peoples.

(b) Other: Amnesty International, Anti-Slavery Society for the Protection of Human Rights, Arab Lawyers Union, Baha'i International Community, Commission of the Churches on International Affairs of the World Council of Churches, Defence for Children International, Fédération Internationale de Terre des Hommes, Friends World Committee for Consultation - Quakers, International Association of Penal Law, International Baccalaureate Office, International Commission of Jurists, International Federation of Human Rights, International Federation of University Women, International Federation of Women Lawyers, International Fellowship of Reconciliation, International Human Rights Internship Programme, International League for the Rights and Liberation of Peoples, International Movement for Fraternal Union among Races and Peoples, International Organization for all forms of Racial Discrimination, Minority Rights Group, Mouvement contre le Racisme et pour l'Amitié entre les Peuples, Muslim World League, Pax Christi, Procedural Aspects of International Law Institute, Rädda Barnen International, Survival International, Women's International League for Peace and Freedom, World Association for the School as an Instrument of Peace, World Federation for Mental Health, World Peace Council, and World University Service.

8. The following indigenous peoples' organizations, as well as other organizations and institutions, were represented at the session and furnished information to the Working Group with its consent.

(a) Indigenous peoples' organizations: Ainu Association of Hokkaido, Alianza Internacionales Inca (Perú), Alianza de Profesionales Indígenas Bilingües, Asociación Interétnica de Desarrollo de la Selva Peruana (AIDESEP), Asamblea de Autoridades Mixe Mexico, Centro de Culturas Indias Perú, Cheyenne Nation, Assembly of First Nations, Chitakolla Center, Coalition of National Aboriginal Organizations, Comisión "Paz y Autonomía" (Nicaragua), Comisión Pueblos Com. Indiq. Oriente Bolivia, Comité de Unidad Campesina de Guatemala, Comité Exterior Mapuche, Confederación de Nacionalidades Amazónicas del Perú (CONAP), Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana (CONFENIAE), Congreso General Guaymí, Conseil Algonquin de l'Ouest de Quebec (Algonquin Nation), Consejo Asesor Hondureño para el Desarrollo de los Etnias Autóctonas, Consejo Indio de la Cuenca Amazónica, Consejo Regional Indígena Tolima Colombia (CRIT), Consejo Coordinador Naciones Indias Argentina, Consultative Assembly of Minority Peoples of the Philippines (CAMPP), Coordinadora de Cuenca Amazónica, Coordinadora Regional de Pueblos Indios de Centro América (Mexico and Panama), Coordinadora Tunasaropa (Surinam), Coordinadora Regional de la Mujer Indígena, Ermineskin Nation, Federation of

Saskatchewan Indian Nations, Four Nations of Hobbema, Free Papua Movement (OPM), Gull Bay Indian Band (Canada), Haudenosaunee Six Nations Iroquois, Hopi Nation, Homeland Mission 1950 to South Maluccas, Indian Council of Indigenous and Tribal Peoples, International Organization of Indigenous Resources Development, Karen, Kechua (Ecuador), Lil'wat Nation, Louis Bull Nation, Mapuche Admapu, Métis National Council, Miskitu, Misurasata (Yatama), Montana Cree Nation, Mountain Work Committee, Movimiento Cooperativista Guatemalteco, Movimiento Juventud Aymara, Movimiento de la Juventud Kuna, Movimiento Revolucionario Tupaj Katari de Liberación de Bolivia, Nahva Amazonia, Native Spiritual Culture Councils, Navajo Nation, Ngati Raukawa (Aotearoa), Ngati Te Ata (Aotearoa), Nordic Sami Council, Nordic Sami Institute, Organización Indígena Yanama (Colombia), Pare Hauraki (Aotearoa), Partido Indio de Liberación, Paul Treaty Nations, Perú Kechua, Prairie Treaty Nations Alliance, Pueblos Unidos, Rangitane (Aotearoa), Runanga O Ngati Awa (Aotearoa), Runanga O Ngati Porou (Aotearoa), Samson Cree Nation, Treaty 6 Chiefs, Tupaj Katari (Bolivia), 12 Oktober Manifest (Surinam), Union of British Columbian Indian Chiefs, Union of New Brunswick Indians, Waitangi Action Committee (Aotearoa), Wayamu (Surinam), and White and Indian Band Canada.

(b) Other organizations and groups: Aboriginal Law Centre - University of New South Wales, Association for the Support of North American Indians, Center for World Indigenous Studies, Comité Belge-Amérique Indienne, Diffusion Inti (France), Foundation for Native American Culture - Musiro (Netherlands), Fourth World Center for the Study of Indigenous Law, Gesellschaft für Bedrohte Völker, Haut Commissariat Environnement et Développement Belgique, Incomindios (Switzerland), Independent Commission for International Humanitarian Issues, Informationszentrale für Nordamerikanische Indianer, Institut für Interkulturelle Zusammenarbeit, Institutum Europoeum, International Scholars for Indigenous Americans, International Work Group for Indigenous Affairs (IWGIA), Islamic African Relief Agency, Koordinatie Werkgroepen Inheemse Aangelegenheden, Service International pour les Droits de l'Homme, Shimin Gaikou Center, Université Itinéraire du Retour, Verein zur Unterstützung Nordamerikanischer Indianer, Werkgroep Inheemse Volken.

9. In addition to the above-mentioned participants, approximately 30 individual scholars, experts and observers attended the meetings.

10. All in all, approximately 380 persons took part in the session.

#### Election of Officers

11. At its first meeting, on 1 August 1988, the Working Group by acclamation reelected Ms. Erica-Irene A. Daes as Chairman/Rapporteur.

#### Organization of work

12. The Working Group held 10 public meetings from 1-5 August 1988.

13. At its first meeting, the Working Group considered the provisional agenda contained in document E/CN.4/Sub.2/AC.4/1988/1. The Chairman/Rapporteur proposed the inclusion of a new agenda item entitled "Outline of the study on treaties, agreements and other constructive arrangements, between States and indigenous populations". The agenda, so amended, was adopted unanimously.

14. The Working Group decided to devote four meetings to item 4 on review of developments, four meetings to item 5 on standard-setting activities, one meeting to item 6 on the outline of the treaty study, and one meeting to item 7 on other matters.

#### Documentation

15. Documents issued prior to the session and other written statements submitted to the Working Group are listed in Annex IV to this report.

#### Adoption of report

16. The Working Group unanimously adopted the present report.

### I. GENERAL DEBATE

17. At the first meeting of the Working Group, the Deputy-Director of the Centre for Human Rights, Mr. K. Nyamekye, made an opening statement in which he explained the Working Group's mandate and the many ongoing activities in the field of indigenous rights falling within the Group's agenda. These include the drafting of standards, the outline of the study on the significance of treaties, agreements and other constructive arrangements between States and indigenous populations, the possible proclamation of an International Year of the World's Indigenous Populations, the upcoming seminar on the economic and social relations between indigenous peoples and States, activities proposed under the Second Decade for Action to Combat Racism and Racial Discrimination, the now operational Voluntary Fund for Indigenous Populations, and the ongoing partial revision by the International Labour Conference of the Indigenous and Tribal Populations Convention, 1957 (ILO Convention No. 107).

18. Following her reelection for the fourth time as Chairman/Rapporteur of the Working Group, Ms. Erica-Irene A. Daes in her introductory statement welcomed Ms. Mbonu and Mr. Tian Jin as members of the Group. She also expressed her deep appreciation and thanks to the two outgoing members, Ms. Gu Yijie and Mr. Kwesi B. S. Simpson, and praised their supportive and constructive participation in past sessions of the Group.

19. In describing the tasks awaiting the Working Group's attention during the week-long session, the Chairman/Rapporteur requested the participants to bear in mind the Group's full and hectic schedule and to keep their interventions as brief and concise as possible. In this context, she referred with special appreciation to the Indigenous Peoples' Preparatory Meeting which took place in Geneva during the week immediately preceding this session. She observed that these meetings, bringing together several indigenous organizations, greatly facilitate the Group's activities through the clarification of issues and consolidation of positions.

20. Prior to and during the Working Group's session, a considerable volume of reports, studies and other written materials of governmental, non-governmental and indigenous origin was received by the Secretariat. These

materials are listed in Annex IV to the present report. Members of the Group stated that this flow of information, with regard to the various items on the agenda, was of great value to their work.

21. In the course of the debate references were made to recent visits by the Chairman/Rapporteur of the Working Group to Australia and New Zealand at the invitation of the National Aboriginal and Islander Legal Services Secretariat (NAILSS) and the Ngati Te Ata tribe. Her reports of these journeys, prepared in her personal capacity and submitted directly and on a confidential basis to the parties concerned, were likewise noted during the debate. The Australian Government delegation commented that the report identified both the problems and the Government's commitment to overcome them. NAILSS presented the report to the Working Group with the suggestion that it was a balanced, valuable and educative resource.

22. The Permanent Secretary of the Department of Aboriginal Affairs of Australia, Mr. Charles Perkins, addressed the Working Group during its sixth session.

23. Mr. Bruce Elijah of the Haudenosaunee Six Nations Iroquois Confederacy made a special presentation to the Working Group of the Two Row Wampum Belt Agreement. In so doing, he explained that this Agreement is a living model of how two separate distinct nations can coexist in friendship, harmony and peace, each with its own Governments, laws and traditions and linked by trust, honour and respect.

24. In her closing statement, the Chairman/Rapporteur extended the Working Group's particular appreciation to the International Service for Human Rights and the Indigenous Peoples Center for Documentation, Research and Information (DOCIP) for the technical secretariat services they had provided to indigenous representatives throughout the session.

25. The Chairman/Rapporteur also expressed her approval and appreciation to the Information Service of the United Nations Office at Geneva for Background Press Release HR/2207 of 29 July 1988, entitled "Reunion of the Working Group on Indigenous Populations", for a briefing organized for non-governmental organizations on 1 August 1988 and for a press conference held on 5 August 1988. Speaking on behalf of the Group, she reiterated the importance of publicity and public attention to the Group's activities and concerns; furthermore, she appealed to the mass media for continued support for the mobilization of public opinion for the protection and promotion of indigenous rights.

#### II. REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

26. In her introductory statement on this item, the Chairman/Rapporteur underlined the importance of this permanent item on the Working Group's agenda. She said it was so both in its own right because of the information provided and the debate generated between all the parties in the conference room and also because it allowed the Group to identify and understand problems and issues which should be addressed in the draft standards under preparation.

27. The significance of this agenda item was indeed underlined by most speakers. The view was expressed that the Working Group should explore formal and official ways in which indigenous peoples could carry on this useful dialogue with the Group's members between its sessions. The need for such an ongoing dialogue was said to be essential, not only for indigenous well-being and the general respect for human rights, but also for the preparation of a draft declaration on indigenous rights truly reflecting indigenous concerns and aspirations, which would in this way contribute to the realization of indigenous rights throughout the world.

28. As at previous sessions, the Chairman/Rapporteur recalled that the mandate of the Working Group, as established by Economic and Social Council resolution 1982/34, did not authorize it to examine specific complaints or communications for the purpose of making recommendations or taking decisions thereon. Furthermore, she emphasized that criticism of the foreign policies of Member States, when these did not affect indigenous affairs, was not within the mandate of the Group.

29. An increasing number of governmental observers informed the Working Group about recent legislative, judicial, administrative and other measures adopted to regulate, protect and promote indigenous rights, including civil, cultural, economic, social and political rights. Mention was made of ongoing negotiations and dialogue between Governments and indigenous peoples aimed at improving relations and guaranteeing better protection of human rights. In this context they referred to historical circumstances and other conditions which had turned indigenous peoples into one of the most vulnerable sectors of society and expressed the willingness of their Governments to take further steps towards the solution of these problems.

30. After providing a historical account of the colonization of the indigenous peoples of his country, a governmental observer outlined the progress made in recent years concerning this people's aspirations to self-determination. Home rule legislation had been enacted transferring extensive control to the autonomous government over all areas except foreign policy, security affairs and the judicial system which remain the sole responsibility of the central Government. With regard to land and natural resources, he described a compromise reached during the negotiations leading up to the home rule legislation which had resulted in a joint commission with mutual veto rights.

31. A governmental observer referred to a major development underway in his country by way of the establishment of a national commission which will provide for a co-ordinated national program, including an indigenous council structure that would decide policy and spending priorities at each level of the commission structure. This structure would give aboriginal people a major decision-making role in the future direction of aboriginal policy and administration in his country. The proposed commission structure, he said, had involved the most extensive community consultations ever undertaken by the Government.

32. One governmental observer described the unity and harmony of the various groups living in his country. This had been established through a social



contract by which these groups decided by their own free will to form a union after gaining independence from colonial rule. Seven states and seven divisions had been constituted under the State constitution in which the principle of equality of these groups and fundamental rights of every citizen were enshrined. Regular elections had been held since 1974, resulting in the full representation of indigenous groups at all levels of State organs and administrative bodies, from the lowest village or ward level up to that of the council of State.

33. Another governmental observer referred to a historical treaty between the indigenous people and the non-indigenous community of his country. He stated that various practical measures had been designed to take greater account of indigenous wishes and to improve the official machinery concerned with indigenous affairs. Special programmes had been introduced and developed in areas such as health, housing, labour, education and the provision of assistance to indigenous people in developing entrepreneurial skills and establishing business and commercial undertakings. He further stated that his Government was committed to a policy approach which recognized the desirability of direct indigenous control over their own economic and social affairs, with funds and administration being devolved from the central authorities. This policy was two-fold: (1) to ensure that existing structures give proper recognition to indigenous rights and special needs; and (2) to encourage steps to examine indigenous claims relating to historical injustices or misunderstandings and, whenever possible, to arrive at equitable solutions. The Government also aimed at establishing an administrative structure to meet these objectives and to provide real scope for participation by indigenous communities. To these ends, a new ministry of indigenous affairs with policy-making rather than functional responsibilities would be established and responsibility for indigenous needs given to mainstream departments of State. Claims are considered by a tribunal which was set up in 1975 and given an enlarged mandate in 1985. The tribunal had recently been empowered to order the return to successful indigenous claimants of lands held or even subsequently sold by state-owned enterprises. It had recommended this year that the Government negotiate with the indigenous tribes concerned on questions of the conservation and utilization of commercial fisheries.

34. In another country, a new constitution had been adopted very recently, providing for the recognition and promotion of indigenous rights within the framework of national unity and development. These provisions foresee the creation of autonomous regions and the recognition of the rights of indigenous cultural communities to their ancestral lands in order to ensure their economic, social and cultural well-being. Furthermore, they provide for the application of customary laws governing property rights in determining the ownership and extent of ancestral domain. The observer called on non-governmental and indigenous observers alleging violations of indigenous rights in his country to submit documented complaints to the national commission on human rights. Another governmental observer informed the Working Group that extensive consideration was being given to aboriginal customary law. In this connection, he indicated that the courts had frequently been confronted with the problem of determining to what extent they should pay regard to aboriginal customary law in the administration of civil and criminal justice.

35. A governmental observer denounced unprovoked attacks and atrocities by terrorist elements on tribal and non-tribal inhabitants in indigenous areas in which several persons including women and children had been killed. He stated that the existence of a state religion by no means implied the turning of the country into a theological state. On the contrary, he said, specific legislative provisions emphasized the complete freedom of the members of all other religions in their religious practices. He further stated that his Government had constituted trust funds for the maintenance and upkeep of places of worship of all religions.

36. The Working Group was informed about the return of some 40,000 indigenous refugees to their country of origin over the past few years. The governmental observer stated that those who returned were, in accordance with cease-fire agreements, allowed to retain their arms and assume responsibility for security in their communities as autonomous units of the national militia. This was seen as implementation of the autonomy law now enshrined in the national constitution. The law guarantees local and regional governments as well as local management of natural resources and land tenure. She also informed the Group that regional intergovernmental accords contain a section on refugees and displaced persons, including commitments to facilitate the repatriation, resettlement and protection of voluntary returnees. She asserted, however, that the Governments of the region and the refugees needed more international assistance. The representative of an indigenous organization reported similar findings from her recent mission to observe the repatriation of indigenous refugees.

37. The constitution of another country, it was stated, contained specific provisions for the recognition and protection of existing aboriginal rights, including those acquired by way of land claims agreements. While working towards the objective of a constitutional amendment containing indigenous self-government, the observer Government was also proceeding with other self-government initiatives. In this context, about 70 proposals covering about 280, or almost half, of the indigenous groups in the country had been received from these indigenous communities. As a matter of policy the Government encouraged the peoples concerned to take greater control over their own affairs. At the suggestion of one band, the Government had proposed legislative amendments which would allow all bands to levy local property taxes on reserve lands used for commercial purposes. The indigenous communities had thus obtained increased potential for more effective community planning and for the enhancement of their economic development prospects. In addition, negotiations had been initiated in order to provide a practical means of furthering greater autonomy and self-reliance among off-reserve aboriginal people. With regard to the process of reinstatement of indigenous status to those persons who had suffered discrimination under older legislative acts, the observer indicated that almost 40 per cent of all the bands had taken control of their own membership. In addition, the status of nearly 40,000 individuals had been restored as a result of the repeal of discriminatory clauses. An indigenous observer noted, however, that the decision of the Government to restore indigenous status without an increase in resources and land base was causing considerable hardship.

38. A governmental observer informed the Working Group that a new constitutional article had recently been enacted making it incumbent upon State authorities to create conditions enabling the indigenous people of his country to preserve and develop their own language, culture and social life. The Parliament had also adopted a bill concerning the establishment of an indigenous assembly. He stated that a previous policy of assimilation was no longer being applied. It was now up to indigenous people themselves to identify their needs and to formulate measures and assume responsibility for the protection of their cultures. Another Government representative stated that the text of the constitution which is currently being drafted in her country envisages exemplary protective measures for indigenous rights.

39. The denial of full and proper recognition of indigenous self-determination and of other collective indigenous rights was raised by several speakers. An indigenous observer explained that his organization had provided a channel of communication between indigenous peoples at the grass-roots level and the Government in a campaign for economic, social and political justice. This was aimed, in particular, at orienting the Government towards an indigenous philosophy, indigenous concepts and distinct identity. He stated that the demand for a separate "homeland" within the national constitutional framework had to be achieved, albeit through democratic and peaceful means.

40. Another indigenous observer welcomed official measures and initiatives which would admit prior wrongdoings and allow aboriginal peoples to participate in the decision-making process through the establishment of elected aboriginal councils, the amalgamation of various services departments and the increased accountability of those bureaucracies. He warned, however, that legislative measures for enforcing the recognition of indigenous land ownership were still lacking.

41. Another indigenous observer pointed out that the Government of his country was hiding behind the excuse of federalism to avoid according full protection to aboriginal peoples, deferring instead to parochial political pressures. State or provincial governments could thus repeal the very modest advances made in the field of aboriginal rights, including certain land rights acts. Furthermore, he asserted, state governments often resorted to illegal measures to this end, such as seizure of the assets of and control over land councils in violation of the principle of self-determination. Fortunately the courts blocked a recent attempt at such an illegal takeover. The observer pointed out that the provincial governments had reaped the greatest benefits from the marginalization of indigenous societies and institutions. Accordingly, these provincial jurisdictions would lose the most if a more equitable sharing of lands and resources were introduced. It was further suggested that any such provincial governments should review their policies in light of existing standards.

42. One indigenous observer stated that the Government had made an offer to aboriginal peoples in that country with regard to the terms of a possible renewal of constitutional discussions related to indigenous rights. The offer had been rejected, however, as it would have compromised indigenous rights by requiring provincial government consent, replacing the nation-to-nation

relationship between the indigenous people and the Government. It was also noted that protracted negotiations had been used as a means of avoiding the implementation of treaties and agreements.

43. Non-governmental and indigenous observers stated that in a certain country, listed by the international community as "least developed", several indigenous and tribal communities had been fighting for the recognition of their ethnic identities for 40 years in vain. They estimated that more than 50 per cent of the national budget was allocated to the armed services which, in turn, were used primarily to suppress and put down all opposition by the indigenous peoples. They expressed concern that development assistance received as a result of the LDC-status would be misused unless subject to strict conditions concerning indigenous and tribal rights. It was proposed that a truce be declared and peace talks initiated by the Government with the indigenous peoples concerned in order to bring an end to the civil injustices and consequent unrest.

44. In response to observations made in this connection, a governmental observer stated that his Government did not recognize the right to self-determination of any group of people within his country. He pointed out that the right to self-determination was only applicable to colonial situations or foreign occupation. He indicated, however, that after obtaining independence, his country had enacted a constitution which prescribed protection and safeguards for the scheduled tribes and castes and aimed at the promotion of their educational and economic interests.

45. One indigenous observer stated that in regard to the circumpolar regions, a serious lack of coherent and comprehensive governmental policies continued to frustrate indigenous political, environmental, economic, social, cultural, peace and security concerns. As a result, her organization was proceeding with the formulation of proposals relating to a regional conservation strategy. The wide range of subject matters with both domestic and foreign policy dimensions include a transboundary nuclear free zone by international agreement or treaty. This work was being slowed down, however, by a lack of financial resources and support from Governments. Indigenous peoples, she said, were still excluded from policy and decision-making in major matters that directly affected indigenous lands and regions. She gave examples of free trade and regional cooperation agreements which failed to specifically address indigenous economic and other concerns.

46. Most representatives of non-governmental and indigenous organizations stressed the importance of the right to land and to natural resources. It was stated that this right was essential for the very survival of indigenous peoples and the retention of their identities. Several examples were listed, applicable to different countries, concerning the expropriation and usurpation of indigenous land. These practices were often based on doctrines such as terra nullius and accompanied by the passive or even open support of the police, the military or other law enforcement agencies. The consequent disruption of indigenous communities, as well as arbitrary killings, torture and other ill-treatment of indigenous peoples, were condemned by these speakers. Reference was made to the report of the World Commission on Environment entitled "Our Common Future and Development", which underlines the importance of the relationship between indigenous law and indigenous survival.

47. In this connection, one indigenous observer drew the attention of the Working Group to the situation affecting several communities in her country. She described the Government's failure to demarcate indigenous lands which had led to the intrusion of foreign and contrary interests and to the invasion of indigenous lands by gold miners, ranchers, lumbermen and other non-Indians. She stated that in certain circumstances indigenous rights could be safeguarded and promoted through constitutional provisions and she recognized that her country had taken some positive steps in this respect. She was, nevertheless, of the view that national laws did not afford sufficient protection; for example, the right to land had not received full recognition and the prohibition against the removal of indigenous peoples from their lands was still subject to the interests of "national sovereignty".

48. Some indigenous observers made particular mention of the activities of transnational and multinational corporations and of international and national agencies which in their pursuit of land and natural resources destroyed the environment and failed to respect traditional indigenous ways of life. These practices, it was said, resulted in problems affecting many aspects of indigenous existence, including the health and nutrition sectors. It was said in no uncertain terms that viable ecological environments and economies of indigenous peoples, who had long been the best caretakers of the world environment, were now being destroyed through these foreign activities.

49. Another indigenous observer stated that the governmental policy of her country amounted to a form of racial discrimination against aboriginal peoples. This policy authorized the extinction of indigenous land titles and the relocation of indigenous peoples. She requested that the Working Group provide her people with technical assistance in the exercise and protection of their human rights, in particular in upcoming parliamentary hearings on legislation concerning their relocation.

50. One indigenous observer indicated that the Government of his country had realized the acuteness of an unprecedented wave of indigenous activism and that the Government had therefore adopted new policies and programmes intended especially to improve their economic conditions. In this respect, the Government had declared at the beginning of the year that a national policy should be evolved for the protection against land alienation and for the restoration of land and rehabilitation of the displaced. The Government had also established a tribal federation in order to offer market facilities for minor forest products and to give protection from money-lenders and their middlemen.

51. One governmental observer stated that a significant comprehensive land claims settlement had resulted in an agreement with an indigenous people. While most of the provisions of the agreement had been substantially implemented, negotiations were under way to clarify the remaining governmental obligations and to enhance implementation prospects for outstanding matters. He said that the Government had worked closely with indigenous and industry representatives in order to forestall a serious threat to the national fur industry forming the economic base of a significant number of indigenous communities. In this respect, he expressed the view that in addressing the many challenges facing aboriginal populations throughout the world, due

attention should be paid to economic rights. He urged the Working Group to consider the need to extend international protection to the economic basis of aboriginal cultures.

52. The exercise of the right to trade with anyone, including trade within and between indigenous communities, was raised. One indigenous observer denounced the recent police invasion of a community in an attempt to levy taxes on internal commerce which had led to the arrests of several indigenous persons. She stated that the question for indigenous peoples was one of jurisdiction and sovereignty, especially economic sovereignty. She indicated that her people had offered peaceful discussions on the issue of commerce and that no positive response from the Government had been forthcoming.

53. Indigenous observers indicated that their people were being threatened with genocide and ethnocide. Having once constituted the majority population they were now confined to tiny infertile mountainous areas. Violations of sacred sites and burial grounds, destruction of forests, massive road construction activities and the establishment of foreign military bases had speeded up the process of land expropriation and relocation without any compensation. It was asserted that the child welfare policies imposed by a certain provincial government on indigenous peoples were in direct conflict with their cultures, languages and values and resulted in a clear form of genocide.

54. One indigenous observer stated that in a country with some 70 different ethnic peoples and minorities only one language was being recognized for official purposes. In this respect, education was being used to forge one nation with one language, one history and one culture. Since all schools had been nationalized by the Government, there were no private or indigenous schools. In this same process of homogenization, all forms of dissent or opposition to these policies were being brutally suppressed.

55. One non-governmental observer expressed grave concern about the torture, beatings, other inhuman treatment and even extrajudicial executions of indigenous persons. Examples were given of such acts against indigenous peoples as they attempted to defend their land from incursions by ranchers, mining and timber companies. Although some cases were said to be before the courts, it was feared that the respective judiciary was too closely associated with local merchants and landowners to offer adequate guarantees of impartial hearings. Elsewhere, in the context of land disputes, members of a community and their elected leader had been detained in a police operation in which the land owner and his lawyer were said to have participated together with a group of some 20 local police officers. The body of the community leader was later found with signs of torture and bullet wounds in his head. Other examples involved the abuse of indigenous peoples whilst peacefully opposing national Governments, for example participating in demonstrations demanding better relief work and prompt payment of minimum wages.

56. It was pointed out by an indigenous observer that the draft declaration should recognize that indigenous peoples and nations were subject not only to direct and violent attacks, but also to more subtle forms of aggression, including various forms of duress and psychological torture. Indigenous

societies were threatened by the forced imposition of individualistic and alien philosophies, which denied or even prohibited the existing realities. The attention of the Working Group was also drawn to a high number of aboriginal deaths in custody which had occurred in his country and were still continuing despite the fact that a governmental commission had been established with the mandate of investigating such deaths. A governmental observer referred to the commission and stated that the families of those who had died were eligible to apply for legal aid to have counsel represent their interests before the commission. He also stated that the Government had been active in promoting measures to prevent further deaths in custody.

57. An indigenous observer alleged that the Government of his country had forcibly conscripted local civilians in indigenous areas to perform manual labour and to act as beasts of burden for the army in military operations. Porters were often rounded up, forced to carry heavy loads and to march for long distances. They were used as human mine sweepers and forced to walk ahead of the troops when in territories controlled by resistance fighters. Conditions for these civilian porters were extremely difficult and dangerous and resulted also in hardship and mental anguish for the families.

58. The allegation was made that chemical compounds were being used indiscriminately in opium poppy growing areas to spray fields and villages belonging to indigenous peoples. The aerial spraying program was said to be initiated under the guise of carrying out a war against the production of the opium poppy but was in reality being used as a form of chemical warfare designed to annihilate the indigenous peoples of the area. This had resulted in deaths of people and livestock and in the destruction of the ecological balance. This observer further alleged that when the army launched an operation into indigenous areas, anti-personnel mines and booby traps causing serious injuries and deaths were left behind.

59. One indigenous observer alleged that despite the availability of governmental resources the Government of her country refused to provide the necessary medical assistance to many indigenous communities. When available, it was not always helpful and sometimes even counter-productive, bringing contact with new diseases and more infections. The same observer stated that there was proof of sterilization of indigenous women, of vaccination programs that were begun but not completed and of discriminatory treatment by hospitals and physicians.

60. In the field of child welfare, education and medical services, one governmental observer informed the Working Group about multi-year funding agreements concluded with indigenous communities, enabling them to engage in long-range planning and to use these resources in a manner suitable for their own needs and priorities. They had thus become responsible for providing an adequate standard of service and also accountable for the expenditures. He indicated that these communities currently manage over 65 per cent of the total budget of the respective Government department. Similarly, the control of health programme resources had been transferred to about half the bands, allowing them to design and deliver their own health programs. The Government was also exploring alternatives for the development of a program for promoting the preservation and enhancement of aboriginal languages. On a wider scale, in the communications field the Government was considering legislation proposing that national broadcasting policy include more aboriginal content.

61. An indigenous observer stated that his people was looking forward to the opportunity for serious negotiations with the Government on the issue of health care jurisdiction. He indicated that a national child care strategy recently initiated did not make specific reference to the needs and rights of indigenous peoples or to the distinct nature of traditional indigenous child care practices. However, the proposed transfer of health services to indigenous communities, against a backdrop of fiscal cutbacks and withdrawal of existing contributions, could not succeed until there was a willingness to solve the jurisdictional issues.

62. A wide range of other problems and issues were discussed during the debate. These included the following: the principles of equality and non-discrimination; the right to legal assistance and protection in administrative and judicial affairs; the right to adequate housing; the right to traditional productive activities, work, free choice of employment, just and favourable conditions of work and protection against unemployment, as well as the right of indigenous people to form and join trade unions for the protection of their interests; the right to freedom of peaceful assembly and association; the right to social security; and the right to trade and to maintain economic, technological, cultural and social relations between indigenous peoples and across State boundaries. In addition, issues relating to treaties and agreements between States and indigenous peoples were frequently brought up (see Chapter IV of this report).

63. With regard to indigenous vulnerability and consequent violations of their rights, one governmental observer agreed that members of indigenous peoples, castes and tribes could be easy targets for victimization. However, all economically and socially disadvantaged sections of society were equally vulnerable to crimes such as torture, beatings and rapes. In the context of this agenda item, it was also pointed out by a governmental observer that aboriginal peoples had the same legal rights as all other citizens, including universal adult suffrage, rights of access to health, education and other services, entitlement to social security benefits, the same employment conditions and industrial protection, the right to purchase and own land, and to live where they wished. He encouraged the indigenous representatives to examine and make use of national and international rights already on the law books.

64. In connection with this agenda item, the observer of the International Labour Office informed the Working Group about the supervision of the Indigenous and Tribal Populations Convention, 1957 (No.107). Under this Convention, the International Labour Organisation's Committee of Experts on the Application of Conventions and Recommendations had made comments to the following States at its March 1988 session: Angola, Argentina, Bangladesh, Bolivia, Brazil, India, Mexico, Pakistan, Panama, Paraguay and Peru. Representatives of several of these countries had been asked to appear before the Application of Standards Committee at the International Labour Conference in June 1988 to provide further explanations. In addition, a direct contacts mission was conducted in Bangladesh in April 1988 under ILO's regular supervisory procedures. The observer recalled that in carrying out its supervisory activities, the ILO regularly took account of information obtained from the meetings of the Working Group and from other international



supervisory bodies. An indigenous observer highlighted the need for other intergovernmental bodies and meetings, such as the Commonwealth at its next Head of Governments Meeting to be kept fully informed about recent developments relating to indigenous rights and perspectives.

65. The Working Group members took note of the many views expressed during the debate. On the one hand, it was pointed out that they had received more information at this session than ever before about official action intended to benefit indigenous peoples in many parts of the world. These actions included constitutional and other legislative enactments and amendments, as well as policies and programs designed for the same purpose. On the other hand, the continued flow of information concerning alleged violations of the human rights and fundamental freedoms of indigenous peoples was deplored. The situations so described further underlined the importance and urgency of rapidly developing, adopting and implementing specific standards on international indigenous rights.

### III. EVOLUTION OF STANDARDS CONCERNING INDIGENOUS RIGHTS

66. In introducing the standard-setting item, the Chairman/Rapporteur recalled that in 1985 the Working Group had decided to proceed, as a first step, with the preparation of a draft declaration on indigenous rights for eventual adoption by the General Assembly. In pursuance of this decision, the Group had adopted in 1985 and 1987, provisionally and in a preliminary session, a set of fourteen draft principles. In 1987 the Working Group, in order to further facilitate this process, recommended that she be entrusted with the preparation of a working paper containing a full set of preambular paragraphs and principles for insertion into the draft declaration. The Group's recommendation was subsequently approved by its parent bodies, namely the Sub-Commission (resolution 1987/16), the Commission on Human Rights (resolution 1988/49) and the Economic and Social Council (resolution 1988/36). On behalf of the Working Group, she expressed her gratitude for these positive responses and for words of encouragement which had accompanied the endorsements.

67. Referring to her working paper, containing a draft Universal Declaration on Indigenous Rights (document E/CN.4/Sub.2/1988/25, see Annex II of this report), the Chairman/Rapporteur said that she had tried to cover all the substantive issues brought to the attention of the Working Group under both the review of developments and the standard-setting items of the agenda. She considered the text a very preliminary first draft to be further amended, improved or corrected by her colleagues in the Group and by the other participants. In addition to the principles previously adopted by the Working Group, her sources had been international human rights instruments, the recommendations made by the Special Rapporteur, Mr. Martínez Cobo, in his Study on the Problem of Discrimination against Indigenous Populations, as well as the many constructive proposals made in the course of the Group's sessions, either orally or in writing, before, during or after the meetings, by indigenous and governmental representatives. Moreover, she had kept in mind the guidelines for the setting of international standards in the field of human rights as laid down by General Assembly resolution 41/120 of 4 December

1986; as a result, the draft did not and should not deal with rights more extensively covered in existing or upcoming instruments.

68. While the draft declaration obviously stood to be revised, the Chairman/Rapporteur pointed out that one should not lose sight of the most significant features of the draft. Those crucial issues included the use of the term "indigenous peoples" rather than "indigenous populations"; the combination of individual and collective rights with a special emphasis on the latter as an inherent and essential element of indigenous rights; the effective protection of indigenous identities as manifested in cultures, languages, religions, traditions and customs; the introduction of indigenous autonomy with meaningful functions and powers; the reaffirmation of land and resources rights; and the absence of a definition of beneficiaries which she considered unnecessary for the adoption and proper application of the declaration. Furthermore, the Chairman/Rapporteur stated that she expected the debate at the sixth session to be a general one and suggested that the Working Group recommend to the Sub-Commission that Governments and indigenous peoples, as well as intergovernmental and non-governmental organizations, should be invited to submit written comments and suggestions on the draft prior to the seventh session of the Group. At that time, there could possibly be a new draft before the Group taking into account the opinions received. Finally, she expressed the hope and expectation that agreement could be reached between all the parties concerned at the Working Group level before the text travelled up the system to the General Assembly. While this approach might take some time, it was definitely worthwhile in facilitating quick acceptance by the parent bodies.

69. The members of the Working Group and the observers for Governments, indigenous peoples and non-governmental organizations expressed their gratitude and appreciation to the Chairman/Rapporteur for her draft declaration. They considered the text a concrete and concise basis for discussion and they found it leading in the right direction. There was agreement among the participants that the draft should be given full attention through the submission of written comments and suggestions by all the parties concerned to enable the Chairman/Rapporteur to prepare a first revised text before the next session of the Group.

70. Members of the Working Group and the observers for Governments and indigenous organizations reiterated the view, expressed at previous sessions, that the standard-setting part of the Group's mandate was of crucial importance and that there was a clear need for additional international standards in the field of indigenous rights. Several speakers expressed the hope that during this 40th anniversary year of the Universal Declaration of Human Rights significant progress would be made towards a Universal Declaration of Indigenous Rights. Some indigenous observers indicated their expectation that the declaration would be adopted by 1992 as this year carried a great symbolic value for many indigenous communities.

71. Speakers reiterated the point made at previous sessions that the final draft of the declaration ought to be broad enough to encompass the conditions and needs of indigenous peoples on a universal basis. One governmental observer referred to the difficulty of reconciling not only different factual situations of indigenous peoples throughout the world but also their many

different legal systems. Members of the Working Group and representatives of Governments also underlined that the declaration should be realistic and acceptable to all the parties involved to the greatest degree possible.

72. A member of the Working Group addressed specific issues related to the Group's standard-setting task. One topic concerned the relationship between article 27 of the International Covenant on Civil and Political Rights on minority rights and the draft declaration before the Group. This article and the draft declaration should be seen as clearly distinct legal entities dealing with two different realities. Article 27 represented an expression of an international minimum standard, only indirectly relevant to the indigenous situation; it would be wrong if the draft declaration were viewed as an interpretation or general comment on article 27. Concerning the relationship between individual and collective rights, reference to article 27 could be useful although the draft declaration should strike a balance between individual and collective rights with an inevitable accent on the latter. This question could also be addressed through the appropriate legal technique, i.e. by elaborating, in some detail, the collective indigenous rights in the body of declaration and by placing, at the end of the declaration, a saving clause providing that nothing in the text could be used in a way which would imply violation of any of the individual rights recognized in the International Bill of Human Rights. Furthermore, he observed that affirmative action towards indigenous peoples should find its place in the draft. In this context the interpretation of article 27 could be of some relevance, namely by virtue of the application of the rule of effectiveness. The words "shall not be denied" (in article 27) should be interpreted to mean that the State should do what is necessary to give effect to the rights stipulated in article 27.

73. A further issue raised by the same member of the Working Group was the nature of the duties of States to be expressed explicitly or implicitly in the draft declaration. Such duties had, in his view, three dimensions. One was the duty to respect, for example, the characteristics, traditions and languages of indigenous peoples. The second was the duty to protect or to guarantee, for instance, the life and physical existence of indigenous peoples as groups; in that regard he noted that the concept of protection in the terminology of human rights law should not be viewed as paternalistic. The third dimension of State duties was the duty to fulfil or to provide, through appropriate legal frameworks of participation, social services, education and assistance for the development of indigenous peoples, etc. All these three dimensions of State duties were contained in other legal instruments and should also be included in the draft declaration. Finally, regarding the conformity of the draft declaration as it now stood in a first preliminary version with the guidelines of General Assembly resolution 41/120, he expressed full satisfaction.

74. A member of the Working Group made a series of specific comments regarding the Group's standard-setting task. She suggested that a distinction be made between autonomy and independence and that the draft declaration should address the right to economic and administrative autonomy and the personal freedom of indigenous peoples in their community. Furthermore, the draft declaration should take additional steps and describe the obligations of States regarding indigenous peoples. She favoured the term "indigenous

peoples" over "indigenous populations" and said that the name of the Working Group should be changed accordingly. The draft declaration generally conformed with the guidelines of General Assembly resolution 41/120; however, according to sub-paragraph 4(q) of the resolution the declaration had to include implementation machinery. In that regard, consideration should be given to establishing reporting obligations for States.

75. Another member of the Working Group stated that the term "indigenous peoples" should be used; that the concept of the right to autonomy should be further emphasized as without autonomy there could be no development; that agreements on the form of autonomy should be reached with the free consent of indigenous peoples; that the draft declaration should emphasize collective rights which were not to be seen as incompatible with individual rights; that the right to education was to be considered as perhaps the most fundamental of the indigenous rights and that States should therefore develop educational systems and provide education to all in forms acceptable to indigenous peoples; that the compatibility of the preservation of indigenous peoples' cultural identity and their allround development should be emphasized; and that the draft declaration should include State obligations and duties.

76. Another member agreed that article 27 of the International Covenant on Civil and Political Rights and the draft declaration were legally distinct. Indigenous peoples were indeed peoples and not minorities or ethnic groups. Although the concept of "peoples" had not been defined by the United Nations, State practice and other indications in national legislation showed that it could be used in the case of indigenous peoples. Turning to the issue of self-determination, he pointed out that this issue underlies much of the discussion in the Working Group. The concept should be demystified since in this case it did not mean statehood or independence or any sort of secession. Indigenous peoples were facing the phenomena of sequels of colonization which continued to exist even after the creation of modern nation-states. Article 28 of the draft declaration was very important; this should lead to a mechanism whereby indigenous communities could discuss with Governments at the level of highest representation. Referring to the issue of individual and collective rights, he pointed out that the latter concept was not a legal novelty and cited the examples of genocide, the right to development, and the right to peace. The draft declaration should place emphasis on collective rights and ensure that the exercise of individual rights would not be used to jeopardize the rights of the community. On the question whether the declaration should contain both the rights of indigenous peoples and the obligations of States, he was of the opinion that it should focus on the rights of indigenous peoples and not on specific State obligations.

77. The nature of the rights to be covered by the draft declaration received considerable attention. Members of the Working Group and indigenous observers underlined that special emphasis should be placed on collective rights. It was pointed out that collective rights should not be considered as contrary to already existing individual rights, but rather as complementary and supportive of those. It was stated that the African Charter on Human and Peoples' Rights recognized the complementarity between individual and collective rights. All indigenous rights would necessarily contain both aspects; it would be through collective action, in particular through the exercise of internal autonomy,

that the full development of all indigenous individuals could best be promoted. In their enjoyment of such collective rights, however, peoples had fully to respect the freedom and dignity of individuals. This complementarity and compatibility between individual and collective rights was considered to be especially important to indigenous peoples because the harsh lessons of past history showed that recognition of individual rights alone would not suffice to uphold and guarantee the continued dignity and distinctness of indigenous societies and cultures.

78. The use of the term "indigenous peoples" was welcomed by indigenous and governmental representatives, as well as by members of the Working Group. In that connection, numerous speakers proposed that the name of the Group be changed to "Working Group on Indigenous Peoples". It was emphasized that indigenous peoples were clearly distinct from minorities or other tribal and ethnic groups. One indigenous observer suggested that the term "indigenous nations" be used as well. The term "peoples" it was said, was in conformity with United Nations terminology and was also employed by national constitutions and the laws of several States.

79. A statement was made by a representative of the Indigenous Peoples' Preparatory Meeting held in Geneva from 25 to 29 July 1988. He expressed the Meeting's support for the Working Group's standard-setting efforts which, he said, should be consistent with and in the context of the most fundamental right of indigenous peoples, the right to self-determination. The 1988 Meeting had expressed its continued support for the Draft Declaration of 22 Principles agreed upon by the 1987 Preparatory Meeting (see the report of the fifth session of the Group, E/CN.4/Sub.2/1987/22, Annex V). The 1988 Meeting was of the view that the draft declaration tabled by the Chairman/Rapporteur did not adequately incorporate the Declaration of 22 Principles. The following constructive comments emanating from the 1988 were offered to the Working Group: (a) the right to self-determination was not adequately covered; (b) the collective right to lands and territories was not fully addressed; (c) the importance of lands and resources including surface and subsurface resources had to be more extensively covered; and (d) the significance of treaties and treaty-making needed further elaboration. In addition, there was a need for the Group to address emerging human rights, such as the right to peace, the right to a safe and healthy environment, the right to development, and the right to humanitarian assistance. On the other hand, other indigenous observers expressed satisfaction with the general contents of the principles prepared by the Chairman/Rapporteur. Speaking about the ongoing process of standard-setting, the representative of the Preparatory Meeting requested the Group that any calls for comments and suggestions on existing or future drafts be addressed to all indigenous peoples and nations. He also encouraged the members to explore formal and official ways in which indigenous peoples could interact with them between sessions so that the future declaration would truly reflect their needs, concerns and aspirations.

80. According to the overwhelming majority of indigenous representatives, self-determination and self-government should be amongst the fundamental principles of the draft declaration. Some of these representatives said that treaty nations had their right to self-determination and self-government

recognized by treaties, although these had often been violated by the State parties. Referring to article 24 of the draft declaration an indigenous participant pointed out that the principle of indigenous peoples themselves determining the structures of indigenous institutions was indeed an attribute of their right to self-determination. Many speakers underlined that it was essential for the draft declaration to guarantee in the strongest language possible free and genuine indigenous institutions. In this context, another indigenous observer raised the question as to how the draft declaration would recognize indigenous peoples who already had their own constitutions and governments prior to the arrival of colonial powers on their lands. She indicated that her people was going to stand by its own constitution and its own record of the treaty relationship.

81. The need for an effective implementation mechanism of the future declaration was stressed by many indigenous speakers. Many were of the view that the draft declaration must encompass not only the rights of indigenous peoples but also the duties of States. One governmental observer acknowledged, in this connection, that the Working Group was faced with the daunting challenge of striving to obtain the highest possible standards of rights and obligations for the protection of especially vulnerable groups within an international system which had often resisted progress in the area of human rights, particularly with respect to implementation. This Government believed, he said, that one way of overcoming such resistance was to use existing international instruments as a foundation, building upon accepted language as circumstances require.

82. Indigenous observers concluded that, together with self-determination, the rights to land and resources were fundamental to the very existence of indigenous peoples, their identity and their well-being. Any standard-setting exercise must, therefore, recognize and give effect to this relationship. The rights, it was said, must encompass surface and subsurface resources, including coastal waters where applicable. One indigenous observer noted, in this connection, that the subsurface resources of his people, oil and gas were managed and controlled by the State and it was becoming increasingly difficult to have funds released for running its own government and carrying out its own development projects.

83. An indigenous observer proposed the following rewording of article 12 of the draft declaration:

"The right to ownership, unrestricted possession and use of the territories which they have traditionally occupied or otherwise used. All matters affecting the territory of indigenous peoples and nations must be determined by their informed consent, freely expressed through their own institutions."

He also proposed the rewording of draft article 14 as follows:

"The right to ownership and control over all resources, surface and subsurface, pertaining to territory they have traditionally occupied or otherwise used. Special measures shall be undertaken to ensure enjoyment of this right."

84. As to emphasis in the draft declaration, it was observed by an indigenous organization that the declaration should include the following basic elements: (a) the concept of decolonization, (b) the inevitable link between

self-determination and ownership of land, including natural resources, and (c) recognition of the right to development. According to a non-governmental organization, the draft ought to emphasize four main points: (a) respect for indigenous nations communities and their cultures; (b) appreciation of cultural diversity; (c) full participation of indigenous peoples; and (d) cooperation between indigenous peoples and their Governments.

85. A number of specific comments and suggestions on the draft declaration was made regarding article 3. A preference was expressed for replacing the words "to be protected" considered to have paternalistic overtones, with other terms related to freedom; for instance, instead of the expression "protection from genocide", the expression "freedom from ethnocide" was suggested. Regarding the use of the term "different" to describe indigenous peoples in the first preambular paragraph, it was suggested that the terms "distinct" and/or "unique" should be used. The rights to hunt, fish, trap and gather should be without limitation, as the qualifying statement "without addressed discrimination" in article 18 might give Governments a way of limiting indigenous traditional means of existence. With respect to the issue of membership mentioned in article 24, it was underlined that indigenous peoples should be able to determine their own membership/citizenship without external interference. As to article 28, the importance of the elements of consultation and consent were stressed by many speakers as essential to the whole exercise.

86. A governmental observer found the division of the draft declaration into six parts a welcome way of creating clear and distinct categories of rights. He noted that certain articles included the notion of "collective rights", while others omitted this qualification although also dealing with "collective aspects of indigenous lives". Regarding articles 9 and 10 and the question of the use of indigenous languages, while committed to the importance of preserving indigenous identities, his Government at the same time believes that distinct realities in different countries should be considered so as to avoid the inclusion of norms difficult to apply in practice. As to part III of the draft declaration, governmental observers pointed out that it could pose difficulties because the legislation of many States contained norms, often of a constitutional nature, possibly in contradiction with portions of this part, in particular in connection with sub-surface natural resources and compensation.

87. Additional provisions for inclusion in the draft declaration were suggested by several speakers. The existence of indigenous peoples, it was stated, was threatened by States' denial of their cultural values as much as the attacks on their physical integrity, resulting now as it had in the past in cultural genocide. It was also suggested that a principle to the effect that "all colonial systems are an attack upon human dignity and morality" should be included. Referring to forced labour practices in certain parts of the world, another representative proposed that the need to establish these practices as they affect indigenous peoples should be reflected in the draft declaration. Another element to take into account, it was said, was the misuse and abuse of modern science and technology, as manifested by the use of cancer-generating substances in the spraying of grounds and the dumping of nuclear waste in certain indigenous areas.

88. An indigenous observer asked that the final text include the right of indigenous peoples to enter the international community and its various international fora in their own right. He suggested that the final instrument should, furthermore, reflect freedom from transmigration used to deny indigenous peoples the exercise of self-determination by altering the "self" in that concept.

89. Other suggestions for additional provisions or further elaboration of principles included comments on article 27 of the draft declaration. It was suggested that it should be stated explicitly that past, present and future treaties and agreements be included with a duty to honour and implement them. Emerging human rights now gaining recognition within the United Nations, such as the right to peace and to a safe and healthy environment, should be included in the declaration. Similarly, the right to development had to find its proper place and emphasis in the text. Some of the most severe socio-economic conditions in the world persisted in indigenous communities. Traditionally indigenous peoples had an excellent record of safe and wise uses of their lands and waters in accordance with their own values, if only they were allowed to determine the nature and pace of development.

90. Finally, it was said that the duty of States to take affirmative action needed to be better and more strongly reflected in the draft declaration. The concept of control, very close to the principle of self-determination had to be clarified; for example, it was crucial for indigenous peoples to have control over the education of their children. A clause should be added to the text providing that State military and police forces should not be permitted to enter areas of indigenous peoples and that the maintenance of law and order should be entirely in indigenous hands. Speaking to these suggestions, a governmental observer pointed out that law and order had to be the responsibility of central Governments.

91. The observer of the International Labour Office informed the Working Group about the first of two scheduled discussions by the International Labour Conference on the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107). This task had been undertaken in accordance with wishes expressed by the Working Group, the Sub-Commission, the Special Rapporteur, Mr. Martínez Cobo and many indigenous organizations. He referred to detailed information submitted by his Office on this matter which is contained in document E/CN.4/Sub.2/AC.4/1988/3/Add.1.

92. The ILO observer finally informed the Working Group about advisory services offered by that office to those Governments which had requested assistance in preparing for the second discussion of the revised Convention. He stated that there were several subjects on which preparatory meetings or other forms of consultation before the 1989 Conference might be helpful. As concerns advisory services for indigenous peoples, he stated that his Office was very interested in carrying out projects of technical and advisory assistance with indigenous and tribal groups all over the world. He suggested that coordinated or even joint missions of the United Nations and the International Labour Office might be useful in this regard.

93. Referring to the ILO revision process, an indigenous observer saw that process as complementary to the standard-setting efforts of the Working



Group. He said that the revised Convention, because it would be available for implementation so quickly, would provide short-term, stop-gap minimum guarantees for urgently threatened indigenous peoples in many parts of the world. Furthermore, the revised Convention could serve as a jumping-off point for future developments in the law of indigenous rights. By comparison, the same speaker said, the draft declaration under preparation in the Working Group should constitute a programme of aspirations and goals for the next century. A governmental representative referring to the revision of the Convention No. 107, expressed the hope for a successful outcome at the 1989 Conference. He emphasized that it would be unrealistic to expect that all special interests be fully provided for and added that the parties should be ready to accept compromises. Another governmental observer and a member of the Working Group said that the Group's standard-setting activities and those of the International Labour Organisation should be closely coordinated.

94. Another indigenous observer indicated deep concern about the lack of full access by indigenous peoples to the ILO decision-making process. As a result, the ILO was urged to introduce new and meaningful ways of increasing indigenous involvement. It was stated as imperative that the term "indigenous peoples" be employed in the revised Convention. It was also stated that, if the new instrument was to be transformed into a useful and enduring Convention, fundamental indigenous rights to territories and resources must be fully respected and that a comprehensive dispute resolution should be incorporated in the text. Furthermore, it was said, some of the present proposals before the International Labour Conference could result in serious and unjust cases of assimilation.

95. On the basis of the observations and comments made during the debate, it was decided that the draft declaration, as contained in the constructive working paper by Ms. Daes, should constitute the framework for continued discussion on the topic of standard-setting in line with recommendations made to the Sub-Commission (see Annex I of this report, paras. 1 - 2).

#### IV. OUTLINE OF THE STUDY ON TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES AND INDIGENOUS POPULATIONS

96. The Special Rapporteur, Mr. Miguel Alfonso Martínez, made a statement at the outset of the debate on this new agenda item. In his description of the legislative history of the resolution establishing his mandate, he referred first to the recommendation made by the Special Rapporteur, Mr. José R. Martínez Cobo, in his Study on the Problem of Discrimination against Indigenous Populations to the effect that a thorough and careful study should be conducted on the treaties concluded between indigenous peoples and nations, on the one side, and States on the other (E/CN.4/Sub.2/1986/7/Add.4, paras. 388 - 392). He also quoted Sub-Commission resolution 1984/35 A which decided that the conclusions, proposals and recommendations of Mr. Martínez Cobo be considered as an appropriate source by the Sub-Commission and the Working Group in their future work on issues affecting indigenous rights. He went on to outline the recommendation made by the Working Group at its fifth session (E/CN.4/Sub.2/1987/22, Annex I) resolution 1987/17 of the Sub-Commission,

resolution 1988/56 of the Commission on Human Rights, and decision 1988/134 of the Economic and Social Council, as well as the changes in the mandate made by the Commission and subsequently approved by the Council.

97. The Special Rapporteur explained that pursuant to the endorsements of the Working Group and Sub-Commission, he had proceeded with the gathering of the information needed to carry out his work. After the adoption of Commission resolution 1988/56, he was, however, confronted with a number of practical difficulties, especially with respect to the broadening of the scope of the study which now was also to cover agreements and other constructive arrangements between States and indigenous populations. He also pointed out that although the new mandate no longer specified that the study be universal in its approach, he would nevertheless proceed on that assumption. Nevertheless, the Special Rapporteur saw improvements made in the new mandate. The resolution now determines that the ultimate goal of both the outline and the study is the protection and promotion of the human rights and fundamental freedoms of indigenous populations. Furthermore, the reference to "other constructive arrangements" clearly implies that the treaties and agreements carry a positive value.

98. As to the more specific contents of the outline and the study, in accordance with the new mandate, the Special Rapporteur discussed the purpose, scope, sources and structure of the future report. The purpose, he said, was clearly spelled out in the authorizing resolution as the effective protection and promotion of indigenous rights through ensuring a solid, durable and equitable basis for current and future relations between indigenous populations and States. As to the scope of the study, he elaborated that geographically it must be universal, temporally it must be basically future-oriented and juridically it must take into account contractual and customary rules and principles of international law. He emphasized that the study would necessarily be of a juridical nature in the technical sense. Accordingly, the sources of the study would be bilateral instruments between indigenous peoples and States; multilateral instruments, including human rights texts; national legislative acts and other domestic laws; the norms, usages and customs of indigenous populations; and international and national jurisprudence and legal doctrines. With regard to the structure of the study, Mr. Alfonso Martínez foresaw three parts: the original validity, the contemporary significance and the future applicability of the treaties, agreements and other constructive arrangements under scrutiny.

99. Finally, in his oral presentation, the Special Rapporteur asked those present in the Conference Room for assistance in clarifying the difference between treaties, agreements and the meaning of "other constructive arrangements". He stated that, after receiving comments from members and observers alike, he would present his written outline to the Working Group and to the Sub-Commission.

100. Many interventions emphasized the substantive and symbolic significance attached to treaties by indigenous peoples. References were made to the solemnity and sacredness of treaties in formalizing relations between indigenous peoples and States and to their long and honourable history and continuing relevance in promoting mutual trust, honour and respect. One indigenous observer referred to the treaty entered into by his nation in the

nineteenth century as the means by which his people maintains its identity. Another observer cited the question of treaties as the sole reason for the attendance of his organization at the Working Group. The view was repeatedly expressed that the treaties represent nation-to-nation relations, connote recognition of the legal capacity of indigenous peoples and in no way impair the right to exercise indigenous sovereignty. Particular emphasis was laid on the recognition of the sovereign capacity of indigenous peoples to enter into bilateral agreements with other sovereign nations implicit in the treaty-making process. Furthermore, the observation was made that the constitutions of certain States ascribe to land claims agreements the status of treaties.

101. A number of indigenous observers referred to the importance of treaties entered into between States and indigenous peoples in providing recognition, not only of the legal capacity of indigenous peoples, but also of indigenous self-determination. Treaties were said to recognize and confirm indigenous autonomy, self-government and self-determination. According to one observer, although an indigenous people may relinquish part of its sovereignty in order to enjoy the protection of another power, sovereignty and the inherent and inalienable right of self-government are always retained. The treaty-making power of indigenous peoples was also said to provide recognition of the collective rights of indigenous peoples. One observer carefully distinguished between interpretations of treaties as a recognition and as a source of indigenous rights, with the latter interpretation being totally unacceptable. A further reason advanced for the significance of treaties was the role they can play in establishing a wide range of rights crucial to the survival of indigenous peoples, nations and communities. Wide support was expressed for the view that although these treaties had been the subject of considerable abuse in the past, they may provide a practical mechanism to protect indigenous rights in the future.

102. Many indigenous peoples also saw the treaties as instruments facilitating peaceful coexistence between indigenous peoples and States. It was repeatedly stated that the treaties had historically been made with this purpose in mind. The compromisory nature of such arrangements was underlined. In particular, it was emphasized by the representative of one indigenous organization that there existed no attempt to alter the relationship originally established by treaty, nor was it intended to dismantle the State with which the treaty had been entered into.

103. With regard to the mandate of the Special Rapporteur, several indigenous observers expressed considerable concern about the changes made by the Commission on Human Rights in resolution 1988/56. Such changes were said to alter the intent behind the original recommendations made by Special Rapporteur Martínez Cobo and by the Working Group at its fifth session. One indigenous observer thus recommended that the study be reconsidered in its original terms. Other organizations, whilst noting their disappointment, expressed continued commitment to support and assist the Special Rapporteurs endeavours.

104. A wide range of issues and concerns were raised for consideration by the Special Rapporteur. It was considered crucial that he investigate the status in international law of presently existing treaties. It was suggested that

the question of the applicability of the international law of treaties to agreements between States and indigenous peoples be addressed in the outline. The same indigenous speaker also suggested that the outline include an analysis of the status in international law of indigenous peoples who have entered into treaties, agreements and other constructive arrangements and the implications of such understandings for the right of the indigenous parties to autonomy and self-determination. In this context, special reference was made to the Western Sahara Advisory Opinion of the International Court of Justice. Furthermore, the Special Rapporteur was invited to address the use of international law in enforcing treaties between indigenous peoples and States. Finally, it was suggested that treaties between States which adversely affect indigenous rights be included in the study.

105. References were made by indigenous observers to historical instances of one sided, unfairly negotiated treaties. The view was expressed that the outline and the study should consider the status in international law of treaties entered into in such circumstances. Similarly, it was felt by many indigenous speakers that the Special Rapporteur should consider situations of subsequent violations of or interference with rights conferred upon indigenous peoples under treaties. Observers cited numerous instances of breaches of treaty rights and unfulfilled treaty obligations. Concern was expressed that States had received considerable benefits under treaties without fulfilling reciprocal obligations. In at least one case, a State had regarded a treaty as extinguished. In another case, a State had sought to require the abandonment of treaty rights in exchange for granting certain land claims. In a number of cases, alleged consistent violations of the spirit and letter of treaties had led to violent confrontations with State authorities. Many of those confrontations remained unresolved and threaten to escalate if the claims of indigenous peoples are not satisfactorily addressed. The use of treaties in the peaceful resolution of disputes relating to territorial jurisdiction and the competing use of natural resources was, therefore, strongly advocated. In this connection it was noted by one indigenous observer that legislative, political and military impediments which might prevent the future feasibility of treaties should also receive close examination.

106. Considerable debate was devoted to the question of the legitimacy and usefulness of treaties as the basis of future relations between States and indigenous peoples. The observer of a Government presently engaged in consultations with indigenous peoples preliminary to the making of a treaty stated that it was possible only through the process of negotiation to build a State within which indigenous and non-indigenous peoples will be able to live together truly in peace and in dignity. Many indigenous observers similarly referred to dialogue and consent as essential elements of the treaty-making process. The existence of free and informed consent was perceived as the necessary corollary of the exercise of indigenous self-determination.

107. Indigenous observers expressed concern about the conduct of negotiations leading to future treaties. One observer recommended that the outline consider appropriate international mechanisms for assuring balanced and representative negotiations. Another observer presently contemplating the entry into a treaty arrangement also suggested the monitoring of negotiations

and any outcome by a mutually acceptable third party. He sought carefully to distinguish between the process of negotiation and that of consultation. The consultative process left the final decision with one party whereas the process of negotiation required a dialogue, a meeting of the minds. A unilateral consultative process was rejected by the aboriginal people involved.

108. One indigenous observer suggested some elements for the outline of the study: (1) the role of treaties in the colonial process, recognizing the similarities and differences between the various regional situations historically; (2) the extent to which former treaties are recognized and respected in municipal law, and whether this respect has played a significant role in preserving indigenous rights that otherwise would have been lost; (3) the extent to which contemporary treaties are likely to prove less exploitative than past treaties, or non-treaty situations; (4) guidelines for assuring that the negotiation and implementation of future treaties or agreements are equal-sided and fair; and (5) conclusions as to the role of past and future treaties in realizing the rights which may be proclaimed in a United Nations declaration.

109. It was suggested to the Special Rapporteur that he consider including in the study the possibility of multilateral negotiations in cases where indigenous nations straddle the international borders of two or more States. Such a possibility was seen to promote reunification of indigenous peoples particularly vulnerable to interstate conflicts. Specifically, the idea of a Sami Convention negotiated and concluded on an equal basis between the Sami and the three Nordic States was introduced during the debate and described in some detail as to purpose, scope and contents.

110. Several indigenous observers commented on the need for dispute resolution mechanisms between treaty parties. The attention of the Special Rapporteur was drawn to the great importance of both interpretation and enforcement aspects of treaties. One indigenous observer noted that the resolution of treaty disputes is usually left in the hands of the State, thus rendering the State interested party, administrator and adjudicator should the indigenous party wish to challenge the actions of the State. Indigenous peoples are then confronted with a State apparatus of considerable financial resources with which to pursue a prolonged series of negotiations, litigation and other legal manoeuvres. For these reasons, indigenous observers emphasized the need for international oversight during the implementation of treaties.

111. One observer Government noted that Governments and the Commission on Human Rights would have an opportunity to consider in due course the outline which was to be presented by the Special Rapporteur. Responding to the request for preliminary guidance, he agreed with the Special Rapporteur that the study should be of a universal, non-discriminatory and forward-looking nature, focussed on contributing to the Working Group's central task of developing universal standards of indigenous rights. To this end, the study could be especially helpful in identifying a wide range of potentially useful approaches to the development and maintenance of relations between Governments and indigenous groups within their jurisdiction. He cautioned against entering into irresolvable historical debates which would not address the problems of indigenous groups in the modern context.

112. The thrust and direction of the study as outlined by the Special Rapporteur was generally endorsed. A number of statements were addressed to the new ground being broken by the upcoming study and the need for creativity in establishing new principles and standards to reflect the uniqueness of indigenous peoples and their treaties. Responding to the interventions made under this agenda item, the Special Rapporteur expressed his gratitude to the many speakers and stated that the ideas and information provided would much facilitate his work. He expressed the hope that he would continue to enjoy the cooperation of all the parties concerned so as to ensure the completion of a good study on time. The written outline of the study, submitted by Mr. Alfonso Martínez after the completion of the debate, is contained in Annex III of this report (issued separately as document E/CN.4/Sub.2/1988/24/Add.1).

#### V. OTHER MATTERS

113. Appreciation was expressed by several indigenous participants to the contributors and the Board of Trustees of the Voluntary Fund for Indigenous Populations for facilitating the attendance of 27 indigenous observers at this session of the Working Group. Similarly, it was hoped that the Fund would be able to further expand its activities in the years to come. A number of parties pledged their contributions to the Fund for 1989 and the Secretary of the Board explained the procedures to be followed for submitting applications to the Fund prior to the Board's second session in April 1989.

114. After consulting with the observer delegation of Australia, the Chairman/Rapporteur indicated that interest had been expressed in the possibility of holding the Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States in 1989 in Australia. Indigenous observers also attached great importance to the equal participation of indigenous experts in the Seminar together with governmental experts.

115. A speaker on behalf of the Maori delegates representing the tribes of Ngati Te Ata, Ngati Awa, Ngati Porou, Pare Hauraki, Ngati Raukawa and Rangitane (Aotearoa) asked the Working Group to seriously consider holding its 1990 Session in New Zealand.

116. In connection with all of the agenda items, the Working Group carefully considered a number of recommendations to the Sub-Commission. The seven recommendations listed in Annex I to this report were approved unanimously by all five members of the Group.

ANNEX I

Recommendations to the Sub-Commission

1. The Working Group decided to recommend to the Sub-Commission that it request Governments, indigenous peoples, intergovernmental and non-governmental organizations to submit their written observations and suggestions on the draft Universal Declaration on Indigenous Rights, which is contained in Annex II of this report, prior to 31 January 1989.
2. The Working Group decided to recommend to the Sub-Commission that the Chairman/Rapporteur of the Group, Ms. Erica Irene A. Daes, be entrusted with the task of preparing a first revised text of the draft Universal Declaration on Indigenous Rights based on comments made in the Group at the present session and on written observations and suggestions received in accordance with Recommendation No.1.
3. The Working Group endorses the outline prepared by the Special Rapporteur of the Sub-Commission, Mr. Miquel Alfonso Martínez, on his Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations and decided to recommend to the Sub-Commission that it endorse the said outline and recommend full authorization from the Economic and Social Council in 1989 for the Special Rapporteur to proceed with the Study referred to in Commission on Human Rights resolution 1988/56 and ECOSOC decision 1988/134 on the basis of the aforementioned outline (Annex III of this report, see document E/CN.4/Sub.2/1988/24/Add.1).
4. The Working Group decided to recommend to the Sub-Commission that it request the Secretary-General to invite indigenous organizations to nominate experts to participate in the upcoming United Nations Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between States and Indigenous Peoples.
5. The Working Group decided to recommend to the Sub-Commission that it request the Secretary-General, through the Advisory Services Program of the Centre for Human Rights to design and carry out advisory and technical assistance projects with and to the benefit of indigenous peoples along the lines of activities described in the report of the Secretary-General to the Commission on Human Rights at its forty-fourth session (E/CN.4/1988/40 and Add.1).
6. The Working Group decided to recommend to the Sub-Commission that the International Year of the World's Indigenous Populations, originally scheduled by the Group and the Sub-Commission for 1992, should instead, in light of Commission on Human Rights resolution, 1988/58, be scheduled for 1993 to coincide with the end of the Second Decade of Action to Combat Racism and Racial Discrimination.
7. The Working Group decided to recommend to the Sub-Commission that it change the title of the agenda item, under which this report is considered, to read "Discrimination against indigenous peoples".

ANNEX II

Draft Universal Declaration on Indigenous Rights  
as contained in document E/CN.4/Sub.2/1988/25

The General Assembly,

Considering indigenous peoples equal to all other human beings in dignity and rights in accordance with existing international standards while recognizing the right of all individuals and groups to be different, to consider themselves different and to be regarded as such,

Considering that all peoples and human groups have contributed to the progress of civilizations and cultures which constitute the common heritage of humankind,

Recognizing the need to promote and protect those rights and characteristics which stem from indigenous history, philosophy of life, traditions and social structures, especially as these are tied to the lands which the groups have traditionally occupied,

Concerned that many indigenous peoples have been unable to enjoy and assert their inalienable human rights and fundamental freedoms, frequently resulting in insufficient land and resources, poverty and deprivation, which in turn may lead to rebellion against all forms of oppression,

Convinced that all doctrines and practices of racial, ethnic or cultural superiority are legally wrong, morally condemnable and socially unjust,

Reaffirming that indigenous peoples in the exercise of their rights should be free from adverse distinction or discrimination of any kind,

Endorsing calls for the consolidation and strengthening of indigenous societies and their cultures and traditions through ethnodevelopment and comprehensive participation in and consultation about all other relevant development efforts,

Emphasizing the need for special attention to the rights and skills of indigenous women and children,

Believing that indigenous peoples should be free to manage their own affairs to the greatest possible extent, while enjoying equal rights with other citizens in the political, economic and social life of States,

Calling on States to comply with and effectively implement all international human rights instruments as they apply to indigenous peoples,

Acknowledging the need for minimum standards taking account of the diverse realities of indigenous peoples in all parts of the world,

Solemnly proclaims the following rights of indigenous peoples and calls upon all States to take prompt and effective measures for their implementation,



Part I

1. The right to the full and effective enjoyment of all fundamental rights and freedoms, as well as the observance of the corresponding responsibilities, which are universally recognized in the Charter of the United Nations and in existing international human rights instruments.

2. The right to be free and equal to all the other human beings in dignity and rights to be free from adverse distinction or discrimination of any kind.

Part II

3. The collective right to exist and to be protected against genocide, as well as the individual rights to life, physical integrity, liberty and security of person.

4. The collective right to maintain and develop their ethnic and cultural characteristics and identity, including the right of peoples and individuals to call themselves by their proper names.

5. The collective right to protection against ethnocide. This protection shall include, in particular, prevention of any act which has the aim or effect of depriving them of their ethnic characteristics or identity, of any form of forced assimilation or integration, of imposition of foreign life styles and of any propaganda directed against them.

6. The right to preserve their cultural identity and traditions and to pursue their own cultural development. The rights to the manifestations of their cultures, including archeological sites, artifacts, designs, technology and works of art, lie with the indigenous peoples or their members.

7. The duty of States to grant - within the resources available - the necessary assistance for the maintenance of their identity and their development.

8. The right to manifest, teach, practise and observe their own religious traditions and ceremonies, and to maintain, protect and have access to sacred sites and burial grounds for these purposes.

9. The right to maintain and use their own languages, including for administrative, judicial and other relevant purposes.

10. The right to all forms of education, including in particular the right of children to have access to education in their own languages, and to establish, structure, conduct and control their own educational systems and institutions.

11. The right to promote intercultural information and education, recognizing the dignity and diversity of their cultures, and the duty of States to take the necessary measures, among other sections of the national community, with the object of eliminating prejudices and of fostering understanding and good relations.

### Part III

12. The right of ownership and possession of the lands which they have traditionally occupied. The lands may only be taken away from them with their free and informed consent as witnessed by a treaty or agreement.

13. The right to recognition of their own land-tenure systems for the protection and promotion of the use, enjoyment and occupancy of the land.

14. The right to special measures to ensure their control over surface resources pertaining to the territories they have traditionally occupied, including flora and fauna, waters and sea ice.

15. The right to reclaim land and surface resources or where this is not possible, to seek just and fair compensation for the same, when the property has been taken away from them without consent, in particular, if such deprivation has been based on theories such as those related to discovery, terra nullius, waste lands or idle lands. Compensation, if the parties agree, may take the form of land or resources of quality and legal status at least equal to that of the property previously owned by them.

16. The right to protection against any action or course of conduct which may result in the destruction, deterioration or pollution of their land, air, water, sea ice, wildlife or other resources without free and informed consent of the indigenous peoples affected. The right to just and fair compensation for any such action or course of conduct.

17. The duty of States to seek and obtain their consent, through appropriate mechanisms, before undertaking or permitting any programmes for the exploration of exploitation of mineral and other subsoil resources

pertaining to their traditional territories. Just and fair compensation should be provided for any such activities undertaken.

#### Part IV

18. The right to maintain within their areas of settlement their traditional economic structures and ways of life, to be secure in the enjoyment of their own traditional means of subsistence, and to engage freely in their traditional and other economic activities, including hunting, fresh-and salt-water fishing, herding, gathering, lumbering and cultivation, without adverse discrimination. In no case may an indigenous people be deprived of its means of subsistence. The right to just and fair compensation if they have been so deprived.

19. The right to special State measures for the immediate, effective and continuing improvement of their social and economic conditions, with their consent, that reflect their own priorities.

20. The right to determine, plan and implement all health, housing and other social and economic programmes affecting them, as far as possible through their own institutions.

#### Part V

21. The right to participate fully in the political, economic and social life of their State and to have their specific character duly reflected in the legal system and in political institutions, including proper regard to and recognition of indigenous laws and customs.

22. The right to participate fully at the State level, through representatives chosen by themselves, in decision-making about and implementation of all national and international matters which may affect their life and destiny.

23. The collective right to autonomy in matters relating to their own internal and local affairs, including education, information, culture, religion, health, housing, social welfare, traditional and other economic activities, land and resources administration and the environment, as well as internal taxation for financing these autonomous functions.

24. The right to decide upon the structures of their autonomous institutions, to select the membership of such institutions, and to determine the membership of the indigenous people concerned for these purposes.

25. The right to determine the responsibilities of individuals to their own community, consistent with universally recognized human rights and fundamental freedoms.

26. The right to traditional contacts and co-operation, including cultural and social exchanges and trade, with their own kith and kin across State boundaries in accordance with established laws and practices.

27. The duty of States to honour treaties and other agreements concluded with indigenous peoples.

#### Part VI

28. The individual and collective right to access to and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes between States and indigenous peoples, groups or individuals. These procedures should include, as appropriate, negotiations, mediation, national courts and international human rights review and complaints mechanisms.