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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF
WORK OF THE COMMISSION; ALTERNATIVE APPROACHES AND WAYS AND MEANS
WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE
ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

National institutions for the protection and promotion of human rights

Updated Report of the Secretary-General

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Introduction

1. The present report is submitted in accordance with resolution 42/116 of the General Assembly and Commission on Human Rights resolution 1988/72 entitled "National institutions for the protection and promotion of human rights". In its resolution the General Assembly, recalling its resolution 41/129 of 4 December 1986 and Commission resolution 1987/40 of 10 March 1987, welcomed the consolidated report of the Secretary-General on national institutions and requested him to bring the report up to date, bearing in mind the practical needs of those engaged in the development of national institutions, invited the Secretary-General to include in his updated report all the information provided by Governments and any additional information Governments may wish to provide, with particular emphasis on the functioning of various models of national institutions in implementing international standards on human rights, as well as a list of existing national institutions with contact points and a bibliography of relevant materials, and requested him to transmit the updated report (through the Commission on Human Rights and the Economic and Social Council) to it at its forty-fourth session for wide distribution as a United Nations handbook on national institutions.

2. In compliance with previous General Assembly resolutions, the Secretary-General has so far submitted three substantive reports to the General Assembly on this question: A/36/440, presented in 1981, A/38/416, submitted in 1983 and the consolidated report - E/CN.4/1987/37 - submitted in 1987.

3. In accordance with the request of the General Assembly, the Secretary-General, on 27 May 1988, addressed a note verbale, together with a copy of the consolidated report, to the Assembly at its forty-second session (E/CN.4/1987/37) to Governments, inviting them to forward any relevant information they may wish to provide, with particular emphasis on the functioning of various models of national institutions in implementing international standards on human rights.

4. As at 30 November 1988, replies have been received from the Byelorussian SSR, Canada, Dominican Republic, Federal Republic of Germany and Finland. Those replies, as well as a list of existing national institutions and a bibliography of relevant materials, are incorporated in this updated report. As may be seen from the replies received by the Secretary-General, since the adoption of General Assembly resolution 42/116, the range of national institutions in the States which have sent information falls basically within the model of institutions which were discussed in the previous report and tend to reinforce the basic approach of that report.

5. As indicated in previous reports, nearly all national institutions have a bearing upon both the protection and the promotion of human rights. In the report the term "human rights" has been used to cover all the rights recognized in the Universal Declaration, the Covenants and other relevant human rights instruments of the United Nations. For the purpose of the report, the term "institution" is understood to mean the organs, authorities and agencies one of whose primary functions is to promote and to protect human rights.

6. While the distinction between "promotion" and "protection" of human rights may, in certain circumstances, be convenient for the clarity of the analysis, it seems somewhat artificial taking into account that most institutions have indeed a dual purpose (promotion and protection). The report has been prepared on the basic understanding that all relevant institutions, whether intended for the "promotion" or for the "protection" of human rights, whether public or private, contribute to the full realization of those rights in a closely interrelated manner.

7. As emphasized by the General Assembly in its resolutions, full attention has been paid to differing social and legal systems. Every effort has been made to take all existing systems into account and to keep the study as balanced as possible.

I. LEGISLATIVE ORGANS AND ORGANS ESTABLISHED TO EXAMINE
THE CONSTITUTIONALITY OF LAWS

A. Legislative organs

8. In most countries the basic foundation for the protection of the human rights of individuals at the national level is established in the Constitution and developed by legislative organs. It is indeed the role of these organs to enact laws and regulations with a view to implementing the principles formulated in the Constitution. Countries which do not function under a written constitution, generally rely on the parliament or on the equivalent legislative organ to ensure the protection of human rights.

9. The essential function of parliament is, of course, its power to abrogate old laws and make new ones. Because of the importance of careful drafting of legislation, many parliaments have created select committees, whose primary function is to scrutinize and draft all proposed legislation.

10. To strengthen further the role of parliament in the protection of human and civil rights, many countries have instituted organs functioning within the parliament, to heighten parliament's awareness of corruption in the Government, and increase the parliament's ability to respond to allegations brought by constituents whose rights may have been violated by illegal or unconstitutional acts, or by public authorities. These legislative organs fall into four basic categories: committees which seek to protect citizens from infringement of rights by the Executive, committees designed to draft and scrutinize legislation, committees which may receive petitions from citizens asking for a parliamentary investigation into a matter of public or private interest, and inquiry or investigatory committees.

11. Committees which are created to protect the rights of citizens from infringement by the Executive, may be either standing committees or ad hoc committees. Standing committees are permanent parliamentary committees which conduct ongoing investigations throughout the year on a particular agenda of issues. Ad hoc committees are created to respond to a particular situation or allegation requiring an investigation, which involves the public interest. Both standing and ad hoc committees may investigate allegations and report their findings to the entire parliament, urging that appropriate action be taken. The purpose of these committees is to exercise control over the Executive, with a view to restraining it from acting in an arbitrary or oppressive manner, to influence the policies of the Government and to act as a liaison between the Government and the general public.

12. The power of parliament to check the powers and activities of the executive branch can also be exercised through its authority to initiate investigations of executive offices. In Poland, for example, in accordance with the Constitution, the parliament can authorize the Supreme Chamber to investigate State officers or authorities which it suspects may be guilty of a breach of law. In Finland, Parliament, exercising legislative powers, plays a central role in the protection and promotion of fundamental rights. The function of the Parliamentary Committee for Constitutional Law is essential in this respect. The Committee deals, as a preparatory body, with matters concerning enactment or abrogation of the Constitution or exceptions thereto, and presents, on the request of other committees, comments on questions regarding the Constitution.

13. Increasingly, legislative bodies in many countries have created standing and ad hoc commissions of inquiry or investigation. These commissions are designed primarily to inquire into matters of public interest which may involve arbitrary action or violations of law. Both Houses of Congress in the United States frequently set up standing or ad hoc committees to investigate a wide range of matters of public interest. In 1974, one such committee, the United States Senate Select Committee, conducted hearings which led to the resignation of the President of the United States. Committees of this nature are generally comprised only of members of the legislative organ concerned, who have lawyers and independent investigators at their disposal. While such committees do not have punitive powers or judicial authority, they may examine witnesses under oath and take testimony.

14. Many countries throughout the world recognize the right of individual citizens to petition the parliament or other legislative bodies for the redress of grievances. In the United Kingdom, for example, the Committee of Petitions, appointed by the House of Commons, may receive petitions from citizens with the aim of redressing grievances. Similarly, in India, in 1952, the Lower House created a Committee on Petitions to inquire into general grievances against the Government.

15. To redress the grievances of citizens who believe that incorrect information, omissions or unauthorized data about themselves has been recorded in the State computer system, New Zealand passed the Wanganui Computer Act in 1976, which provides for the appointment of a Wanganui Computer Centre Privacy Commissioner as an officer of Parliament. Not a civil servant, and answerable only to Parliament, the Privacy Commissioner may, if he/she deems it justified after the completion of an investigation, direct the department concerned to make such deletions or alterations as may be deemed necessary by the Commission. The departments in question are required to comply with the Commissioner's directions.

16. The Spanish Standing Commission on Petitions, which functions within the Congress of Deputies (the lower house of the Cortes), is required to consider each individual or collective petition received by Congress. The Commission may refer any of these petitions to the President of the Chamber, the Commission of Congress most suited to respond to the matter in question, the Senate, the Government, the Courts, or the Office of the Government Attorney. Finally, the Presidiums of the Supreme Soviets in the USSR have the power to receive and consider petitions from citizens.

B. Organs established to examine the constitutionality of laws 1/

17. In many countries, organs have been established with a view to ensuring that laws adopted by parliament do not violate constitutional norms and principles.

18. For example, a 1983 amendment to the Hungarian Constitution called for the National Assembly to elect a Constitutional Council to exercise control over the constitutionality of legal rules and legal directives or guidelines. The Constitutional Council is empowered to suspend the enforcement of any legal provisions (except legislative enactments by the National and Presidential Council) and directives and rulings of the Supreme Court. The Constitutional Council also assists in the interpretation of the provisions of the Constitution.

19. Constitutional councils similarly charged with determining the constitutionality of legislative acts, may, in some countries, function as independent bodies outside the parliamentary sphere. For instance, in France, the Constitutional Council is neither a legislative nor a judicial organ. However, in accordance with article 61 of the French Constitution of 4 October 1958, the Constitutional Council is empowered to examine the constitutionality of acts referred to it, before they are promulgated. The Council may be seized by the President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate or 60 deputies or senators.

20. In other countries, such as Finland, courts do not have the authority to examine the constitutionality of laws after they have been promulgated and there is no other organ empowered with the authority to examine the constitutionality of laws adopted by Parliament. The Finnish Parliament Committee for Constitutional Law exercises advance control, and the President of the Republic can also raise the question of the constitutionality of laws which are to be enacted. If the President finds that a law which has been dealt with as an ordinary law should have been dealt with in accordance with the order of procedure required for the enactment of constitutional law, he can, and this is known to have happened, refuse to confirm the law.

II. JUDICIAL ORGANS

A. Courts of general jurisdiction 2/

21. The judiciary plays a central role in enforcing and safeguarding human rights at the national level. Courts, and in particular, courts of general jurisdiction, are endowed with great powers through which they may exercise their ability to enforce human rights, including the very basic function of providing a fair, open and impartial hearing for persons accused of crimes and other illegal acts.

22. The forum of a court room may provide the accused with the opportunity to hear for the first time all of the specified crimes with which he is charged. Clearly, such information is essential in the preparation of an effective defence for the accused. Moreover, it is the court which provides the accused with the opportunity to speak in his own defence, should he choose to do so, and to confront the witnesses who may testify against him. Such provisions are essential to ensure the protection of the rights of the accused, particularly in penal cases where a great advantage is held by the prosecution, which generally has all organs of the State, including the police, at its disposal while prosecuting a case.

23. Courts of general jurisdiction also provide forums in which individuals can challenge legislative or executive acts, as well as actions by public authorities which may be illegal. Such a recourse is important in that it helps to hold public officials legally accountable for their actions.

24. In case of deprivation of liberty, one of the most essential requirements for a fair and equitable administration of justice is the existence of effective remedies. Such remedies are generally provided in all legal systems. Particular mention should be made of the procedures of habeas corpus and amparo (enforcement of constitutional rights) - a procedure found in Latin American countries.

25. In many countries, the constitution or other laws provide for the special remedies of habeas corpus and amparo to redress an unlawful violation of fundamental rights. 3/ Both habeas corpus and amparo are procedures primarily designed to provide speedy relief for the individual who has been the victim of wrongful detention or deprivation of liberty, affected for reasons or in a manner not prescribed by law. Such an action may be the result of a civil or criminal matter.

26. Although countries may apply different rules as regards access to these procedures, the common factor of habeas corpus and amparo procedures is the speed and simplicity with which these remedies are effected. Generally, a detained person will submit to the competent judge or authority a "petition alleging unlawful custody". The court will then require the responsible official to appear before the court and explain the reasons for detaining the person in custody. The responsible officer must also, at this time, present the detainee to the court. If the judge decides that the person in custody has indeed been unlawfully detained, then the judge must order that the detained person be released immediately.

27. For example, according to the Constitution of Venezuela, every person who becomes subject to a deprivation or restriction of his or her liberty in violation of constitutional guarantees, has the right to ask the competent judge to issue a writ of habeas corpus. The judge shall immediately order the official in whose custody the aggrieved person is held to report within 24 hours, and shall initiate a summary verification. If the judge decides that the legal formalities for deprivation or restriction of liberty were not met, he or she must order the immediate release of the aggrieved or an end to the restriction imposed, within 96 hours after the time that request was originally submitted. Moreover, recent decisions of the Venezuelan Supreme Court of Justice have broadened the application of the remedy of amparo to the violation of any fundamental right.

28. Finally, in many countries, actions of habeas corpus or amparo may be presented directly to the Supreme Court, High Court or Constitutional Court, and no exhaustion of other legal remedies is necessary. This is the case in El Salvador, India and Spain.

B. Constitutional courts 4/

29. One of the most important ways in which the courts may strengthen the protection of human rights is through judicial examination of the constitutional validity of enacted laws and administrative measures. Courts of this nature have been established in a number of countries. They are solely concerned with determining the constitutionality of enacted laws and are often called constitutional courts. 5/ For instance, the Spanish Constitutional Court may declare a law invalid if it contravenes the rights guaranteed under the Constitution. Similarly, in Ecuador, the Constitutional Guarantees Court, created in 1945 and re-established in 1978 after a period of suspension, seeks to ensure respect for the human rights guaranteed by the Constitution. Composed of three judges, the members of the Ecuadorian Constitutional Guarantees Court are elected by the national legislature, the President of the Supreme Court of Justice, the Attorney-General, the President of the Supreme Electoral Court, a representative of the President of the Republic, a representative of the workers, a representative of industrial organizations and two citizens' representatives.

30. While in many countries separate constitutional courts have been created, a large number of other States have empowered their supreme courts or high courts to determine the constitutionality of laws. In Singapore, for instance, in addition to its authority to hear all disputes and claims, the High Court is also empowered to hear and adjudicate all constitutional disputes. In accordance with section 42 (2) of the Nigerian Constitution, the High Court has special jurisdiction to hear and decide cases of alleged violations of the human rights guaranteed in the Constitution. Similarly, the Supreme Court of Canada has ultimate jurisdiction to ensure the conformity of both federal and provincial statutes or administrative measures to the Charter of Rights and Freedoms set out in the Constitution. The United States Supreme Court hears appeals from the decisions of the State courts in cases involving questions of constitutional interpretation, in addition to its authority to adjudicate cases on appeal from federal courts. The Court may declare any executive Act, Congressional Act or State law unconstitutional if such a law denies or abridges the guaranteed civil liberties of the people.

31. Although the functions of most courts which examine the constitutionality of laws are quite similar, countries vary greatly in granting the right of direct access to such courts. Most countries have strictly limited the access of individuals to such courts. For instance, actions filed with the Spanish Constitutional Court must be filed by either the President, the People's Advocate, 50 deputies, 50 senators, the executive collegiate bodies of the Autonomous Communities, or their legislative assemblies. A judge or a court, either ex officio or at the request of a party, may, however, refer a question on the constitutional validity of a law applicable to the case at hand to the Constitutional Court.

32. Some courts, like the Supreme Court of Papua New Guinea, however, determine questions of constitutional law presented by other courts, organizations or governmental bodies, as well as by individuals. Similarly, the Ecuadorian Constitutional Guarantees Court may receive complaints from individuals or any entity concerning alleged violations of human rights. The Federal Constitutional Court of the Federal Republic of Germany may hear an appeal from any individual who considers that his rights guaranteed in the Basic Law have been violated. In Sri Lanka, every individual has the constitutional right to apply to the Supreme Court with respect to an alleged infringement or imminent infringement, by executive or administrative action, of a fundamental right recognized by the Constitution. Similarly, the Indian Constitution gives each individual the legal right to challenge before the Supreme Court the measures adopted by the State which affect or threaten to affect his civil and political rights. In some Latin American countries, like El Salvador, Panama and Venezuela, the acción popular de inconstitucionalidad permits every citizen, even those not directly affected, to appeal to the Supreme Court to declare any specific law unconstitutional if it violates the rights guaranteed by the Constitution. For example, article 112 of the Venezuelan Organic Law of the Supreme Court of Justice states that any person whose rights or interests are affected by a law, regulation, ordinance or other act, created by national deliberative bodies at the State or municipal level or by the national executive power, may demand before the Supreme Court that such an act be declared void for reasons of unconstitutionality or illegality. In India complainants may appeal to the Supreme Court, even at first instance, to challenge the constitutionality of measures affecting their civil and political rights.

33. In the Federal Republic of Germany, complainants are required to exhaust all available State and local remedies before seeking recourse to the Constitutional or Supreme Court for a determination of the constitutionality of a law or action.

C. Special courts and tribunals 6/

34. Increasingly, the legal systems in many countries have provided specialized judicial bodies with limited competence, which function apart from courts of general jurisdiction. Such specialized courts are created for a number of reasons. In some instances, they are established to deal with issues of a socially or politically sensitive nature. Moreover, the character of some legal issues and questions may require a certain level of technical knowledge for a fair adjudication of the matter. Clearly, the creation of such courts helps to ease the case-load of the courts of general jurisdiction, which are frequently too overburdened to provide aggrieved parties with a timely decision on their case. Specialized courts are frequently incorporated

into the judicial framework in many countries throughout the world to deal with a number of questions. Labour courts and juvenile and children's courts may be mentioned as examples of special courts.

1. Labour courts 7/

35. During recent years a large number of countries have begun to establish courts, designed to settle, conciliate or arbitrate disputes arising from labour relations between employers, employees and workers' unions. For instance, the Constitution of Yugoslavia calls for the establishment of "self-management courts", empowered to conciliate and arbitrate labour disputes. These self-management courts are composed of permanent judges and workers from organized labour, State organs and other self-managed organizations and communities. In Norway, special courts - the Arbeidsretten - have been created to adjudicate labour disputes. The decisions of these courts cannot be appealed to ordinary courts or courts of general jurisdiction. Labour courts have also been established in many other countries, including Barbados, the Federal Republic of Germany, India, Kenya, Papua New Guinea, Thailand and Finland.

36. In some countries the organs dealing with the settlement of disputes in the area of labour relations are not always considered fully-fledged judicial bodies. They settle such disputes in quasi-judicial proceedings. For instance, the main competence of the Canadian Labour Relations Board lies in its statutory and regulatory powers. However the Board may hear appeals against safety rulings in cases where unsafe working conditions have been alleged. The Board also rules on complaints by employees that they have been discriminated against or punished for exercising their rights in relation to safety. An important part of the Board's activities is concerned with granting or reviewing certification on the application of trade unions to act as bargaining agents for groups of employees. The jurisdiction of the Canadian Labour Relations Board is limited to federally regulated companies and organizations. Provincial labour relations boards regulate labour relations matters within areas of provincial jurisdiction. The Labour Code of some countries - France and Tunisia for example - provides for the establishment of Conseils de Prud'hommes (Councils of Elders), with competence to rule in disputes between workers and employees.

2. Juvenile and children's courts 8/

37. The establishment of juvenile and children's courts is based on the principle that children and young persons need special care and different treatment from that accorded to adults under the law. Definitions of the terms "infants", "children", "minors", "young persons", and "juveniles" vary from country to country. Distinctions are also made according to cases. For example, a "minor" in penal matters may not be so considered in civil cases. Juvenile and children's courts usually have broad discretion for the settlement of cases, ranging from the imposition of a sentence, often suspended, upon the accused, to ordering his or her placement in a rehabilitative institution or school, or merely warning or reprimanding the accused.

38. Children's courts in Australia are entitled to hear all complaints against children concerning summary offences as well as charges against children accused of committing indictable offences other than homicide, or offences punishable by penal servitude for life. In El Salvador, the Juvenile Courts have exclusive competence to try infractions regarded as crimes or offences under ordinary law and attributed to minors of 18 years of age or under; to investigate the situation of minors of 18 years of age or under who are in a state of moral or physical abandon or in danger, and to adopt suitable measures for the care, treatment, placement, supervision and education of minors.

39. In Tunisia, minors between 13 and 18 years of age charged with a transgression regarded as a crime, or offence, are brought before the children's judge or the Minors' Penal Court. The judges in such cases are required to order appropriate measures of protection, assistance, supervision and education. Where the circumstances and the personality of the delinquent appear to warrant this, the Court may deliver a penal sentence against a minor of over 13 years old, in which case the sentence is served in a special establishment.

40. Some States select individuals to sit on the juvenile court from among professionals in the community who are qualified to bring particular sociological or psychological expertise to the panel, in addition to the legally certified judges who usually sit on the judicial panel in such courts. For instance, in Italy, the Special Juvenile Court, which tries minors of 18 years of age, is composed of a judge of the Court of Appeals and two citizens (a man and a woman) over 30 years of age who are professionals in biology, psychiatry, clinical anthropology or psychology.

41. Many juvenile and children's courts are concerned with maintaining the privacy of minors in court proceedings. In Barbados for example, the Juvenile Offenders Act provides that juvenile courts may convene in different places and at different times from ordinary courts. The Act also prohibits the publication of information likely to lead to the identification of any juvenile offender. Similarly, in France, the Juvenile Court and the Juvenile Assize Court are always held in private, without a public audience apart from close relatives. Decisions are, however, delivered in open court.

42. Finally, it is important to note that some States do not try juvenile delinquents before an organized court. In Cyprus, for example, cases involving delinquent minors do not appear before the Court except when a very serious crime has been committed. Instead, in most cases, delinquent minors are supervised by social workers in their own environment.

3. Other specialized courts

43. In addition to juvenile courts and labour courts, many countries have reported the existence of a wide range of quasi-judicial organs to settle disputes involving diverse categories of rights. For instance, New Zealand reports the existence of the Maori Land Court, established to adjudicate the land claims of its indigenous population. In the same country, a Deportation Review Tribunal was created in 1978 to examine administrative orders for the expulsion and deportation of foreigners. A special Social Insurance Court or Trygderetten, whose decisions may be brought before the ordinary courts, has

been created in Norway. An insurance court also exists in Finland. It is an appeal organ in certain social security matters. It deals with, inter alia, complaints in relation to national pensions, accident insurance and indemnities for military injuries.

D. Administrative courts and tribunals 9/

44. The protection of human rights may be provided either within a unitary judicial system, or under a dual system of civil courts (competent to hear civil disputes and penal cases) and administrative courts (competent to rule on complaints against administrative acts). Such a dual system is employed in France, where the Cour de cassation, at the top of the judicial hierarchy, deals with criminal and civil cases, and the Conseil d'Etat is the judicial authority which exercises ultimate control of the administration by giving final rulings on appeal from the Administrative Tribunals (Tribunaux administratifs). The Conseil d'Etat may declare void administrative acts which are contrary to the law as well as acts by State or local authorities which have exceeded their jurisdiction. Additionally, the Conseil d'Etat may declare measures void, if it finds that they have been exercised for purposes other than those intended by the law. The available remedies of the Conseil d'Etat are the annulment of challenged acts and the granting of compensation to the victim, which is paid by the administration.

45. Administrative courts of a similar nature are also found in other countries, notably in Belgium, Finland, the Federal Republic of Germany, Greece and Tunisia. For instance, the Tunisian Administrative Tribunal, which was created in 1972, may hear appeals for compensation from the civil courts and appeals for annulment on grounds of misuse of authority lodged against acts of the administration, local public authorities or public administrative bodies. In the Federal Republic of Germany, any administrative act which the person affected considers to be a violation of his basic rights (or unlawful for other reasons) is subjected to judicial review upon application by him. Responsibility for such proceedings lies with administrative courts or, depending on the administrative act contested, with social courts (especially for social insurance matters) or finance courts (for tax matters).

E. Other organs established within the framework of the judicial system

46. Within the framework of the judicial system, many countries have established organs to assist the judicial process in providing adequate protection of individuals' rights. In Finland, the Chancellor of Justice of the Council of State is, together with the Parliamentary Ombudsman (see IV), the supreme supervisor of the administration of justice in Finland. His importance with regard to the protection and promotion of human rights is evident in his power to settle complaints lodged with him by the citizens as well as in his position of supreme prosecuting authority in which capacity he supervises the public prosecutors who are obliged to observe his orders. Contrary to the Parliamentary Ombudsman, whose duties comprise the supervision only of the legality of the activities of judges and authorities, the Chancellor of Justice exercises a general authority in matters relating to complaints. The Chancellor of Justice is appointed to his position by the President of the Republic. The Chancellor of Justice submits an annual report to the President and to Parliament on, inter alia, his findings on the

observation of laws. If the Chancellor of Justice has found that the administration of justice has in some way given cause for comments, or that new legislation is needed, he can make his proposals or express his opinions on these subjects, too.

1. The "Ministerio Público" 10/

47. One such organ is the Ministerio Público, an institution which exists in several Latin American countries. The Ministerio Público has a broad range of responsibilities consisting in an overall supervision of the administration of justice. Each category of existing court or tribunal in the country is generally provided with a corresponding agent of the Ministerio Público. Agents of the Ministerio Público may act on their own initiative, or upon complaints addressed to them by individuals or groups requesting the office's intervention. In some countries, the Ministerio Público is elected by the legislature. In others, the Ministerio Público is appointed by the President from a list of suggested candidates submitted by the State Council. This is the procedure followed in Guatemala.

48. The competence of the Ministerio Público extends to the activities of all judicial courts and administrative tribunals. Although the Ministerio Público does not have power to change laws or quash any administrative or judicial decision, agents of its offices are empowered to prosecute, sue, request that disciplinary action be taken, impeach public officials before the competent courts and act as a party in proceedings. In Colombia, for example, the Ministerio Público has a broad range of responsibilities and duties. Generally, it may receive complaints of violations of human rights from individuals, investigate such complaints and take appropriate action on them, supervise the official conduct of public officials and employees (particularly those in the judicial branch), ensure that the competent authorities investigate acts by public officials or employees that might constitute a criminal offence, and represent the interests of the nation in the judicial forum, either in person or through its agents. In Venezuela, the Ministerio Público is an independent institution which primarily supervises the actions of public officials. In accordance with the Venezuelan Organic Law, the Ministerio Público is, inter alia, responsible for ensuring that tribunals of the Republic apply the law correctly and uniformly in penal cases, investigating cases of alleged arbitrary detention, and promoting action to bring about the end of such unlawful detention, defending the independence and autonomy of judges in the exercise of their duties, ensuring that police officials in prisons and other prison personnel maintain respect for the human rights of prisoners.

2. The Procurator 11/

49. The Procurator's Office, headed by the Procurator-General, is an institution found primarily in the Soviet Union and other Eastern European countries. With minor variations in the scope of the authority and duties of its officers, the Procurator system exists in Bulgaria, Hungary, Romania, Czechoslovakia, Poland and Yugoslavia. In addition, the office of Procurator was also established in the Democratic People's Republic of Korea in 1974.

50. The Procurator's Office was designed to protect the constitutionally guaranteed rights and legally protected interests of citizens of the USSR, as well as to protect the rights and legally protected interests of State institutions. In order to provide the Procurator's Office with the means to fulfil this broad responsibility, the State grants the Procurator far-reaching authority and jurisdiction. For instance the Procurator's powers include the right to demand documents and information, and all State bodies and officials must submit the necessary information to the Procurator's Office upon request.

51. Unlike the Scandinavian ombudsman, with which the Procurator's Office is frequently compared, the Procurator-General is empowered to monitor the legality and validity of verdicts, decisions, judgements and orders of judicial organs in criminal and civil cases. In accordance with this authority, the Procurator may appeal to a higher court if, in his view, a court sentence in a criminal case or a ruling in a civil case is unlawful and unjustified. He may not however, challenge a sentence of acquittal, which is irreversible after one year from the date on which the sentence was passed.

52. The Procurator is further charged with the supervision of administrative bodies. To that end, the Procurator's Office may act on its own initiative or on the basis of complaints received from aggrieved citizens. Considerable importance is attached to these complaints. Ensuring respect for the law in the examinations of such complaints is one of the Procurator's most important duties. The law governing this matter imposes upon all administrative organs seized of a complaint, the obligation to make a careful investigation, to communicate to the plaintiffs in writing and orally, the decision taken, and to state the grounds for negative decisions. Furthermore, the Administration must attempt to draw general conclusions on the complaints received with a view to eliminating the causes of the violations. Penalties are imposed in the case of a breach of the complaints procedure, bureaucratic unco-operativeness or victimization of the plaintiff.

53. Generally, the Procurator's Office is also charged with the prevention of crime and the prosecution of criminals. Included in this prosecutory power is the obligation to ensure that the organs of inquiry and preliminary investigation strictly observe the criminal investigation procedures established by the law. The Procurator is also empowered to investigate the lawfulness of administrative detention of a citizen. Moreover, the Procurator must ensure that no arrest is made unless it has been ordered by a court or approved by the Procurator's Office. In addition, the Procurator has a duty immediately to release any person illegally deprived of liberty or detained in custody for longer than the term provided for by the law or by a court sentence.

54. The Procurator of the USSR is elected by the Supreme Soviet for a term of seven years' service. Only the Supreme Soviet may remove the Procurator-General from Office. He is responsible for appointing the Procurators of the Union Republics, the autonomous republics, the territories, the regions and the autonomous regions. The various agencies of the Procurator's Office are then established, according to the division of the Republic, into administrative units. Although the Procurator's Office is virtually an independent organ, the Procurator-General must submit an annual activity report to the Supreme Soviet.

3. Legal assistance services 12/

55. One of the most important institutions for safeguarding the rights of the individual within the judicial framework is the system of legal assistance services provided in most countries to persons who are financially or otherwise unable to defend themselves competently in a legal action. Generally such assistance may be granted when: (a) the accused is financially unable to retain counsel; (b) the accused is mentally or physically incapable of presenting his or her own defence to the court; or (c) when the statutes or laws relevant to the case are of such a complex nature that legal expertise is required to present an effective defence. Many countries have included provisions in their constitutions or laws making legal assistance mandatory in some types of criminal case. For instance, legal assistance is viewed as indispensable in the interest of justice in cases in which: (a) the defendant is charged with a capital offence; (b) the accused is a minor, deaf or mute, or is mentally unsound; (c) the accused does not have a command of the language used in court. In some countries, such provisions may be waived by the accused.

56. To illustrate, the following examples may be mentioned. In Barbados the Community Legal Services provide free legal assistance only to persons charged with such indictable offences as murder, manslaughter and rape, who have insufficient means to retain their own defence counsel. Similarly, the Nigerian Legal Aid Council restricts its grant of free legal aid to defendants with inadequate resources in criminal proceedings. In Norway, legal aid is granted to all who apply for it in criminal cases. In civil cases, applicants must demonstrate that they are without sufficient means. This stipulation applies to all requests for free legal advice, even in cases where judicial proceedings have not been instituted. When an accused person does not have counsel, courts in the Federal Republic of Germany will appoint a lawyer, especially in cases where the accused is charged with a crime which carries a minimum prison sentence of one year. Counsel is also appointed for the accused when such assistance appears to be necessary because of the gravity of the act or because of difficulties of fact or law, or when it is obvious that the accused cannot defend himself. In these cases, an accused person without sufficient means may be assisted at no cost by an attorney appointed by the Court. No proof of lack of financial means is required. However, if convicted, the accused must bear the cost of both the proceedings and court-appointed counsel. In Morocco, every accused person may, at any stage of the proceedings, have recourse to the assistance of defence counsel. Appointment of such counsel is mandatory when accused persons are under 16 years of age, or when they are blind or disabled. General legal assistance is provided in Finland free of charge or at partial fee. Such assistance can be granted to persons whose income or property is insufficient to retain expert help in judicial matters. The Finnish Act on Public Legal Aid also makes free legal assistance available to foreigners and stateless persons. In the United States Public Defender Offices are located throughout the country, to provide legal assistance to the accused. The Public Defender is appointed by State or local authorities if a defendant in a criminal prosecution cannot afford to retain a lawyer. The staff of Public Defender Offices may be selected through civil service procedures, appointed by the judiciary or elected. The public defender systems are financed by public funds. The right to defence counsel in the United States has been expanded to include any case in which the defendant might be imprisoned and cannot provide his or her own

attorney. In the USSR and the Ukrainian SSR, colleges of advocates are available to give legal assistance to citizens and organizations. In cases provided for by law, citizens shall be given legal aid free of charge.

57. Finally, various countries have made provisions to extend special legal aid services to persons who do not understand the language in which the court proceedings are conducted or to persons belonging to specific population groups. For instance, in Canada, the Native Courtworkers Programme provides counselling, other than legal advice, to native persons in the criminal justice system.

58. Free legal aid services, in general, are provided by bar associations, legal aid societies or other similar bodies which may or may not receive financial assistance from the Government, by court appointed lawyers, who are not in government service or by lawyers employed by the Government, known as public defenders, who are usually appointed by State or local authorities and are full-time, salaried lawyers. The community legal clinics in Ontario receive financial assistance from the Government but are operated by community boards of directors.

59. Some States require that the accused request legal assistance before the court will appoint a lawyer to the case. In others, the court appoints a lawyer to defend the accused, whether or not the defendant has so requested. In still other States, like Costa Rica, the court will only appoint a lawyer for the defence, if the accused has not chosen a lawyer within a certain time.

III. ADMINISTRATIVE ORGANS

60. In many countries, Governments have established special commissions or agencies with a view to ensuring that the laws and regulations concerning the protection of human rights are effectively applied. The role and functions of such commissions and agencies are described below.

A. Human rights commissions 13/

61. Human rights commissions are concerned primarily with the protection of citizens against discrimination as well as with the protection of civil and other human rights. These commissions and similar public bodies at the national level are generally designed to hear and investigate individual charges of human rights violations or discriminatory acts committed in violation of existing law. Most human rights commissions are collegial bodies, comprised of members who, in most cases, are selected by the Executive. In many cases the commissions enjoy statutory independence, and are responsible for reporting on a regular basis, to the legislative body. In some cases, as in Japan, the human rights commissions are organized within the Ministry of Justice. Similarly, the Ministry of Foreign Affairs is responsible for the selection of the members of the Norwegian Human Rights Committee, and the same is true in Denmark.

62. Commission members may be selected from a number of fields, but preference is generally given to persons having prior experience in the field of human rights. For instance, in Denmark, the members of the Human Rights Committee include representatives from the Foreign Ministry, other ministries and various non-governmental organizations concerned with human rights. In some cases, restrictions are placed on selection of commission members. For example, in the United States, members of the Civil Rights Commission are selected by the President and must be confirmed by the Senate, with the requirement that not more than half of the Commission's members belong to the same political party. In Japan, the Ministry of Justice selects the members of the Civil Liberties Bureau from among citizens in each locality of the Bureau's eight offices across the country. The citizens chosen as Commissioners include social workers, schoolteachers, attorneys, media personnel and manual workers in agriculture and forestry.

63. Generally the laws or statutes which create a human rights commission define its jurisdiction, since they codify the range of discriminatory or violative conduct that the Commission is empowered to investigate. For example, the Australian Human Rights Commission (established in 1981) is authorized to hear and investigate complaints of violations of any rights defined in the Racial Discrimination Act and the Human Rights Commission Act. The United States Civil Rights Commission, may hear and investigate complaints alleging discrimination on the grounds of race, colour, religion, sex or national origin. An even broader range of rights is protected in Canada, in accordance with federal, provincial and territorial human rights acts. For example, the Canadian Human Rights Act empowers the Canadian Human Rights Commission to investigate allegations of discrimination based on race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability and conviction for an offence for which a pardon has been issued. Additional grounds covered in other jurisdictions include public assistance (housing), social condition, sexual orientation, political convictions and ancestry.

64. The procedures followed by human rights commissions in the investigation and resolution of complaints vary from country to country. It is true however, that in almost all countries the human rights commission does not have the power to make binding decisions itself in resolving a complaint. In most cases, the human rights commission attempts to arrive at settlements between parties. If the settlement or appropriate remedial steps suggested by the commission are not implemented, it frequently has the authority to seize the Courts or the Prosecutor's Office for adjudication or prosecution of the matter. The commission may, as in Australia, merely submit the matter to the Attorney-General with a recommendation as to the appropriate legal action.

65. In cases in which no settlement can be reached, the law often provides the procedures to be followed. In Canada, for example, in such cases, upon the recommendation of the human rights commission concerned, a board of inquiry must be set up (in some jurisdictions, the appointment of a board of inquiry is discretionary). The Board's membership is entirely independent of the Commission. If the Board decides that a human rights violation has indeed been committed, it may determine the appropriate remedial action to be taken, including the payment of damages. When the Board's order or recommendation, as the case may be, is not implemented, it may be enforced by the courts, or in some Provinces, by the Human Rights Commission itself. In one Canadian Province, in which no Board of Inquiry exists, the Human Rights Commission may, with the plaintiff's consent, seek an injunction from the Court, in the event that its recommendation has not been implemented.

66. In some cases, a human rights commission may hear and investigate complaints, but may not be empowered to act upon them. This is true of the United States Civil Rights Commission. The Commission's function is, primarily, to review the status of compliance with civil rights law and to study the situation concerning respect for human rights. The Commission is empowered, however, to hear complaints and to receive information regarding those complaints. In fulfilling its responsibilities, the United States Civil Rights Commission may issue subpoenas and hold formal hearings.

67. One of the most important functions of a human rights commission is its power to review systematically existing government policy toward human rights and to suggest improvements. For instance, in addition to its competence to hear, investigate and apply remedies to cases involving human rights violations, the National Commission for the Promotion and Protection of Human Rights in Nicaragua conducts periodic reviews of the legislative and administrative systems and recommends to the Government ways in which these systems might be improved. Similarly, the Standing Advisory Commission on Human Rights for Northern Ireland advises Parliament on the adequacy and effectiveness of existing laws in preventing discrimination based on religious belief and political opinion.

68. Many human rights commissions engage in monitoring State legislative compliance with existing human rights law. In its review of every newly enacted State law, the Senate Legal Committee of Zimbabwe, for example, seeks to ensure that all new legislation complies with the Declaration of Rights embodied in the Zimbabwean Constitution. The Committee also advises the Government on whether any provisions in the new legislation would be in violation of the Declaration of Rights. Similarly, the Italian Interministerial Committee on Human Rights engages in a systematic review of legislative and administrative measures in an effort to ensure that Italy

meets its obligations under international conventions on human rights. Also, in New Zealand, the Human Rights Commission is responsible for advising the Prime Minister on the acceptance by New Zealand of any international instruments on human rights. It may, in addition, give advice on the human rights implications of any policy or legislation proposed by the Government.

69. Most human rights commissions are also actively engaged in educating the public about their function and purpose, as well as about various important issues in the field of human rights. This has been referred to in previous reports as the "promotional role" of human rights commissions. They generally fulfil this function through seminars, counselling services and meetings, as well as through the distribution of periodic reports, studies and bulletins prepared by the commission or other human rights institutions. In fact recently, the Australian Human Rights Commission published its own handbook on human rights. Frequently, responsibility for educating the public on human rights issues is part of a human rights commission's statutory mandate. For example, part of the mandate of the Japanese Civil Liberties Bureau is to provide educational activities and to encourage community campaigns and non-governmental organization activities, which promote respect for human rights. Even more specifically, under the Canadian Human Rights Act, the Canadian Human Rights Commission may provide assistance and advice with respect to special programmes; must develop and conduct information programmes to foster public understanding of the Canadian Human Rights Act; must carry out research programmes and undertake studies concerning discrimination; may consider recommendations received concerning human rights and individual freedoms; may provide assistance and advice directed at ensuring compliance with the Act; and must maintain close liaison with bodies or authorities in the Provinces that are working against discrimination. Provincial and territorial human rights commissions carry out public education functions and other functions similar to those of the Canadian Human Rights Commission.

69a. According to information made available by the Commission on Human Rights of the Philippines, a commission was established as an independent constitutional office by Article XIII, Section 17. Shortly after the ratification of the New Charter, President Corazon C. Aquino signed Executive Order No. 163 on 5 May 1987 constituting the Commission on Human Rights and providing the guidelines for its operations. According to this information, the powers and functions of the Commission are to:

"Investigate on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;

"Adopt its operational guidelines and rules of procedures, and cite for contempt for violations thereof in accordance with the Rules of Court;

"Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad and provide for preventive measures and legal aid/services to the under-privileged whose human rights have been violated or need protection;

"Exercise visitorial powers over jails, prisons, and detention facilities;

"Establish a continuing programme of research, education and information to enhance respect for the primacy of human rights;

"Recommend to Congress effective measures to promote human rights and to provide for compensation to the victims of violations of human rights or their families;

"Monitor the Philippine Government's compliance with international treaty obligations on human rights;

"Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority."

70. In some cases, commissions are created for the sole purpose of carrying out promotional and educational human rights duties. In fact, in 1984, Suriname reported that it had established a Commission for Information and Guidance regarding Human Rights in Suriname. Such a commission would, ostensibly, be solely devoted to providing promotional services to the community in heightening an awareness of human rights issues. Suriname later expressed its intention to broaden the scope of this Commission beyond its merely promotional duties, and eventually to establish a national institution for the promotion and protection of human rights pursuant to General Assembly resolution 38/123.

71. What appears to be the most essential ingredient for an effective human rights commission, is a strong connection between the law, the commission and the courts. First, the human rights commission requires a broad and clearly codified mandate (as part of the Constitution or of the law) to establish its jurisdiction, and to ensure its statutory independence from the Executive or parliamentary control. An effective human rights commission further requires recourse to the courts or the Prosecutor's Office, to enforce the results and recommendations of its investigations. Without this important connection (between the law, the commission and the court), a human rights commission would be largely impotent. The power to investigate complaints without the power to enforce the recommendations resulting from such investigations, may render a human rights commission powerless, and may ultimately discourage citizens from seeking recourse to such organs. The purpose and role of a human rights commission is highly questionable if a citizen must initiate another action, either in the courts or with another agency, after utilizing the offices of the commission, particularly since many individuals who have suffered some form of discrimination or a violation of their rights may be unwilling to initiate a second action after the first had produced an unenforceable decision and no actual relief.

72. In order to maintain low administrative costs (by eliminating the need for citizens to take their complaints to more than one agency), to ease the burden on the courts (by settling matters without the high cost of an independent adjudicative investigation), and most of all, to encourage citizens to seek redress for violations of their civil and human rights, human rights commissions must be empowered to enforce compliance with their recommendations, either by seizing the court or the Prosecutor's Office, or through an independent grant of power, enabling the human rights commissions to make binding decisions.

73. Another very important consideration to bear in mind in the development of a human rights commission is a mechanism for the equitable selection of commission members, as problems may arise if the selection procedure is unfair. Moreover, maintaining close ties with the community, and dispelling the image of human rights commissions as lofty government agencies, can only benefit the standing of human rights commissions as effective institutions for the protection of the human and civil rights of the ordinary citizen.

B. Agencies for the protection of specific groups

74. In recognition of the fact that particular groups in the community are often subject to an inordinately high incidence of discrimination, many States have established institutions designed to protect and promote the rights of individuals in such groups. Members of the community who are most often recognized by Governments as needing specialized human rights agencies to protect their interests are persons belonging to ethnic and linguistic minorities, aliens, refugees, indigenous populations, women and children, as well as members of religious minority groups. For the most part, these agencies are designed to promote government and social policy which protects the rights of these groups, to investigate instances and patterns of discrimination against individuals in the group and against the group as a whole; and to provide material and consultative assistance to members of the group.

75. Such agencies are generally not empowered to make binding decisions or to initiate legal action. Most often, agencies for the protection of the rights of specific groups are consultative and advisory commissions to the parliament and executive branch of government, and are required to examine the status of human rights violations as regards the groups concerned. These agencies are also generally responsible for monitoring the effectiveness of existing statutory and constitutional safeguards aimed at protecting the rights of specific groups in the community, and are additionally empowered to investigate claims of discrimination brought by members of the community against State and local authorities.

1. Agencies for the protection of persons belonging to ethnic and linguistic minorities 14/

76. Agencies for the protection of minorities have been established in many States over the past several decades to protect the rights of members of ethnic and linguistic minority groups, who are traditionally subject to discrimination. For instance, in Yugoslavia, commissions have been established to address the specific problems faced by minorities and to promote the principle of equality and collective rights. Other organizations of a similar nature are designed primarily to investigate the grievances of minority group members charging State or local authorities with engaging in discriminatory practices. In Pakistan, for example, District Minority Committees have been organized under the chairmanship of Minority Officers to redress, at the local level, the grievances of the minority communities expressed by their representatives.

77. A broad mandate was contemplated when the Indian Minorities Commission was created in 1978. The functions of the Commission are:

(a) To evaluate the working of the various safeguards provided for in the Constitution and in laws passed by the Union and State Governments for the protection of minorities;

(b) To make recommendations with a view to ensuring the effective implementation and enforcement of all the safeguards and laws;

(c) To undertake a review of the implementation of the policies pursued by the Union and the State Governments with respect to minorities;

(d) To look into specific complaints regarding deprivation of rights and safeguards of minorities;

(e) To conduct studies, research and analysis on the question of avoidance of discrimination against minorities;

(f) To suggest appropriate legal and welfare measures in respect of any minority to be undertaken by the central or State Governments;

(g) To serve as a national clearing-house for information in respect of the conditions of minorities;

(h) To make periodical reports at prescribed intervals to the Government.

78. Such a body can clearly have a great impact on human rights policy in the country, as well as on the immediate problems facing minorities with regard to discrimination in the community.

79. In accordance with its Constitution, Singapore has established a Presidential Council for Minority Rights. The Council considers and reports on information received from Parliament or the Government on matters concerning persons belonging to racial and religious minorities. The Council is especially requested to report on any proposed legislation or regulation which may result in discriminatory or unequal treatment of persons in particular communities. For the protection of the rights of linguistic minorities, India has established a Commissioner for Linguistic Minorities. In accordance with article 350A of the Indian Constitution, all States must provide adequate facilities for instruction in the mother tongue at the primary school level of education. The Indian Commissioner for Linguistic Minorities investigates all matters relating to the safeguards provided for in the Constitution regarding the rights of linguistic minorities. The Commissioner is also required to report directly to the President on these matters. Another example of an organ established for the protection of linguistic minorities is the Austrian system of contact committees for the Slovene-speaking and Croatian-speaking minorities, organized within the Austrian Federal Chancellery. The contact committees meet at regular intervals and are comprised of members of the Federal Government, the provincial government concerned, the political parties represented in parliament and the provincial legislative assemblies concerned. Representatives of the minority groups also serve on these committees. The primary function of the committees is to consider measures for the implementation of the provisions of the State treaty of 1955 regarding minority rights. The committees are also charged with the consideration of all action relating to the peaceful cohabitation of the various ethnic groups and may deal with problems concerning individual members of the various ethnic groups or the groups as a whole.

80. Concerning ethnic groups more specifically, countries with an ethnically diverse population often create special commissions designed to ensure that the rights of the various ethnic groups in the community will be protected. For instance, in India, the Commissioner for Scheduled Castes and Tribes was empowered to investigate all matters relating to the safeguards provided for the scheduled castes and tribes under the Constitution. The Commissioner was responsible for submitting an annual report to the President, which was subsequently presented to both Houses of Parliament. Because of the magnitude of the problem however, a Commission for Scheduled Castes and Tribes - composed of a Chairman and four members - was organized to address the issues concerned in the protection of the rights of scheduled castes and tribes more effectively.

81. It has also been suggested that such commissions may be even more needed in ethnically homogeneous countries, in which small ethnic groups are virtually without representation at the State and local level and may be subject to a high incidence of discrimination in the community. Organizations established to protect the rights of such ethnic groups are often additionally charged with promoting respect for the various cultures present in the community. In Finland, for example, the Advisory Board for Gypsy Affairs has developed projects for the teaching of the Gypsy language, culture and history. The Sami, mainly inhabiting the North of Finland, have a special Sami Committee (the Sami Parliament), which deals with the legal, economic, social and cultural conditions of the Sami as well as other questions concerning the very special circumstances of this minority people. Only Sami are allowed to take part in the election of members to this Parliament. The Committee does not have the right of decision in Sami questions. An example of the recent activities of the Committee is the bill for a Language Act which would guarantee the Sami the right to use their mother tongue when dealing with the authorities. In addition to this Committee, there is the Commission for Lappish Affairs to ensure a uniform preparation of matters concerning the Sami population. The members of the Commission represent both the Sami and the authorities in charge of Sami Affairs. This Commission, like the Committee, does not have the right of decision either.

2. Agencies for the protection of indigenous populations 15/

82. Increasingly, the countries concerned have created organs to protect and promote the rights of indigenous populations, which are often subject to discrimination, dispossession of land and other human rights abuses.

83. In New Zealand for example, the Department of Maori and Island Affairs and the New Zealand Maori Council have been established to address the concerns of the Maori population. The Department of Maori and Island Affairs is responsible for co-ordinating and implementing government policy with respect to Maoris. The New Zealand Maori Council is a consultative body, which expresses its views on all proposed legislation affecting the Maori population. Norway, Finland and Sweden have all created independent commissions to deal with the concerns and problems of their respective Sami (formerly referred to as Lappish) populations. The Finnish Commission for Lappish Affairs is composed of representatives of the Ministries of Justice, Education and Agriculture, and of representatives of various Sami organizations. The main function of the Commission is to advise the Council of State on proposed measures designed to promote the culture of the Sami. The Commission is also consulted by State and local authorities on all matters

concerning the Sami population. The Swedish Commission on Sami Affairs, created in 1970, is designed to examine the various problems confronting the Sami in Swedish society. The Commission is particularly concerned with addressing the needs of those Sami who have left reindeer husbandry and moved away from the breeding areas. Norway has created two organs to deal with Sami issues and concerns. The first, the Norwegian Lapp Council, is comprised of eight members, who are all Sami. The Council is primarily an advisory body, which may make recommendations on matters concerning the economic, social and cultural situation of the Sami. Norway has also established a Select Committee, comprised of government and Sami representatives. The Committee, organized under the Ministry of Church and Education, examines questions relating to the educational development of the Sami.

84. Another example of an organ created to address the concerns of indigenous populations is the Mexican Instituto Nacional Indigenista (National Institute for Indigenous Affairs), which was established to study issues concerning the indigenous populations, and to report on the implementation of measures taken to improve the situation of Mexico's indigenous populations.

3. Agencies for the protection of aliens, migrants and immigrants

85. To address the problems of discrimination against foreign migrants and refugees, many countries have created agencies to protect these individuals against discrimination and other obstacles which may obstruct the full exercise of their rights in the community. The Australian Ethnic Affairs Council, for example, advises the Minister for Immigration and Ethnic Affairs on matters relating to the integration of migrants into the Australian community, particularly in the area of community services. In addition, the Australian Government has opened two Multi-Cultural Resource Centres established to provide an information and advisory service to meet the special needs of immigrants, and to provide information on the availability of benefits and services at the State and local level. The Centres are designed to provide premises for the centralized distribution of multilingual information material, such as pamphlets on social security benefits and other relevant information.

86. In Belgium in 1952, the Aliens Advisory Commission was created. This Commission must be consulted by the King in all cases in which an alien can only be removed from the country by an expulsion order. The Belgian Minister of Justice may seek the Commission's opinion before making a decision concerning an alien. If the Commission is not consulted prior to a decision which is the subject of an application for review, the Minister of Justice must obtain the Commission's views before ruling on that application. Similarly, concern with protecting the rights of immigrants resulted in the creation of the Norwegian Foreign Workers' Association, which is aimed at safeguarding the economic, social and cultural interests of Norway's many new immigrant groups. The Association receives substantial financial assistance from the Norwegian Government, and emphasis is placed on an increased commitment to permitting immigrant groups to exercise greater influence on matters which particularly concern them. In Sweden, the Commission on Ethnic Prejudice and Discrimination may propose to the Government, measures concerning the improvement of the situation of aliens. Finally, it was recently reported that, in an effort to address the needs of its growing refugee population, Denmark has created a Directorate for Aliens and a Refugee Board. The Directorate is the authority of first instance for decisions

concerning refugee status. Such decisions are appealable to the Refugee Board, which functions procedurally like a court. Matters concerning foreign refugees in Finland are dealt with by the Committee for Refugee Matters at the Ministry of Social Affairs and Health. The aim of the Committee on Migration Affairs at the Ministry of Labour is to promote the situation of the migrants. The duty of the Counsellor for Aliens is inter alia to provide information and guidance for foreigners in Finland and to take initiatives for the consolidation of their situation. The Officer has no right of decision. He functions under the Ministry of Social Affairs and Health.

4. Agencies for the protection of children and minors 16/

87. Although in most countries protection of children's rights is primarily the responsibility of parents and legal guardians, mechanisms have been established by States for the protection of children whose parents do not fulfil their recognized duties, or who may be particularly vulnerable to exploitation. One of the primary concerns of such agencies is the exploitation of children in the labour market. Examples of institutions concerned with the prevention of child labour include the Egyptian Supreme Council for the Child, the Indian National Children's Board, the National Council for Children's Affairs in Bangladesh, the Chinese People's National Committee for the Defence of Children, the National Council for the Child in the Dominican Republic, and the United States Federal Inter-Agency Committee for Children and Youth.

88. In some States, these agencies function as subsidiary organs of the legislative body. For instance, in the USSR, the Ukrainian SSR and the Byelorussian SSR, Commissions of the Supreme Soviet on Women's Working and Living Conditions, Maternity and Child Welfare, deal in a co-ordinated manner with all questions concerning the rights of the child. Similar functions are carried out by the Juvenile Welfare Board in Norway, the Commission on Children's Rights in Sweden, and the Child Care Board in Barbados. In India, the National Children's Board, established in accordance with the National Policy for the Children Resolution adopted by the Legislature in 1974, is headed by the Prime Minister. This Children's Board was designed to provide "a focus and a forum to plan and review and properly co-ordinate the multiplicity of services, striving to meet the needs of children".

89. Many agencies for the protection of children are increasingly concerned with the social protection of homeless and abandoned children. In Finland, matters concerning the care and upbringing of children are dealt with by the Ministry of Social Affairs and Health and its subsidiary central authority, the National Board of Social Welfare. The Social Welfare Boards function as local authorities in these matters. In Poland, for example, the Society of the Friends for Children renders special assistance to children's homes and day-care centres. Also concerned with the social protection of children, the Minors' Association of Mexico provides both moral and material assistance to young persons who have committed offences or who are socially abandoned.

5. Agencies for the protection of women

90. States have increasingly recognized the need for agencies which are equipped to deal with the problem of discrimination against and exploitation of women. Many of these organizations are concerned with the high incidence of discrimination against women in the area of employment. Several of these

agencies have already been discussed in the section of the report on equal employment agencies (see sect. C below). However, other organs for the protection of women are more broadly designed to promote the rights of women, and to protect women from discrimination, not only in the workplace, but in all areas. One such organization is the Australian National Women's Advisory Council, which was created to give all Australian women a consultative voice at the federal level with a view to protecting the interests of women in the national sphere. This Council advises the Federal Government on issues affecting women through the Minister for Home Affairs. The women who serve on the Council are selected from different parts of the country and are of diverse backgrounds and interests. To eliminate discrimination against women in the federal sphere, and to monitor potential discrimination inherent in proposed federal laws and practices, Australia also has established the Office of Women's Affairs. This Office is additionally responsible for co-ordinating the work of women's affairs units in other departments. Another example of an agency designed to monitor potential discrimination in the law is the Commission on Women's Rights, created by the Government of Barbados in 1977. This Commission was established to examine all aspects of the law relating to women. The Commission presents reports, containing the results of its ongoing examinations, to the Attorney-General, whose Ministry has a Department of Women's Affairs. In India, both the Committee on the Status of Women and the National Committee on Women are designed to promote the rights of women. The Committee on the Status of Women in India is concerned primarily with emphasizing the need to co-ordinate agencies and communication in the implementation of measures to improve the status of women. The National Committee on Women is responsible for an ongoing review of the progress of programmes for women. The National Committee on Women is chaired by the Prime Minister of India, and the position of Vice-Chairman is held by the Minister of Education, Social Welfare and Culture. Other members of the National Committee are generally leading public figures in the field of women's issues. In Finland, the duties of the Equality Ombudsman were created at the beginning of 1987 for supervising the realization of equality between men and women and the observation of the prohibition of sexual discrimination.

91. Agencies created to protect groups in the community from the deleterious effects of discrimination and exploitation would seem to be an essential part of any comprehensive national programme for the protection and promotion of human rights. In all countries, groups characterized by race, ethnicity, national origin, religion or sex, may be, in varying degrees, subject to instances and practices of discrimination. When there is a tradition of bias or long-standing discrimination in a community, such groups are often under-represented at the State and local official level, and subsequently may have little or no readily accessible means of alerting the proper authorities to redress such acts of discrimination. Moreover, when acts of discrimination are perpetrated by State or local authorities, the recourse available to members of particular groups in the community may be non-existent. Organizations which deal solely with the protection of these groups can offer an accessible and effective recourse to members of the community who traditionally lack responsive administrative machinery at the State and local level.

92. Finally, the high incidence of refugee and migratory movement, the continued abuse of the land rights of indigenous populations, and the pervasive level of racial and sexual discrimination which exist in countries

throughout the world, overwhelmingly heighten the need for special agencies to address the problems and concerns which face particular groups of the community, which often suffer from inordinately high levels of discrimination.

C. Equal employment agencies

93. The importance of fair labour practices and the availability of adequate redress for discrimination in the area of employment has been generally recognized throughout the world as an essential part of any comprehensive human rights protection programme. While Governments frequently include Ministers of Labour in their cabinets to deal with the many issues and problems which characterize the area of employment, an ever-increasing number of States consider that resources of a local and specialized nature are required to address the needs and demands of workers adequately. For instance, labour courts and tribunals, which conciliate, mediate and adjudicate disputes arising under labour agreements, or between workers' unions and employers, have been established in many countries.

94. States have also created administrative commissions or agencies, responsible for addressing specific problems in the labour market that may infringe on the rights of some groups and individuals in the community to equal work for fair and equal compensation and adequate working conditions. These commissions frequently operate under the Ministry of Labour. For example, to assist in eradicating unemployment, the Government of Zimbabwe created the Department of Employment and Employment Promotion, which functions under the Ministry of Labour and Social Services. The primary purpose of this body is to match persons seeking work with existing employment vacancies as quickly as possible, and to work closely with other governmental bodies in an attempt to create productive employment opportunities.

95. Many of the organizations created by States are established to deal primarily with sexual and racial discrimination in employment. The powers and duties of these commissions and agencies differ from country to country. Sometimes, they exist solely on the national level, but they are often organized on both the national and local level. For instance, in Australia National and Local Employment Discrimination Committees were established in 1973 to deal with cases of discrimination covered by the International Labour Organisation (ILO) Discrimination (Employment and Occupation) Convention (No. 111), 1958. Basically, the Australian Employment Discrimination Committees consider questions concerning possible discrimination in the remuneration of employees. The National Committee's primary functions are to:

"... consider allegations of discrimination referred by the State (Local) Committees; consider allegations which involve the Federal Government as an employer and those which are of national significance; to advise the Federal Government on relevant matters of policy; and to develop and promote a community education programme."

The six State (Local) Committees investigate charges of discrimination against employers, and attempt to arrive at amicable settlements through conciliation. The membership of Australia's Employment Discrimination Committees is comprised of representatives of Government, national employers' organizations and the trade-union movement, as well as individuals with special expertise in the problems of employment regarding Aborigines, migrants and women.

96. With some modifications, similar powers and duties characterize the United States Equal Employment Opportunity Commission (EEOC). Established by the Civil Rights Act of 1964, EEOC was created to hear and investigate claims of discrimination in employment practices and procedures. When EEOC receives a complaint, it transfers that complaint to the competent State or local agency, which is required to act on the complaint within 60 days. If no such action takes place, EEOC then takes up the claim, investigates the complaint and attempts to arrive at an amicable settlement. If no settlement can be reached, EEOC is empowered to seize the United States District Court (federal court) for adjudication of the matter. This seizure of the court by EEOC does not preclude the victim in the case from initiating his own judicial action as well. Decisions or rulings by the court constitute legally binding precedents, which affect employment policy throughout the nation. Finally, State and local agencies of EEOC which investigate claims of discrimination in employment, are also empowered to investigate charges of unequal access to public facilities and housing as a result of discrimination.

97. Some equal employment agencies function as "watch-dogs" to ensure that particular pieces of legislation concerning employment and labour are fully complied with. As an example of such an agency, mention may be made of the Vigilance Committees in India. These Committees were created under the Bonded Labour Systems Abolition Act of 1976. Vigilance Committees are comprised of officials, representatives of the locality, social workers and financial and credit institutions. Their basic functions are to advise the district authorities on the implementation of the Act forbidding the practice of bonded labour, to monitor offences under the Act, and to make recommendations on whether action should be taken regarding these offences. The Committee also defends suits instituted against bonded debts.

98. Often equal employment commissions and agencies also perform advisory services. As previously stated, the Australian National Employment Discrimination Committee advises the Federal Government on employment and labour policy. Similarly, the Tripartite Advisory Committees in India, comprised of government, employer and employee representatives, were established to advise the Government on the formulation of labour policy and to ensure the implementation of labour laws. The French Supreme Council for Professional Equality Between Men and Women, established in 1983 is also an advisory body. The Supreme Council is consulted by the Government on bills and draft decrees designed to ensure professional equality between men and women, as well as on texts dealing with the particular working conditions of the different sexes. The Council may also make proposals designed to improve professional equality between the sexes.

99. Equal employment agencies are also required, in most cases, to include activities aimed at promoting equality in the employment area as part of their basic functions. For example, both the Danish Equality Council and the Portuguese Commission on Women's Conditions are charged with promoting equality between the sexes in employment and vocational training. The United States EEOC proposes affirmative action hiring plans to employers and industries for voluntary undertaking. Once employers accept such plans, they become binding. In Finland, the Equality Ombudsman is charged with promoting the situation of women in the area of employment and ensuring that employers act in accordance with their responsibilities under the Act on Equality between men and women. In many countries, however, the promotion of equality in employment is the responsibility of human rights and civil rights commissions.

100. The role of equal employment commissions in safeguarding the workplace from discrimination is clearly an important factor in protecting the human and civil rights of the individual. Although it is often the responsibility of human rights commissions to address issues concerning discrimination in employment, the existence of widespread discrimination in the field of labour relations seems to corroborate the idea that separate agencies, designed to deal solely with employment and labour issues are needed to protect the individual's right to work in an environment free from discrimination. Moreover, agencies comprised of employers and workers play an important role in advising Governments on the needs of the working community. Discrimination in employment is one of the most pernicious violations of human rights, since it undercuts the very livelihood of the individual and frequently triggers a chain reaction of financial and social circumstances which often expose the individual to further exploitation. Therefore, agencies which can address the problem of discrimination in the workplace exclusively, provide an essential service in the protection of human rights.

IV. THE OMBUDSMAN 17/

101. It would be difficult to classify the ombudsman as a legislative, judicial or administrative organ. It is indeed an institution of a sui generis nature, having a multi-faceted character. The ombudsman is an independent mediator - and, in some instances, a collegiate body - whose primary role is to protect the rights of the individual who believes he is the victim of unjust acts on the part of the public administration. Generally appointed to office by the legislative body, the ombudsman in many instances functions in a supervisory capacity on behalf of parliament, acting on complaints received from aggrieved persons against government officials or agencies. The ombudsman is often perceived as a Scandinavian institution, since it had its beginnings in early nineteenth century Sweden, and is firmly established in Denmark, Norway and Finland. In the past several decades, however, the ombudsman or the office of the mediator has been established in a number of countries outside Scandinavia. Australia, Austria, Barbados, Canada, France, Ghana, Guyana, India, Jamaica, Japan, Mauritius, New Zealand, Portugal, Spain, Trinidad and Tobago, the United Kingdom and certain areas in the United States have all utilized the ombudsman system in one form or another. Moreover, several African countries (Nigeria, the Sudan, Tanzania and Zambia) have established collegiate bodies or commissions, which function with the authority and jurisdiction of the ombudsman.

102. Essentially, the ombudsman in all countries follows similar procedures in the performance of his duties. He receives complaints from aggrieved parties, and subsequently initiates an investigation if the claim has merit and falls within his jurisdiction. The ombudsman is generally granted access to documents of all authorities within his jurisdiction, which are pertinent to the investigation. He then usually issues a statement of recommendation based on his investigation, which is given to both the complainant and the office or authority against whom the complaint has been lodged. If the recommendation is not acted upon, the ombudsman may then submit his recommendation to parliament. In the Scandinavian countries, the ombudsman may also call both parties to the case to a hearing if necessary, and he is empowered to examine witnesses under oath. In Sweden, the Ombudsman's investigation generally results in a letter to both parties, stating his opinion on the conduct of the official, and stating his interpretation of the law in question. He may recommend that damages be paid to the injured party by the official, or out of public funds. In rare cases involving major faults, the Swedish Ombudsman may order prosecution before the courts. In minor cases, when the investigation reveals faults, delay or neglect, the Ombudsman may issue a reminder to the official concerned that his handling of the case was faulty or improper.

103. Additionally, in almost all countries, the ombudsman submits an annual report to parliament or the corresponding legislative body. Each country may require its ombudsman to include specific information or recommendations in his report. For instance, the Swedish Ombudsman's annual report may include an opinion on inadequacies in legislation, as well as his views on the meaning of existing laws and statutes and how they should be interpreted and applied. He may also suggest new legislation. Similarly, the French Ombudsman, le Médiateur, may suggest in his reports amendments to the laws and regulations. The Austrian Volksanwaltschaft may make recommendations to the highest executive authorities in addition to his annual activity report, which is submitted to the Nationalrat.

104. Although he submits annual reports to parliament, the ombudsman is essentially an independent office. The office of ombudsman is frequently provided for in a constitution or by an act of the legislature. As such, the ombudsman is accountable to the legislature, and in most cases, the legislative body will conduct an annual review of the ombudsman's office. Despite annual review by parliament or the Executive, the ombudsman nevertheless enjoys relative independence. For example, the Swedish Ombudsman cannot be removed from office unless a Parliamentary Committee issues a petition for his removal. In the United Kingdom, the Parliamentary Commissioner (Ombudsman) is subject to review by a Select Committee of the House of Commons, but he can only be removed by an address from both Houses of Parliament.

105. Ombudsmen may sometimes be accountable to the Executive. For example, while the Nigerian Public Complaints Commission and the Sudanese People's Assembly for Administrative Control are accountable to Parliament, the Tanzanian Permanent Commission of Inquiry and the Zambian Commission for Investigations are directly responsible to the Head of State.

106. In most cases, the ombudsman initiates an investigation based on a complaint received at his offices. He may, however, initiate an investigation without such a complaint. For instance, in Sweden, the Ombudsman frequently may begin an investigation on the basis of a newspaper report about illegalities and maladministration. France also provides for investigations by the Médiateur without receipt of a complaint, by giving members of parliament the right to request that the Médiateur investigate a matter of concern to parliament. Some countries limit recourse to the ombudsman to those complainants who have actually been injured by the challenged act or authority. This is a requirement in Guyana and in Trinidad and Tobago. Recourse to the Austrian Volksanwaltschaft, however, is granted to non-citizens and citizens who are "concerned by alleged abuses in the administration of the Bund". Spain merely requires that the complainant assert a legitimate interest in the complaint.

107. Several countries (Austria, Jamaica, New Zealand and the United Kingdom) require that the complainant first exhaust all alternative legal remedies before approaching the ombudsman. While there is generally no statute of limitations on the time within which the complainant must lodge his or her grievance with the ombudsman, there is often a requirement that the complaint to an ombudsman be made within one year of notification of the decision complained of. None the less, some ombudsmen have discretion to consider older grievances.

108. Access to the ombudsman by an individual complainant varies from country to country. In many countries (Denmark, Finland, New Zealand, Norway, Sweden, the United Republic of Tanzania and Zambia for example) individuals may lodge their complaints directly with the ombudsman's office. Israel additionally provides that the ombudsman may receive sealed complaints in writing from prisoners. However, in France, the Sudan and the United Kingdom, complaints must be submitted to a member of parliament, who forwards to the ombudsman those complaints which fall within his jurisdiction. For example, the French Médiateur receives individual complaints first addressed to Deputies or Senators who transfer them to the Médiateur. In practice, members of parliament generally forward all complaints received to the ombudsman.

Complainants whose cases fall outside the ombudsman's jurisdiction may then receive a communication from the ombudsman's office, explaining why he is unable to act on the complaint.

109. Complaints made to the ombudsman are generally confidential, and the identity of the complainant will not be disclosed without his consent. In most countries, the identity of the complainant and that of the official against whom the complaint has been lodged are not revealed in the ombudsman's annual report. In Sweden however, upon the completion of a case, the Ombudsman's file is, in most cases, open to inspection by the press.

110. The jurisdiction of the ombudsman's authority generally reaches all offices of public administration. Nevertheless, the scope of the ombudsman's jurisdiction varies from country to country. For example, Finland and Denmark vest power over Ministers in the Ombudsman. Austria, Australia, New Zealand and Sweden do not permit their ombudsmen to investigate complaints against Ministers. The Tanzanian Permanent Commission has jurisdiction over central and local government, and practically all statutory bodies, as well as over the party and party affiliates. The Commission does not, however, have jurisdiction over presidential decisions, or matters of government or public policy. In Nigeria, complaints to the Public Complaints Commission may be made against government departments, functionaries, employers and employees, individuals in the public and private sectors, State governments and local authorities. The Sudan People's Assembly Committee may investigate any complaint charging that an administration decision is the result of:

(a) nepotism, corruption or bias, (b) failure to observe sound administrative bases, (c) negligence in carrying out duty, (d) misuse of discretion, (e) incompetence, (f) loss of documents and papers, (g) tardiness and delay, (h) unjust segregation or (i) any similar matter. The Parliamentary Commissioner of the United Kingdom is empowered to investigate maladministration in most departments and authorities dealing with the public. Maladministration is defined as including: incompetence, delay, neglect and bias, but not policy. Policy questions fall within the jurisdiction of Parliament. The Commissioner does not have the power to investigate the merits of discretionary decisions. Nor does his jurisdiction extend to the national health service, local government or the police, since other organs exist which are empowered to investigate complaints against these institutions. The Ombudsman of New Zealand has jurisdiction over acts or omissions of the departments of State, a small number of statutory administrative tribunals and local organizations. He has no control over any matter in which there is a right of appeal or review on the merits of the case to any court, no direct control over a Minister, and may not alter a decision he believes is wrong. In Finland, Sweden and the United Republic of Tanzania, the ombudsman is allowed to investigate complaints against the judiciary. Other countries, such as Austria, Denmark and Norway, have left judges entirely outside the ombudsman's jurisdiction because of a strong concern for maintaining the independence of the courts.

111. In the countries in which the ombudsman has supervisory power over Ministers, the authorities in question are required to support the ombudsman in the exercise of his investigation, including providing all requested documents and testimony. Despite this requirement however, in some instances, Ministers may refuse to give information to the ombudsman if, in the Minister's judgement, the exposure of such information would be prejudicial to national security or defence. In order to prevent abuse of this exception by

Ministers, the United Kingdom introduced a provision in its Parliamentary Commissioner Act which grants the Ombudsman access to all information relevant to his investigation, but which gives the Minister the power to prohibit him from disclosing in his report, any information which, in the Minister's judgement, would be "prejudicial to the safety of the State or otherwise contrary to the public interest".

112. Responsibility for heightening public awareness of the duties and functions of the office seems to rest with the ombudsman's office itself. Radio messages, pamphlets and television documentaries on the history and role of the ombudsman are all methods which may be used to inform the public about the ombudsman's office as an important resource. For example, the Tanzanian and Zambian ombudsman commissions hold public meetings in villages in rural areas to explain the work done by their commissions, and to increase their accessibility to individuals residing in outlying areas, who may have grievances against public officials. After these public meetings, the commissions' representatives hold private sessions in which aggrieved parties may report their complaints. These complaints are subsequently investigated and, if necessary, additional visits are made to the villages for follow-up contacts. In its first year, members of the Tanzanian commission visited 14 regions, 53 districts and addressed over 64,000 persons.

113. The ombudsman is a potentially effective human rights organ, which can be adapted to various political and social systems. A large number of countries have successfully incorporated the ombudsman into their administrative systems. Naturally, the ombudsman's office may only be as effective as its authority and jurisdiction permits. While countries may differ on the breadth of jurisdiction to be bestowed upon that office, it is clear, for instance, that the right to view documents and to question authorities under the parameters of that jurisdiction, appears to be essential for a thorough and accurate investigation. In addition, the effectiveness of the ombudsman's office is largely dependent on the ability of a potential complainant to utilize the services provided by the ombudsman. Therefore, it is important that individuals are not encumbered by confusing petition processes, when attempting to present their grievances to the ombudsman's office. While it is true that most ombudsmen may initiate investigations on their own, independent of a private complaint, the primary function of the office is to provide a recourse to the individual who has been the victim of injustice resulting from governmental or administrative action. As such, all efforts must be made to ensure that the ombudsman's office is easily accessible to all members of the public.

V. NON-GOVERNMENTAL ORGANIZATIONS 18/

114. Many Governments have stressed the important role and significant successes of non-governmental organizations in promoting and protecting human rights at the national level. Their goals have been pursued through a wide variety of techniques, including seminars, symposia and other meetings, the publication of brochures and periodicals, educational activities and mass media campaigns for raising public consciousness and awareness. By exposing human rights violations, they attract public attention to them. Moreover the establishment, by these organizations, of liaison and other contacts with legislative, administrative and judicial branches of government, and the offering of assistance and specific services to vulnerable persons or groups, such as prisoners, refugees, foreign workers, minorities and indigenous populations, help to ensure stricter application of the laws and regulations relating to the protection of human rights. In some countries, for instance in Canada, non-governmental activities are carried out with support and financial assistance from the State.

Notes

1/ See also chap. II, sect. B.

2/ A/36/440, paras. 18-46; A/38/416, paras. 10-26; A/39/556.

3/ A/36/440, paras. 38-46.

4/ See paras. 17 and 18 above.

5/ A/38/416, paras. 10-26.

6/ See A/36/440, paras. 190-201; A/38/416, paras. 27-42.

7/ See A/38/416, paras. 145-152.

8/ A/36/440, paras. 120-130, 202-206; A/38/416, paras. 153-156.

9/ A/36/440, paras. 26-36; A/38/416, para. 26.

10/ A/36/440, paras. 69-72; A/38/416, paras. 61-62.

11/ A/36/440, paras. 65-68; A/38/416, paras. 59-60.

12/ A/36/440, paras. 92-115; A/38/416, paras. 76-81.

13/ A/36/440, paras. 86-91; A/38/416, paras. 63-75.

14/ A/36/440, paras. 131-145. See also the Study on the rights of persons belonging to ethnic, religious and linguistic minorities (United Nations publication, Sales No. E.78.XIV.1).

15/ See E/CN.4/Sub.2/1982/Add.4.

16/ See also chap. II, sect. C.

17/ A/36/440, paras. 47-64; A/38/416, paras. 43-58.

18/ A/36/440, paras. 146-151, 215-217; A/38/416, paras. 87-92, 166.

ANNEX I

LIST OF NATIONAL INSTITUTIONS */

I. LEGISLATIVE ORGANS ESTABLISHED TO EXAMINE THE CONSTITUTIONALITY OF LAWS

A. Legislative organs

Ad hoc Commission (Spain, United States)

Advisory Commission (or investigatory commission) (Barbados)

Bureau for Petitions and Appeals (Yugoslavia)

Civil Liberty Protection Unit (Thailand)

Commission Consultative des Droits de l'Homme (France)

Commission for Information and Guidance regarding Human Rights (Suriname)

Commission générale de Pétitions (Spain)

Commission législative constitutionnelle et de Justice (Spain)

Committee Deals (Finland)

Committee of Petitions (India, United Kingdom)

Commission permanente constitutionnelle (Spain)

Commission permanente de Pétitions (Spain)

Direito e Justica (Portugal)

House of Commons (United Kingdom)

House of Congress (United States)

Human Rights Commission (El Salvador)

Litigation Expeditions Unit (Thailand)

Ligue pour la Défense et la Promotion des Droits de l'Homme (Madagascar)

Lower House (Finland)

Parliament (Finland, France, New Zealand, Poland)

*/ This list of national institutions for the promotion and protection of human rights is established in accordance with the information submitted by Governments.

Parliament Committee for Constitutional Law (Finland)
Presidium of the Supreme Soviet (USSR)
Privacy Commissioner (New Zealand)
Public Petitions Committee (New Zealand)
Select Committee on Statutory Instruments (United Kingdom)
Senate Select Committee (United States)
Standing Commission (Byelorussian SSR, Ukrainian SSR and USSR)
Standing Commission on Petitions (Spain)
Supreme Court (Poland)
Surate Legal Committee (Zimbabwe)
Wanganui Computer Centre Privacy Commission (New Zealand)

- B. Organs established to examine the constitutionality of laws
Constitutional Council (Hungary)

II. JUDICIAL ORGANS

- A. Courts of general jurisdiction
Appeal Court (Finland, France, Singapore, United Kingdom)
Assize Court (France)
Chancellor of Justice (Finland)
Chamber of Appeal (Chambre de Recours) (France)
Circuit Courts of Appeals (United States)
Common Courts (Poland)
Consejero de Estado (Venezuela)
Constitutional Council (France)
Constitutional Court (Canada, El Salvador, Federal Republic of Germany, Guatemala, India, Panama, Spain)
Constitutional Guarantees (Ecuador)
Constitutional Tribunal (Thailand)
Council of State (France)

County Courts (United Kingdom)

Courts of Criminal Appeal (Singapore)

Crown Court (United Kingdom)

Defender of the People (Defensor de Pueblo) (Spain)

District Courts (Singapore)

Federal Constitutional Court (Federal Republic of Germany)

Federal Courts (Canada, United States)

High Court (Argentina, Barbados, Colombia, El Salvador, India, Nigeria, Panama, Singapore, Spain, United Kingdom, Venezuela)

House of Lords (United Kingdom)

Magistrates' Courts (Singapore, United Kingdom)

Parliamentary Ombudsman (Finland)

Supreme Court (Canada, Cyprus, Ecuador, El Salvador, Finland, Federal Republic of Germany, India, Nigeria, Papua New Guinea, Panama, Poland, Singapore, Spain, Sri Lanka, United States, USSR)

Supreme Court of Appeal (France)

B. Constitutional courts

Acción Popular de Inconstitucionalidad (El Salvador, Panama, Venezuela)

Constitutional Court (Canada, El Salvador, Federal Republic of Germany, India, Panama, Spain)

Constitutional Guarantees Court (Ecuador)

Executive Collegiate Bodies of the Autonomous Communities (Spain)

High Court (Spain)

People's Advocate (Spain)

Supreme Court (Spain)

Supreme Electoral Court (Ecuador)

C. Special courts and tribunals

1. Labour courts

Arbeidsretten (Norway)

Central Labour Court (Thailand)

Conseils de Prud-hommes (France, Tunisia)

Council of State (Belgium, Finland, France, Greece)

Defensor del Pueblo (Spain)

Insurance Court (Finland)

Labour Court (Barbados, Finland, Federal Republic of Germany, India, Kenya, Papua New Guinea, Thailand)

Labour Relations Board (Canada)

Self-Management Court (Yugoslavia)

Special Court (France, Netherlands)

Supreme Administrative Court (Finland, Poland)

Workers' Mediatorial Commissions (Poland)

2. Juvenile and children's courts

Assize Court for Minors (France)

Children and Young Persons' Courts (New Zealand)

Children's Board (New Zealand)

Children's Courts (Australia)

Juvenile and Children's Courts (Australia, France, Thailand)

Juvenile Assize (France)

Juvenile Court (Barbados, El Salvador, France)

Minors' Penal Court (Tunisia)

Special Juvenile Court (Italy)

3. Other specialized courts

Broadcasting Tribunal (New Zealand)

Deportation Review Tribunal (New Zealand)

Family Courts (Australia)

Indecent Publication Tribunal (New Zealand)

Maori Appellate Court (New Zealand)

Maori Land Court (New Zealand)

Ministerio Fiscal (Spain)

Social Insurance Court (Norway)

D. Administrative courts and tribunals

Administrative Courts (Austria, Belgium, France, Greece, Netherlands, Tunisia)

Conseil d'Etat (France)

Cour de Cassation (France)

Supreme Administrative Court (Finland)

E. Other organs established within the framework of the judicial system

1. Ombudsman and similar institutions

Ad Hoc Arbitrator (Fiji)

Assemblies of Socio-Political Communities (Yugoslavia)

Children's Ombudsman (Norway)

Civil Ombudsman's Protection against Arbitrariness in Public Administration (Norway)

Commission of Counter Corruption (Thailand)

Commission of Investigation (Tanzania)

Commission for Self-Management Workers Supervision (Yugoslavia)

Equal Opportunities Commissioner (Norway)

Equal Opportunities Council (Norway)

Médiateur (France)

Ministerio Público (Colombia, Ecuador, Guatemala, Portugal, Venezuela)

Nigerian Public Complaints Commission (Nigeria)

Ombudsman (Australia, Austria, Barbados, Canada, Denmark, Fiji, Finland, France, Federal Republic of Germany, Ghana, Guatemala, Guyana, India, Jamaica, Japan, Mauritius, New Zealand, Nigeria, Norway, Portugal, Spain, Sudan, Sweden, Tanzania, Trinidad and Tobago, United Kingdom, United States, Zambia, Zimbabwe)

Supreme Court of Justice (Organic Law) (Venezuela)

Permanent Arbitrator (Fiji)

Permanent Commission of Enquiry (Tanzania)

Prokuratura (Albania, Bulgaria, Byelorussian SSR, Czechoslovakia,
Democratic Republic of Germany, Hungary, Poland, Romania,
Ukrainian SSR, USSR, Yugoslavia)

Prosecutor's (Finland)

Provedor de Justica (Portugal)

Public Complaints Commission (Nigeria)

Servicio du Provedor de Justica (Portugal)

Social Attorney of Self-Management (Yugoslavia)

Social Mediatory Commissions (Poland)

Wanganiu Computer Centre Privacy Commission (New Zealand)

Volksanwaltschaft (Austria)

Workers' Councils in Undertaking (Yugoslavia)

Works' Mediatory Commissions (Poland)

2. Legal assistance services

Bureau of Civil Liberty and Public Interest Protection (Thailand)

Citizens Legal Assistance Office (Philippines)

Colleges of Attorneys (Byelorussian SSR, Ukrainian SSR, USSR)

Community Legal Services (Barbados)

Legal Aid Association (Japan)

Legal Aid Board (Finland)

Legal Aid Council Office (Nigeria)

Legal Aid Regulation of the Public Prosecution (Thailand)

Legal Aid Service Regulation Issued by the Public Prosecution
Department (Thailand)

Legal Aid Unit (Thailand)

Maluganik Tukisiiniakvit Legal Service Centre (Canada)

Native Courtworkers' Association (Canada)

Public Defender Office (United States)

Public Legal Aid (United States)

III. ADMINISTRATIVE ORGANS

A. Human rights commissions and similar public bodies expressly entrusted with overall responsibilities in the field of human rights

Advisory Body of the Commission for Human Rights of the Federal Secretariat for Foreign Affairs (Yugoslavia)

Australian Commission of Jurists (Australia)

Board's Membership (Canada)

Canadian Human Rights Commission (Canada)

Canadian Human Rights Act (Canada)

Central Civil Liberties Bureau of the Ministry of Justice (Japan)

Civil Liberties Bureau (Japan)

Civil Liberties Protection Unit (Thailand)

Commission des Droits de l'Homme de l'Ordre des Avocats (Portugal)

Commission for Fundamental Rights (New Zealand)

Commission for Information and Guidance regarding Human Rights (Suriname)

Commissioner for Community Relations (Australia)

Committees of Minors (USSR)

Committees of the International Covenant on Economic, Social and Cultural Rights (Iraq)

Committees on the International Covenant on Civil and Political Rights (Iraq)

Computer-based Information Centre (New Zealand)

Council for the Protection of Human Rights (Brazil)

Danish Human Rights Division (Denmark)

Department of the Secretary of State (Canada)

Directorate of Human Rights of the Department of State (Canada)

District Minority Committees (Pakistan)

Federal Human Rights Commission (Canada)

Federal-Provincial Committee of Officials responsible for Human Rights (Canada)

Federal-Provincial-Territorial Committees (Canada)

Foreign and Public Relations Unit (Thailand)

Human Rights Commission (Australia)

Human Rights Division (Israel)

Human Rights Society (Pakistan)

Human Rights Tribunal (Canada)

Italian Interministerial Committee on Human Rights (Italy)

Iraq National Human Rights Commission (Iraq)

National Commission for the Promotion and Protection of Human Rights (Nicaragua)

National Human Rights Committee (Iraq)

National Institutions for the Promotion and Protection of Human Rights (Suriname)

New Zealand Human Rights Commission (New Zealand)

Norwegian Human Rights Committee (Norway)

Police Complaints Board (United Kingdom)

Provincial Human Rights Commissions (Canada)

Provincial Minister of Justice (Canada)

Sami Committee (Finland)

Senate Legal Committee (Zimbabwe)

Standing Advisory Commission on Human Rights (Northern Ireland)

Supervisory Committees (USSR)

United States Civil Rights Commission (United States)

United States Equal Employment Opportunity Commissions (United States)

Voluntary Crime Prevention Boards (USSR)

Voluntary People's Militia (Byelorussian SSR, Ukrainian SSR, USSR)

B. Agencies for the protection of specific groups

1. Agencies for the protection of persons belonging to ethnic, linguistic and religious minorities

Advisory Board for Gypsy Affairs (Finland)

Advisory Committee (Pakistan)

Australian Federal Chancellery (Australia)

Australian Institute of Multicultural Affairs (Australia)

Central Council of German Sinti and Rom (Federal Republic of Germany)

Commission consultative pour les Refugiés (Portugal)

Commission to Promote the Principle of Equality and Collective Rights (Yugoslavia)

Commission for Lappish Affairs (Finland)

Commission for Racial Equality (United Kingdom)

Commission interministérielle d'Appui aux Refugiés et Apatrides (Portugal)

Commission of Minors (Ukrainian SSR)

Commission on Civil Rights (United States)

Commissioner for Linguistic Minorities (India)

Commissioner for Scheduled Castes and Tribes (India)

Committee for Refugee Matters (Finland)

Committee for the Slovene-speaking and Croatian-speaking Minorities (Australia)

Committee of Inquiry into the Education of Children (United Kingdom)

Committee on Migration Affairs (Finland)

Counsellor for Aliens (Finland)

Cuban Institute of Friendship (Cuba)

Ethnic and Religious Committees (Canada)

District Minority Committees (Pakistan)

Fair Employment Agency (Northern Ireland)

Human Rights Society (Pakistan)

Indian Minority Commission (India)
Mexican Commission for Assistance to Refugees (Mexico)
National Board of Social Welfare (Finland)
National Committees (Czechoslovakia)
Office of the Commissioner for Community Relations (Australia)
Office of Race Relations Conciliator (New Zealand)
Permanent Commission of Enquiry (Tanzania)
Presidential Council for Minority Rights (Singapore)
Public Complaints Commission of Nigeria (Nigeria)
Sami Committee (Finland)
Social Welfare Services (Cyprus)
Standing Advisory Commission on Human Rights (Northern Ireland)
Tunisian League of Human Rights (Tunisia)
Research Centre for Domestic Languages (Finland)

2. Agencies for the protection of indigenous populations

Committee for Refugee Matters (Finland)
Department of Maori and Island Affairs (New Zealand)
Finnish Commission for Lappish Affairs (Finland)
Instituto Nacional Indigenista de Mexico (Mexico)
Norwegian Lapp Council (Norway)
Swedish Commission on Sami Affairs (Sweden)

3. Agencies for the protection of aliens, migrants and immigrants

Aliens Advisory Commission (Belgium)
Australian Ethnic Affairs Council (Australia)
Commission on Ethnic Prejudice and Discrimination (Sweden)
Committee on Migration Affairs (Finland)
Directorate for Aliens and Refugee Board (Denmark)

Multi-Cultural Resource Centres (Australia)

Norwegian Foreign Workers' Association (Norway)

4. Agencies for the protection and promotion of children and minors

Child Care Board (Barbados)

Children's Ombudsman (Norway)

Chinese People's National Committee for the Defence of Children
(China)

Commission on Children's Rights (Sweden)

Council for Family Affairs (Poland)

Egyptian Supreme Council for the Child (Egypt)

Federal Inter-agency Committee for Children and Youth (United States)

Indian National Children's Board (India)

Juvenile Welfare Board (Norway)

Maternity and Child Welfare (USSR)

Minor's Association (Mexico)

National Children's Board (India)

National Commission for the Year (Algeria)

National Council for the Child (Dominican Republic)

National Council for Children's Affairs (Bangladesh)

National Directorate for Children and Family (Panama)

National Policy for the Children (India)

Orphans' Housing Aid Society (Poland)

Polish Pathfinders' Union (Poland)

Polish Students' Association (Poland)

Rural Youth Union (Poland)

Social Welfare Board (Finland)

Society of the Friends for Children (Poland)

Standing Commission on Women's Working and Living Conditions,
Maternity and Child Welfare (Byelorussian SSR)

Supreme Council for the Child (Egypt)

Union of Socialist Polish Youth (Poland)

5. Agencies for the protection of women

Australian National Women's Advisory Council (Australia)

Commission of Supreme Soviet on Women's Working and Living
Conditions (USSR)

Commission on Women's Rights (Barbados)

Committee on the Status of Women (India)

National Committee on Women (India)

Office of Women's Affairs (Australia)

C. Equal employment agencies

Danish Equality Council (Denmark)

Department of Employment and Employment Promotion of the Ministry of
Labour and Social Services (Zimbabwe)

Employment Departments at the Local People's Councils (Poland)

Employment Division (Barbados)

Equal Council (Denmark)

Equal Employment Opportunity Commission (United States)

Equality Ombudsman (Finland)

Equality of Treatment Committee (Austria)

French Supreme Council for Professional Equality between Men and
Women (France)

General Division (Barbados)

National and Local Employment Discrimination Committees (Australia)

National and State Committees on Discrimination in Employment and
Occupation (Australia)

Portuguese Commission on Women's Rights (Portugal)

Tax and Valuation Division of Appeal Tribunal (Barbados)

Tripartite Advisory Committee (India)

Vigilance Committee (India)

D. Institutions for the dissemination of information, in particular information on human rights

Australian National Commission for UNESCO (Australia)

Civil Liberties Bureaux (Japan)

Civil Liberties Commissioners (Japan)

Commission for Information and Guidance regarding Human Rights (Suriname)

Committees for the Defence of Human Rights (Venezuela)

Committee on Human Rights (German Democratic Republic)

Council for the Protection of Human Rights (Brazil)

Human Rights Commission (Nicaragua)

Human Rights Permanent Commission on the Right to Amparo (Ecuador)

Marangopoulos Foundation for Human Rights (Greece)

Nigerian Institute of International Affairs Services (Nigeria)

People's Councils (Poland)

People's Universities in the USSR (USSR)

Polish Institute for International Affairs (Poland)

Polish Red Cross Society (Poland)

Scholarly Research and Information on Human Rights (Poland)

Society for the Popularization of Culture and Science (Poland)

Society of Friends of the United Nations (Poland)

Yermouth University of Jordan (Jordan)

E. Educational institutions

Academy of Social Sciences (Poland)

Canadian Foundation for Human Rights (Canada)

Canadian Human Rights Commission (Canada)

Central Committee of the Polish United Workers' Party (Poland)

Child Care Board (Barbados)

Civil Liberties Bureaux (Japan)

Civil Liberties Commissioners (Japan)

Committee of Inquiry into the Education of Children (United Kingdom)

Commission for Educational Planning and Research Promotion
(Federal Republic of Germany)

International Institute of Human Rights (France)

Judicial Office (Spain)

Legal Education of the Population in the Field of Human Rights
(Ukrainian SSR)

National Commission on the Role of the Filipino (Philippines)

Nigerian Institute of International Affairs (Nigeria)

Norwegian Human Rights Committee (Norway)

Swedish National Educational Board (Sweden)

F. Health Care Systems

Aboriginal Health Programme (Australia)

Association of Catholics "Caritas" (Poland)

Directorate of Epidemic Disease (Senegal)

Community Health Programme (Austria)

Departments of Health and Social Welfare (Poland)

Environmental Health Units (Iraq)

Family Planning Association (New Zealand)

Health Service Commissioner (United Kingdom)

National Commission for Disabled Persons (Philippines)

National Family Planning and Populations Bureau (Tunisia)

Occupational Health Safety and Compensation Department (Zimbabwe)

Polish Committee for Social Aid (Poland)

Polish Red Cross (Poland)

Population Control and Family Planning Division of the Ministry of
Health (Bangladesh)

Provincial People's Acting Councils (Poland)

Rural Health Centres (Cyprus)

Swedish National Board (Sweden)

Swedish National Board of Health and Welfare (Sweden)

Village Health Committees (India)

G. Social security and social welfare schemes

Central Social Welfare Board (India)

Co-operative Insurance Institutions (Poland)

Department of Social Services of Ministry of Labour and Social Services (Zimbabwe)

Housing Corporation (Bahamas)

Insurance Units (Poland)

National Commission for Integral Family Development (Mexico)

National Insurance Board (Barbados)

Nigerian Ministry of Social Development (Nigeria)

Ministry of Social Services and Development (Philippines)

Social Security Division (Barbados)

State-controlled Social Insurance Institution (Poland)

Youth, Sports and Culture (Niger)

IV. NON-GOVERNMENTAL ORGANIZATIONS

Amnesty International, Finnish Section (Finland)

Amicale des Femmes Juristes (Senegal)

Anti-Racism Movement (Canada)

Association for the Protection of Human Rights against Encroachments of Psychiatry (Austria)

Association of the Friends of Human Rights (Egypt)

Association sénégalaise de Recherche et d'Etudes juridiques (Senegal)

Association sénégalaise pour les Nations Unies (Senegal)

Australian Section of Amnesty International (Australia)

Catholic Church (Dominican Republic)

Central Union for Child Welfare (Finland)

Comité sénégalaise des Droits de l'Homme (Senegal)

Committee for Human Rights of the Lawyers' Association (Portugal)

Commission de la Condition féminine (Portugal)

Commission portugaise Pro-Amnesty International (Portugal)

Commission nationale des Droits de la Femme sénégalaise (Senegal)

Conseil supérieur de l'Egalité professionnelle entre les Femmes et les Hommes (France)

Dominican Human Rights Committee (Dominican Republic)

Egyptian Association for Human Rights (Egypt)

Ethnic and Religious Committees (Canada)

Federation of Iraqi Jurists (Iraq)

Fondation pour les Droits de l'Homme (Greece)

Finnish Gypsy Association (Finland)

Finnish Red Cross (Finland)

Francisco Ulises Espaillat Foundation (Dominican Republic)

General Federation of Iraqi Women (Iraq)

Ihmisoikenspuristit (Finland)

Indian (India)

Indonesian Institute for the Defence of Human Rights (Indonesia)

Iraqi Human Rights Society (Iraq)

Innuït and Native Organization (Canada)

Lawyers' Association (Iraq)

League for Human Rights (Austria)

Ligue portugaise des Droits de l'Homme (Portugal)

Mediatory Commission of the Labour Courts at District Courts (Poland)

Organization for Disabled Groups (Canada)

Provincial Civil Liberties Associations (Canada)

Section grecque de l'Amnesty International (Greece)

Section nationale des Juristes démocrates (Senegal)

Section sénégalaise de l'Association des Barreaux africains (Senegal)

Unión Dominicana para la Defensa de los Derechos Humanos
(Dominican Republic)

Union pour les Droits de l'Homme et des Citoyens (Greece)

Unioni Women's Rights Union (Finland)

Women's Rights Organization (Canada)

Workers' Unions (USSR)

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ANNEX II

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8. Report of the Seminar on Participation in Local Administration as a Means of Promoting Human Rights, Budapest, Hungary, 14-27 June 1966 (ST/TAO/HR/26).
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