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SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMSNational institutions for the promotion and protection of
human rightsReport of the Secretary-General

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I. INTRODUCTION

1. At its thirty-eighth session, the General Assembly had before it, pursuant to its resolution 36/134 of 14 December 1981, a report of the Secretary-General on national institutions for the promotion and protection of human rights (A/38/416). That report was based on replies received from 35 Governments as well as relevant information and reports of the specialized agencies. The Secretary-General had also taken into account Governments' reports under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Racial Discrimination, the Convention on the Suppression and Punishment of the Crime of Apartheid, the reports and background papers of various United Nations seminars, various studies by the Special Rapporteur and the Secretariat as well as some information submitted to United Nations bodies by non-governmental organizations in consultative status. The following types of national institutions for the protection and promotion of human rights were discussed in the report:

I. NATIONAL INSTITUTIONS FOR THE PROTECTION OF HUMAN RIGHTS

A. Judicial institutions

1. Courts of general jurisdiction
2. Courts and quasi-judicial organs of special jurisdiction

B. Non-judicial organs supervising the observance of the law

1. The "Ombudsman" and similar institutions
2. The "Prokuratura" and the system of citizen's complaints in the socialist countries of Eastern Europe
3. The "Ministerio Público" in various Latin American countries

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

D. Legal counselling and assistance

E. Protection of human rights by legislative organs

1. Petition procedures
2. Inquiry procedures

F. Role of non-governmental organizations, including trade unions, in the protection of human rights

II. NATIONAL INSTITUTIONS FOR THE PROMOTION OF HUMAN RIGHTS

- A. Promotional role of human rights commissions and similar public bodies expressly entrusted with responsibilities in the field of human rights
- B. Promotion of human rights through participation in Government and the legislative process
- C. Institutions for the dissemination of information, in particular information on human rights
- D. Educational institutions
- E. Health care systems
- F. Social security and social welfare schemes
- G. Promotional institutions in the fields of employment, working conditions and labour relations
- H. Institutions for the promotion of the rights of children and young persons
- I. Institutions for the promotion of racial equality and harmonious race relations
- J. Promotional role of non-governmental organizations

2. In its resolution 38/123 of 16 December 1983, the General Assembly took note with appreciation of the report of the Secretary-General; invited all Member States to take appropriate steps for the establishment or, where they already existed, the strengthening of national institutions for the protection and promotion of human rights; emphasized the importance of the integrity and independence of such national institutions, in accordance with national legislation; drew attention to the constructive role that national non-governmental organizations could play in the work of national institutions; recommended that all Member States should take appropriate steps to encourage the exchange of experience in the establishment of national institutions; requested the Secretary-General to transmit his report to Governments and to invite them to submit additional information, comments and observations, with a view to developing further the various types of national institutions for the protection and promotion of human rights; and also requested the Secretary-General, in the light of his previous reports and of further information received, to submit to the Assembly at its thirty-ninth session an updated report providing detailed information on the various types of national and local institutions for the protection and promotion of human rights, taking into account differing social and legal systems and the contributions that national and local institutions could make towards the implementation of international human rights instruments.

3. In accordance with the request of the General Assembly, the Secretary-General, on 15 February 1984, addressed a note verbale, together with a copy of his report to the Assembly at its thirty-eighth session (A/38/416), to Governments inviting them to forward any relevant information they might wish to submit in connection with paragraphs 6 and 7 of the resolution.

4. As at 17 September 1984, replies had been received from the following Member States: Austria, Costa Rica, Cyprus, Denmark, El Salvador, Germany, Federal Republic of, Madagascar, Spain, Suriname and United Kingdom of Great Britain and Northern Ireland. Those replies are summarized in paragraphs 6 to 15 below.

5. As may be seen from the replies received by the Secretary-General, since the adoption of General Assembly resolution 38/123, the range of national institutions in the States which have sent information falls basically within the models of institutions which were discussed in the previous report and tend to reinforce the basic approach of that report.

II. SUMMARIES OF REPLIES RECEIVED FROM GOVERNMENTS

A. Austria

6. Austria indicated in its reply that a new fundamental right had been introduced through a federal constitutional law recognizing the freedom of artistic creation and the presentation and teaching of art. It also indicated that in connection with the institutions ensuring the safeguard of fundamental rights in Austria, a few minor modifications had occurred in the Constitutional Court's procedures since 1981. Furthermore, mention was made of the incorporation of the institution of mediators into the Constitution and of the fact that, since the collège d'experts entrusted with the task of reviewing the fundamental rights and freedoms had completed its work in 1983, measures were being taken to give practical effect to the results of the work of that body. Reference was also made to the law on equality of treatment which prohibited any discrimination on the ground of sex concerning the collective or individual fixing of wages in working relations governed by private law.

B. Costa Rica

7. In its reply, Costa Rica gave references to the constitutional provisions in the field of human rights, the general situation of human rights, the measures taken and to be taken with a view to guaranteeing the respect of human rights and the international treaties and conventions relating to human rights which had been ratified by Costa Rica.

C. Cyprus

8. In its reply, Cyprus indicated that there was nothing new to be added to information and comments made on the subject in the past.

D. Denmark

9. Denmark reported that the principal objective of the new Aliens Act, which entered into force on 1 October 1983, was to ensure increased legal protection of aliens. It indicated that this had been achieved, inter alia, by a more detailed and precise wording of the statutory provisions relating to expulsion, by the introduction of provisions under which aliens, including refugees, on specified conditions had a formal legal claim to be granted a residence permit, and by changes of competence according to which the power to make decisions for expulsion on account of criminal offences and for other reasons was now vested in the courts of law. Under those new provisions certain administrative decisions refusing residence permits were appealable to the courts. It also indicated that the Directorate for Aliens was the authority of first instance to make decisions concerning refugee status and that these decisions were appealable to the newly established Refugee Board, the proceedings of which were of a court-like nature.

E. El Salvador

10. El Salvador mentioned the existence of the Human Rights Commission of El Salvador (Comisión de Derechos Humanos de El Salvador). A copy of the report of that Commission, which contained a review of its activities in 1983 and the text of legal instruments relating to its creation and functioning, was attached and is available for consultation in the Secretariat.

F. Federal Republic of Germany

11. In its reply, the Federal Republic of Germany made reference to the previous reports on the subject as well as to the periodic reports that the Federal Republic of Germany had submitted under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

G. Madagascar

12. Madagascar reported that its Constitution of 31 December 1975 respected the leading ideas of the International Covenants. Mention was made of various fundamental rights and freedoms and of the functioning mechanisms for the protection of human rights in Madagascar, in particular the possibility for individuals to appeal to the Human Rights Committee in accordance with the Optional Protocol to the International Covenant on Civil and Political Rights. It stated that national jurisdictions had the possibility of implementing the international norms relating to human rights. It finally stated that the constitution proclaiming the principle of freedom of association allowed for the establishment of associations to defend and promote human rights (ligues pour la défense et la promotion des droits de l'homme), that is, national non-governmental institutions. Reference was made to the role played by the church in the defence of human rights.

H. Spain

13. Spain indicated in its reply that since February 1983, new norms had been put into effect with a view to protecting human rights in various aspects. Mention was made of Ley Orgánica 7/1983 de 23 de abril relating to preventive detention and Ley Orgánica 8/1983 de 25 de junio which introduced various modifications to the Penal Code, in particular those that contributed to the realization of the principle of equality among individuals. Special mention was further made of Ley Orgánica 9/1983 de 15 de julio regarding the regulation of the right of association, Ley Orgánica 14/1983 de 12 de diciembre regarding the rights of the detainees and the legal assistance to these detainees, and Ley Orgánica 6/1984 de 24 de mayo regarding the regulation of the habeas corpus procedure.

I. Suriname

14. Suriname reported the creation of a Commission for Information and Guidance regarding human rights in Suriname. It also indicated that a process was under way to broaden the terms of reference of the aforementioned Commission in order, eventually, to establish a national institution for the promotion and protection of human rights pursuant to General Assembly resolution 38/123.

J. United Kingdom of Great Britain and Northern Ireland

15. In its reply, the United Kingdom of Great Britain and Northern Ireland mentioned a number of the major statutory bodies concerned with the promotion and protection of the human rights of individuals. It referred in particular to the Parliamentary Commissioner for Administration, the Equal Opportunities Commission, the Commission for Racial Equality, the Health Service Commissioner and the Local Government Ombudsman. It was stated that Northern Ireland had a number of separate institutions designed to protect and promote human rights. Some of those institutions had close parallel arrangements in Great Britain; others were set up in response to Northern Ireland's special circumstances and had no direct equivalent in Great Britain, namely the Fair Employment Agency and the Standing Advisory Commission on Human Rights.
