

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL
E/CN.4/1321
1 February 1979
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Thirty-fifth session
Item 11 (b) of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS, INCLUDING: (b) IMPORTANCE OF
NATIONAL INSTITUTIONS IN THE FIELD OF HUMAN RIGHTS

Report of the Secretary-General

1. At its 105th meeting, on 16 December 1977, the General Assembly adopted resolution 32/123 concerning the observance of the thirtieth anniversary of the Universal Declaration of Human Rights. In the annex to the resolution the General Assembly suggested measures for the celebration of the anniversary. Among the measures to be taken at the United Nations level, the General Assembly recommended the organization in 1978, at Geneva, of a special seminar within the programme of advisory services, at the world-wide level, on the subject of national and local institutions for the promotion and protection of human rights. The report of the seminar should be forwarded to the General Assembly.
2. At its 1473rd meeting, on 8 March 1978, the Commission on Human Rights adopted resolution 23 (XXXIV), 1/ by which it decided that the seminar on national and local institutions in the field of human rights, recommended by the General Assembly, referred to above, should as part of its task, suggest certain possible guidelines for the structure and functioning of national institutions, based on the provisions of that resolution and the annex thereto. The Secretary-General was also requested to circulate the resolution and the above-mentioned guidelines suggested by the seminar to all Member States for their comments and suggestions. The Secretary-General was further requested to prepare a report containing all the information received from Member States, together with their comments and suggestions regarding possible guidelines for national institutions to be set up in the future, and to circulate this report to the members of the Commission on Human Rights, as early as possible, before the thirty-fifth session of the Commission. The Commission decided to consider the report of the Secretary-General under the sub-item entitled "Importance of national institutions in the field of human rights" under the item "Further promotion and encouragement of human rights and fundamental freedoms".
3. Pursuant to General Assembly resolution 32/123 and Commission on Human Rights resolution 23 (XXXIV) the seminar was held at Geneva from 18 to 29 September 1978. 2/

1/ See Official Records of the Economic and Social Council, 1978, Supplement No. 4 (E/1978/34), resolution 23 (XXXIV).

2/ The report of the seminar is available to the Commission as contained in document ST/HR/SER.A/2 and Add.1.

4. In compliance with Commission on Human Rights resolution 23 (XXXIV), the Secretary-General, in a note verbale dated 12 October 1978, addressed to Member States, circulated both resolution 23 (XXXIV) of the Commission and the guidelines formulated by the seminar for their comments and suggestions regarding future guidelines which could be available to Governments of Member States for their assistance in setting up national institutions in the field of human rights. With a view to the exchange of information and experience in regard to the functioning of such national and local institutions, Governments were also requested to communicate to the Secretary-General all relevant information on that subject. Member States were requested to make the above-mentioned information available to the Secretary-General by 15 December 1978.

5. As requested by the General Assembly in its resolution 32/123, the report of the seminar was submitted to the General Assembly at its thirty-third session. Following its consideration of the report of the seminar the General Assembly adopted resolution 33/46 by which it took note of the report with appreciation. In paragraphs 2 and 3 of this resolution the General Assembly repeated the request to Member States already transmitted by the Secretary-General in his note verbale mentioned above to communicate their comments before the thirty-fifth session of the Commission on Human Rights. The Commission was requested to consider the suggested guidelines by the seminar and to send its recommendations in this regard to the General Assembly at its thirty-fourth session, through the Economic and Social Council, which could then be made available to Governments of Member States for their assistance in setting up national institutions for the promotion and protection of human rights. The Secretary-General was requested to ensure that the participation by Member States in seminars organized at a world-wide level is based on the principle of equitable geographical representation. The Secretary-General was also requested to transmit this resolution to all Member States for appropriate action. In compliance with this request a note verbale to that effect was sent to all Member States on 5 January 1979.

6. As at the end of January 1979 the Secretary-General had received substantive comments from the following Governments: Austria, Japan, Norway, Panama, Seychelles and Thailand. Those comments are reproduced below. Additional information which may be received hereafter will be issued as addenda to this report.

Austria

Austria attaches great importance to the role of national institutions in the field of human rights. Considering paragraph 1 ('within the framework of their national legislation and policy') as well as paragraph 2 ('keeping in mind both the legal, judicial, executive and other systems of the country') of resolution 23 (XXXIV) of the Commission on Human Rights it will have to be left to the individual States to which extent such national institutions will be established. Especially these functions mentioned in the guidelines which are at present executed in a satisfactory way by already existing institutions - for example, in Austria, by courts of law - should not be transferred to a special institution to be established.

Austria holds the opinion that, as far as new institutions to be established are concerned, the guidelines have a particular significance in the field of the promotion of human rights. Considering the ever-increasing number of treaties, recommendations, resolutions and other instruments in the field of human rights, a central documentation and object-orientated information on such texts seem to be imperative.

Therefore the establishment in Austria of a special human rights centre

Japan

1. The Government of Japan informed the Secretary-General that the national organs for the protection and promotion of human rights in Japan included, in the broad sense of the term, the Diet, all administrative organs and the courts but, in the narrow sense of the term, the administrative organs established for this particular purpose are the Civil Liberties Bureau of the Ministry of Justice and its local organs, and, in addition, there are Civil Liberties Commissioners appointed by the Minister of Justice from among learned men to obtain the co-operation of the populace.

2. The Civil Liberties Bureau and its local organs, namely, Legal Affairs Bureau and District Legal Affairs Bureau, take charge of the following matters concerning: investigation into, and collection of information on, the cases which involve infringements upon human rights; the promotion of non-governmental activities for the protection of human rights; Civil Liberties Commissioners; public information and education activities to promote respect for freedom and human rights; habeas corpus; succour in litigation for poor people; and other matters concerning the protection of human rights.

3. Civil Liberties Commissioners take charge of the following matters: to carry out public information and education activities to promote respect for freedom and human rights; to make efforts to promote non-governmental activities for the protection of human rights; to investigate, and collect information on, the cases involving infringements upon human rights for taking remedial steps, and take pertinent action; to provide succour in litigation and take other pertinent relief measures for poor people, for protecting their rights; to make efforts for the protection of human rights in any other matter.

4. The Government of Japan submitted the following comments on the suggested guidelines:

(a) On paragraph 16

As regards the legal aid granted to poor people in civil or administrative suits, the Legal Aid Association advances, on their behalf, lawyer's retainer, guarantee money and lawyer's fees tentatively and, in exceptional cases, they may be exempted from the obligation to pay back the money advanced.

(b) On paragraph 25

The investigation of infringements of human rights is not made with such compulsory power by law as is exercised in the investigation of crimes, and it is carried out with the voluntary co-operation of victims, infringers and witnesses, in all cases. Also, the dispositions made after investigation include warning or persuasion to the parties, elimination of infringements, etc., but these dispositions have no legal effect to compel the infringer or his supervisor to obey such warning, persuasion, etc.

However, the past experience of investigation shows that the parties involved have refused the investigation in very rare cases because of its voluntary nature, and the human rights organs have succeeded in relieving the victims, eliminating the infringements inflicted as well as in taking preventive measures for the future, in almost all cases, as the result of persuading the infringers, etc., to reflect on their conduct and change their mind, by trying everything in all sincerity and reasoning with them.

The reason why the human rights organs have no compulsory power, as stated above, in handling the cases involving infringements of human rights is that it is based on the idea that they should try to enlighten and make the parties involved conscious of the sense of human rights and let them settle their disputes by themselves.

This may sometimes seem a roundabout way of settlement, but the spirit of respecting human rights, essentially, can be created not by compulsion but by understanding and comprehension.

For the above reasons, it is not proper to empower the human rights organs to summon witnesses and have access to relevant evidence.

(c) On paragraph 26

The organs which are responsible for legislative or administrative work are all under obligation to respect and protect the fundamental human rights guaranteed by the Constitution, and they are always mindful of their duties to take pertinent measures for the promotion of the rights of citizens, as regards the matters under their jurisdiction. Therefore, it is not appropriate for the human rights organs to make a review of the matters belonging to the jurisdiction of the above organs for the purpose of suggesting improvements relevant to the promotion of human rights, as this is likely to incur the question of conflict of authority.

(d) On paragraph 31

This paragraph is not appropriate, as it is deemed to be against the principle of separation of three powers, legislative, judicial and executive.

Norway

The Government of Norway informed the Secretary-General that Norway was represented at the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights and had thus contributed actively to the drafting of the guidelines, which altogether constitute a suitable basis for follow-up by the relevant bodies of the United Nations.

Panama

The Government of the Republic of Panama believes that the establishment of national institutions for the promotion of human rights is essential to the preservation of the peace and legal stability of States Members of the United Nations and particularly of those peoples who are waging the struggle against colonialism, apartheid and any other existing forms of discrimination in the world. These national institutions could have the following functions:

(a) collect and disseminate information on matters concerning violations of human rights that are of concern to their respective governments. To that end, they should have at their disposal their own means of communication not subject to any political influence;

(b) ensure that their members or the persons responsible for their administration adopt a scientific approach to human rights so that the national institutions are accessible to all persons wishing to obtain information or advice on matters concerning their rights;

(c) develop an advisory programme in collaboration with national universities, with a view to providing legal and social assistance to the population, particularly the rural population;

(d) promote instruction in human rights matters from the primary level, to ensure that the population is aware of the principal basic guarantees offered by expedients such as habeas corpus and the protection of constitutional guarantees and of any other similar rights embodied in the legislation of their respective States;

(e) suggest improvements to those legal procedures which obstruct genuine protection of human rights, without prejudice to the independence of the judiciary.

As regards their structure the Government believes that they should be established under national constitutions as independent and impartial bodies and provided with the facilities necessary to guarantee their autonomy and impartiality. These institutions should be protected against any kind of threat or harassment likely to jeopardize their activities.

Seychelles

The Government of the Republic of Seychelles stated that due to limited financial resources and bearing in mind the comparatively small population of Seychelles, it was of the opinion that the setting-up of a national institution for the promotion and protection of human rights would prove unduly burdensome.

With regard to paragraphs 11, 16 and 22 of the suggested guidelines, the Government commented that the judiciary of Seychelles is absolutely independent and that there are no fetters whatsoever on the independence of lawyers in respect of their representing their clients. The matter of free legal aid to the needy is already provided in part for criminal offences. Consideration is being given to the extension of legal aid in other matters.

Thailand

The Government of Thailand commented that it generally subscribes to the purposes contained in the suggested guidelines for the structure and functioning of national institutions for the promotion and protection of human rights, and that such national institutions, while functioning as independent bodies, should perform their tasks, particularly in the dissemination of information at regional and local levels, in close co-operation with existing educational and developmental agencies in the field and thereby avoid unnecessary administrative and financial burden.
