

## **ANNEXES**

# THE INTERNATIONAL BILL OF HUMAN RIGHTS

## 1. Universal Declaration of Human Rights

Adopted and proclaimed by General Assembly  
resolution 217 A (III) of 10 December 1948

### PREAMBLE

*Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Whereas* disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

*Whereas* it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

*Whereas* it is essential to promote the development of friendly relations between nations,

*Whereas* the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

*Whereas* Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

*Whereas* a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

*Now, therefore,*

*The General Assembly*

*Proclaims* this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

### Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### Article 3

Everyone has the right to life, liberty and security of person.

### Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### Article 6

Everyone has the right to recognition everywhere as a person before the law.

### Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

### Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

### Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

*Article 10*

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

*Article 11*

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

*Article 12*

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

*Article 13*

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

*Article 14*

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

*Article 15*

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

*Article 16*

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

*Article 17*

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

*Article 18*

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

*Article 19*

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

*Article 20*

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

*Article 21*

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

*Article 22*

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

*Article 23*

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

*Article 24*

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

### Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

### Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

### Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

### Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

### Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

### Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to

engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

## 2. International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966

ENTRY INTO FORCE: 3 January 1976, in accordance with article 27.

### PREAMBLE

*The States Parties to the present Covenant,*

*Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,*

*Recognizing that these rights derive from the inherent dignity of the human person,*

*Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,*

*Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,*

*Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,*

*Agree upon the following articles:*

### PART I

#### Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## PART II

### Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

### Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

### Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

### Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

## PART III

### Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

### Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

### Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

#### *Article 9*

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

#### *Article 10*

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

#### *Article 11*

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed.

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

#### *Article 12*

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

#### *Article 13*

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### *Article 14*

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

#### *Article 15*

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

### **PART IV**

#### *Article 16*

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall

within the responsibilities of the said agencies in accordance with their constitutional instruments.

#### *Article 17*

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

#### *Article 18*

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

#### *Article 19*

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

#### *Article 20*

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

#### *Article 21*

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

#### *Article 22*

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

#### *Article 23*

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

#### *Article 24*

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

#### *Article 25*

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

### PART V

#### *Article 26*

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

#### *Article 27*

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

#### *Article 28*

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

#### *Article 29*

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

#### *Article 30*

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

#### *Article 31*

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.



2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

### 3. International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966

ENTRY INTO FORCE: 23 March 1976, in accordance with article 49.

#### PREAMBLE

*The States Parties to the present Covenant,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

*Recognizing* that these rights derive from the inherent dignity of the human person,

*Recognizing* that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

*Considering* the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

*Realizing* that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

*Agree* upon the following articles:

#### PART I

##### Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

#### PART II

##### Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

##### Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

##### Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same inter-

mediary, on the date on which it terminates such derogation.

#### Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### PART III

#### Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

#### Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

#### Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.

#### Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

#### Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

#### Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

#### Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

#### Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes of the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

#### Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

#### Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

#### Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or corres-

pondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

#### Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

#### Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

#### Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

#### Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

#### Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

#### Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

#### Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

#### Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

#### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the

law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### *Article 27*

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

### PART IV

#### *Article 28*

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

#### *Article 29*

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

#### *Article 30*

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the

United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

#### *Article 31*

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

#### *Article 32*

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

#### *Article 33*

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

#### *Article 34*

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

### Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

### Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

### Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

### Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

### Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

### Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall

transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

### Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its goods offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented

when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

- (i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may

be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

#### Article 43

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures

prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

#### *Article 45*

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

### PART V

#### *Article 46*

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

#### *Article 47*

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

### PART VI

#### *Article 48*

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

#### *Article 49*

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

#### *Article 50*

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

#### *Article 51*

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

#### *Article 52*

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars :

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

#### *Article 53*

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.



#### 4. Optional Protocol to the International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966

ENTRY INTO FORCE: 23 March 1976, in accordance with article 9.

*The States Parties to the present Protocol,*

Considering that in order further to achieve the purposes of the Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Have agreed as follows:

##### Article 1

A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol.

##### Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

##### Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

##### Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

##### Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies.

This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

##### Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

##### Article 7

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

##### Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

##### Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

#### *Article 10*

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

#### *Article 11*

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

#### *Article 12*

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

#### *Article 13*

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

#### *Article 14*

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

**EUROPEAN CONVENTION FOR THE  
PROTECTION OF HUMAN RIGHTS AND  
FUNDAMENTAL FREEDOMS**

**(with amendments)**

**ROME 4.XI.1950**

Text amended according to the provisions of Protocol No. 3 which entered into force on 21 September 1970, and of Protocol No. 5 which entered into force on 20 December 1971.

The Governments signatory hereto, being Members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948 ;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the rights therein declared ;

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms ;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend ;

Being resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration ;

Have agreed as follows :

#### Article 1

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

### SECTION I

#### Article 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary :
  - a. in defence of any person from unlawful violence ;
  - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained ;
  - c. in action lawfully taken for the purpose of quelling a riot or insurrection.

### Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### Article 4

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term "forced or compulsory labour" shall not include :
  - a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention ;
  - b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service ;
  - c. any service exacted in case of an emergency or calamity threatening the life or well-being of the community ;
  - d. any work or service which forms part of normal civic obligations.

### Article 5

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law :
  - a. the lawful detention of a person after conviction by a competent court ;
  - b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law ;
  - c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ;
  - d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority ;
  - e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants ;
  - f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1. c. of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

#### Article 6

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights :

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him ;

b. to have adequate time and facilities for the preparation of his defence ;

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require ;

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ;

e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### Article 7

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time

when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

#### Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### Article 9

1. Everyone has the right to freedom of thought, conscience and religion ; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

#### Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

#### Article 12

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

#### Article 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

#### Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

#### Article 15

1. In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.



#### Article 16

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

#### Article 17

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

#### Article 18

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

### SECTION II

#### Article 19

To ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention, there shall be set up :

- a.* A European Commission of Human Rights, hereinafter referred to as "the Commission" ;
- b.* A European Court of Human Rights, hereinafter referred to as "the Court".

### SECTION III

#### Article 20

The Commission shall consist of a number of members equal to that of the High Contracting Parties. No two members of the Commission may be nationals of the same State.

#### Article 21

1. The members of the Commission shall be elected by the Committee of Ministers by an absolute majority of votes, from a list of names drawn up by the Bureau of the Consultative Assembly ; each group of the Representatives of the High Contracting Parties in the Consultative Assembly shall put forward three candidates, of whom two at least shall be its nationals.

2. As far as applicable, the same procedure shall be followed to complete the Commission in the event of other States subsequently becoming Parties to this Convention, and in filling casual vacancies.

#### Article 22 \*

1. The members of the Commission shall be elected for a period of six years. They may be re-elected. However, of the members elected at the first election, the terms of seven members shall expire at the end of three years.
2. The members whose terms are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after the first election has been completed.
3. In order to ensure that, as far as possible, one half of the membership of the Commission shall be renewed every three years, the Committee of Ministers may decide, before proceeding to any subsequent election, that the term or terms of office of one or more members to be elected shall be for a period other than six years but not more than nine and not less than three years.
4. In cases where more than one term of office is involved and the Committee of Ministers applies the preceding paragraph, the allocation of the terms of office shall be effected by the drawing of lots by the Secretary General, immediately after the election.
5. A member of the Commission elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.
6. The members of the Commission shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.

#### Article 23

The members of the Commission shall sit on the Commission in their individual capacity.

#### Article 24

Any High Contracting Party may refer to the Commission, through the Secretary General of the Council of Europe, any alleged breach of the provisions of the Convention by another High Contracting Party.

#### Article 25

1. The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.

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\* Text amended according to the provisions of Protocol No. 5 which entered into force on 20 December 1971

2. Such declarations may be made for a specific period.
3. The declarations shall be deposited with the Secretary General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties and publish them.
4. The Commission shall only exercise the powers provided for in this article when at least six High Contracting Parties are bound by declarations made in accordance with the preceding paragraphs.

#### Article 26

The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

#### Article 27

1. The Commission shall not deal with any petition submitted under Article 25 which :
  - a. is anonymous, or
  - b. is substantially the same as a matter which has already been examined by the Commission or has already been submitted to another procedure of international investigation or settlement and if it contains no relevant new information.
2. The Commission shall consider inadmissible any petition submitted under Article 25 which it considers incompatible with the provisions of the present Convention, manifestly ill-founded, or an abuse of the right of petition.
3. The Commission shall reject any petition referred to it which it considers inadmissible under Article 26.

#### Article 28

In the event of the Commission accepting a petition referred to it :

- a. it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission ;
- b. it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in this Convention.

#### Article 29 \*

After it has accepted a petition submitted under Article 25, the Commission may

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\* Text amended according to the provisions of Protocol No. 3 which entered into force on 21 September 1970.

nevertheless decide unanimously to reject the petition if, in the course of its examination, it finds that the existence of one of the grounds for non-acceptance provided for in Article 27 has been established.

In such a case, the decision shall be communicated to the parties.

#### Article 30 \*

If the Commission succeeds in effecting a friendly settlement in accordance with Article 28, it shall draw up a report which shall be sent to the States concerned, to the Committee of Ministers and to the Secretary General of the Council of Europe for publication. This report shall be confined to a brief statement of the facts and of the solution reached.

#### Article 31

1. If a solution is not reached, the Commission shall draw up a report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention. The opinions of all the members of the Commission on this point may be stated in the report.

2. The report shall be transmitted to the Committee of Ministers. It shall also be transmitted to the States concerned, who shall not be at liberty to publish it.

3. In transmitting the report to the Committee of Ministers the Commission may make such proposals as it thinks fit.

#### Article 32

1. If the question is not referred to the Court in accordance with Article 48 of this Convention within a period of three months from the date of the transmission of the report to the Committee of Ministers, the Committee of Ministers shall decide by a majority of two-thirds of the members entitled to sit on the Committee whether there has been a violation of the Convention.

2. In the affirmative case the Committee of Ministers shall prescribe a period during which the High Contracting Party concerned must take the measures required by the decision of the Committee of Ministers.

3. If the High Contracting Party concerned has not taken satisfactory measures within the prescribed period, the Committee of Ministers shall decide by the majority provided for in paragraph 1 above what effect shall be given to its original decision and shall publish the report.

4. The High Contracting Parties undertake to regard as binding on them any decision which the Committee of Ministers may take in application of the preceding paragraphs.

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\* Text amended according to the provisions of Protocol No. 3 which entered into force on 21 September 1970.

### Article 33

The Commission shall meet *in camera*.

### Article 34 \*

Subject to the provisions of Article 29, the Commission shall take its decisions by a majority of the members present and voting.

### Article 35

The Commission shall meet as the circumstances require. The meetings shall be convened by the Secretary General of the Council of Europe.

### Article 36

The Commission shall draw up its own rules of procedure.

### Article 37

The secretariat of the Commission shall be provided by the Secretary General of the Council of Europe.

## SECTION IV

### Article 38

The European Court of Human Rights shall consist of a number of judges equal to that of the Members of the Council of Europe. No two judges may be nationals of the same State.

### Article 39

1. The members of the Court shall be elected by the Consultative Assembly by a majority of the votes cast from a list of persons nominated by the Members of the Council of Europe ; each Member shall nominate three candidates, of whom two at least shall be its nationals.
2. As far as applicable, the same procedure shall be followed to complete the Court in the event of the admission of new Members of the Council of Europe, and in filling casual vacancies.
3. The candidates shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

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\* Text amended according to the provisions of Protocol No. 3 which entered into force on 21 September 1970.

#### Article 40 \*

1. The members of the Court shall be elected for a period of nine years. They may be re-elected. However, of the members elected at the first election the terms of four members shall expire at the end of three years, and the terms of four more members shall expire at the end of six years.
2. The members whose terms are to expire at the end of the initial periods of three and six years shall be chosen by lot by the Secretary General immediately after the first election has been completed.
3. In order to ensure that, as far as possible, one third of the membership of the Court shall be renewed every three years, the Consultative Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more members to be elected shall be for a period other than nine years but not more than twelve and not less than six years.
4. In cases where more than one term of office is involved and the Consultative Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by the drawing of lots by the Secretary General immediately after the election.
5. A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.
6. The members of the Court shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.

#### Article 41

The Court shall elect its President and Vice-President for a period of three years. They may be re-elected.

#### Article 42

The members of the Court shall receive for each day of duty a compensation to be determined by the Committee of Ministers.

#### Article 43

For the consideration of each case brought before it the Court shall consist of a Chamber composed of seven judges. There shall sit as an *ex officio* member of the Chamber the judge who is a national of any State Party concerned, or, if there is none, a person of its choice who shall sit in the capacity of judge ; the names of the other judges shall be chosen by lot by the President before the opening of the case.

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\* Text amended according to the provisions of Protocol No. 5 which entered into force on 20 December 1971 .

#### Article 44

Only the High Contracting Parties and the Commission shall have the right to bring a case before the Court.

#### Article 45

The jurisdiction of the Court shall extend to all cases concerning the interpretation and application of the present Convention which the High Contracting Parties or the Commission shall refer to it in accordance with Article 48.

#### Article 46

1. Any of the High Contracting Parties may at any time declare that it recognises as compulsory *ipso facto* and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention.
2. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain other High Contracting Parties or for a specified period.
3. These declarations shall be deposited with the Secretary General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties.

#### Article 47

The Court may only deal with a case after the Commission has acknowledged the failure of efforts for a friendly settlement and within the period of three months provided for in Article 32.

#### Article 48

The following may bring a case before the Court, provided that the High Contracting Party concerned, if there is only one, or the High Contracting Parties concerned, if there is more than one, are subject to the compulsory jurisdiction of the Court or, failing that, with the consent of the High Contracting Party concerned, if there is only one, or of the High Contracting Parties concerned if there is more than one :

- a. the Commission ;
- b. a High Contracting Party whose national is alleged to be a victim ;
- c. a High Contracting Party which referred the case to the Commission ;
- d. a High Contracting Party against which the complaint has been lodged.

#### Article 49

In the event of dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

#### **Article 50**

If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the present Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.

#### **Article 51**

1. Reasons shall be given for the judgment of the Court.
2. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

#### **Article 52**

The judgment of the Court shall be final.

#### **Article 53**

The High Contracting Parties undertake to abide by the decision of the Court in any case to which they are parties.

#### **Article 54**

The judgment of the Court shall be transmitted to the Committee of Ministers which shall supervise its execution.

#### **Article 55**

The Court shall draw up its own rules and shall determine its own procedure.

#### **Article 56**

1. The first election of the members of the Court shall take place after the declarations by the High Contracting Parties mentioned in Article 46 have reached a total of eight.
2. No case can be brought before the Court before this election.

### **SECTION V**

#### **Article 57**

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of this Convention.



#### Article 58

The expenses of the Commission and the Court shall be borne by the Council of Europe.

#### Article 59

The members of the Commission and of the Court shall be entitled, during the discharge of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

#### Article 60

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

#### Article 61

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

#### Article 62

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

#### Article 63

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
4. Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Commission to receive petitions from individuals, non-governmental organisations or groups of individuals in accordance with Article 25 of the present Convention.

#### Article 64

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
2. Any reservation made under this article shall contain a brief statement of the law concerned.

#### Article 65

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a Party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a Member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 63.

#### Article 66

1. This Convention shall be open to the signature of the Members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
2. The present Convention shall come into force after the deposit of ten instruments of ratification.
3. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
4. The Secretary General of the Council of Europe shall notify all the Members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950 in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

**EUROPEAN SOCIAL CHARTER, 1961**

**TURIN, 18.X.1961**

The Governments signatory hereto, being Members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms,

Considering that in the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950, and the Protocol thereto signed at Paris on 20th March 1952, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin,

Being resolved to make every effort in common to improve the standard of living and to promote the social well-being of both their urban and rural populations by means of appropriate institutions and action,

Have agreed as follows :

## PART I

The Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised :

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.
6. All workers and employers have the right to bargain collectively.

## ARTICLE 1

### THE RIGHT TO WORK

With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake :

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment,
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.

## ARTICLE 2

### THE RIGHT TO JUST CONDITIONS OF WORK

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake .

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2. to provide for public holidays with pay;
3. to provide for a minimum of two weeks annual holiday with pay;
4. to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;
5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest.

## ARTICLE 3

### THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake :

1. to issue safety and health regulations;

7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
8. Employed women, in case of maternity, and other employed women as appropriate, have the right to a special protection in their work.
9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
10. Everyone has the right to appropriate facilities for vocational training.
11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
12. All workers and their dependents have the right to social security.
13. Anyone without adequate resources has the right to social and medical assistance.
14. Everyone has the right to benefit from social welfare services.
15. Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability.
16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
17. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.
18. The nationals of any one of the Contracting Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
19. Migrant workers who are nationals of a Contracting Party and their families have the right to protection and assistance in the territory of any other Contracting Party.

## PART II

The Contracting Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following Articles and paragraphs.

2. to provide for the enforcement of such regulations by measures of supervision;
3. to consult, as appropriate, employers' and workers' organisations on measures intended to improve industrial safety and health.

#### ARTICLE 4

##### THE RIGHT TO A FAIR REMUNERATION

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake :

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

#### ARTICLE 5

##### THE RIGHT TO ORGANISE

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this Article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.



## ARTICLE 6

### THE RIGHT TO BARGAIN COLLECTIVELY

With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake :

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise :

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

## ARTICLE 7

### THE RIGHT OF CHILDREN AND YOUNG PERSONS TO PROTECTION

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake :

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. to provide that the working hours of persons under 16 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;

6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day.
7. to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. to ensure special protection against physical and moral dangers to which children and young persons are exposed and particularly against those resulting directly or indirectly from their work.

## ARTICLE 8

### THE RIGHT OF EMPLOYED WOMEN TO PROTECTION

With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for women to take leave before and after childbirth up to a total of at least 12 weeks;
2. to consider it as unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence;
3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose,
4. (a) to regulate the employment of women workers on night work in industrial employment;  
(b) to prohibit the employment of women workers in underground mining, and, as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature.

## ARTICLE 9

### THE RIGHT TO VOCATIONAL GUIDANCE

With a view to ensuring the effective exercise of the right to vocational guidance, the Contracting Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity : this assistance should be available free of charge, both to young persons, including school children, and to adults.

## ARTICLE 10

### THE RIGHT TO VOCATIONAL TRAINING

With a view to ensuring the effective exercise of the right to vocational training, the Contracting Parties undertake :

- 1 to provide or promote, as necessary, the technical and vocational training of all persons including the handicapped, in consultation with employers' and workers organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;
2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments,
3. to provide or promote, as necessary :
  - (a) adequate and readily available training facilities for adult workers;
  - (b) special facilities for the re-training of adult workers needed as a result of technological development or new trends in employment;
4. to encourage the full utilisation of the facilities provided by appropriate measures such as :
  - (a) reducing or abolishing any fees or charges;
  - (b) granting financial assistance in appropriate cases;
  - (c) including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;

- (d) ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

## ARTICLE 11

### THE RIGHT TO PROTECTION OF HEALTH

With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed *inter alia* :

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases.

## ARTICLE 12

### THE RIGHT TO SOCIAL SECURITY

With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake :

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention (No. 102) Concerning Minimum Standards of Social Security;
3. to endeavour to raise progressively the system of social security to a higher level;
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements, or by other means, and subject to the conditions laid down in such agreements, in order to ensure :

- (a) equal treatment with their own nationals of the nationals of other Contracting Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Contracting Parties;

- (b) the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Contracting Parties.

### ARTICLE 13

#### THE RIGHT TO SOCIAL AND MEDICAL ASSISTANCE

With a view to ensuring the effective exercise of the right to social and medical assistance, the Contracting Parties undertake :

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this Article on an equal footing with their nationals to nationals of other Contracting Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11th December 1953.

### ARTICLE 14

#### THE RIGHT TO BENEFIT FROM SOCIAL WELFARE SERVICES

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Contracting Parties undertake :

1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

## ARTICLE 15

### **THE RIGHT OF PHYSICALLY OR MENTALLY DISABLED PERSONS TO VOCATIONAL TRAINING, REHABILITATION AND SOCIAL RESETTLEMENT**

With a view to ensuring the effective exercise of the right of the physically or mentally disabled to vocational training, rehabilitation and resettlement, the Contracting Parties undertake :

1. to take adequate measures for the provision of training facilities, including, where necessary, specialised institutions, public or private,
2. to take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment.

## ARTICLE 16

### **THE RIGHT OF THE FAMILY TO SOCIAL, LEGAL AND ECONOMIC PROTECTION**

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.

## ARTICLE 17

### **THE RIGHT OF MOTHERS AND CHILDREN TO SOCIAL AND ECONOMIC PROTECTION**

With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.

## ARTICLE 18

### **THE RIGHT TO ENGAGE IN A GAINFUL OCCUPATION IN THE TERRITORY OF OTHER CONTRACTING PARTIES**

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Contracting Party, the Contracting Parties undertake :

1. to apply existing regulations in a spirit of liberality;
2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
3. to liberalise, individually or collectively, regulations governing the employment of foreign workers;

and recognise :

4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Contracting Parties.

## ARTICLE 19

### **THE RIGHT OF MIGRANT WORKERS AND THEIR FAMILIES TO PROTECTION AND ASSISTANCE**

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake :

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters :
  - (a) remuneration and other employment and working conditions;
  - (b) membership of trade unions and enjoyment of the benefits of collective bargaining;
  - (c) accommodation;
5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
7. to secure for such workers lawfully within their territories, treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this Article;
8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
10. to extend the protection and assistance provided for in this Article to self-employed migrants insofar as such measures apply.

### **PART III**

#### **ARTICLE 20**

#### **UNDERTAKINGS**

1. Each of the Contracting Parties undertakes :
  - (a) to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that Part;
  - (b) to consider itself bound by at least five of the following Articles of Part II of this Charter : Articles 1, 5, 6, 12, 13, 16 and 19;



(c) in addition to the Articles selected by it in accordance with the preceding sub-paragraph, to consider itself bound by such a number of Articles or numbered paragraphs of Part II of the Charter as it may select, provided that the total number of Articles or numbered paragraphs by which it is bound is not less than 10 Articles or 45 numbered paragraphs.

2. The Articles or paragraphs selected in accordance with sub-paragraphs (b) and (c) of paragraph 1 of this Article shall be notified to the Secretary-General of the Council of Europe at the time when the instrument of ratification or approval of the Contracting Party concerned is deposited.

3. Any Contracting Party may, at a later date, declare by notification to the Secretary-General that it considers itself bound by any Articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this Article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification or approval, and shall have the same effect as from the thirtieth day after the date of the notification.

4. The Secretary-General shall communicate to all the signatory Governments and to the Director-General of the International Labour Office any notification which he shall have received pursuant to this Part of the Charter.

5. Each Contracting Party shall maintain a system of labour inspection appropriate to national conditions.

## PART IV

### ARTICLE 21

#### REPORTS CONCERNING ACCEPTED PROVISIONS

The Contracting Parties shall send to the Secretary-General of the Council of Europe a report at two-yearly intervals, in a form to be determined by the Committee of Ministers, concerning the application of such provisions of Part II of the Charter as they have accepted.

## ARTICLE 22

### REPORTS CONCERNING PROVISIONS WHICH ARE NOT ACCEPTED

The Contracting Parties shall send to the Secretary-General, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of Part II of the Charter which they did not accept at the time of their ratification or approval or in a subsequent notification. The Committee of Ministers shall determine from time to time in respect of which provisions such reports shall be requested and the form of the reports to be provided.

## ARTICLE 23

### COMMUNICATION OF COPIES

1. Each Contracting Party shall communicate copies of its reports referred to in Articles 21 and 22 to such of its national organisations as are members of the international organisations of employers and trade unions to be invited under Article 27, paragraph 2, to be represented at meetings of the Sub-committee of the Governmental Social Committee.

2. The Contracting Parties shall forward to the Secretary-General any comments on the said reports received from these national organisations, if so requested by them.

## ARTICLE 24

### EXAMINATION OF THE REPORTS

The reports sent to the Secretary-General in accordance with Articles 21 and 22 shall be examined by a Committee of Experts, who shall have also before them any comments forwarded to the Secretary-General in accordance with paragraph 2 of Article 23.

## ARTICLE 25

### COMMITTEE OF EXPERTS

1. The Committee of Experts shall consist of not more than seven members appointed by the Committee of Ministers from a list of independent experts of the highest integrity and of recognised competence in international social questions, nominated by the Contracting Parties.

2. The members of the Committee shall be appointed for a period of six years. They may be reappointed. However, of the members first appointed, the terms of office of two members shall expire at the end of four years.

3. The members whose terms of office are to expire at the end of the initial period of four years shall be chosen by lot by the Committee of Ministers immediately after the first appointment has been made.

4. A member of the Committee of Experts appointed to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

## ARTICLE 26

### PARTICIPATION OF THE INTERNATIONAL LABOUR ORGANISATION

The International Labour Organisation shall be invited to nominate a representative to participate in a consultative capacity in the deliberations of the Committee of Experts.

## ARTICLE 27

### SUB-COMMITTEE OF THE GOVERNMENTAL SOCIAL COMMITTEE

1. The reports of the Contracting Parties and the conclusions of the Committee of Experts shall be submitted for examination to a Sub-committee of the Governmental Social Committee of the Council of Europe.

2. The Sub-committee shall be composed of one representative of each of the Contracting Parties. It shall invite no more than two international organisations of employers and no more than two international trade union organisations as it may designate to be represented as observers in a consultative capacity at its meetings. Moreover, it may consult no more than two representatives of international non-governmental organisations having consultative status with the Council of Europe, in respect of questions with which the organisations are particularly qualified to deal, such as social welfare, and the economic and social protection of the family.

3. The Sub-committee shall present to the Committee of Ministers a report containing its conclusions and append the report of the Committee of Experts.

## ARTICLE 28

### CONSULTATIVE ASSEMBLY

The Secretary-General of the Council of Europe shall transmit to the Consultative Assembly the conclusions of the Committee of Experts. The Consultative Assembly shall communicate its views on these Conclusions to the Committee of Ministers.

## ARTICLE 29

### COMMITTEE OF MINISTERS

By a majority of two-thirds of the members entitled to sit on the Committee, the Committee of Ministers may, on the basis of the report of the Sub-committee, and after consultation with the Consultative Assembly, make to each Contracting Party any necessary recommendations.

## PART V

## ARTICLE 30

### DEROGATIONS IN TIME OF WAR OR PUBLIC EMERGENCY

1. In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. Any Contracting Party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary-General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary-General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.
3. The Secretary-General shall in turn inform other Contracting Parties and the Director-General of the International Labour Office of all communications received in accordance with paragraph 2 of this Article.

**ARTICLE 31**  
**RESTRICTIONS**

1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those Parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

**ARTICLE 32**  
**RELATIONS BETWEEN THE CHARTER  
AND DOMESTIC LAW OR INTERNATIONAL AGREEMENTS**

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

**ARTICLE 33**  
**IMPLEMENTATION BY COLLECTIVE AGREEMENTS**

1. In member States where the provisions of paragraphs 1, 2, 3, 4 and 5 of Article 2, paragraphs 4, 6 and 7 of Article 7 and paragraphs 1, 2, 3 and 4 of Article 10 of Part II of this Charter are matters normally left to agreements between employers or employers' organisations and workers' organisations, or are normally carried out otherwise than by law, the undertakings of those paragraphs may be given and compliance with them shall be treated as effective if their provisions are applied through such agreements or other means to the great majority of the workers concerned.

2. In member States where these provisions are normally the subject of legislation, the undertakings concerned may likewise be given, and compliance with them shall be regarded as effective if the provisions are applied by law to the great majority of the workers concerned.

## ARTICLE 34

### TERRITORIAL APPLICATION

1. This Charter shall apply to the metropolitan territory of each Contracting Party. Each signatory Government may, at the time of signature or of the deposit of its instrument of ratification or approval, specify, by declaration addressed to the Secretary-General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.

2. Any Contracting Party may, at the time of ratification or approval of this Charter or at any time thereafter, declare by notification addressed to the Secretary-General of the Council of Europe that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible or for which it assumes international responsibility. It shall specify in the declaration the Articles or paragraphs of Part II of the Charter which it accepts as binding in respect of the territories named in the declaration.

3. The Charter shall extend to the territory or territories named in the aforesaid declaration as from the thirtieth day after the date on which the Secretary-General shall have received notification of such declaration.

4. Any Contracting Party may declare at a later date by notification addressed to the Secretary-General of the Council of Europe, that, in respect of one or more of the territories to which the Charter has been extended in accordance with paragraph 2 of this Article, it accepts as binding any Articles or any numbered paragraphs which it has not already accepted in respect of that territory or territories. Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the thirtieth day after the date of the notification.

5. The Secretary-General shall communicate to the other signatory Governments and to the Director-General of the International Labour Office any notification transmitted to him in accordance with this Article.

## ARTICLE 35

### SIGNATURE, RATIFICATION AND ENTRY INTO FORCE

1. This Charter shall be open for signature by the Members of the Council of Europe. It shall be ratified or approved. Instruments of ratification or approval shall be deposited with the Secretary-General of the Council of Europe.

2. This Charter shall come into force as from the thirtieth day after the date of deposit of the fifth instrument of ratification or approval.

3. In respect of any signatory Government ratifying subsequently, the Charter shall come into force as from the thirtieth day after the date of deposit of its instrument of ratification or approval.

4. The Secretary-General shall notify all the Members of the Council of Europe and the Director-General of the International Labour Office, of the entry into force of the Charter, the names of the Contracting Parties which have ratified or approved it and the subsequent deposit of any instruments of ratification or approval.

## ARTICLE 36

### AMENDMENTS

Any Member of the Council of Europe may propose amendments to this Charter in a communication addressed to the Secretary-General of the Council of Europe. The Secretary-General shall transmit to the other Members of the Council of Europe any amendments so proposed, which shall then be considered by the Committee of Ministers and submitted to the Consultative Assembly for opinion. Any amendments approved by the Committee of Ministers shall enter into force as from the thirtieth day after all the Contracting Parties have informed the Secretary-General of their acceptance. The Secretary-General shall notify all the Members of the Council of Europe and the Director-General of the International Labour Office of the entry into force of such amendments.

## ARTICLE 37

### DENUNCIATION

1. Any Contracting Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force for it, or at the end of any successive period of two years, and, in each case, after giving six months notice to the Secretary-General of the Council of Europe, who shall inform the other Parties and the Director-General of the International Labour Office accordingly. Such denunciation shall not affect the validity of the Charter in respect of the other Contracting Parties provided that at all times there are not than five such Contracting Parties.

2. Any Contracting Party may, in accordance with the provisions set out in the preceding paragraph, denounce any Article or paragraph of Part II of the Charter accepted by it provided that the number of Articles or paragraphs by which this Contracting Party is bound shall never be less than 10 in the former case and 45 in the latter and that this number of Articles or paragraphs shall continue to include the Articles selected by the Contracting Party among those to which special reference is made in Article 20, paragraph 1, sub-paragraph (b).

3. Any Contracting Party may denounce the present Charter or any of the Articles or paragraphs of Part II of the Charter, under the conditions specified in paragraph 1 of this Article in respect of any territory to which the said Charter is applicable by virtue of a declaration made in accordance with paragraph 2 of Article 34.

#### **ARTICLE 38**

#### **APPENDIX**

The Appendix to this Charter shall form an integral part of it.



In witness whereof, the undersigned, being duly authorised thereto, have signed this Charter.

Done at Turin,

this 18th day of October 1961, in English and French, both texts being equally authoritative, in a single copy which shall be deposited within the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the Signatories.

## APPENDIX TO THE SOCIAL CHARTER

### *Scope of the Social Charter in terms of persons protected :*

1. Without prejudice to Article 12, paragraph 4 and Article 13, paragraph 4, the persons covered by Articles 1 to 17 include foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned, subject to the understanding that these Articles are to be interpreted in the light of the provisions of Articles 18 and 19.

This interpretation would not prejudice the extension of similar facilities to other persons by any of the Contracting Parties.

2. Each Contracting Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed at Geneva on 28th July 1951, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Contracting Party under the said Convention and under any other existing international instruments applicable to those refugees.

### *PART I*

#### *Paragraph 18*

### *PART II*

#### *Article 18, paragraph 1*

and

It is understood that these provisions are not concerned with the question of entry into the territories of the Contracting Parties and do not prejudice the provisions of the European Convention on Establishment, signed at Paris on 13th December 1955.

### *PART II*

#### *Article 1, paragraph 2*

This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.

#### *Article 4, paragraph 4*

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

#### *Article 4, paragraph 5*

It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.

#### *Article 6, paragraph 4*

It is understood that each Contracting Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article 31.

*Article 7, paragraph 8*

It is understood that a Contracting Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under 18 years of age shall not be employed in night work.

*Article 12, paragraph 4*

The words "and subject to the conditions laid down in such agreements" in the introduction to this paragraph are taken to imply *inter alia* that with regard to benefits which are available independently of any insurance contribution a Contracting Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Contracting Parties.

*Article 13, paragraph 4*

Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Social Charter in respect of this paragraph provided that they grant to nationals of other Contracting Parties a treatment which is in conformity with the provisions of the said Convention.

*Article 19, paragraph 6*

For the purpose of this provision, the term "family of a foreign worker" is understood to mean at least his wife and dependent children under the age of 21 years.

*PART III*

It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof.

*Article 20, paragraph 1*

It is understood that the "numbered paragraphs" may include Articles consisting of only one paragraph.

*PART V*

*Article 30*

The term "in time of war or other public emergency" shall be so understood as to cover also the *threat* of war.

**ANNEX VI**

**TEXT PREPARED  
WITHIN THE  
ORGANISATION OF AMERICAN STATES**

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**THE INTER-AMERICAN CONVENTION ON  
HUMAN RIGHTS**

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**SAN JOSE (Costa Rica), 22.XI.1969**

## AMERICAN CONVENTION ON HUMAN RIGHTS

### PREAMBLE

The American States signatory to the present Convention,

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognising that the essential rights of man are not derived from one's being a national of a certain State but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a Convention reinforcing or complementing the protection provided by the domestic law of the American States;

Considering that these principles have been set forth in the Charter of the Organisation of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope;

Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights; and

Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organisation itself of broader standards with respect to economic, social and educational rights and resolved that an inter-American Convention on human rights should determine the structure, competence and procedure of the organs responsible for these matters,

Have agreed upon the following:

# AMERICAN CONVENTION ON HUMAN RIGHTS

## PART I - STATE OBLIGATIONS AND RIGHTS PROTECTED

### CHAPTER I - GENERAL OBLIGATIONS

#### Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognised herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.
2. For the purposes of this Convention, "person" means every human being.

#### Article 2. Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

### CHAPTER II - CIVIL AND POLITICAL RIGHTS

#### Article 3. Right to Juridical Personality

Every person has the right to recognition as a person before the law.

#### Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law, and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, this may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. Its application shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be re-established in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offences or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending a decision by the competent authority.

#### Article 5. Freedom from Torture

1. Every person has the right to have his physical, mental and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialised tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

#### Article 6. Freedom from Slavery

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.
2. No one shall be required to perform forced or compulsory labour. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labour, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labour shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.
3. For the purposes of this article the following do not constitute forced or compulsory labour:
  - a. any work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;
  - b. any military service and, in countries in which conscientious objectors are recognised, any national service that the law may provide for in lieu of that service;

- c. any service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or
- d. any work or service that forms part of normal civic obligations.

#### Article 7. Right to Personal Liberty

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.
7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for non-fulfilment of duties of support.

#### Article 8. Right to a Fair Trial

1. Every person shall have the right to a hearing with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights or obligations of a civil, labour, fiscal or any other nature.
2. Every person accused of a serious crime has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
  - a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;



- b. prior notification in detail to the accused of the charges against him;
  - c. adequate time and means for the preparation of his defence;
  - d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
  - e. the inalienable right to be assisted by counsel provided by the State, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
  - f. the right of the defence to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
  - g. the right not to be compelled to be a witness against himself or to plead guilty; and
  - h. the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person, acquitted by a non-appealable judgment, shall not be subjected to a new trial for the same cause.
5. Criminal procedure shall be public, except in so far as may be necessary to protect the interests of justice.

#### Article 9. Freedom from Ex Post Facto Laws

No one shall be convicted of any act or omission that did not constitute a criminal offence, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offence was committed. If subsequently to the commission of the offence the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

#### Article 10. Right to Compensation

Every person shall have the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.

#### Article 11. Right to Privacy

1. Everyone has the right to have his honour respected and his dignity recognised.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honour or reputation.
3. Everyone has a right to the protection of the law against such interference or attacks.

## Article 12. Freedom of Conscience and Religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for religious and moral education of their children, or wards, that is in accord with their own convictions.

## Article 13. Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law and be necessary in order to ensure:
  - a. respect for the rights or reputations of others; or
  - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or implements or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship, for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or any other similar illegal action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offences punishable by law.

#### Article 14. Right of Reply

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or make a correction using the same communications outlet, under such conditions as the law may establish.
2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
3. For the effective protection of honour and reputation, every publication and every newspaper, motion picture, radio and television company shall have a person responsible, who is not protected by immunities or special privileges.

#### Article 15. Right of Assembly

The right of peaceful assembly, without arms, is recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interests of national security or public safety or public order, or to protect public health or morals or the rights or freedoms of others.

#### Article 16. Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labour, social, cultural, sports or other purposes.
2. Exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interests of national security, public safety, or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

#### Article 17. Rights of the Family

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.
2. The right of men and women of marriageable age to marry and to raise a family shall be recognised, if they meet the conditions required by domestic laws, in so far as such conditions do not affect the principle of non-discrimination established in this Convention.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.
5. The law shall recognise equal rights for children born out of wedlock and those born in wedlock.

#### Article 18. Right to a Name

Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

#### Article 19. Rights of the Child

Every minor child has the right to the measures of protection required by his condition as a minor, on the part of his family, society and the State.

#### Article 20. Right to Nationality

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

#### Article 21. Right to Property

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

#### Article 22. Freedom of Movement and Residence

1. Every person lawfully in the territory of a State Party shall have the right to move about in it and to reside in it subject to the provisions of the law.
2. Every person has the right to leave the country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law, to the extent indispensable in a democratic society in order to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognised in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.

5. No one can be expelled from the territory of the State of which he is a national or be deprived of the right to enter it.
6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.
7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the State and international Conventions, in the event he is being pursued for political or related common crimes.
8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.
9. The collective expulsion of aliens is prohibited.

#### Article 23. Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:
  - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
  - b. to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
  - c. to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph, exclusively on the basis of age, nationality, residence, language, education, civil and mental capacity and conviction by a competent judge in criminal proceedings.

#### Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

#### Article 25. Right to Judicial Protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court of tribunal for protection against acts that violate his fundamental rights recognised by the Constitution or laws of a State or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his right thereto determined by the competent authority provided for by the legal system of the State;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

CHAPTER III - ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 26. Progressive Development

The States Parties undertake to adopt measures, both internally and through international co-operation, especially those of an economic and technical nature, with a view to achieving progressively by legislation or other appropriate means, the full realisation of the rights implicit in the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organisation of American States as amended by the Protocol of Buenos Aires.

CHAPTER IV - SUSPENSION OF GUARANTEES,  
INTERPRETATION AND APPLICATION

Article 27. Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, colour, sex, language, religion or social origin.
2. The foregoing provision does not authorise any suspension of the following articles: Article 3 (Right to Juridical Personality); Article 4 (Right to Life); Article 5 (Right to Humane Treatment); Article 6 (Freedom from Slavery); Article 9 (Freedom from Ex Post Facto Laws); Article 12 (Freedom of Conscience and Religion); Article 17 (Rights of the Family); Article 18 (Right to a Name); Article 19 (Rights of the Child); Article 20 (Right to Nationality); and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.
3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organisation of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension and the date set for the determination of such suspension.

## Article 28. Federal Clause

Where a State Party is constituted as a federal State, the national government of such State party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.

With respect to the provisions over whose subject matter the constituent units of the federal State have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfilment of this Convention

Whenever two or more States Parties agree to form a federation or other type of association they shall take care that the resulting federal or other compact contains the provisions necessary for continuing and rendering effective the standards of this Convention in the new State that is organised.

## Article 29. Restrictions Regarding Interpretation

No provision of this Convention shall be interpreted as:

- a. permitting any State Party, group or person to suppress the enjoyment or exercise of the rights and freedoms recognised in this Convention or to restrict them to a greater extent than is provided for herein;
- b. restricting the enjoyment or exercise of any right or freedom recognised by virtue of the laws of any State Party or by virtue of another Convention to which one of the said States is a party;
- c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
- d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

## Article 30. Scope of Restrictions

The restrictions that, pursuant to this Convention may be placed on the enjoyment or exercise of the rights or freedoms recognised herein may not be applied except in accordance with laws enacted for reasons of general interest and for the purpose of which the restrictions have been established.

## Article 31. Recognition of Other Rights

Other rights and freedoms recognised by virtue of the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.

## CHAPTER V - PERSONAL RESPONSIBILITIES

### Article 32. Relations between Duties and Rights

1. Every person has responsibilities to his family, his community, and mankind.
2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

## PART II - MEANS OF PROTECTION

### CHAPTER VI - COMPETENT ORGANS

#### Article 33

The following organs shall be competent to hear matters relating to the fulfilment of the commitments made by the States Parties to this Convention.

- a. the Inter-American Commission on Human Rights, referred to as the "The Commission"; and
- b. the Inter-American Court of Human Rights, referred to as "The Court".

### CHAPTER VII - INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### Section I. Organisation

##### Article 34

The Inter-American Commission on Human Rights shall be composed of seven members, who shall be persons of high moral character and recognised competence in the field of human rights.

##### Article 35

The Commission shall represent all the member countries of the Organisation of American States.

##### Article 36

1. The members of the Commission shall be elected in a personal capacity by the General Assembly of the Organisation from a list of candidates proposed by the governments of the member States.
2. Each of those governments may propose up to three candidates, who may be nationals of the States proposing them or of any other member States of the Organisation of American States. When a State of three is proposed, at least one of the candidates shall be a national of a State other than the one proposing the slate.



### Article 37

1. The members of the Commission shall be elected for a term of four years and may be re-elected only once, but the terms of three of the members chosen in the first election shall expire at the end of two years. Immediately following that election the General Assembly shall determine the names of those three members by lot.
2. No two nationals of the same State may be members of the Commission.

### Article 38

Vacancies that may occur on the Commission for reasons other than the normal expiration of a term shall be filled by the Permanent Council of the Organisation in accordance with the provisions of the Statute of the Commission.

### Article 39

The Commission shall prepare its Statute, which shall be submitted to the General Assembly for approval, and it shall also establish its own Regulations.

### Article 40

Secretariat services for the Commission shall be furnished by the appropriate specialised unit of the General Secretariat of the Organisation. This unit shall be provided with the resources required to accomplish the tasks assigned to it by the Commission.

## Section II. Functions

### Article 41

The main functions of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:

- a. to develop an awareness of human rights among the peoples of America;
- b. to make recommendations to the governments of the member States, when it considers such action advisable, for the adoption of progressive measures in favour of human rights within the framework of their domestic law and constitution precepts as well as appropriate measures to further the observance of those rights;
- c. to prepare such studies or reports as it considers advisable in the performance of its duties;
- d. to request the governments of the member States to supply it with information on the measures adopted by them in matters of human rights;

- e. to respond, through the General Secretariat of the Organisation of American States, to inquiries made by the member States on matters related to human rights and, within the limits of its possibilities, to provide those States with the advisory services they request;
- f. to take action on petitions and other communications pursuant to its authority, in accordance with the provisions of Article 44 through 51 of this Convention and
- g. to submit an annual report to the General Assembly of the Organisation of American States.

#### Article 42

The States Parties shall transmit to the Commission a copy of each of the reports and studies that they submit annually to the Executive Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture, in their respective fields, so that the Commission may watch over the promotion of the rights implicit in the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organisation of American States as amended by the Protocol of Buenos Aires.

#### Article 43

The States Parties undertake to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provisions of this Convention.

### Section III. Competence

#### Article 44

Any person or group of persons, or any non-governmental entity legally recognised in one or more member States of the Organisation, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

#### Article 45

1. Any State Party may, when it deposits its instrument of ratification or of adherence to this Convention, or at any later time, declare that it recognises the competence of the Commission to receive, and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.
2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognising the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.

3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period or for a specific case.

4. The declarations shall be deposited in the General Secretariat of the Organisation of American States, which shall transmit copies thereof to member States of that Organisation.

#### Article 46

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 and 45 shall be subject to the following requirements:

- a. that the remedies of domestic law have been pursued and exhausted, in accordance with generally recognised principles of international law;
- b. that the petition is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final decision;
- c. that the subject of the petition or communication is not pending before another international procedure for settlement; and
- d. that, in the case of Article 44, the petition contains the name, nationality, profession, domicile and signature of the person or persons or of the legal representative of the entity lodging the petition.

2. The provisions of paragraphs 1 (a) and 1 (b) of this article shall not be applicable when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his right has been denied access to the remedies of domestic jurisdiction or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the afore-mentioned remedies.

#### Article 47

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

- a. any of the requirements indicated in Article 46 has not been met;
- b. the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention;

- c. the statements of the petitioner or the State indicate that the petition or communication is manifestly groundless or obviously out of order; or
- d. the petition or communication is substantially the same as one previously studied by the Commission or another international Organisation.

#### Section IV. Procedure

##### Article 48

1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows:

- a. If it considers the petition or communication admissible, it shall request information from the government of the State which has been indicated as being the authority responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case.
- b. After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed.
- c. The Commission may also declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received.
- d. If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the fact. If necessary and advisable, the Commission shall conduct an investigation, for the effective conduct of which it shall request and the interested States shall furnish to it, all necessary facilities.
- e. The Commission may request the State concerned to furnish any pertinent information and, if so requested, shall hear oral statements or receive written statements from the parties concerned.
- f. The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognised in this Convention.

2. However, in serious and urgent cases, only the presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an investigation with the prior consent of the State in whose territory a violation has allegedly been committed.

#### Article 49

If a friendly settlement has been reached in accordance with paragraph 1.f of Article 48, the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention and then communicated to the Secretary General of the Organisation of American States for publication. This report shall contain a brief statement of the facts and of the solution reached. If any party in the case so requests, the fullest possible information shall be provided to it.

#### Article 50

1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report.

2. The report shall be transmitted to the States concerned, which shall not be at liberty to publish it.

3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit.

#### Article 51

1. If, within a period of three months from the date of the transmittal of the report of the Commission to the States concerned, the matter has not either been settled or submitted by the Commission or by the State concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the State is to take the measures that are incumbent upon it to remedy the situation examined.

3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the State has taken adequate measures and whether to publish its report.

CHAPTER VIII - INTER-AMERICAN COURT OF HUMAN RIGHTS

Section I. Organisation

Article 52

1. The Court shall consist of seven judges, nationals of the member States of the Organisation, elected in an individual capacity from among jurists of the highest moral authority and of recognised competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the State of which they are nationals or of the State that proposes them as candidates.
2. No two judges may be nationals of the same State.

Article 53

1. The judges of the Court shall be elected by secret ballot by an absolute majority vote of the States Parties to the Convention in General Assembly of the Organisation, from a panel of candidates proposed by those States.
2. Each of the States Parties may propose up to three candidates, nationals of the State that proposes them or of any other member State of the Organisation of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a State other than the one proposing the slate.

Article 54

1. The judges of the Court shall be elected for a term of six years and may be re-elected only once. The term of three of the judges chosen in the first election shall expire at the end of three years. Immediately after the election, the names of the three judges shall be determined by lot in the General Assembly.
2. A judge elected to replace a judge whose term has not expired shall complete the term of the latter.
3. The judges shall continue in office until the expiration of their term. However, they shall continue to serve with regard to cases that they have begun to hear and that are still pending, for which purposes they shall not be replaced by the newly-elected judges.

Article 55

1. If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case.
2. If one of the judges called upon to hear a case should be a national of one of the States Parties to the case, any other State Party in the case may appoint a person of its choice to serve on the Court as an ad hoc judge.

3. If among the judges called upon to hear a case none is a national of any of the States Parties to the case, each of the latter may appoint an ad hoc judge.

4. An ad hoc judge shall possess the qualifications indicated in Article 52.

5. If several States Parties to the Convention should have the same interest in a case, they shall be considered as a single party for purposes of the above provisions. In case of doubt, the Court shall decide.

#### Article 56

Five judges shall constitute a quorum for the transaction of business by the Court.

#### Article 57

The Commission shall appear at all cases before the Court.

#### Article 58

1. The Court shall have its seat at the place determined by the States Parties to the Convention in the General Assembly of the Organisation; however, it may convene in the territory of any member State of the Organisation of American States when a majority of the Court considers it desirable, and with the prior consent of the States concerned. The seat of the Court may be changed by the States Parties to the Convention in the General Assembly, by a two-thirds vote.

2. The Court shall appoint its own Secretary.

3. The Secretary shall have his office at the place where the Court has its seat and shall attend the meetings that the Court may hold away from its seat.

#### Article 59

The Court shall establish its own secretariat, which shall function under the direction of the Secretary of the Court, in accordance with the administrative standards of the General Secretariat of the Organisation in all matters not incompatible with the independence of the Court. The staff of the Court's Secretariat shall be appointed by the Secretary General of the Organisation, in consultation with the Secretary of the Court.

#### Article 60

The Court shall draw up its statute and it shall submit it to the General Assembly for approval. It shall adopt its own Rules of Procedure.

## Section II. Jurisdiction and Functions

### Article 61

1. Only the States Parties and the Commission shall have the right to submit a case to the Court.
2. In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 to 50 shall have been exhausted.

### Article 62

1. A State Party may, upon depositing its instrument of ratification or accession to this Convention, or at any subsequent time, declare that it recognises as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
2. Such declaration may be made unconditionally, or on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organisation, who shall transmit copies thereof to the other member States of the Organisation and to the Secretary of the Court.
3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognise or have recognised such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

### Article 63

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.
2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in the matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

### Article 64

The member States of the Organisation may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American States. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organisation of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.

The Court, at the request of a member State of the Organisation, may provide that State with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.



## Article 65

To each regular session of the General Assembly of the Organisation of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a State has not complied with its judgments and make any pertinent recommendations.

## Section III. Procedure

### Article 66

1. Reasons shall be given for the judgment of the Court.
2. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.

### Article 67

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

### Article 68

1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.
2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with the domestic procedure governing the execution of judgments against the State.

### Article 69

The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the States Parties to the Convention.

## CHAPTER IX - COMMON PROVISIONS

### Article 70

The judges of the Court and the members of the Commission shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law. During the exercise of their official function they shall, in addition, enjoy the diplomatic privileges necessary for the performance of their duties.

At no time shall the judges of the Court or the members of the Commission be held liable for any decisions or opinions issued in the exercise of their functions.

### Article 71

The position of judge of the Court or member of the Commission is incompatible with any other activity that might affect the independence or impartiality of a judge or member, as determined in the respective statutes.

### Article 72

The judges of the Court and the members of the Commission shall receive emoluments and travel allowances in the form and under the conditions set forth in their statutes, with due regard for the importance and independence of their office. Such emoluments and travel allowances shall be determined in the budget of the Organisation of American States, which shall also include the expenses of the Court and its secretariat. To this end, the Court shall draw up its own budget and submit it to the General Assembly through the General Secretariat. The latter may not introduce any changes in it.

### Article 73

The General Assembly may, only at the request of the Commission or the Court, as the case may be, determine sanctions to be applied against members of the Commission or judges of the Court when there are justifiable grounds for such action as set forth in the respective statutes. A vote of a two-thirds majority of the member States of the Organisation shall be required for a decision in the case of members of the Commission and, in the case of judges of the Court, a two-thirds majority vote of the States Parties to the Convention shall also be required.

## PART III - GENERAL AND TRANSITORY PROVISIONS

### CHAPTER X - SIGNATURE, RATIFICATION, RESERVATIONS, AMENDMENTS, PROTOCOLS AND DENUNCIATION

### Article 74

1. This Convention shall be open for signature and ratification by or adherence of any member State of the Organisation of American States.
2. Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organisation of American States. As soon as eleven States have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any State that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.

The Secretary General shall inform all member States of the Organisation of the entry into force of the Convention.

#### Article 75

This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969.

#### Article 76

1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.
2. Amendments shall enter into force for the States ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.

#### Article 77

1. In accordance with Article 31, any State Party and the Commission may submit proposed Protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection.
2. Each Protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.

#### Article 78

1. The States Parties may denounce this Convention at the expiration of a five-year period starting from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organisation of American States, who shall inform the other States Parties.
2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that State prior to the effective date of denunciation.

### CHAPTER XI - TRANSITORY PROVISIONS

#### Section I. Inter-American Commission on Human Rights

#### Article 79

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each member State of the Organisation to present, within ninety days, its candidates for membership on the Inter-American Commission on Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented, and transmit it to the member States of the Organisation at least thirty days prior to the next session of the General Assembly.

#### Article 80

The members of the Commission shall be elected by secret ballot of the General Assembly from the list of candidates referred to in Article 79. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the member States shall be declared elected. Should it become necessary to have several ballots in order to elect all the members of the Commission, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the General Assembly.

### Section II. Inter-American Court of Human Rights

#### Article 81

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each State Party to present, within ninety days, its candidates for membership on the Inter-American Court of Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented and transmit it to the States Parties at least thirty days prior to the next session of the General Assembly.

#### Article 82

The judges of the Court shall be elected from the list of candidates referred to in Article 81, by secret ballot of the States Parties to the Convention in the General Assembly. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties shall be declared elected. Should it become necessary to have several ballots in order to elect all the judges of the Court the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the States Parties.

## STATEMENTS AND RESERVATIONS

### STATEMENT OF CHILE

The Delegation of Chile signs this Convention, subject to its subsequent parliamentary approval and ratification, in accordance with the constitutional rules in force.

### DECLARATION OF EL SALVADOR

The Delegation of El Salvador has the honour of signing the American Convention on Human Rights without making any reservations at the present time. It wishes to leave on record, however, that it attended this distinguished Conference in the hope that an American Commission and an American Court would arise therefrom which would have sufficient jurisdiction and powers to effectively promote and protect human rights in the hemisphere, and this, we consider, has not been fully attained inasmuch as the compulsory jurisdiction of these organs was not established and, more serious still, this jurisdiction has been left open to acceptance by the States for specific cases.

### RESERVATION OF URUGUAY

Article 80.2 of the Uruguay Constitution provides that citizenship is suspended for a person indicted according to law in a criminal prosecution that may result in a sentence of imprisonment. This restriction of the exercise of the rights recognised in Article 23 of the Convention is not envisaged among the circumstances provided for in this respect by paragraph 2 of Article 23, for which reason the Delegation of Uruguay expresses a reservation on this matter.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, whose full powers were found in good and due form, sign this Convention, which shall be called "PACT OF SAN JOSE, COSTA RICA", (in the city of San José, Costa Rica, the twenty-second of November, nineteen hundred and sixty-nine).

## ANNEX VII

### TEXT PREPARED WITHIN THE ORGANISATION OF AFRICAN UNITY

## THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

Nairobi, June 1981

### *Preamble*

The African States members of the Organization of African Unity, parties to the present convention entitled "African Charter on Human and Peoples' Rights",

Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of "a preliminary draft on an African Charter on Human and Peoples' Rights providing *inter alia* for the establishment of bodies to promote and protect human and peoples' rights" ;

Considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and legitimate aspirations of the African peoples" ;

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples' of Africa and to promote international co-operation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights ;

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights ;

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1. Text provided by the Division of Press and Information of the OAU General Secretariat.

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings, which justifies their international protection and on the other hand that the reality and respect of peoples' rights should necessarily guarantee human rights ;

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone ;

Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights ;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, language, religion or political opinions ;

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations ;

Firmly convinced of their duty to promote and protect human and peoples' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa ;

Have agreed as follows :

## PART I – RIGHTS AND DUTIES

### Chapter I - Human and Peoples' Rights

#### *Article 1*

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

#### *Article 2*

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

#### *Article 3*

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

#### *Article 4*

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

#### *Article 5*

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

#### *Article 6*

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

#### *Article 7*

1. Every individual shall have the right to have his cause heard. This comprises :
  - a. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force ;
  - b. the right to be presumed innocent until proved guilty by a competent court or tribunal ;



c. the right to defence, including the right to be defended by counsel of his choice ;

d. the right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

#### *Article 8*

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

#### *Article 9*

1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law.

#### *Article 10*

1. Every individual shall have the right to free association provided that he abides by the law.

2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.

#### *Article 11*

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

#### *Article 12*

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

#### *Article 13*

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

#### *Article 14*

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

#### *Article 15*

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

#### *Article 16*

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.

2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

*Article 17*

1. Every individual shall have the right to education.
2. Every individual may freely, take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

*Article 18*

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

*Article 19*

All peoples shall be equal ; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

*Article 20*

1. All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the States Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

#### *Article 21*

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principles of international law.

4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.

5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

#### *Article 22*

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively to ensure the exercise of the right to development.

*Article 23*

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.

2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that :

a. any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter.

b. their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

*Article 24*

All peoples shall have the right to a general satisfactory environment favourable to their development.

*Article 25*

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

*Article 26*

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

**Chapter II - Duties**

*Article 27*

1. Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.

2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

#### *Article 28*

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

#### *Article 29*

The individual shall also have the duty :

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family ; to respect his parents at all times, to maintain them in case of need ;
2. To serve his national community by placing his physical and intellectual abilities at its service ;
3. Not to compromise the security of the State whose national or resident he is ;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened ;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law ;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society ;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society.
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

## PART II – MEASURES OF SAFEGUARD

### **Chapter I - Establishment and organisation of the African Commission on Human and Peoples' Rights**

#### *Article 30*

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

#### *Article 31*

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights ; particular consideration being given to persons having legal experience.
2. The members of the Commission shall serve in their personal capacity.

#### *Article 32*

The Commission shall not include more than one national of the same State.

#### *Article 33*

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of State and Government, from a list of persons nominated by the States parties to the present Charter.

#### *Article 34*

Each State party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of the States parties to the present Charter. When two candidates are nominated by a State, one of them may not be a national of that State.

#### *Article 35*

1. The Secretary General of the Organisation of African Unity shall invite States parties to the present Charter at least four months before the elections to nominate candidates.

2. The Secretary General of the Organization of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections.

#### *Article 36*

The members of the Commission shall be elected for a six year period and shall be eligible for re-election. However, the term of office of four of the members elected at the first election shall terminate after two years and the term of office of three others, at the end of four years.

#### *Article 37*

Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to decide the names of those members referred to in Article 36.

#### *Article 38*

After their election, the members of the Commission shall make a solemn declaration to discharge their duties impartially and faithfully.

#### *Article 39*

1. In case of death or resignation of a member of the Commission the Chairman of the Commission shall immediately inform the Secretary General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.
2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary General of the Organization of African Unity, who shall then declare the seat vacant.
3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the remaining period of his term unless the period is less than six months.



*Article 40*

Every member of the Commission shall be in office until the date his successor assumes office.

*Article 41*

The Secretary General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear cost of the staff and services.

*Article 42*

1. The Commission shall elect its Chairman and Vice-Chairman for a two-year period. They shall be eligible for re-election.
2. The Commission shall lay down its rules of procedure.
3. Seven members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The Secretary General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

*Article 43*

In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities provided for in the General Convention on the Privileges and immunities of the Organization of African Unity.

*Article 44*

Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the Organization of African Unity.

## **Chapter II - Mandate of the Commission**

### *Article 45*

The functions of the Commission shall be :

1. To promote Human and Peoples' Rights and in particular :
  - a. to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.
  - b. to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation.
  - c. co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State Party, an institution of the OAU or an African Organization recognized by the OAU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

## **Chapter III - Procedure of the Commission**

### *Article 46*

The Commission may resort to any appropriate method of investigation ; it may hear from the Secretary General of the Organization of African Unity or any other person capable of enlightening it.

## ***Communication from states***

### ***Article 47***

If a State party to the present Charter has good reasons to believe that another State party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the communication, the State to which the communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible relevant information relating to the laws and rules of procedure applied and applicable and the redress already given or course of action available.

### ***Article 48***

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

### ***Article 49***

Notwithstanding the provisions of Article 47, if a State party to the present Charter considers that another State Party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organization of African Unity and the State concerned.

### ***Article 50***

The Commission can only deal with a matter submitted to it *after making sure* that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

*Article 51*

1. The Commission may ask the States concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

*Article 52*

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples' Rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in Article 48, a report to the States concerned and communicated to the Assembly of Heads of State and Government.

*Article 53*

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

*Article 54*

The Commission shall submit to each ordinary Session of the Assembly of Heads of State and Government a report on its activities.

***Other communications***

*Article 55*

1. Before each Session, the Secretary of the Commission shall make a list of the Communications other than those of States parties to the present Charter and transmit them to the Members of the Commission, who shall indicate which communications should be considered by the commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

#### *Article 56*

Communication relating to human and peoples' rights referred to in Article 55 received by the Commission, shall be considered if they :

1. indicate their authors even if the latter request anonymity,
2. are compatible with the Charter of the Organization of African Unity or with the present Charter,
3. are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. are not based exclusively on news disseminated through the mass media,
5. are sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged,
6. are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter, and
7. do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

#### *Article 57*

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

#### *Article 58*

1. When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.

2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its finding and recommendations.

3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

#### *Article 59*

1. All measures taken within the provisions of the present Chapter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide.

2. However, the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.

3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

### **Chapter IV - Applicable principles**

#### *Article 60*

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialised Agencies of the United Nations of which the parties to the present Charter are members.

#### *Article 61*

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member States of the Organization of African Unity, African practices consistent with international norms on human and peoples' rights,

customs generally accepted as law, general principles of law recognized by African States as well as legal precedents and doctrine.

*Article 62*

Each State party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.

*Article 63*

1. The present Charter shall be open to signature, ratification or adherence of the Member States of the Organization of African Unity.
2. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary General of the Organization of African Unity.
3. The present Charter shall come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority of the member States of the Organization of African Unity.

PART III – GENERAL PROVISIONS

*Article 64*

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.
2. The Secretary General of the Organization of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organization within three months of the constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

*Article 65*

For each of the States that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of deposit by that State of its instrument of ratification or adherence.

*Article 66*

Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.

*Article 67*

The Secretary General of the Organization of African Unity shall inform member States of the Organization of the deposit of each instrument of ratification or adherence.

*Article 68*

The present Charter may be amended if a State Party makes a written request to that effect to the Secretary General of the Organization of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the States parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the States parties. It shall come into force for each State which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

*Adopted by the eighteenth Assembly of Heads of State  
and Government - June 1981 - Nairobi, Kenya*



## LIST OF INSTRUMENTS IN CHRONOLOGICAL ORDER OF ADOPTION

Date of Adoption	Instrument
1926	
25 September	Slavery Convention
1930	
28 June	Forced Labour Convention
1948	
9 July	Freedom of Association and Protection of the Right to Organise Convention
9 December	Convention on the Prevention and Punishment of the Crime of Genocide
10 December	Universal Declaration of Human Rights
1949	
1 July	Right to Organise and Collective Bargaining Convention
2 December	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
1950	
14 December	Statute of the Office of the United Nations High Commissioner for Refugees
1951	
29 June	Equal Remuneration Convention
28 July	Convention Relating to the Status of Refugees
1952	
16 December	Convention on the International Right of Correction
20 December	Convention on the Political Rights of Women

1953	
23 October	Protocol amending the Slavery Convention signed at Geneva on 25 September 1926
1954	
28 September	Convention relating to the Status of Stateless Persons
1955	
30 August	Standard Minimum Rules for the Treatment of Prisoners
1956	
7 September	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
1957	
29 January	Convention on the Nationality of Married Women
25 June	Abolition of Forced Labour Convention
1958	
25 June	Discrimination (Employment and Occupation) Convention
1959	
20 November	Declaration of the Rights of the Child
1960	
14 December	Convention against Discrimination in Education
14 December	Declaration on the Granting of Independence to Colonial Countries and peoples
1961	
30 August	Convention on the Reduction of Statelessness
1962	
7 November	Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
10 December	Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education

14 December General Assembly resolution 1803 (XVII) on "Permanent sovereignty over natural resources"

1963

20 November United Nations Declaration on the Elimination of All Forms of Racial Discrimination

1964

9 July Employment Policy Convention

1965

1 November Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

7 December Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples

21 December International Convention on the Elimination of All Forms of Racial Discrimination

1966

4 November Declaration of the Principles of International Cultural Co-operation

16 December International Covenant on Economic, Social and Cultural Rights

16 December International Covenant on Civil and Political Rights

16 December Optional Protocol to the International Covenant on Civil and Political Rights

16 December Protocol relating to the Status of Refugees

1967

7 November Declaration on the Elimination of All Forms of Discrimination against Women

14 December Declaration on Territorial Asylum

1968

13 May Proclamation of Teheran

26 November Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity

- 1969
- 11 December Declaration on Social Progress and Development
- 1971
- 23 June Workers' Representatives Convention
- 20 December Declaration on the Rights of Mentally Retarded Persons
- 1973
- 30 November International Convention on the Suppression and Punishment of the Crime of Apartheid
- 3 December Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity
- 1974
- 16 November Universal Declaration on the Eradication of Hunger and Malnutrition
- 14 December Declaration on the Protection of Women and Children in Emergency and Armed Conflict
- 1975
- 10 December Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind
- 9 December Declaration on the Rights of Disabled Persons
- 9 December Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 1977
- 16 December Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms
- 1978
- 27 November Declaration on Race and Racial Prejudice
- 28 November Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War

- 15 December Declaration on the Preparation of Societies for Life in Peace
- 1979
- 17 December Code of Conduct for Law Enforcement Officials
- 18 December Convention on the Elimination of All Forms of Discrimination against Women
- 1981
- 25 November Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- 1982
- 3 December Declaration on the Participation of Women in Promoting International Peace and Co-operation
- 18 December Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 1984
- 12 November Declaration on the Right of Peoples to Peace
- 10 December Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## SELECTED CASE-LAW SUMMARIES

The following case-law summaries provide illustrations where superior courts in a number of jurisdictions have invoked international human rights norms in the context of criminal proceedings.

## AUSTRALIA

Jago v The Judges of the District Court of New South Wales and Others. Court of Appeal, Supreme Court of New South Wales (Appeal No. 259 of 1987). 10 May 1988

A case concerning a delay of almost ten years in bringing to trial a person accused of serious criminal charges of misappropriation. An application for a permanent stay of criminal proceedings was refused by the District Court.

The Court of Appeal considered at length the right to a speedy trial of criminal charges. Samuels J A and Kirby P reviewed relevant constitutional provisions and case-law in England, the United States, Canada and Australia. Reference was made to Article 14(3) of the International Covenant of Civil and Political Rights (which has been ratified by Australia).

Article 14(3) states:

"In the determination of any criminal charge against him, every one shall be entitled to the following minimum guarantees in full equality:

- (a) to be informed promptly ... of the charge against him;
- (b) to be tried without undue delay"

Kirby P stated:

"A (more) relevant source of guidance in the statement of the common law of this State may be the modern statements of human rights found in international instruments, prepared by experts, adopted by organs of the United Nations, ratified by Australia and now part of international law ...".

"It is well established in England that courts, in the interpretation of legislation and the declaration of the common law should act, as far as possible, so as not to bring their decisions into conflict with obligations assumed by the ratification of a relevant international treaty".

It was held that the right to a speedy trial was an attribute of the indisputable right to a fair trial, and fairness required consideration of a wide range of factors. Although the delay in prosecuting the accused was extremely long and largely unexplained, there was insufficient prejudice to the accused in this case, and the trial should therefore proceed.

## BERMUDA

### Minister of Home Affairs v Fisher [1980] A C 319 (PC)

An appeal from a judgment of the Court of Appeal for Bermuda. The case relates to the status in Bermuda of four "illegitimate" children, all aged under 18 years, of a Jamaican woman who had married a Bermudian and came to live in Bermuda in 1972. In 1976 the children were ordered to leave Bermuda.

Section 11(5) of the Bermuda Constitution lists those persons deemed to belong to Bermuda, sub-section (d) including a person under 18 years who is the child, stepchild or child adopted by a person with Bermudian status or his wife. The Court of Appeal had held by a majority that by virtue of s.11(5)(d) of the Constitution, the Fisher children were deemed to belong to Bermuda. The question for the Privy Council to decide was whether the word "child" in section 11(5)(d) of the Constitution of Bermuda, includes an illegitimate child.

Although the above instruments at the date of the Constitution (1968) had no legal force, they could certainly not be disregarded as influences upon legislative policy.

The appeal by the Minister of Home Affairs was dismissed.

## BRITAIN

### R v Chief Immigration Officer, ex parte Salamat Bibi [1976] 1 WLR 979 [1976] 3 All E R 843, Court of Appeal

Concerning the application by immigration officers of Immigration Rules made under the 1971 Immigration Act. The applicant was a person seeking admission to the United Kingdom as the wife of a resident Commonwealth citizen. It was argued that the Rules should be interpreted and applied by immigration officers in accordance with the right to respect for family life in Article 8 of the European Convention on Human Rights.

Lord Denning, M R said:

"... the position, as I understand it, is that if there is any ambiguity in our statutes or uncertainty in our law, then the Courts can look at the Convention as an aid to clear up the ambiguity and uncertainty, seeking always to bring them into harmony with it. Furthermore, when Parliament is enacting a statute, or the Secretary of State is framing rules, the courts will assume that they had regard to the provisions of the Convention, and intend to make the enactment accord with the Convention and will interpret them accordingly".

However, the Convention is not part of English law until it is made so by Parliament and immigration officers cannot be expected to know or apply the Convention. The appeal was dismissed.

An appeal by the natural mother of a minor, who had become a ward of court, against an order that the child should remain a ward of court, that access should be terminated and that the local authority should be at liberty to place the child for adoption.

Lord Wilberforce, giving judgment, said that the way to construe a constitution on the Westminster model is to treat it not as if it were an Act of Parliament but:

"... sui generis, calling for principles of interpretation of its own suitable to its character ... without necessary acceptance of all the presumptions that are relevant to legislation of private law ..."

Looking at the origin of the Bermuda Constitution, Lord Wilberforce said:

"It can be said that this instrument has certain special characteristics. (1) It is, particularly in Chapter 1 drafted in a broad and ample style which lays down principles of width and generality. (2) Chapter 1 is headed "Protection of Fundamental Rights and Freedoms of the Individual". It is known that this chapter, as similar portions of other constitutional instruments drafted in the post-colonial period, starting with the Constitution of Nigeria, and including the constitutions of most Caribbean territories, was greatly influenced by the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953). The Convention was signed and ratified by the United Kingdom and applied to dependent territories including Bermuda. It was in turn influenced by the United Nations Universal Declaration of Human Rights of 1948. These antecedents, and the form of Chapter 1 itself, call for a generous interpretation avoiding what has been called the "austerity of tabulated legalism", suitable to give individuals the full measure of the fundamental rights and freedoms referred to."

This meant that the question of what is meant by "child" had to be approached with an open mind. Section 11(5)(d) amounted to a clear recognition of the unity of the family as a group which as a whole belongs to Bermuda. This would be fully in line with Article 8 of the European Convention of Human Rights, the UN Declaration on the Rights of the Child 1959, and Article 24 of the International Covenant on Civil and Political Rights.

Lord Oliver analysed whether English law governing parental access to a child in care was in conformity with Article 8 of the European Convention of Human Rights (right to respect for family life). The judgment of the European Court of Human Rights in R v UK (1987) was looked at in some detail and Lord Oliver stated that:

"... your Lordships attention has been directed to the decision of the European Court of Human Rights in R v UK (1987)



Although this is not binding on your Lordships, the United Kingdom is, of course a party to the Convention ... and it is urged that it is at least desirable that the domestic law of the United Kingdom should accord with the decisions of the Court of Human Rights under the Convention ..."

"... I do not, for my part, discern any conflict between the propositions laid down by your Lordship's House in J v C (1969) (principle that the child's welfare is the paramount consideration) and the pronouncements of the European Court of Human Rights in relation to the natural parent's rights of access to her child ...".

The appeal was dismissed.

## INDIA

Hussainara Khartoon v Home Secretary, State of Bihar [1979] A I R 1369 S C

A case concerning the right of the accused to a speedy trial and the powers of the Supreme Court to issue directions to the State for the enforcement of the right.

Article 21 of the Indian Constitution guarantees:

"Protection of life and personal liberty - no person shall be deprived of life and personal liberty except according to procedure established by law".

The Supreme Court held (Bhagwati, J), following the dynamic interpretation placed on Article 21 in the case of Maneka Gandhi v Union of India, that:

"Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights ... so also Article 6 of the European Convention on Human Rights provides that:

"everyone arrested or detained - shall be entitled to trial within a reasonable time or to release pending trial ...".

No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21".

It is the constitutional obligation of the State to devise a procedure which would ensure a speedy trial for the accused. It is also the obligation of the Supreme Court, as the guardian of the fundamental rights of the people, to enforce the fundamental right of the accused, by issuing the necessary directions to the State - which may include taking positive action.

The powers of the Supreme Court in the protection of the constitutional rights are of the widest amplitude and there is no reason why the Court should not adopt an activist approach.

Indian Express Newspapers (Bombay) Private Ltd v Union of India  
[1986] A I R 515 S C.

Concerning the imposition of an import duty of 15% on newsprint imported from abroad by newspapers with a circulation over 50,000. The Supreme Court held that while taxes may be levied on the newspaper industry, the Government should exercise caution, and such a tax may become unconstitutional if it is unduly burdensome.

The Court emphasised the value of a free press and held that although the Indian Constitution does not use the expression "freedom of the press" as such in Article 19, it is included in Article 19(1)(a) which guarantees freedom of speech and expression.

It is with a view to checking government malpractices which interfere with the free flow of information that democratic constitutions all over the world have made provisions guaranteeing the freedom of speech and expression and laying down the limits of interference with it. It is, therefore, the primary duty of all national courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate.

Olga Tellis v Bombay Municipal Corporation [1986] A I R 180 S C

A case concerning the eviction of slum dwellers, who claimed deprivation of their right to life under Article 21 of the Indian Constitution. Article 21 guarantees:

"Protection of life and personal liberty - no person shall be deprived of life and personal liberty except according to procedure established by law".

The Supreme Court held that the scope of Article 21 is wide and and far-reaching, and includes, as an equally important facet, the right to livelihood because no person can live without the means of living.

Other provisions of the Constitution, being Directive Principles of State Policy not enforceable in the courts, provide that the State shall direct its policy towards ensuring that citizens have the right to an adequate means of livelihood and employment.

If there is an obligation upon the State to secure to citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compelled to provide adequate means of livelihood or work to citizens. But any person who is deprived of his right to livelihood except according to a just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.

A direction was made by the Supreme Court that, to minimise hardship, no further evictions should be made until the end of the current monsoon season.

## MALTA

### Olivier v Buttigieg [1967] A C 115 (PC)

An appeal from the Court of Appeal of Malta. The respondent was the editor of the "Voice of Malta" - a weekly newspaper published by the Malta Labour Party. In 1961 the Archbishop of Malta condemned the newspaper, and said that no one, without committing a mortal sin could print, write, sell, buy, distribute or read it. In 1962 the Chief Governmental Medical Officer issued a circular to all the establishments and services in the Medical and Health Department prohibiting employees to take the Voice of Malta into such places.

Lord Morris of Borth-y-Gest, giving judgment for the Privy Council, agreed with the Court of Appeal of Malta and held that the respondent's right to freedom of expression guaranteed under s.14 of the Malta Constitution, had been violated. In particular, Lord Morris looked at the question of whether the respondent was hindered in the enjoyment of his freedom to impart ideas and information without interference and referred to cases from India (Ramesh Thapper v State of Madras 1950) and the United States (Martin v City of Struthers 1943) to support his conclusion that freedom to distribute information is a vital component of freedom of expression:

"The steps taken by the editor of a newspaper to impart ideas and information include the expression of ideas and information in words followed by the printing of such words in the paper followed by publishing the paper and followed by circulating it".

Lord Morris also rejected a submission that any hindrance was minor both on the facts and on principle and stated that:

"Their Lordships considered that where "fundamental rights and freedoms of the individual" are being considered a court should be cautious before accepting the view that some particular disregard of them is of minimal account".

Reference was made to the US case of Thomas v Collins (1944) (... "it is from petty tyrannies that large ones take root and grow").

Although the State is entitled under the Constitution to limit the right to freedom of expression on certain grounds, the publication of the Voice of Malta did not contravene any law and it was not shown that the prohibition imposed by the circular was warranted by any law that imposed "restrictions upon public officers".

The newspaper editor, Buttigieg, was granted relief.

PAPUA NEW GUINEA

The State v NTN Pty Ltd and NBN Ltd, Supreme Court of Papua New Guinea, 7 April 1987 (No SC 323)

An application before the Supreme Court of Papua New Guinea for the enforcement of a fundamental right under s.57 of the Constitution - namely the right to freedom of expression under s.46, or more specifically the right to communicate through the medium of television.

The applicants were prohibited by the Television (Prohibition and Control) Act 1986 from broadcasting television until 31 January 1988. Under the Constitution the right to freedom of expression may be "regulated" or "restricted" by law, but that law must comply with s.38 of the Constitution which states that the law can be for one of three different purposes: to give effect to public interest in defence, public safety, public order, etc; to protect the exercise of the rights and freedoms of others; to make reasonable provisions for cases where the exercise of one such right may conflict with the exercise of another. The onus is on the State to prove that the restriction comes within the limits permitted by s.38 and the Act must clearly set out the particular purpose for which the law is made. In addition the Act must be "necessary" and "reasonably justified in a democratic society".

Kapi, D C J said:

"The word "necessary" implies that fundamental rights should not be regulated or restricted if there is another way of effectively protecting the public interest ..."

"(In addition) A law that is necessary does not necessarily mean that it is also reasonably justifiable in a democratic society ... the test is an objective one and must be considered within the context of the subject matter or circumstances of each case".

These are near-identical tests to those applied by the European Convention organs and the UN Human Rights Committee, as well as by many other national and international bodies.

Giving judgment, Kapi, D C J said that:

"... the provisions of the Constitution relating to fundamental rights must be interpreted with a liberal approach to ensure protection of fundamental rights. The courts in other jurisdictions have also adopted the same approach". (Cases from The Gambia, Bermuda and Canada were cited).

The Court held that the Television (Prohibition and Control Act) 1986 was not reasonably justifiable in a democratic society and was therefore invalid as being ultra vires the Constitution.

## SINGAPORE

### Ong Ah Chuan v Public Prosecutor: Koh Chai Cheng v Public Prosecutor [1981] A C 648 (PC)

Two appeals from the Court of Criminal Appeal of Singapore. Both applicants were found guilty of drug trafficking and sentenced to death. Under the Misuse of Drugs Act 1973 (Singapore) the death penalty is mandatory in a drug trafficking offence, where the amount (e.g. of heroin) exceeds 15 grammes. By s.15 of the Act there is a rebuttable presumption that possession of an amount greater than 2 grammes is for the purpose of trafficking.

The appeal to the Privy Council was based on the issue of whether the presumption contained in s.15 conflicted with Articles 9(1) and 12(1) of the Singapore Constitution and whether the mandatory death penalty was unconstitutional.

Article 9(1) states:

"No person shall be deprived of his life or personal liberty save in accordance with law".

Article 12(1) states:

"All persons are equal before the law and entitled to the equal protection of the law".

The defendants argued that the statutory presumption was in conflict with the "presumption of innocence" guaranteed implicitly by Articles 9(1) and 12(1).

Giving judgment, Lord Diplock applied the same criteria for interpreting a constitution on the Westminster model as Lord Wilberforce in Minister of Home Affairs v Fisher - namely that it should be treated as sui generis and not as an Act of Parliament. He said:

".... the requirements of the Constitution are (not) satisfied simply if the deprivation of life or liberty complained of has been carried out in accordance with provisions contained in any Act passed by the Parliament of Singapore, however arbitrary or contrary to the fundamental rules of natural justice the provisions of such Act may be".

The question of what "in accordance with law" and "equality before the law" meant was discussed at length, with cases cited from Malaysia, India, Britain, the United States, Singapore, Canada and the European Court of Human Rights.

"In a Constitution founded on the Westminster model, and particularly in that part of it that purports to assure individual citizens the continued enjoyment of fundamental liberties or rights, references to "law" in such contexts as "in accordance with law", "equality before the law", "protection of the law" and the like, in their Lordships' view, refer to a system of law which incorporates those fundamental rules of natural justice that had

formed part and parcel of the common law of England that was in operation in Singapore at the commencement of the Constitution ..."

"It would have been taken for granted by the makers of the Constitution that the "law" to which citizens could have recourse for the protection of fundamental liberties assured to them by the Constitution, would be a system of law that did not flout those fundamental rules".

But in this case, it was held that s.15 of the Misuse of Drugs Act was not unconstitutional. On the question of the mandatory death penalty, the Privy Council refused to consider its efficacy or morality and said Article 21(1):

"does not forbid discrimination in punitive treatment between one class of individual and another in relation to which there is some difference in the circumstances of the offence that has been committed".

#### ZIMBABWE

Ncube, Tshuma and Ndhlovu v The State Supreme Court of Zimbabwe, Judgment No. SC 156/87

Concerning the issue of whether the imposition of a sentence of whipping upon a male adult offender was inhuman or degrading punishment in contravention of s.15(1) of the Declaration of Rights contained in the Constitution of Zimbabwe.

The three appellants had all been found guilty of rape and were sentenced to between 5 and 7 years imprisonment with labour, plus a whipping of six strokes each. Applications for appeal against the sentence were allowed, but only in respect of that part of their sentences ordering them to be whipped.

S.15(1) of the Declaration of Rights of Zimbabwe states:

"No person shall be subject to torture or to inhuman or degrading punishment or other such treatment".

Gubbay, J A, giving judgment held that:

"Section 15(1) is not confined to punishments which are in their nature inhuman or degrading. It also extends to punishments which are "grossly disproportionate"; those which are inhuman or degrading in their disproportionality to the seriousness of the offence, in that no one could possibly have thought that the particular offence would have attracted such a penalty - the punishment being so excessive as to shock or outrage contemporary standards of decency".

In determining whether corporal punishment was per se inhuman or degrading, the position in Zimbabwe, South Africa, the United Kingdom, Canada, Australia and the United States was looked at. Gubbay, J A concluded that:

"Fortunately on the few occasions where the issue of whether whipping is constitutionally defensible has been judicially considered, it appears to have resulted in little difference of opinion, whether imposed upon an adult person or a juvenile offender the punishment in the main has been branded as both cruel and degrading ...".

"... perhaps the most important decision is that of the European Court of Human Rights in Tyrer v United Kingdom delivered on 25 April 1978 for it was concerned directly with Article 3 of the European Convention of Human Rights - a provision worded virtually identically to section 15(1) of the Constitution of Zimbabwe".

This case, in which judicial corporal punishment was held to be "degrading punishment", was quoted from at length.

Giving judgment, Gubbay, J A concluded that:

"the whipping each appellant was ordered to receive breaches section 15(1) of the Constitution of Zimbabwe as constituting a punishment which in its very nature is both inhuman and degrading ..."

Regard was had to international practice and also to the decreasing recourse to whipping in Zimbabwe. More especially, reliance was placed upon the following adverse features which were inherent in the infliction of a whipping:

- "(1) The manner in which it is administered ...
- (2) By its very nature it treats members of the human race as non-humans ...
- (3) ... it is a procedure easily subject to abuse ...
- (4) It is degrading to both the punished and the punisher alike".

The challenge to the constitutionality of the sentence of a whipping upon the person of a male adult was therefore upheld. The appeals were accordingly allowed to the extent that the imposition of the strokes were deleted from the sentence.

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## THE WORK OF THE COMMONWEALTH SECRETARIAT'S HUMAN RIGHTS UNIT

### Introduction

1. Commonwealth Heads of Government have always attached importance to the observance of human rights and have affirmed their commitment in various Commonwealth Declarations notably those of Singapore (1971), Lusaka (1979) and Melbourne (1981). At the Commonwealth Heads of Government Meeting in London in June 1977, The Gambia presented a Memorandum which proposed the establishment of a Commonwealth Human Rights Commission as a feasible and effective step forward in the Commonwealth's efforts to defend human rights. Following consideration of The Gambian proposal at the Lusaka Heads of Government Meeting in August 1979, a Working Party was established to examine The Gambian proposal and make recommendations through the Secretary-General for consideration by Commonwealth governments.
2. Governments were invited to submit written comments to the Working Party. The responses were varied; in particular there was concern that the Commonwealth should not duplicate the functions of existing international or regional machinery, nor depart from the Commonwealth traditions of consultation and consensus.
3. The Report of the Working Party proposed that the Commonwealth Secretariat establish a special Unit for the promotion of human rights and that an Advisory Committee for the protection and maintenance of human rights be set up by the Secretary-General in consultation with Governments. At the Melbourne HGM 1981, Heads of Government considered the Report of the Working Party and reaffirmed the importance which all Commonwealth Governments attach to the observance of human rights. They urged those Governments which had not yet done so to accede to relevant global and regional instruments on human rights and endorsed in principle the establishment of a special Unit in the Secretariat for the promotion of human rights, subject to the provision of funding, an agreed Commonwealth definition of human rights and definition of the Unit's functions.
4. It was not envisaged that co-operation in promoting human rights should involve interference in the internal affairs of Commonwealth countries and it was agreed that the Unit should not have investigative or adjudicative functions. Heads of Government took note of the Working Party's proposals for an Advisory Committee for the protection and maintenance of human rights and asked that this should be further considered by the next meeting of Commonwealth Law Ministers.
5. The proposal to set up a Commonwealth Advisory Committee was carefully considered at the Commonwealth Law Ministers Meeting in Sri Lanka, February 1983. In reaffirming the value of establishing a Human Rights Unit in the Secretariat, Ministers gave guidance to the definition of human rights from a Commonwealth perspective and concluded that although

there was considerable interest in the Advisory Committee proposal being kept on the agenda, it was considered that it was not appropriate for immediate implementation.

6. The Unit was finally set up with the approval of the Finance Committee in January 1985. It has a staff of three persons and is located within the International Affairs Division of the Secretariat. The Division is responsible for monitoring international political developments and assisting consultation between member governments on political issues. It was understood that the work of the Unit should avoid duplication with that of other inter-governmental human rights institutions.

#### Mandate of the Human Rights Unit

7. The mandate of the Human Rights Unit is:

- (a) to promote human rights within the Commonwealth; it is understood that the functions of the Unit will not involve any investigative or enforcement role;
- (b) to ensure that in the Secretariat itself due account is taken of human rights considerations in the work of all its Divisions.

#### The definition of human rights within the Commonwealth

8. The definition of "human rights" from the Commonwealth perspective derives from the various Commonwealth Declarations, the relevant international instruments which Commonwealth countries have accepted, and also includes customary international law. Successive Commonwealth Declarations indicate the collective commitment of Member States to:

- (a) the liberty of the individual;
- (b) equal rights for all citizens regardless of race, colour, sex, creed or religious belief.
- (c) the inalienable right of all individuals to participate by means of free and democratic political processes in the framing of the society in which they live;
- (d) the right of all men and women to live in ways which sustain and nourish human dignity.

9. To quote the Singapore Declaration: "We oppose all forms of colonial domination and racial oppression and are committed to the principles of human dignity and equality. We will therefore use all our efforts to foster human equality and dignity everywhere and to further the principles of self-determination and non-racialism".

10. The Lusaka Declaration on racism and racial prejudice recognises that "the peoples of the Commonwealth have the right to live freely in dignity and equality, without any distinction or exclusion based on race, colour, sex, descent, or national or ethnic origin". It further emphasises that "we share an international responsibility to work together for the total eradication of apartheid and racial discrimination".

11. The Melbourne Declaration emphasises the importance of all men and women having "the right to live in ways that sustain and nourish human dignity" and that this right imposes obligations on all States, large and small, to act at national and international levels to reduce the gross inequality of wealth and opportunity currently existing in the world.

12. The concern for human rights, based on the principles adopted by successive Heads of Government meetings, pervades the work of the Secretariat at many levels and has been a clear factor in dealing with important political issues such as the question of Zimbabwe's independence, the situation in South Africa and the special needs of small states.

#### Activities of the Human Rights Unit

13. The Secretary-General has invited each government to nominate a point of contact to whom requests for information about the domestic procedures for promoting human rights may be sent. The Human Rights Unit is available to advise points of contact on matters relevant to the mandate of the Unit and its work programme, specifically in respect of the following:

(i) Assistance to Commonwealth Governments to Promote Human Rights

14. The Human Rights Unit serves to facilitate practical ways of assisting Commonwealth governments to promote respect for and understanding of fundamental human rights in all their aspects. Member governments are invited to inform the Secretariat as to the particular fields in which they would envisage the Human Rights Unit providing assistance to them.

15. Throughout the Commonwealth, various national institutions and domestic procedures are evolving in recognition of the developmental significance of measures to promote equality and justice. Given the extent of comparable legal and administrative practices, those directly responsible for promoting respect for human rights can derive obvious benefits from regular exchanges of information and experiences at the pan-Commonwealth, regional and national levels. The Human Rights Unit is seeking to ascertain the possibility of advancing this process through Commonwealth mechanisms by, in the first instance, undertaking a survey by questionnaire, on the functions of relevant national institutions and domestic procedures within the Commonwealth.

16. The Unit's research facility is available to assist governments, as appropriate. It commissions studies, reports on issues relating to human rights and facilitates the organisation of seminars and symposia for the promotion of human rights within the Commonwealth, including the teaching of human rights in the Commonwealth.

(ii) Human Rights Clearing House

17. Commonwealth governments have expressed an interest in the Human Rights Unit serving as a "clearing house" for information. Over the years the Commonwealth Law Bulletin has regularly published details of Commonwealth human rights legislation. The Unit has been contributing further items of relevance to human rights issues. It now also publishes its own newsletter - Human Rights Update, which is distributed essentially

as a service to governments. A limited number of copies are also distributed to official national institutions, relevant inter-governmental organisations and selected Commonwealth professional bodies. It includes details of human rights and international humanitarian law courses and conferences, articles on noteworthy developments in respect of Commonwealth measures to promote human rights concerns, and reviews of relevant articles and books.

18. Member Governments may indicate further kinds of information and activities which would be of interest to them and direct specific requests for data to the Unit.

(iii) International Human Rights Instruments

19. The Unit monitors the status of the principal international human rights instruments with regard to Commonwealth governments. Priority is being given to developing appropriate explanatory documentation for Commonwealth jurisdictions on the principal instruments. To this end an "accession kit" was produced on the Convention on the Elimination of All Forms of Discrimination Against Women for the Nairobi World Conference to review and appraise the achievements of the UN Decade for Women.

20. A further project is underway to produce documentation on the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It will examine inter alia the inter-relationship between the two instruments in light of the importance attached by the Commonwealth to the principle of non-discrimination, whether on the basis of race, colour, sex, creed or religious belief.

21. In addition, the Human Rights Unit serves to facilitate exchanges of information on various subjects relevant to the implementation of the principal international instruments on human rights and humanitarian law including measures which States Parties have taken to fulfil their obligations, whether problems have arisen in interpreting specific articles and how States Parties meet their reporting obligations.

22. Member governments have been invited to consider the value and possibilities of technical assistance to them in reviewing legislation and administrative procedures with respect to the practical implementation of international human rights instruments and the role that the Commonwealth might play in the delivery of such assistance.

(iv) Integrating Human Rights considerations into the work of the Commonwealth Secretariat

23. Importance is placed on ensuring that all Commonwealth programmes take into account the human rights dimension. There are in-house consultations on ways of integrating human rights considerations into all aspects of the Secretariat's work. It is already apparent that many of the programmes being implemented serve to promote the realisation of human rights in a general sense.

24. It is important, however, that even if human rights considerations are not made specific, those responsible for the planning and implementation of programmes are aware of the relevance of their work for

the promotion of human rights. The Unit has worked with several Secretariat Divisions, notably the Legal Division, the Food Production and Rural Development Division and the Women and Development Programme, on joint activities.

(v) Liaison with International Organisations

25. The Human Rights Unit monitors trends in the United Nations debates on human rights and liaises with the UN and other relevant inter-governmental organisations. It also maintains contact with international and regional non-governmental organisations. The Unit is exploring ways of liaising fruitfully with international and regional mechanisms concerned with human rights without duplicating the work done by such institutions.

Concluding Comment

26. The programme of work for the Unit is designed to promote greater awareness and understanding of Commonwealth human rights ideals. These are, however, not static abstractions divorced from reality. To promote human rights is to go beyond rhetoric to practical ways by which political and economic processes can promote equality, justice and human dignity. In the long term, the programme of work for the Human Rights Unit may contribute to an exploration of how shared humanitarian concerns can be further integrated into the well-established traditions of consensus and co-operation intrinsic to the Commonwealth consultations and problem solving.

Human Rights Unit  
International Affairs Division  
Commonwealth Secretariat

September 1988