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ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS
SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS

Respect for the right of everyone to own property alone as
well as in association with others and its contribution to
the economic and social development of Member States

Report of the Secretary-General

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I. INTRODUCTION

1. In its resolution 43/123 of 8 December 1988, the General Assembly requested the Secretary-General to seek the views of Member States and of the specialized agencies and other competent bodies of the United Nations system on the means whereby and the degree to which the right to own property alone as well as in association with others contributes to the development of individual liberty and initiative, which serve to foster, strengthen and enhance the exercise of other human rights and fundamental freedoms. The Assembly suggested that Member States and the other organizations concerned might wish to address, in particular, the right to own the following types of property:

(a) Personal property, including the residence of one's self and family;

(b) Economically productive property, including property associated with agriculture, commerce and industry.

The Assembly further requested the Secretary-General to report his findings to it at its forty-fifth session.

2. In its resolution 43/124 of 8 December 1988, the General Assembly requested the Secretary-General, in preparing his report in accordance with resolution 43/123, to take into account resolution 43/124.

3. Pursuant to these resolutions, the Secretary-General invited, by a communication dated 9 February 1990, Member States, specialized agencies and other competent bodies of the United Nations to submit their views on the subject.

4. As at 19 October 1990, the following Governments had submitted substantive information: Australia, Bolivia, Canada, Colombia, Egypt, Kenya, Pakistan, Panama, Portugal, Saudi Arabia, Sudan, Turkey, United States of America and Yugoslavia. Information was also received from the Office of the Under-Secretary-General for International Economic and Social Affairs, the Committee on the Exercise of the Inalienable Rights of the Palestinian People, the United Nations Centre for Human Settlements (Habitat), the Economic and Social Commission for Western Asia, the Food and Agriculture Organization of the United Nations and the United Nations Educational, Scientific and Cultural Organization.

5. The present report compiles the substantive information received. Any further material, if any, will be submitted in addenda to this report.

II. INFORMATION RECEIVED FROM GOVERNMENTS

AUSTRALIA

[Original: English]

[28 June 1990]

1. The protection of real and personal property in private hands has always been a fundamental precept of the Common Law as developed in Australia. This concern is reflected in the Australian Constitution which provides a guarantee against acquisition of property by the Commonwealth Government, in the following terms:

"51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good Government of the Commonwealth with respect to ...;

(xxxi.) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws;"

2. The distinguished Australian jurist, Sir Owen Dixon, former Chief Justice of the High Court of Australia, has provided a succinct analysis of this provision:

"Section 51 (xxxi) serves a double purpose. It provides the Commonwealth Parliament with a legislative power of acquiring property; at the same time as a condition upon the exercise of the power it provides the individual or the State affected with a protection against governmental interferences with his property rights without just recompense ... In requiring just terms s 51 (xxxi) fetters the legislative power by forbidding laws with respect to acquisition on any terms which are not just Bank Nationalisation Case (1948) 76 CLR 1 at 349-50."

BOLIVIA

[Original: Spanish]

[6 June 1990]

1. The Constitution of Bolivia, in its first part, refers to the person as a member of the State and, in Title One, sets forth the fundamental rights and duties of the person. The relevant articles of the Constitution state expressly:

Article 7. "Every person has the following fundamental rights, in accordance with the laws governing their exercise:

"(a) To life, health and safety;

"(b) To express his ideas and opinions freely, by any means of dissemination;

/...

- "(c) To work and engage in commerce, industry, or any other lawful activity, in conditions which are not detrimental to the public interest;
- "(e) To receive an education and acquire culture;
- "(f) To teach under the supervision of the State;
- "(g) To enter, remain in, travel through, and depart from the national territory;
- "(h) To make petitions, individually or collectively;
- "(i) To own property, individually or collectively, provided it serves a social purpose;
- "(j) To just fair remuneration for his labour ensuring for himself and his family an existence worthy of human dignity;
- "(k) To social security, in the form prescribed in the Constitution and the laws."

Article 8. "Every person has the following fundamental duties:

- "(a) To obey and comply with the Constitution and the laws of the Republic;
- "(b) To work, according to his capacity and capabilities, in socially useful activities;
- "(c) To acquire, in proportion to his financial capacity, to payment for public services;
- "(e) To care for, feed, and educate his minor children, and to protect and support his parents if they are in a state of illness, poverty or need;
- "(f) To perform any civic and military services which the nation may require for its development, defence and conservation;
- "(g) To co-operate with the organs of the State and the community in social service and security;
- "(h) To safeguard and protect the property and interests of the community."

2. The foregoing subparagraphs are supplemented by the following provisions:

Private property

Constitution

Article 22. "Private property shall be guaranteed provided that the use made thereof is not detrimental to the public interest.

"Expropriation shall be carried out for reasons of public benefit or where the property does not serve a social purpose, in accordance with the law and for just compensation."

Article 23. "Property shall never be confiscated as punishment for political offences."

Article 25. "Within 50 kilometres of the frontiers, foreigners shall in no capacity acquire or own land or subsoil, directly or indirectly, individually or as a company, under penalty of forfeiture to the State of the property acquired, except in case of national necessity so declared by special law."

Article 28. "The property of the Church, of religious orders and congregations, and of institutions engaged in educational, welfare and charitable pursuits shall enjoy the same rights and guarantees as those enjoyed by private individuals."

Article 166. "Labour is the basic source for the acquisition and holding of agrarian property, and the right of rural workers (campesinos) to an allotment of land is established."

Article 167. "The State does not recognize the latifundio. The existence of communal, co-operative, and private ownership of land is guaranteed. The forms of ownership and changes thereof shall be established and regulated by law."

Article 169. "The rural homestead (solar campesino) and the small-holding are declared indivisible; they shall constitute the essential minimum and shall have the status of an unattachable family patrimony under the law. Medium holdings and agricultural enterprises recognized by law shall be entitled to the protection of the State provided that they serve an economic and social purpose, in accordance with the development plans."

Civil Code

Article 105. "I. Ownership is a legal power which permits the use, enjoyment and disposal of property and shall be exercised in a manner compatible with the public interest, within the limits of the law and subject to the obligations established by law.

"II. An owner may claim his property from a third party and engage in further action to defend his property in accordance with the provisions in volume V of this Code."

Article 106. (Social function of ownership)

"Ownership shall serve a social purpose."

Article 107. (Abuse of the right)

"An owner shall not commit any act for the sole purpose of harming or annoying others and, in general, shall not be permitted to exercise his right in a manner contrary to the economic or social purpose for which the right has been conferred upon him."

Article 108. (Expropriation)

"I. Expropriation shall be admissible only against payment of just and prior compensation, in the following cases:

"1. In the public interest;

"2. When ownership of property does not serve a social purpose.

"II. Public interest and failure to serve a social purpose shall be defined under special laws which shall also regulate the conditions and procedure for expropriation.

"III. If the property expropriated in the public interest is not earmarked for the purpose for which it was expropriated, the owner or his assigns may withdraw it subject to returning the payment received. Compensation shall be paid for damages following an expert evaluation."

Article 115. (Exercise of the right to property to the detriment of neighbours)

"I. When exercising his right, especially when engaged in an industrial or commercial activity, the owner shall refrain from any act that might be detrimental to neighbouring properties or to the safety and health of those living in them or disturb their peace.

"II. This provision shall apply also to persons who own and to persons holding the property."

Article 116. (Buildings in danger of collapse and trees constituting a danger)

"I. Property owners shall be required to maintain their property in good condition, so that it neither jeopardizes nor affects the safety of third parties.

"II. Where a building is in danger of collapse, neighbours may demand that it be demolished or that the necessary repairs be made, as the case may be.

"III. Where a tree constitutes a danger, it may be uprooted or pruned."

Article 117. (Nuisances)

"I. Property owners shall prevent odours, smoke, soot, heat, light from illuminated signs, annoying vibrations or noise or other nuisances from reaching neighbouring properties, where such nuisances exceed the normal neighbourhood levels. The nature of the premises and the purpose for which the buildings are used shall be borne in mind, and property rights and the requirements of development shall in any case be reconciled.

"II. This provision shall also apply to owners and to persons in possession of the property."

Agrarian Reform Law

Article 2. "The State recognizes and guarantees private ownership of agricultural land where the ownership serves a useful purpose for the nation; it shall plan, regulate and rationalize exercise of such ownership and seek to distribute the land equitably so as to ensure the freedom and economic and cultural well-being of the Bolivian people."

Article 5. "Private ownership of agricultural land shall be recognized and vested in natural or juridical persons so that they may exercise their right in accordance with civil law and the provisions of this Decree-Law. The State shall recognize only the forms of private ownership of agricultural land specified in the following articles."

Article 6. "The homestead (solar campesino) serves as a rural abode and is not sufficient to meet the subsistence needs of a family."

Article 7. "The small holding (propiedad pequeña) is one which the farmer and his family work on their own and which yields enough to meet their needs efficiently. While the farmer works on his own, he may have occasional helpers for certain chores."

Article 8. "The medium-size holding (propiedad mediana) is larger than the so-called smallholding, and, while it does not resemble a capitalist farm, it is cultivated with the help of paid workers or machines, and most of its yield is sent to market."

Article 10. "The farm co-operative (propiedad agraria cooperativa) comprises:

"(a) Property granted to farmers who form a co-operative for the purpose of obtaining the land, preparing it for cultivation and settling there;

"(b) Small and medium-size holdings pooled in order to form the capital of the co-operative;

"(c) The lands of farmers who were awarded the former large estates (latifundios) and organized a co-operative in order to cultivate them;

"(d) The lands belonging to agricultural co-operatives, of whatever type not included in the preceding paragraphs."

Article 11. "An agricultural enterprise (empresa agrícola) is one in which substantial additional capital has been invested, which employs paid workers, and in which modern techniques are used - except, in the last case, for areas where the terrain is uneven. Details of these factors will be given in special regulations."

Article 12. "The State does not recognize the latifundio, i.e. the large estate comprising substantial rural property (of variable size depending on its geographical situation) which remains undeveloped or underdeveloped, under the extensive farming system, using outdated implements and methods and resulting in a waste of human effort, or because the land is leased out to produce income. As regards land use in the Andean region, property of this type has been granted in parcelas (parcels), pegujales (small holdings), sayañas, aparcerías (holdings for sharecropping) or under similar arrangements. Owing to the imbalance in the factors of production, the return from such lands comes essentially from the increased value generated by the farmers working as serfs or tenant farmers, which the landowner appropriates as earned income. This is a system of feudal oppression which is reflected in agricultural backwardness and a low standard of living and culture for the rural population."

Article 13. "The maximum area of private holdings shall be determined solely on the basis of the areas that can be farmed economically."

Article 30. "The latifundio (large estate) shall cease to exist. Large corporate farms and other large concentrations of land in the hands of individuals and entities which, by virtue of their legal structure, prevent equitable distribution of land among the rural population, shall be prohibited."

Article 52. "For the purposes of this Decree-Law, undivided holdings shall be deemed to be divided into as many holdings as there are co-owners."

Article 56. "Social welfare institutions operating schools, shelters and hostels which are supported by income from farms may own property no larger than three times the size of a medium-size holding situated in the same geographical region. Settlers on such property shall be given land thereon. Feudal farming systems shall be prohibited."

Article 57. "Indigenous communities shall be the private owners of the lands which they own jointly. Family-owned lots, so designated on the basis of reinspections or by tradition, within each community shall be the private property of the family."

Article 58. "Property of indigenous communities shall be inalienable, except in the cases to be established in special regulations. Ownership of such property shall give rise to all the rights and obligations pertaining to individually-owned and co-operatively-owned farms."

Article 59. "The indigenous inhabitants of each community shall, with the advice of State experts, regroup the parcels of land to ensure the efficient use thereof."

Article 60. "Members of the indigenous community shall not be required to render personal services or to make contributions in kind. Any political, military, municipal or ecclesiastical authorities demanding such contributions shall be deemed guilty of abusing authority."

Article 61. "Landless rural inhabitants living in an indigenous community without being members thereof and working for the owners of the lands shall be entitled to a part of the uncultivated land, the size of which shall not exceed that of the average parcel owned by a family of the newcomer category."

Criminal Code

Article 326. (Theft) ...

Article 329. (Larceny)

"Any person having a chose in action misappropriated from the lawful owner, to the detriment of that person or of a third party, shall be given a work sentence of one to six months."

Article 331. (Robbery)

"Any person who misappropriates a chose in action by force, or by inflicting violence on or intimidating persons, shall be sentenced to deprivation of liberty for one to five years."

Article 337. (Stellionatus)

"Any person who sells or encumbers, as unattached, property which is in litigation, under attachment or mortgaged, and any person who sells, encumbers or leases the property of others as if it were his own, shall be sentenced to deprivation of liberty for one to five years."

3. The foregoing legal provisions are relevant to the Universal Declaration of Human Rights (art. 17). Similarly, Part III (Special régimes), Title One (Economic and financial régime), chapter II, of the Constitution of Bolivia refers to national property.

Public - State property

Constitution of the State

Article 136. "In addition to the property designated by law as being in the domain of the State, the soil and subsoil with all their natural resources; the lake, river and medicinal waters; and the physical elements and forces susceptible of utilization are in the domain of the State. The law shall

establish the status of this domain and the provisions governing the concession and allocation thereof to individuals."

Article 137. "The assets in the patrimony of the nation constitute public property which is inviolable, and it is the duty of every inhabitant of the national territory to respect and protect it."

Article 138. "The nationalized mining groups are part of the patrimony of the nation as one of the bases for the development and diversification of the economy of the country, and they shall not be transferred or allotted to private enterprises under any form of title of ownership. The top-level management and administration of the State mining industry shall be entrusted to an autonomous entity having powers to be specified by law."

The autonomous entity referred to in this article is the public enterprise called Corporación Minera de Bolivia (Bolivian Mining Corporation).

Article 139. "Deposits of hydrocarbons, regardless of the state or form in which they are found, shall be in the direct, inalienable and indefeasible domain of the State. No concession or contract shall confer ownership of the deposits of hydrocarbons. The exploration, exploitation, marketing and transport of hydrocarbons and their derivatives shall be the responsibility of the State. The State shall exercise this right through autonomous entities or through time-limited concessions and contracts to mixed companies engaged in joint operations or to individuals, in accordance with the law."

Article 140. "The promotion and development of nuclear energy shall be a function of the State."

Article 144. "The programming of economic development of the nation shall be carried out by means of the exercise and furtherance of national sovereignty. The State shall periodically formulate a general plan for the economic and social development of the Republic, the implementation of which shall be mandatory. This scheme shall include the State, mixed and private sectors of the national economy.

"When private enterprise contributes to the improvement of the national economy, it shall receive the encouragement and co-operation of the State."

Article 157. "Labour and capital shall enjoy the protection of the State. The law shall regulate their relationship by establishing rules concerning individual and collective contracts, minimum wages, maximum working hours, work by women and minors, paid weekly and annual days of rest, holidays, bonuses, premiums, and other systems for sharing in the profits of an enterprise, compensation for time worked, dismissals, occupational training, and other social and protective benefits for workers.

"It shall be a function of the State to create conditions which will guarantee employment opportunities, work security, and fair remuneration for all."

Article 168. "The State shall plan and promote the economic and social development of the rural communities and agricultural co-operatives."

Agrarian Reform Law

Article 1. "The soil, subsoil and the territorial waters of the Republic belong by original right to the Bolivian nation."

Article 3. "As an addition to the property recognized by the laws in force to belong to the public domain are the highways, even where they have been created by private individuals, the lakes, ponds, rivers and all physical forces susceptible of economic utilization."

Article 4. "Uncultivated lands, lands that revert through the lapse of a concession or for any other reason, unoccupied lands situated outside the urban radius of towns, lands belonging to the State bodies and autonomous entities, and lands deemed to be forests by the laws in force, shall be part of the patrimony of the State."

Article 50. "Agrarian properties belonging to the organs of the State, universities and autonomous institutions shall be non-attachable, provided that they are used for the purposes that determined their acquisition. Settlers in those properties shall be provided with lands therein."

Article 51. "The institutions referred to in the preceding article may acquire extensions exceeding the maximum limit established for rural property, provided that they serve a purpose of manifest utility to the community."

Article 50. [sic] "Indigenous communities must plan, with the advice of State experts, the redistribution of small holdings, for the purpose of rational land use."

Article 76. "All roads, ports and paths are for public use. Waters and trees necessary for building houses and for other domestic uses shall also be for public use."

Article 223. (Destruction of or damage to State assets and national wealth)

"Any person who destroys, damages, misappropriates or exports an asset in the public domain, a source of wealth, monuments or objects belonging to the national archaeological, historical or artistic heritage, shall be sentenced to one to six years' deprivation of liberty."

Article 224. (Anti-economic conduct)

"A public official or other person exercising managerial or other duties involving responsibility in State enterprises or institutions, who causes, through maladministration, technical mismanagement, or for any other reason, damage to their patrimony or to the interests of the State, shall be sentenced to one to six years' deprivation of liberty."

"If such person acts culpably, the sentence shall be from three months' to two years' rigorous imprisonment."

Family Code

Article 163. (Charges)

"Common property shall be assigned to satisfy the needs of the spouses and to the maintenance and education of the children."

Article 164. (Administration and disposition of common property)

"Common property shall be administered by both spouses. Expenditures incurred and obligations contracted by one party for satisfying mutual needs and the children, shall also be binding on the other. Instruments for the disposition of common property as well as loan and other contracts conceding the use or enjoyment of property shall require the consent of both spouses. In this regard, the provisions governing joint ownership of property held in community by husband and wife may also be applied."

Article 165. (Earnings from work)

"Earnings from the work of each party may be administered and invested freely; but if either spouse ceases to make a contribution to the mutual expenditure and to the maintenance and education of the children, the other may request attachment and direct delivery of the appropriate share."

Article 166. (Personal property)

"Personal property shall be administered and disposed of freely by the spouse to whom it belongs."

Article 167. (Termination of the union)

"The free conjugal union is terminated by death or at the wish of one of the spouses. However, in the latter case that spouse shall retain his or her responsibilities."

Article 168. (Death)

"If the union is terminated through the death of one of the spouses, the survivor shall take the half of the common property to which he or she is entitled, and the other half shall be distributed among the children; where there are no children, the provisions of the Civil Code in matters of estate shall apply.

"The survivor shall have a share in personal property, on an equal basis with each of the children.

"Where a will exists, it shall be executed in so far as it does not conflict with the foregoing provisions.

"Social benefits and social security shall be governed by the relevant specific rules."

Article 169. (Unilateral breach)

"In the event of unilateral breach, the other spouse may immediately request division of the common property and delivery of the corresponding part, and, if there has been no infidelity or other serious fault on the part of that spouse, in the absence of sufficient means of subsistence, an assistance pension may be awarded to provide for his or her needs and those of any dependent children.

"In particular, if the marriage is breached with the intention of forming a union with a third party, the abandoned spouse may oppose the marriage and require that provision should first be made regarding the above-mentioned matters. However, in each case, the precise financial arrangements made by the perpetrator of the breach shall be submitted to the judge for approval."

CANADA

[Original: English]

[3 July 1990]

1. Property rights are fundamental to the Canadian legal system, subject only to limitations in the public interest. In this context, property rights, together with the other rights set out in the Universal Declaration of Human Rights and the two International Covenants, are recognized in Canada as contributing to the dignity and the worth of the human person and the principles of freedom and justice affirmed by the International Bill of Rights.
2. The right to own and enjoy property is a basic element of the common law and statutory law in Canada. At common law, various presumptions operate in favour of property rights, including the presumption that compensation is to be provided where someone has been deprived of their property by statute and the statute does not expressly deal with this point. In addition, common law principles of fairness and natural justice apply where someone's property rights have been affected by law or other government action. Where Canadian statutes make provision for the expropriation of property in the public interest, such statutes provide for fair notice and compensation.
3. The right to enjoyment of property is also protected at the federal level by the Canadian Bill of Rights. It specifically provides, in respect of all federal laws, that individuals have the right to enjoyment of property and the right not to be deprived thereof except by due process of law.

COLOMBIA

[Original: Spanish]

[26 June 1990]

1. The Constitution of Colombia stipulates the right of ownership, placing certain limits on its exercise by assigning to it a social function, since "private interest must yield to the public or social interest". The Constitution enlarges extensively on this limitation in the following provisions:

Article 30: "Private ownership and other rights acquired under due title in accordance with civil law by individuals or bodies corporate are guaranteed and may not be disregarded or disturbed by subsequent civil laws. When the application of a law enacted for reasons of public benefit or social interest results in a conflict between the rights of individuals and the necessity recognized by that law, the private interest must yield to the public or social interest.

"Property is a social function which entails obligations. For reasons of public benefit or of social interest defined by the legislator, expropriation may take place by a court order and after indemnification. Nevertheless, the legislator, for reasons of equity, may specify cases where, by an affirmative vote of the absolute majority of the members of both houses, no indemnification is to be made."

Article 31: "No law establishing a monopoly shall apply until full indemnification has been made to the individuals who, by virtue of that law, are prevented from operating a lawful business.

"No monopoly shall be established except as a revenue measure and in accordance with law.

"The only privileges which may be granted shall be those which refer to useful inventions and to communication routes."

Article 32: "Freedom of enterprise and private initiative shall be guaranteed within the limits of the common good, but overall management of the economy shall be the responsibility of the State. The State shall be authorized by law to take action in the production, distribution, utilization and consumption of public and private goods and services, in order to rationalize and plan the economy and to achieve overall development.

"The State shall also be authorized by law to take action in order to ensure that the human and natural resources are utilized to the full, under an income and wages policy whereby social justice and the harmonious and comprehensive upgrading of the community, and of the working classes in particular, constitute the principal objective of economic development."

The right of ownership

2. Since 1886 the Constitution of Colombia has embodied laws which guarantee private ownership. Article 120, paragraph 18, authorizes the President to issue temporary patents to initiators of useful inventions or improvements; article 35 guarantees copyright; article 202 the ownership of mines; article 36 provides for donations inter vivos and by testament; article 30, paragraph 1, recognizes private ownership and other rights acquired under civil law; article 34 proscribes the penalty of confiscation; article 30, paragraph 3, allows expropriation for reasons of public benefit or social interest, but only after authorization by law, a court order which so decrees and indemnification.

3. In 1936, the reformers of the Constitution went beyond the statement that ownership "has" a social function by proclaiming, in article 30, paragraph 2, that ownership "is" a social function, and a "function which entails obligations".

4. This has formed the basis for important laws on agrarian reform; these include the new concept of possession through economic development; an extinctive prescription of ownership, whereby, should land cease to be worked economically for a period of three years, the private ownership thereof is extinguished and the land passes into the domain of the State; and the establishment of the Colombian Institute of Agrarian Reform, responsible for formulating and implementing land improvement plans, for monitoring the extinction of ownership and initiating procedures for legalizing such extinction, for the expropriation and sale of land and for the gratuitous award of vacant land.

The prohibition of monopolies

5. Article 31 of the Constitution of Colombia, the text of which is given above, is intended to protect economic freedom in view of the illicit manipulation of the supply of or demand for goods and services in which an individual could become involved. In other words, it prohibits the existence of private monopolies which transform their holders into controllers of production and sales, but it admits the temporary operation of the so-called "natural" monopolies, i.e., those which arise from inventions or improvements. The only monopolies authorized by the Constitution are those established by law to increase State revenues. Any business or industry deemed to be an official monopoly and therefore prohibited from operating is entitled to indemnification.

6. Finally, attention is drawn to articles 39 and 48 of the Constitution which establish, respectively, that the law may restrict the production and consumption of liquor and fermented beverages and that the Government alone is entitled to import, manufacture and possess arms and ammunition.

The freedom of enterprise

7. From the proclamation of the Republic until a few years ago, our Constitution drew inspiration from the liberal traditions of the Manchester School.

8. The Constitutional reform of 1936 gave authorization, for the first time, for State action in the operation of private industries or enterprises. On the one hand, article 39, paragraph 4, of the Constitution stated that the State could order transport or water companies and other public services to revise their tariffs and regulations. The purpose of this was to upgrade public services. This article remains in force and appears without amendment in the present Constitution.

9. On the other hand, article 32, introduced in the same year, made general provision for State action in the operation of all private industries and enterprises. The much broader purpose of this action was to "rationalize the production, distribution and consumption of wealth and to give the worker his due protection". But the action deriving from this article could only be taken through legislation adopted by a special majority.

10. The Supreme Court interpreted this provision to mean that action could be taken only when Congress had specified the measures involved. For that reason, the wording of the article was changed in 1945; henceforth it would be for the Government to act and determine all the details of the action, and legislation would first have to be enacted in Congress by an absolute majority.

11. In the constitutional reform on 1968, one of whose main aims was to settle planning problems, article 23 was recast to give a fuller definition of the purposes of State action "under an income and wages policy whereby social justice and the harmonious and comprehensive upgrading of the community, and of the working classes in particular, constitute the principal objective of economic development".

12. This broader view of the role of the State in economic life was confirmed by article 120, paragraph 14, of the Constitution, which authorized the Government to intervene, when necessary, in the bank of issue and in the activities of individuals and bodies corporate aimed at the management or utilization and investment of funds from private savings. This last-mentioned power of the executive is a particularly effective form of action, there being very few economic activities which have no link with private savings.

13. This is how Colombian law regulates the practice of economic intervention, which, despite strong resistance from businessmen, is extensively applied.

Intellectual property

14. As the term "property" does not apply exclusively to tangible things and can also cover the product of intellectual and creative activity, the Constitution of Colombia establishes in article 35, paragraph 1, that literary and artistic property shall be protected in the same manner as transferable property, for the duration of the author's life and 80 years thereafter, through the procedures prescribed by law.

15. In accordance with Act 23 of 1982, article 1, the authors of literary, scientific and artistic works enjoy protection for their works in Colombia. Legal protection is also enjoyed by the interpreters or performers of such works, by

producers of recordings and broadcasting organizations, in matters of their rights vis-à-vis those of the author.

16. Accordingly, the main aspects of the right to individual and collective property are set forth in the Constitution of Colombia.

EGYPT

[Original: Arabic]

[17 July 1990]

1. Because Egypt has been a member of the United Nations since its foundation and participates in and adheres to its covenants, its signing of the Universal Declaration of Human Rights of 1948 had the effect of making that Declaration and its provisions a part of its internal legislation. Since article 17 of the Declaration provides that everyone has the right to own property alone as well as in association with others, and that no one shall be arbitrarily deprived of his property, Egypt's adherence to that principle has been incorporated into its Constitution. The Constitution enshrines that right and treats it as a basic constitutional principle, and the legal system has established means of legislative protection such as to ensure that that right is maintained and not infringed.

I. Constitutional protection of the right to own property

2. The Egyptian Constitution includes provisions for the protection of this right. Article 34 states that "private property shall be safeguarded and may not be sequestered other than in cases specified by law and by means of a judicial decision. It may not be expropriated other than for the public good and against compensation in accordance with the law ...". Article 35 states that "nationalization of such property shall not be permitted other than for considerations of public interest, in accordance with the law and against compensation". Article 36 prohibits confiscation other than by a judicial decision.

3. The Egyptian Constitution recognizes the importance of the individual private ownership of property and its effective role in fulfilling the objectives of economic and social development, constituting as they do a pivotal element of the purposes and covenants of the United Nations. Article 32 states that "private property shall take the form of non-exploitive capital. The law shall govern the performance of its social function in the service of the national economy within the framework of the development plan ...". It is worth noting that this form of property plays its part - beside public and co-operative forms of property - in contributing to the optimum utilization of human and material resources and in fulfilling development objectives by promoting a balanced measure of economic and social justice. It is also noteworthy that the Egyptian legal system recognizes several forms of private property, including an individual's right to own his dwelling and the instruments by which he earns his living. This right is entirely separate from the right of any member of his family, including his spouse, to own

private property, as well as from the right of individuals to own production projects for diverse consumer and investment purposes.

4. Egypt's Supreme Constitutional Court plays its part in protecting these constitutional principles. When a law diverges from any one of these principles, the judgements of the Court ensure that the unconstitutional provision is rescinded. Judgements have been given by the Constitutional Court, inter alia, in respect of the following cases:

(a) In action No. 5 (judicial year 1), the Court found that article 2 of the decision in Law No. 150 of 1964 was unconstitutional in providing for the devolution to the State of the funds and property of individuals who have been taken into custody. According to its judgement, since the devolution to the State of the funds and property of natural persons who have been taken into custody is not equivalent to the expropriation of property for the public good or to nationalization, it constitutes an act of trespass against private property and of confiscation, thereby violating the provisions both of article 34 of the Constitution, which states that private property shall be safeguarded, and of article 36, which prohibits public confiscation and does not permit private confiscation other than by a judicial decision.

(b) In action No. 67 (judicial year 4), the Court found that article 4, paragraph 2, of the decision in Law No. 72 of 1962 concerning the nationalization of certain companies and enterprises was unconstitutional in ruling that property belonging to the spouses and children of the owners of nationalized companies and enterprises was to be attached as an indemnity against any obligations to which such companies and enterprises might be liable in excess of their assets. According to the judgement, Egyptian constitutional law has specifically emphasized the principle whereby private property should be safeguarded and protected from infringement other than as an exception, because such property is, essentially, the product of individual labour and a spur to dynamism and progress, besides being a source of national wealth which must be developed and preserved in order to perform its social function in the service of the national economy. The Court decided that the property of spouses and children should not be held as an indemnity against any obligations to which nationalized companies and enterprises were liable in excess of their assets, because they were in no way involved with such obligations and there was no reason why they should bear responsibility for them, and because the indemnity embraced all the property of wives and children, even if the source of such property had no connection whatsoever with the company or its owners.

(c) In action No. 8 (judicial year 5), the Court found that article 2 of the decision in law No. 13 of 1964 concerning trading in medicines under trade names was unconstitutional. According to its judgement, Egyptian constitutional law prohibits nationalization other than for considerations of public interest, in accordance with the law and against compensation. It also categorically prohibits the public confiscation of funds and does not permit private confiscation other than by a judicial decision. Since the aforementioned article of Law No. 13 of 1964 provides for the devolution without compensation to the (State-owned) Egyptian Public Medicines Company of the ownership of medicines and preparations produced in pharmacies under trade names, or for the purposes of trading, and registered with the Ministry of Health, it thereby contravenes the provisions of article 36 of the

Constitution, which prohibits the public confiscation of property and does not permit private confiscation other than by a judicial decision.

(d) In action No. 23 (judicial year 3), the Court found that article 10 of Law No. 9 of 1959 concerning importation was unconstitutional in ruling that the Minister of Economy or his representative was entitled to subject imported goods to administrative confiscation. According to its judgement, constitutional legislation had established rulings to govern confiscation. It prohibited private confiscation other than by a judicial decision, defined the instrument whereby such private confiscation was to be carried out and required that it should take place on the basis of a judicial rather than an administrative decision. The intention was thus to safeguard private property from any confiscation other than by a judicial decision, to ensure that the procedures and guarantees of litigation would enable the rightful owner to defend his rights and to remove any suspicion of unjust or forcible action against him.

(e) In action No. 12 (judicial year 5), the Court found article 5 of the decision in Law No. 156 of 1960, as amended, to be unconstitutional in establishing a maximum limit for compensation due to owners of newspapers whose ownership has been transferred to the State. According to its judgement, the Egyptian Constitution upholds the principle whereby private property and its inviolability must be safeguarded. It prohibits the forcible expropriation of such property from its owner other than for the public good and against compensation. Such compensation shall be assessed only in terms of its real value to the owners of those newspaper enterprises which have been transferred to the State, meaning that the compensation shall correspond and be equivalent to that value. The promulgation of a law setting a maximum limit to that value can therefore not be permitted, because such action would reduce the value of the compensation due and constitute an act of trespass against private property.

(f) The Court also found the laws prohibiting recourse to justice in specific cases to be unconstitutional, because, under constitutional legislation, no administrative action or decision may be rendered unamenable to judicial control. It is thus clear that the Court has not limited the applications of its authority to declaring laws which infringe the principle of the protection of private property to be unconstitutional but has also proceeded to establish and protect the constitutional principle prohibiting the enactment of legislation which renders any action unamenable to judicial control. In this context, the Court found article 2, paragraph 5, of the decision in Law No. 2 of 1963 concerning the expropriation of immovable property required for the implementation of irrigation projects to be unconstitutional because it did not permit any form of appeal against a decision to assess compensation for such expropriation.

II. Legislative and judicial protection of the right to own property

5. While the Constitution and judicial applications thereof affirm respect for the right to own property as set forth above, Egyptian laws, as inspired by the Constitution, provide for a harmonious regulation of that right, on a basis of respect and affirmation, details of which are provided below.

A. Protection of the right to own property in the provisions of the Civil Code

6. The provisions of the Civil Code (articles 802 et seqq.) establish and regulate the right to own property. Within the limits of the law, the owner of any thing is alone entitled to use, enjoy and dispose of it, meaning both the entire thing owned and those of its essential elements which cannot be separated therefrom without its being damaged or destroyed. An owner of land is also entitled to treat his ownership as including that which is above and below it and is entitled to its fruits, products and accessories.

7. While the concept of ownership originally applied only to material items of immovable and movable property, the right of ownership has, since the beginning of this century, been extended to new resources having an economic value. Property rights have come to include the ownership by individuals of the various different forms of literary and artistic rights, as well as the ownership of trade marks, data and patents, of financial and commercial instruments and of businesses, taken as a group of abstract components.

8. The legislation of the Civil Code is intended to protect private ownership against any infringement thereof. In article 805, the Code provides that "no one may be deprived of his property other than in the cases and in the manner provided for by the law and against fair compensation". Besides being intended to protect private property against administrative interference, as will be explained below, the legislation provides for protection against arbitrary action by individuals.

9. The means of recourse open to an owner whose property is subject to interference is to initiate an action in respect of his entitlement by making a claim against the party which has infringed his ownership of the thing owned. An action such as this, which is brought to protect the right of ownership, may be undertaken by any owner having a claim on an item of property which is held by another. It derives from his right of ownership and is intended to restore that item of his property to his possession. Such an action is based on the right of ownership, which is not subject to any limitation, and an action protecting that right is therefore of consequence. Although the acquisition of property is subject to limitation, the forfeiture of property is, conversely, not subject to such limitation.

10. The judgements given by the Egyptian Court of Cassation have successively consolidated both the former and latter concepts establishing the right of individuals to own property and safeguarding that right against infringement. The Court has ruled:

(a) That anyone who owns land becomes its owner and of all that is above and below it.

(b) That the owner of any thing is alone entitled to use, enjoy and dispose of it, within the limits of the law.

(c) That an action in respect of entitlement brought by an owner with a view to recovering his property from the party which has usurped it shall not be subject to any limitation. The right of ownership shall be a permanent right, which does not lapse as a result of lack of use. A claim made by the owner for the value of immovable property which has been usurped shall be regarded as a claim obliging the usurper to fulfil his commitment to make amends by means of compensation if he is unable to restore the property in kind. Restoration in kind is the essential premise and shall be replaced by cash compensation only if restoration in kind is impossible. Accordingly, an action to claim the value of immovable property which has been usurped shall not be subject to limitation.

B. Protection of the right to own property in the Law concerning expropriation

11. The greatest threat to individual ownership of property is its forcible seizure by the Administration, drawing upon those means of execution which individuals are unable to contest. Accordingly, the first means which the law establishes to protect private property against arbitrary action by the Administration is that of restricting the State's authority to infringe upon the private property of individuals. The Law declares such restriction to be legitimate in article 508 of the Civil Code, as follows:

(a) Removal of property from its owner shall be based on a provision in law; the law does not permit such removal other than in promotion of the public interest;

(b) In cases of expropriation of property for the public good, the Administration shall follow the procedure laid down by the law, i.e., after observing the procedures laid down by the Law concerning expropriation of property for the public good;

(c) Fair compensation shall be paid to the owner in respect of the forfeiture of his property. The Law concerning expropriation lays down the measures which ensure the assessment of fair compensation for the owner if his assessment of such compensation differs from that of the Administration.

12. In Law No. 577 of 1954 concerning the expropriation of immovable property for the public good or for purposes of improvement, the law has erected a series of guarantees to protect the right to own property, requiring essentially that expropriation of immovable property take place only in the event of necessity related to the public good. Service of the public good is the corner-stone upon which any decision to expropriate property must be based; without it, such a decision has no legal validity. It also requires that there must be compensation for such expropriation; without it, the expropriation is legally invalid. It stipulates that the compensation paid to owners whose property is expropriated must be fair and equivalent to their loss, in accordance with specific rules dictating that such compensation must be paid to them with all due promptness.

13. Articles 6 et seq. of the Law concerning expropriation of property for the public good lay down specific procedures for the expropriation of property, stating

that those concerned may object to such expropriation and to the related assessment of compensation. Article 13 stipulates that the committee appointed to rule on such an objection should include a member of the judiciary as its chairman in order to ensure neutrality. The article also endows these procedures with legal protection by authorizing owners to refer the decisions of this Committee to the tribunal of first instance dealing with appeals, besides invalidating any immunity against judicial control which might be extended to the decisions of the committee. In articles 16 et seq., the Law prohibits the temporary seizure of property belonging to individuals other than for the public good and against fair compensation, including compensation for the non-utilization of such property from the time of its temporary seizure until the actual payment of due compensation. In article 18, it establishes a maximum limit of three years for such temporary seizure and states that property must be returned in the same condition as at the time of its seizure, subject to the owner being compensated for any damage or reduction in its value. The decision of the President of the Republic contained in Law No. 252 of 1960 authorizes the President alone to decide on cases of temporary seizure and the public good, prohibiting other branches of the Administration from taking such a decision, in accordance with the serious nature of such action and the need to avoid any error on the part of the administrative authorities.

14. The Egyptian Court of Cassation has affirmed these principles in several judgements. On different occasions, it has ruled as follows:

(a) That an owner whose property is seized and appropriated for the public good without observance of the legal procedures for expropriation shall be entitled to claim compensation from the Government;

(b) That the judge hearing the case shall be free to fix compensation and award it in the form either of a single consolidated sum or of the expropriated property itself, together with compensatory interest;

(c) That the court hearing the case may assess the compensation due to the owner against the proceeds yielded by the land forcibly seized and appropriated from him by the Government for the public good;

(d) That de facto seizure of land by the Government and its incorporation into a main road shall of itself be sufficient grounds to make a claim for compensation, even if an expropriation decree has not been issued;

(e) That the compulsory seizure by the Government of immovable property from its owner without observance of the procedures required under the Law concerning the expropriation of property for the public good shall constitute unlawful seizure. Ownership of such immovable property shall therefore not be transferred to the Government, and the owner of the immovable property shall, despite its seizure, continue to be the rightful owner. The Court also ruled that measures carried out in that context are considered invalid and that the owner of the immovable property is entitled to make a direct claim for compensation;

(f) That the committee appointed to rule on objections raised by those concerned to decisions for the expropriation or seizure of property for the public

good shall be authorized to fix compensation in respect of expropriation decisions. Appeals against its decisions shall be heard by the competent tribunal of first instance, whose decision in such a case shall be final.

C. Separation of the financial liability of spouses with respect to the right to own property

15. Article 13/1 of the Civil Code provides that the statutes of Egyptian law, one of whose sources is the Islamic Shariah, shall apply to the state of marriage and its consequences, including its financial consequences.

16. The statutes establish that the financial liability of spouses shall be separate, contrary to comparable practices in other States which treat the financial liability of spouses as a single liability, while authorizing one member of the couple to choose alternative financial treatment, whether this be the dowry system or the amalgamation of their liabilities. As a result of the establishment by the Islamic Shariah of the principle of separation between the financial liabilities of spouses, the right of either one of them to own property, to make use of such property, to administer it and to decide as to its disposal is treated separately.

17. The technical principles of Islamic law establish the responsibility of women from the religious and secular point of view, and women and men are, in that respect, equal. It is implicit in women's responsibility, which is independent of that of men, that they should have the reward of what they have earned, including the right of ownership, without sharing it with their husbands. According to the Shariah, a woman of full legal age has free disposal of all her property with respect to donation and commutation, and her husband has no entitlement to it and has no right of restraint over her in her disposition of all or part of such property. God has said, "Then, if you perceive in them right judgement, deliver to them their property" (Koran 4.10). This indicates that women are completely free to dispose of their property without prior permission and that it is not possible for husbands to establish rights over the property of their wives.

18. The principles of the Islamic Shariah accord protection to the wife's right of ownership of her bridal trousseau and, although it goes to the conjugal dwelling, her right of ownership in it is safeguarded and it is held in trust by the husband and may not be encroached upon. These principles have been applied in the judgements of the Court of Cassation, which has found:

(a) That the provision of the Islamic Shariah, and thus of the Egyptian legal system, take no cognizance of the concept of communauté de biens known to French law under which the property of both spouses is subject to a régime of joint or shared ownership;

(b) That the financial arrangement between husband and wife, in accordance with the provisions of Egyptian law, is governed by the principles of personal status law. These principles constitute the general law that must be applied in questions relating to personal status, according to the preponderant view in the madhhab of the Imam Abu Hanifa;

(c) That the wife's trousseau is held in trust by the husband and that, as with everything that falls into this category, an unwarranted refusal to hand it over gives rise to an infraction;

(d) By virtue of a judgement of the Court of Cassation on the application of the Lease Law, which stipulates that it is prohibited for one person to hold more than one dwelling needlessly, the Court found that this prohibition is limited to a single, specified individual and does not extend to others even if such others are members of his family.

D. Legal regulation of joint commercial ownership

19. The Civil Code and the Commercial Code contain provisions dealing with the regulation of partnerships of all kinds. Reference is here made to them as forms of joint ownership that have evolved in the course of economic development in the world as a whole. A partnership is a contract under which two or more persons undertake to participate in a financial undertaking by providing a part of the capital or labour in order subsequently to divide the profit or loss to which the undertaking may give rise, and the provisions of the law protect such joint ownership and establish rules to ensure its protection and regulation, whether the partnership in question is one of persons or of property.

20. The formation of a partnership entails its endowment with a financial liability independent of that of the individual partners. The partnership, rather than its members, assumes the financial obligations arising out of its operations. That is to say that rights and obligations are directly attributable to the liability of the partnership and not to that of each of the partners. Ownership of the shares provided by the partners is transferred to the partnership itself, which has free disposal of them, and no creditor of the partnership may take measures of execution against the private property of partners other than general partners. A partner may have free disposal of the share owned by him, and its counter value may be assigned to his heir. The Commercial Code provides a number of formal and substantive guarantees in order to ensure the proper management, protection and supervision of joint property. In its judgements, the Court of Cassation has found itself obliged to establish principles ensuring the protection of the private property of partners and its separation from the joint property of the partnership used for the purposes of the enterprise, and it has found:

(a) That a partnership has a corporate identity independent of the persons of the co-owners, and that its liability must therefore be separated from theirs and its property must be independent of theirs;

(b) That it is one of the effects of the formation of a partnership that it acquires a financial liability independent of the liabilities of the co-owners so that their private property is unaffected.

III. Criminal protection of the right to own property

21. The progressive regulation and protection of the right to own property requires that it should be accorded criminal protection. Accordingly, the Criminal Code regards certain acts considered by the legislature as being prejudicial to the right of individuals to own property as criminal offences. The Code of Criminal Procedure also contains a number of guarantees to safeguard and protect the constituent elements of this right.

A. The Penal Code

22. Articles 311 et seq. of the Criminal Code regard as a criminal offence the misappropriation of private movable property of value than can be owned and possessed. The legislature has laid down stiff penalties for acts of misappropriation committed against the owner when in his home or its outbuildings with a view to protecting the scope of the right to own property, and it has established the penalty of imprisonment at labour for this offence.

23. By Law No. 29 of 1982, the legislature enacted a new provision into article 321 (bis) of the Penal Code penalizing anyone who trespasses on the ownership of a lost article or animal by not returning it to its owner within three days of finding it and by considering it to be his own, thus encroaching on its owner's right to it. The offender is penalized by imprisonment at labour for a period of two years for this offence. The legislature has also imposed on whoever takes unrightful possession, without the intention of acquiring ownership, of a vehicle belonging to someone else the penalty of one year's imprisonment (art. 322 (bis) (i)). It has also regarded as a criminal act the seizure of documents of financial, literary or intrinsic value and has imposed on trespass on their ownership the penalty of temporary hard labour (art. 325).

24. The legislature has provided for the protection of private property against trespass by means of fraud and the betrayal of trust and has classified such acts as misappropriation of property. It has imposed the penalty of imprisonment for the fraudulent possession of movable property with the intention of stealing it, and has penalized the misappropriation and dissipation of movable property entrusted to the offender in one manner or another by its owner or possessor (arts. 336 et seq.).

25. In directly criminalizing encroachment on the private property of individuals, the legislature has penalized the destruction and damaging of agricultural implements and livestock enclosures (art. 354), encroachment on animals owned by others (art. 355), damage to any area peripheral to the property of others that is under crops (art. 358) and the removal of property lines and boundary markers. It has imposed penalties for damage to movable and immovable property owned by others in such a way as to render it unservicable (art. 361) and has penalized the destruction of goods, effects or crops owned by others (art. 366).

26. In the context of protecting real property, the legislature has laid own penalties for entry onto land that is not in the tenure of the offender with the

intention of preventing occupancy by force (art. 369) and has declared to be a criminal offence and imposed a penalty of imprisonment on entry into inhabited places and their outbuildings with the intention of preventing their occupancy (art. 370).

27. The legislature has imposed a penalty on trespass on agricultural land and open space owned by persons other than the offender if carried out for the purpose of cultivation, erecting installations thereon, occupancy or enjoyment in any manner whatever (art. 372 (bis)).

28. The legislature has considered as a criminal offence the entry of an offender onto agricultural land or open space owned by another and his refusal to leave on orders from the rightful owner (art. 373).

29. The jurisprudence of the Court of Cassation has constantly supported the protection of private property and has imposed penalties on those who infringe upon it. The Court has judged:

(a) That the enactments regarding misappropriation as a criminal act that apply to movable property belonging to others also apply to the misappropriation of anything that has a financial value and that can be owned, possessed and moved;

(b) That destruction of the property of others shall include destruction of any significant portion of the crops or trees and need not affect a large amount and that plowing the earth shall give rise to the offence of destruction of crops;

(c) That the penalty for encroachment on the periphery of the property of others shall extend to encroachment on any structures on the property lines whether made of wood, earth or any other material;

(d) That the penalty for the destruction of the property of others shall apply if such destruction affects property that is not owned by the accused;

(e) That, in penalizing entry to land in the possession of another, the legislature had it in mind to protect the holder of such land from the encroachment of others on this property;

(f) That the penalty for the offence of preventing occupancy by others shall have effect upon proof that there was material interference with others in their de facto occupancy of the land with the intention of preventing such occupancy by force.

B. The Code of Criminal Procedure

30. The Code of Criminal Procedure has surrounded the right of persons to own property with a number of guarantees, whether relating to the entry of agents of public authority into places owned by individuals and their inspection, search and sealing, or to the return of objects, their sequestration and the impermissibility of their removal as long as their presence is not the result of an offence, and it has established a number of procedures to protect the possession by owners of their property:

(a) Article 45 of the Code of Criminal Procedure prohibits the entry of agents of public authority into any place owned and occupied by individuals other than in the circumstances set forth in the law, and this is permitted only in the event that assistance is requested from inside or in the event of fire or flood;

(b) Articles 46 et seq. of the Code of Criminal Procedure restrict cases in which it is permissible for agents of public order to inspect premises owned by individuals or to search in any place of safe-keeping for evidence of crime to those carried out under a judicial warrant;

(c) Article 54 of the Code of Criminal Procedure allows the occupant of land under seal or sequestration to appeal against the procedure to a magistrate;

(d) Article 52 of the Code of Criminal Procedure prohibits security officials from breaking open locked safes and from examining the papers kept in them by their owners if they should come across them in the course of a search;

(e) Articles 101 et seq. permit the return of items owned by others and previously seized, as long as they are not necessary for the prosecution of a case or are subject to confiscation, even without a request to that effect. If their owner fails to request their return and they are likely to perish with the passage of time, they may be sold and their value paid to the owner;

(f) Article 208 (bis) (b) of the Code of Criminal Procedure permits any person against whom a decision has been issued by the Public Prosecutor preventing him from free disposal and management of his property (in implementation of art. 208) to appeal against that decision to the Court;

(g) Articles 373 (bis) et seq. of the Penal Code surrounds the right to own property with reserve guarantees by stipulating that the Office of the Public Prosecutor may take precautionary measures to protect the property of an owner against which an infringement has taken place and may bring the matter before the competent magistrate for the issuance of his decision within a maximum period of three days. It also requires the Office of the Public Prosecutor, in such an event, to bring a criminal action against the act of infringement within 60 days. Just as this may be undertaken by the Office of the Public Prosecutor, the plaintiff may also bring the case in civil law.

KENYA

[Original: English]

[12 July 1990]

1. The right to own property is a constitutional right and Kenya recognizes this as one of the basic human rights provisions. It is further protected under the Convention on the Elimination of All Forms of Discrimination against Women, to which Kenya is a party.

2. Kenya's legislation with regard to all forms of property preclude any impairment of enjoyment of human rights and fundamental freedoms, without prejudice to their right freely to choose and develop their political, social, economic and cultural systems.

3. The Government of Kenya therefore supports the principles as stipulated under the two resolutions.

PAKISTAN

[Original: English]

[6 July 1990]

Pakistan states that the fundamental right of every citizen to own property or dispose of property in any part of Pakistan is guaranteed under articles 23 and 24 of the Constitution of Pakistan.

PANAMA

[Original: Spanish]

[4 May 1990]

1. In its strict legal sense, the right to own property is the full power to dispose at will of material goods except as legally restricted.

2. The term property is sometimes used in the sense of ownership and means not the thing but the legal power over the thing.

3. At the domestic level, the Political Constitution of the Republic of Panama enshrines in its articles 44, 45, 46 and 47 the principles contained in article 17 of the Universal Declaration of Human Rights, which protects the right of everyone to own property alone as well as in association with others and the right not to be arbitrarily deprived of one's property, as follows:

"Article 44: The right of natural or juridical persons to own property acquired in accordance with the law is guaranteed.

"Article 45: The right to own private property entails obligations on the part of its owner by reason of the social function it must fulfil.

"For reasons of public utility or social interest as defined by law, property may be expropriated pursuant to special judgement and with compensation.

"Article 46: When the application of a law enacted for reasons of public utility or social interest results in a conflict between private rights and the need stated in the law in question, the private interest must yield to the public or social interest.

"Article 47: In the event of war, serious disturbance of public order or urgent social interest, when prompt action is required, the executive branch may decree the expropriation or occupation of private property.

"Where restitution of the object occupied is feasible, the occupation shall be only for the duration of the circumstances that gave rise to it.

"The State shall in every case be responsible for any expropriation so carried out by the executive branch and for the losses and damage caused by the occupation, and shall pay the amount thereof once the reason for the expropriation or occupation has ceased to exist."

4. None the less, at the legal level, it must be emphasized that the principles enshrined in the Universal Declaration concerning the right of every person to own property alone and in association with others and the right not to be arbitrarily deprived of one's property are, in the case of the first principle, recognized by the Civil Code and, in the case of the second, by the Judicial Code, which states as follows:

"Article 337: The right to own property is the right to enjoy and dispose of a thing without restrictions other than those established by law.

"The owner shall be entitled to take legal action against the possessor of the thing in order to reclaim it.

"Article 338: No one shall be deprived of his property except by the competent authorities and for serious reasons of public utility, subject always to prior payment of appropriate compensation."

5. Expanding on article 45 of the Political Constitution and article 338 of the Civil Code, article 1937 of the Judicial Code establishes the procedure to be followed in cases of expropriation for reasons of public utility or social interest.

PORTUGAL

[Original: French]

[2 August 1990]

1. The right to own private property and to transfer it during life or by reason of death is a fundamental right enshrined in the Portuguese Constitution, in its chapter on economic, social and cultural rights.

2. In conformity with article 17, paragraph 1, of the Universal Declaration of Human Rights and article 1 of Protocol No. 1 to the European Convention on Human Rights, which Portugal has ratified, article 62, paragraph 1, of the Portuguese Constitution states that "Everyone shall have the right to own private property and to transfer it during life or by reason of death in conformity with the Constitution".

3. In providing for the right to own private property, the Constitution enshrines the right of private persons to acquire goods or patrimonial rights. These persons, natural or legal, have the right to own goods as property and, in general, the right to become, through acts inter vivos or mortis causa, the holders of any right having pecuniary value, such as credit rights, royalties, social rights, etc. Patrimonial rights are not therefore exclusively reserved for the State or the community but may also be held by private persons.

4. Nevertheless, some kinds of goods may be removed from the sphere of private property - as is the case for the means of production, land and natural resources where this is justified by the public interest (art. 80, subpara. c, of the Constitution) - and rules may exist which limit freedom of hereditary transfer (art. 2024 et seq of the Civil Code) or provide for preferential rights (see art. 1117 of the Civil Code).

5. The right to own private property is thus subject to limitations established by law, which are referred to in several articles of the Constitution (e.g., art. 89).

6. Paragraph 2 of article 62 of the Constitution also includes a general clause providing for requisition or expropriation for reasons of public utility, thus providing for other possible limitations on the right to own private property.

7. Nevertheless, in conformity with article 17, paragraph 2, of the Universal Declaration of Human Rights and article 1 of Protocol No. 1 to the European Convention on Human Rights, article 62, paragraph 2, of the Constitution provides that requisition or expropriation for reasons of public utility may be carried out only in accordance with the law and subject to the payment of fair compensation.

8. This principle is also applicable to all similar acts affecting the right to own property or patrimonial rights.

9. Fair compensation is thus intended to make good the loss that the individual has suffered by reason of the requisition or expropriation, and must be determined in conformity with the provisions of Decrees-Law Nos. 845/76 and 635/74 (dealing with expropriation and requisition respectively).

10. In addition to the broad generic definition given in article 62, the Constitution provides for divided forms of property ownership in several of its articles and for different purposes. That is the case for royalties (art. 42, para. 2), ownership of urban land (art. 65, para. 4), ownership of the means of production (arts. 82 and 89) and agricultural property (arts. 97 and 98).

11. The Constitution also gives the State the following responsibilities in connection with the right to housing and the right to own agricultural property:

(a) To encourage the establishment of housing co-operatives and to promote private individual construction (art. 65. 2 (b) and (c));

(b) To promote, in conformity with the law and without prejudice to the right to own property, greater balance among agricultural holdings, for the purpose of ensuring the rational management of land and other natural resources (arts. 97 and 98).

12. The right to own private property thus takes on aspects of an economic, social and cultural right. Its establishment is intended to ensure that the largest possible number of people are in fact given the possibility of owning property or exercising other patrimonial rights.

13. From this point of view, the right to own property overlaps with the right to housing (art. 65) and the right to private, co-operative and self-managed economic initiative (art. 61), and has its place within the broader context of the realization of economic, social and cultural democracy.

SAUDI ARABIA

[Original: English]

[5 March 1990]

1. The right of owning property is enjoyed by all Saudi Arabian citizens, privately or in association with other Saudi Arabian citizens. In fact, the Saudi Government distributes public land and interest-free loans for unlimited duration for the construction of private homes and the development of agricultural and industrial enterprises by every Saudi Arabian citizen.
2. The private ownership of property by non-Saudi citizens is not practised under Saudi Arabian legislation as in many other countries.

SUDAN

[Original: English]

[11 September 1990]

1. The right of everyone to own property alone as well as in association with others and the right not to be arbitrarily deprived of one's property, has been provided for in all the Constitutions of Sudan, both transitional and permanent, since independence in 1956. These rights have also been provided for in Sudan's various legislations (e.g. The Civil Transactions Act 1984).
2. Referring to the first Sudanese Constitution (The Sudan Transitional Constitution adopted in 1956) these rights were provided for in article (6) of the said Constitution which read as follows:

"6. No person may be arrested, detained, imprisoned or deprived of the use or ownership of his property except by due process of Law."

3. The same article was re-enacted in The Sudan Transitional Constitution (Amendment 1964), which was abolished by the Permanent Constitution of The Democratic Republic of The Sudan of 1973. The social role played by private ownership in the field of production has been recognized, and the right of ownership has been provided for in article 33 of this Constitution which reads as follows:

"Art. 33 The right of private ownership shall be guaranteed for the citizens, unless it is against the public interest, and its inheritance and donation in accordance with the Law are guaranteed. The State recognizes the useful social role played by private ownership in the field of production and in appreciation of its responsibility."

4. Article 34 of this Constitution protected private property from confiscation, as it provided that:

"No private property shall be confiscated except in the public interest, in accordance with the Law, and on payment of fair compensation."

5. The Permanent Constitution was replaced by The Sudan Transitional Constitution of 1985, which provided for the right of ownership in article 25 as follows:

"Art. 25 The right of ownership shall be guaranteed to citizens and associations as organized by law and shall not be acquired or appropriated save in the public interest and in consideration of fair compensation."

6. This Constitution was abolished by the first Constitutional Decree of 1989. Nevertheless this same Constitution of Decree recognized and provided for the Continuity of all existing laws until repealed or amended.

7. The right of private ownership is well protected by Sudanese laws. The Civil Transactions Act of 1984 provided for ownership, its kind, restrictions and methods of acquisition. Section 516 of this Act, which provided definition and scope of ownership states:

"1- Ownership is the absolute power of the owner to dispose of his property, its use and enjoyment.

"2- The owner of immovable property has the exclusive rights to its crops, fruits and other natural products and may dispose of it in all the legally permissible ways.

"3- The owner of property owns all its essential components which cannot be secured without being destroyed or its nature changed.

"4- He who owns land owns the airspace above it and the subjacent soil below it to the useful extent unless there is agreement to the contrary."

8. Section 517 of the same Act which provides for the protection of ownership states:

"1- 517 (1) No person shall be deprived of his property without a lawful cause.

"2- No person shall be deprived of his property except in the public interest and for just consideration and in accordance with the provisions of law."

9. The restrictions on ownership are provided for in section 516 of the same Act which reads:

"The owner has the right to deal with his property in the manner he thinks best, provided he does not cause grave injury to others or act in a way contrary to the laws relating to health, public policy, private interests or easements."

10. The right of ownership of property in association is protected by sections 532 and 533 of The Civil Transactions Act which states:

"S.532: Subject to the rules which govern succession, if two persons or more acquire the ownership of a thing by any of the modes of acquisition, without the partition of their respective shares, they are deemed co-owners in undivided and equal shares unless there is evidence to the contrary.

"Any co-owner may dispose of his share in common property in the manner he thinks fit, provided that he does not prejudice the rights of other co-owners."

11. The acquisition of land privately owned, by the public authorities, and the compensation to be paid is governed by the Land Acquisition Act, 1930. Land is defined in section (3) of this Act as follows:

"'Land' includes benefits to arise out of the land and buildings and things permanently fixed to the land, also an undivided share in the land and also any interest in land which requires or is capable of registration."

12. The Act defines the word "person" in the same section as including a body corporate.

13. Section 4 of this Act reads:

"4 (1). Where it appears to the President of the Republic that land in any locality is likely to be acquired permanently or temporarily for any public purpose a notification to this effect shall be published in the Gazette, and the people's Executive Council, and for its servants or workmen, to do all or any of the following things:

"(a) To enter upon and survey and take levels of any land in such locality;

"(b) To dig or bore into the subsoil;

"(c) To do all other acts necessary to ascertain whether the land is adopted for such purpose;

"(e) To make such levels, boundaries and lines by placing marks and cutting trenches;

"(f) Where otherwise the survey cannot be completed, the levels taken or the boundaries or lines of the work warded, to cut down and clear away any crop, fence, trees or undergrowth;

"Provided that no person shall under this section enter into any building or any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

"(2) The Government shall pay compensation for the damage (if any) caused by any acts carried out under the provisions of subsection (1) and the people's Executive Council shall at the time of entry on the land pay or tender payment of such amount (if any) as it thinks sufficient to cover the damage likely to be caused as aforesaid."

14. Instead of payment of money as compensation for the damage caused by acquisition, the person interested in land may be granted other land, by the provision of section 22, subsection (1) of this Act which reads:

"Where land is being acquired under this Act the people's Executive Council may elect to compensate the persons interested in the land, apart from any buildings, by granting them other land instead of by a payment of money."

TURKEY

[Original: English]

[25 June 1990]

1. The Turkish legal system recognizes and ensures respect for the right to own property individually or in association with others. The right to own property is recognized as a fundamental human right and protected as such by the Turkish Constitution of 1982.

2. The Turkish Constitution, in its article 35, entitled "right to property", states that everyone has the right to own and inherit property. According to the Constitution, the right to own and inherit property may be limited by law only in the public interest. In line with the traditional approach adopted since the eighteenth century, the Constitution recognizes the close interrelation between the right to property and the right to inherit and guarantees both legal institutions as fundamental rights, placing them under constitutional protection.

3. The constitutional protection of the right to private property is an indication of the economic system opted for. Private property is seen as a prerequisite for the individual and social development. It is recognized that private property has a direct bearing on the full enjoyment of human rights as well as on the material and spiritual development of the individual. Article 16, paragraph 1, of the Constitution, stating that "everyone has the right to ... protect and develop his material and spiritual entity", has a particular relevance in this context.

4. Article 35 of the Constitution, while guaranteeing the right to own property as a fundamental individual right, stipulates on the one hand that this right may be limited by law only in view of the public interest and on the other hand, that this right shall not be exercised in contravention of the public interest. Chapter III of the Constitution dealing with economic and social rights contains provisions providing guarantees in case of derogations made in view of the public interest to the full exercise of the right to own property, such as the nationalization or expropriation of privately owned real estate or the imposition of administrative servitudes thereon.

5. The property as protected in the Turkish legal system covers, in addition to all movable properties and real estate, patrimony as a whole, entitlements, right in rem, etc. The constitutional protection of the right to property including the means of production is extended to the prevention of the formation of monopolies and cartels. This particular protection set forth in article 167 of the Constitution is designed to prevent any kind of exploitation and to ensure equal rights to property for all.

6. The protection of the property against violations by individuals is ensured by the provisions of the Civil Code and Act No. 3091 on the prevention of violation of real estate possession. The legal framework for the exercise of the right to property individually or in association with others is defined in Book IV of the Turkish Civil Code, entitled "Rights In Rem".

7. In line with the above, the Turkish Government believes that the right to own property is a fundamental right which contributes to the development of individual liberty and initiatives, and serves as a basis for the exercise of many other human rights.

UNITED STATES OF AMERICA

[Original: English]

[20 June 1990]

1. In the United States, a tradition of respect for basic human rights and fundamental freedoms has moulded both Government and society. A corner-stone of this tradition, which antedates the formation of our country, is respect for the right of the individual to own property alone as well as in association with others.

2. Democracy itself rests upon the premise of the moral integrity of the individual and the belief that society should be regulated by individual choice and decision-making. Respect for this moral principle permits individuals to exercise authority over their economic activities (which most people spend a majority of their time performing), and particularly the practical means and the material output of those activities. Without such authority, individual integrity is greatly impaired by a loss of control over actual work. The individual becomes alienated from society and susceptible to the control of authoritarian and totalitarian forms of Government.

3. Recognition and protection of the fundamental right to own property gives the individual the means and social standing to exercise personal independence. This was crucial for the development of a democratic form of Government in the United States.

4. In the same way, the right to own property was also essential to the development of legal, economic, social and cultural institutions in which free and independent persons can participate without discrimination, and in which the protection of other fundamental rights and freedoms is respected. No one can deny that property rights form the corner-stone of free-market economies, but their significance in society far transcends the economic realm. The right to own property is essential in stimulating individual initiative necessary for the economic, social and political growth of society as a whole.

5. The right to own and enjoy property is thus an essential and integral part of the protection of human rights and fundamental freedoms which is afforded by the Constitution and laws of the United States. The United States Constitution secures the individual's fundamental freedom from arbitrary search and seizure. Further, it enforces the individual's fundamental right to due process and just compensation before private property can be taken for a public purpose.

6. In a free and democratic society characterized by appropriate limitations on the powers of Government, protecting the integrity of the individual necessarily includes protecting the individual's use and enjoyment of private property. Civil liberties such as the freedom of speech, worship and assembly flourish in a society that respects property rights, as in the United States. These civil liberties will be more fully exercised by individuals who know that potentially malevolent actions of Government cannot cause the arbitrary seizure of material assets or the means of their livelihood.

7. Much of Government's role in a democratic society arises from the need to regulate competing claims to property among individuals or groups. But in implementing such evenhanded measures and administrative policies, Government should promote the creation of assets and the acquisition of property by individuals over whom it exerts authority.

8. This creation of assets and acquisition of property is an important element in the "pursuit of happiness". When Government becomes an obstacle to that pursuit, it becomes destructive of the end for which it was established. Such an outcome will inspire certain individuals, or the people as a whole, to seek to exercise their fundamental right to change their Government.

9. In some countries, Governments may react by imposing general restrictions on human rights as part of desperate efforts to preserve political power. In other cases, as illustrated over the past year in Eastern Europe, Central Europe and Central America, individuals succeed in replacing repressive Governments with more democratic ones pledged to respect the right to own property.

10. The right to own property alone as well as in association with others, if fully protected, benefits the international community as well. Individuals will choose to trade and invest abroad when they have confidence that the Government of another country will not expropriate their assets without just compensation, will generally permit them to repatriate their earnings, and will respect their ability to make private economic decisions. In relation to civil, political, legal, economic, social and cultural aspects of overall growth and development, the future of the world's developing countries depends on full respect for private property rights throughout the world, in every Member State and across all international boundaries.

YUGOSLAVIA

[Original: English]

[25 September 1990]

1. The 1988 amendments to the Constitution of the Socialist Federal Republic of Yugoslavia introduced radical changes in the political system and socio-economic relations. The purpose of the changes is to reflect the needs of future development of the Yugoslav society and to overcome the contradictions and problems which emerged in the constitutional system and in various forms of the social set-up and relations.

2. The emphasis has been placed on the socio-economic system resulting in a broad conceptual transformation of socio-economic relations. This has been done through the orientation towards a market economy based on a free play of market forces. This means that the organizational forms of economic activity, attracting private financial resources of citizens and foreign capital; the introduction of new forms of ownership, the system of allocation, use and management of the socially owned means of production are now systemically in the function of the market and market-based economy.

3. In the field of proprietary-legal relations (Amendment XXIII substituted art. 78, para. 2, and art. 80, paras. 1 and 2, of the Constitution of the Socialist Federal Republic of Yugoslavia) the constitutional amendments provide for qualitatively and quantitatively new solutions concerning the right of citizens to own buildings, apartments, means of production, business premises and agricultural land. These solutions constitute an entirely new attitude of society towards the size of property owned by citizens. Citizens are guaranteed the right of ownership over the means of production, business buildings and premises, apartments and houses, without any quantitative restrictions. This practically means that the extent of the right to own property in this field is unlimited, i.e., that citizens

have the right to own any number of houses, apartments, business buildings and premises and means of production. At the same time, under the conditions and in the manner stipulated by law, the means owned by citizens may be leased or rented out to other persons for the purpose of earning income thus recognizing the economic and market-oriented character of this property.

4. According to Amendment XV to the Constitution of Yugoslavia, foreign (physical or legal) persons have now the possibility to establish their own companies in Yugoslavia, to act, together with Yugoslav nationals, as co-founders of joint ventures, contractual companies, banks and other financial organizations, and to be investors in companies, banks or other financial organizations, co-operatives or other forms of co-operation and joint business activities.

5. Further amending of the Constitution of Yugoslavia is under way so that an equal treatment and protection of all forms of ownership (social, State, co-operative, private) could be guaranteed also in the country's main legislative document. (On 24 April 1990, the Commission of the Assembly of the Socialist Federal Republic of Yugoslavia for constitutional questions prepared Draft Amendments to the Constitution of Yugoslavia.) The right to own property is particularly emphasized as a right contributing to the realization of economic and social development. In addition to labour, ownership will be the basis for participation in management, self-management and decision-making.

6. In view of the above solutions, it is clear that the constitutional changes, those already made and those under way, speaking in very general terms, tend to rehabilitate private ownership, i.e., the private sector in the structure of production relations.

7. As far as legislation is concerned, proprietary relations have been regulated, at the federal level, by the Law on the basic proprietary-legal relations, which came into force in September 1980. The 1988 amendments to the Constitution of the Socialist Federal Republic of Yugoslavia made necessary radical changes in some solutions contained in the above-mentioned law, so that proprietary legal relations could be regulated in a more comprehensive and conceptually different manner. The Constitutional and reform principle concerning the plurality of ownership forms (social, co-operative, private, individual) requires legislative regulation through the establishment of an equal material-legal régime for all forms of ownership, by ensuring the legal security of the owner and the inviolability of his proprietary rights with a view to creating material interest and stimulation for production-oriented and other forms of engagement of his own property; by introducing an appropriate, more liberal proprietary-legal régime for foreign physical or legal persons participating as owners or founders of companies, investors and licence-holders, etc., in the economic system of Yugoslavia; by eliminating institutional (administrative, etc.) and other restrictions in the sphere of proprietary-legal relations; by abolishing the established maximum of privately-owned immovable property and by making possible free enterprise.

8. Considering that some of the above-mentioned, and some other no less important, questions in the sphere of proprietary-legal relations require a very complex legislation which cannot be incorporated only in the Law on basic

proprietary-legal relations, an extensive legislative activity is now under way to draft a federal law on property (and other rights) under which the principals of an equal status for all types of property, legal protection in the acquisition, disposal and sale of property as well as the abolition of all institutional prohibitive rules, preferring one type of property over the others, will be much more recognized. The Principles contained in articles 7, 17 and 27 of the Universal Declaration of Human Rights and in other documents of the United Nations binding upon the States Parties will thus find their full meaning and justification in the Yugoslav proprietary-legal system.

III. INFORMATION RECEIVED FROM UNITED NATIONS BODIES

OFFICE OF THE UNDER-SECRETARY-GENERAL FOR INTERNATIONAL ECONOMIC AND SOCIAL AFFAIRS

[Original: English]

[23 April 1990]

1. The right to own property alone as well as in association with others contributes to the development of individual liberty and initiative and serves to foster, strengthen and enhance the exercise of other human rights and fundamental freedoms. The degree to which the right to own property contributes to the achievement of other objectives depends very strongly on the extent to which the right is enjoyed in practice by individuals. One limit to such ownership is when Governments as instruments of society own all property or all property useful in earning a livelihood. Such monopoly in the ownership of property leads demonstrably to the reduction of individual liberty. An engine driver on a railroad is at the mercy of the railroad owner for a livelihood, if there were only one owner or if all railroads were owned by Government or if all railroad owners, being few, could act in unison. A similar fate befalls a machine tool operator in an automobile factory, if all such factories were owned by one person or organization. Since earning a livelihood is so central to one's being, all other liberties can be in jeopardy when means of livelihood are so controlled.

2. However, in practice, individuals' right to own property is exercised by only a few in society. Wealth is notoriously unequally distributed and, to that degree, the livelihood of many in society can be withheld by the few. It is true that the drive to make profits urges owners of wealth to put that wealth into productive use providing the many with incomes and livelihoods. However, in periods of tension and conflict between property owners and those dependent on that property for making a living, non-property owners can be at a distinct disadvantage.

3. To make good that disadvantage, several things need to be done. Opportunities must be opened for all to acquire incomes and wealth, so that there is continual change in the ownership of property. Governments must act to prevent collusion among property owners and for this purpose impose anti-trusts and anti-monopolies legislation. Those without property must be given every opportunity to organize themselves to exercise countervailing power to withstand periodic onslaughts by

owners of property. The right to own property individually or in association unbridled by such countervailing forces will no more ensure the exercise of individual liberty than a government monopoly of property.

COMMITTEE ON THE EXERCISE OF THE INALIENABLE RIGHTS OF
THE PALESTINIAN PEOPLE

[Original: English]

[10 April 1990]

The Committee on the Exercise of the Inalienable Rights of the Palestinian People, which was established by the General Assembly to make recommendations on the modalities for implementing the inalienable national rights of the Palestinian people, does not have a contribution to make to the general conceptual questions regarding the right to own property to be addressed in the proposed study. The Committee, however, has repeatedly expressed its grave concern at the violation by Israel of the human rights of Palestinians in the occupied territory, including violations of their property rights. These have included confiscation of land, restrictions on the use of water resources, demolition of buildings, uprooting of trees and destruction of crops, forced closures of shops, seizures of movable property, and various restrictions on trade and financial exchanges. Details on these various practices are contained in the reports of the Committee to the General Assembly and the publications of the Division for Palestinian Rights, and can be provided if required. The reports of the Special Committee on Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories also contain detailed relevant information.

UNITED NATIONS CENTRE FOR HUMAN SETTLEMENTS (HABITAT)

[Original: English]

[21 June 1990]

1. The activities of UNCHS (Habitat) in relation to the right to own property are shaped by the Global Strategy for Shelter to the Year 2000. The General Assembly in its resolution 43/181 of 20 December 1988 on the Global Strategy for Shelter to the Year 2000 decided that "the main objective of the Strategy is to facilitate adequate shelter for all by the year 2000". The same resolution, as one of the principles which form the basis of the strategy, recommends adoption of "enabling policies, whereby the full potential and resources of all governmental and non-governmental actors in the field of human settlements are utilized". Within the context of the Global Strategy for Shelter, the ownership of land by individuals and families is one of the means of securing land tenure. The ownership of shelter is also seen as a means of increasing productivity in the housing sector mostly by providing incentives for individuals to buy or develop shelter on their own.

2. The right to personal property, including the residence of one's self and family has also been implicitly recognized by the Commission on Human Rights resolution 1987/22 of 10 March 1987 on the realization of the right to adequate housing adopted on the occasion of the International Year of Shelter for the Homeless.

3. The technical co-operation projects of UNCHS in many developing countries contains elements relating to enabling policies to promote ownership of land and shelter by individuals and families.

ECONOMIC AND SOCIAL COMMISSION FOR WESTERN ASIA

[Original: English]

[26 July 1990]

1. The social development programme at ESCWA deals with the development of various disadvantaged groups. The "Conference on capabilities and needs of disabled persons in the ESCWA region", which took place in Amman from 20 to 28 November 1989, recognized that the prolonged armed conflicts such as the Iraqi-Iranian war, the Lebanese conflict, the repeated Arab-Israeli wars and the Israeli practices towards the intifadah in the occupied territories added to the gravity of the disability problem in the ESCWA region. The studies contained in the background papers were carried out under specific political and social conditions in the region and include statistics regarding age distribution of the victims of armed conflicts and the available rehabilitation programmes for various categories of disabled children in the countries in question.

2. ESCWA also contributed to a seminar on prospects for the Palestinian industrial sector, which took place at UNIDO in Vienna from 11 to 13 October 1989, by presenting a paper on "The occupied Palestinian territories: industrial development policies, constraints and prospects".

3. In addition, the Commission is preparing, on the instructions of the Secretary-General, a report entitled "Israeli land and water policies and practices in the occupied Palestinian and other Arab territories".

IV. INFORMATION RECEIVED FROM SPECIALIZED AGENCIES

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

[Original: English]

[25 May 1990]

1. The right to own property is a fundamental element of all democracies and an intrinsic part of human rights. The right affects the social and economic development of Member States as a whole and, therefore, it also affects the

welfare, quality of life, health and nutrition of populations. In view of its importance, this question has been treated recurrently in philosophical, political and economic treatises, tracts and pamphlets since the beginning of civilization to the present day. In fact, the perception which has worked as the driving force of political and economic reforms in the until now centrally planned economies has been reflected in these two resolutions and particularly in paragraph 5 of resolution 43/123.

2. The right to own property alone as well as in association with others to enhance the exercise of human rights and fundamental freedom and the respect for the rights of others in meeting the just requirements of the general welfare in a democratic society has been recognized by the World Conference on Agrarian Reform and Rural Development (WCARRD), held in Rome in 1979. The WCARRD demanded that where systems of ownership and use of land and access to water and other natural productive resources "are judged to be constraints on rural development, achievement of social equity, and wide access to land and other natural resources for the vast majority of rural masses, Governments should consider institutional, legal and policy changes within the context of their national and rural development goals ..." (WCARRD Declaration of Principles, p. 9).

3. If the right to private property is considered as among the incentives to produce food and as a determinant of access to food by means of asset ownership, its relationship to food security - which is central to the mandate of FAO - would be apparent. In fact, FAO's World Food Security Compact carries exhortations to Governments and individuals which would imply the need for government policies which grant to farmers the right to own property as an incentive to grow more food (see III.3, p. 3). The provisions on action by individuals (V.4, p. 8) go further and make the farmer responsible not only for food production but also for the conservation of the soil and other natural resources for future generations. These are obligations which go even beyond the right to own private property.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

[Original: French/English]

[11 September 1990]

1. In 1989, within the framework of the programmes of the "United Nations Task Force on Implementation of Nairobi Forward-looking Strategies toward the Year 2000 for Rural Women", United Nations Educational, Scientific and Cultural Organization carried out research on rural women's land ownership in Africa. The study compared legislations and practices of different periods in African history. Field research in Cameroon, for example, revealed that women were excluded from land ownership even after the introduction of a Western-type civil code, due to the coexistence of traditional land tenure and modern institutions.

2. UNESCO carried out research on the causes of the exclusion of women from land ownership in Cameroon. This case study makes it possible to arrive at a better understanding of the mechanisms of exclusion and the grounds for them.

3. This study appeared to be necessary, since virtually all the land farmed is owned by men. The participation of women in the production of agricultural resources ranges from 40 per cent to 80 per cent throughout the world, varying by region and by degree of mechanization. Why are the main workers of the land excluded from land ownership? Our research focused on the links between social structures, in terms of sex, tasks and the land rights of women in various cultures in general, and in the Bamileke and Beti population groups in Cameroon in particular. Our theories on the exclusion of women from land ownership are based on the study of different types of tenure resulting from the combination of different variables, including: acquisition and defence of territory, social structures and status of individuals, matrimonial mobility of women, population density, collective or individual access to land, production and management of resources by sex, and inheritance of property.

4. Since the restraints of child-bearing forced them to become the first human beings to adopt a sedentary way of life, women were evidently mainly concerned with food-gathering as a means of survival. Much later, climatic changes and dwindling resources apparently ended the nomadic life of men as hunters, after rivalry between them had caused the land to be distributed among different communities. To conquer and defend fertile land, to carry off women and then protect them against rivals, were roles which made men dominant in the emerging social structures. Exogamy excluded girls and instituted a male line of inheritance.

5. In order to justify the male monopoly on land ownership, various pretexts are resorted to, inculcated and spread throughout the community. An appeal is made to logic, to moral, to philosophical and religious systems, and to beliefs, customs, rules and laws. For example, several myths about the origin of the world associate women with or liken them to the earth, as producers or reproducers, under the control of the man.

6. Research into traditional African forms of land tenure has established that land, sometimes considered to be divine, was a sacred community possession, one that was inalienable and managed by the elders of the tribes. Men, women and children, in accordance with certain rules, enjoyed the usufruct, or access to all the resources of this source of life which lends itself, but does not submit, to mankind. Among the Bamileke, a highly hierarchical society on the high plateaus in western Cameroon, the chief, the notables and the married men managed the plots of land according to the needs of the families, while a single heir was responsible for taking care of the descendants. The particular status of the Mah-foh (queen mother) gave her certain prerogatives, including land-owning rights similar to those of the notables. For the Beti clans, which for a long time were semi-nomadic in the vast forest in the south, the land did not become a valued asset until the colonial era, but was shared only among male heirs.

7. The colonial administration introduced radical changes: the land was no longer sacred; it became the object of commercial transactions, and was divided up and registered as individual private property. Western ideas of land ownership, the notions of usus and abusus were transferred to societies that were still at the stage of community usufruct. The colonial settlers misinterpreted what was said to them by local spokesmen, and mistook for owners those who were merely

administrators of the land. Thus, under the Napoleonic civil code women lost their tacit rights as joint usufructuaries of the land and became dependents of the head of the family. When it took over the existing social and traditional structures, the administration superimposed its own modern and uniform system of land-ownership on a varied set of local agrarian customs.

8. With independence, the new States retained the imported land-ownership legislation while also making use of pseudo-traditional types of tenure which dropped the idea of community usufruct (which was fair to women) and made men the sole owners.

9. In Cameroon, traditional and modern types of land tenure exist side by side, despite their paradoxical and sometimes contradictory nature. Under the Act of 7 July 1966, "Any member of a community may have his right to ownership recognized in the case of areas of land actually occupied, in accordance with custom, by himself or his legal heirs or assigns". But does this return to custom really enable "positive law" to take precedence over custom in the application of this provision? Nowadays, rules of custom applied in the lower courts do not grant women any right to land ownership: women have no place in the lineage of their fathers and husbands. The higher courts apply modern law and guarantee equal rights without distinction as to sex; but women still need to be aware of this and to have good lawyers. Women's undeniable contribution to development is not given its due, but it would be encouraged by land ownership-rights which appeared fairer to women. Certain international organizations are, in fact, recommending such a solution. But there is still a long way to go, when one considers that French law still has difficulty in overcoming the rule of primogeniture in the south-west and the egalitarianism which in the north, often excludes daughters.

10. Land rights are conditioned by social structures which are hierarchical to varying degrees, and always discriminatory with regard to sex. Various reasons are given to justify this situation: beliefs and customs of traditional societies, the colonialists' egalitarianism and duty to civilize their colonies, and modernization and development needs of the inheritors and liberators, namely the newly-independent States themselves. There is a proposal to the effect that land, a vital resource, should be considered the common heritage of all humanity, and should therefore be managed equally by both men and women. In practice, the law does not resolve the problem of the exclusion of women. What strategies, what structures and what means could we devise to enable women to participate in the management of the land?
