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UNITED STATES OF AMERICA

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I. Influence of United Nations instruments containing principles and norms for the recognition, protection and promotion of civil and political rights, and, in particular, measures adopted to implement such instruments

The United States has, since the founding of the UN, been a leader in the drafting of principles and norms for the promotion of human rights worldwide.

Guarantees and coverage as broad as or broader than the typical UN human rights instruments are provided in the Constitutions of the United States and of the states of the United States, together with implementing U.S. legislation and administrative procedures. Like the United Nations system, the United States Constitution is never static. It is a complex, living, growing organism. The last few decades have witnessed a great growth of federal and state civil rights legislation plus numerous relevant court decisions. In the sections which follow, reference is made to domestic measures adopted in 1971-77 which are relevant to the provisions of the particular UN questionnaire to which this is responding.

II. Significant developments with regard to the recognition, protection and promotion of civil and political rights during the period from 1 July 1971 to 30 June 1977:

A. Inviolability of the Person

1. Right to Life:

The right to life is inherent. It is specifically protected in the United States Constitution by Amendment V which is set forth in full here and will be referred to as appropriate:

Amendment V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the

> militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

In the period 1971-77, the principal issues of "right to life" came to the Supreme Court in two different forms.

(a) The death penalty: In the United States, parts of federal criminal law and the criminal statutes of most states have provided for the possibility of the imposition of the death penalty for conviction of certain heinous crimes. Because of questions of evenhandedness of imposition of this penalty, in fact executions were stayed after convictions for many years. Finally, the Supreme Court in Furman v. Georgia, 408 U.S. 238 (1972), held that the death penalty, as carried out in the states in question, had often disproportionately involved minorities and had, for other reasons as well, been unequally applied. As then administered, the imposition of capital punishment was found to be violative of the Eighth Amendment prohibition against cruel and unusual punishment (see infra Section A (3)). The Court did not, however, rule that the death penalty as such constituted an impermissible punishment, although two Justices made that argument. The lack of evenhandedness in application of the punishment was the crucial factor. Within a few years, the bulk of the states rewrote their statutes in an effort to assure constitutionality. In 1972-1976, 35 states and the Federal Government made revisions in their penal codes. Then, in the 1975-76 term, the Supreme Court upheld the death penalty for murderers if imposed pursuant to specified procedural safeguards. See Gregg v. Georgia, 428 U.S. 153 (1976). Many aspects of the state statutes still remain to be tested in the courts (and see infra Section A (3)).

(b) Abortion: In the United States, intentional abortion had been made criminal at the state level unless the abortion was essential to preserve the life or physical well-being of the mother. These laws came under increasing attack as unfair to women. Based on the general spirit of

the Constitution, emanations from several clauses in the Constitution, and a woman's right to privacy and control of her own body, the Court, in Roe v. Wade, 410 U.S. 113 (1973), struck down state anti-abortion statutes, giving the woman sole choice in the first trimester of pregnancy and permitting regulation by the state in the second trimester, in the words of the opinion, "in ways that are reasonably related to maternal health." In the third trimester, rights of fetus could be legislated on as well (see also Doe v. Bolton, 410 U.S. 179 (1973--State of Georgia)). Attacks on the decision by those who argue that meaningful life begins at conception have focused on a proposed constitutional amendment, but the decision remains the law of the land. Indeed, in further freeing the woman's choice in matters of abortion, the Court, in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), struck down state restrictions which required parental (for a minor) or spousal agreement to the procedure. The Court did also, however, suggest a possible future retreat from Roe v. Wade in suggesting that a state could regulate abortions at any stage where an independently viable life could be sustained, though not where the mother's life was in question (Doe v. Bolton, 410 U.S. 179 (1973)).

2. Right to liberty and security of person; freedom from arbitrary arrest, detention or exile:

The U.S. Constitution, in addition to Amendment V, cited under A.1. above, provides in Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The Fourth Amendment (see A.5. below) guarantees against unreasonable searches and seizures of the person and his house as well. Searches must be on probable cause with a judicial warrant obtained in advance in all usual

cases; in general, evidence seized in violation of these rules is inadmissible in criminal proceedings (see, e.g., the earlier case of Davis v. Mississippi, 394 U.S. 721).

3. Freedom from torture or cruel, inhuman or degrading treatment or punishment:

The Constitution provides in Amendment VIII that:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

As noted, attacks on the death penalty have in part been based on the idea that it is inherently a cruel and unusual punishment. While the Court has held that it was not per se such a punishment, as noted in Section A.1. above, the practice in the United States into the early 1970s lacked evenhandedness. As applied, it was found to be unconstitutional. In a recent case, it was also held that the assessment of the death penalty in a rape case was a "grossly disproportionate and excessive punishment." (Coker v. Georgia, 433 U.S. 584 (1977)). The Court did not rule that all crimes other than certain homicides could not be punished by death, but the case does suggest that only a very limited number of crimes may qualify.

It should also be pointed out that U.S. practice uniformly prohibits torture; those guilty may be prosecuted by the state and sued for damages by their victims. Confessions so obtained may not be used in court proceedings.

4. Freedom from slavery, the slave trade, servitude and forced or compulsory labour:

The post-Civil War amendments to the United States Constitution (XIII, XIV, XV) prohibit slavery (and much more). The slave trade was outlawed for the United States in the early 19th century. (Importation of slaves after 1808 was forbidden by the Constitution.) In the United States, penal sentences for the commission of felonies normally place the convict in a penal institution where labor is required but, within the meaning of this report, the civil and political rights of persons within the United States are fully recognized with respect to the avoidance of slavery, the slave trade, servitude and forced or compulsory labor.

U.S. Constitutional Amendment XIII (December 18, 1865) expressly states that:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

5. Freedom from arbitrary interference with one's privacy, family, home, correspondence and from attacks upon one's honor and reputation:

In the United States, attacks upon one's "honour and reputation" are normally remedied through a civil suit by the aggrieved party. The right of privacy has been a protected right for nearly a century. The right to non-interference with the home is protected by the Fourth Amendment to the United States Constitution which provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Privacy and related problems have come up in the context of conflict with the free press (under Amendment I, see infra) and with respect to the family. The rights provided in the Fourth Amendment are taken seriously, even in domestic security cases. For example, the Supreme Court has held that the Fourth Amendment's protection against unreasonable searches and seizures required some form of judicial authorization before the government could use wiretaps or forms of electronic surveillance (United States v. United States District Court for the Eastern District of Michigan, 407 U.S. 297 (1972)). And the Court, in Moore v. City of East Cleveland, Ohio, 431 U.S. 494 (1977), pointed out that matters relating to family life have a strong due process shield, piercible only by a very important government interest. In 1974, the Privacy Act of 1974 (PL 93-579, 88 Stat. 1896, December 31, 1974), a major piece of legislation, was enacted both to help safeguard the rights of the individual to privacy against misuse of Federal Government records and to grant individuals access to public files about themselves and to certain other records.

B. Protection of the Law

1. Right to recognition as a person before the law:

All humans and such legal entities as corporations are recognized as "persons" in the law of the United States (see also Amendment XIV, printed under B.2. below). One issue under the definition of "person" is noted under A.1. above: the Supreme Court has held that fetuses, at least within the first three months of a pregnancy, are not "persons" protected by the Fourteenth Amendment.

2. Equality before the law and equal protection of the law without any discrimination:

The Fourteenth Amendment provides, inter alia, that:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The report of the United States submitted to the United Nations in 1972 (E/CN.4/1098/Add. 15) noted the important strides made in the United States in the search for equality in education, housing, employment, health and public accommodations. Federal Government efforts have continued to seek, wherever possible, to eliminate legally barred discriminations based on race, color, sex, religion, national origin or particular status (e.g., illegitimacy).

Equal Opportunity:

Among the legislative actions taken in this period are those to: "provide equality of treatment for married women Federal employees with respect to preference eligible employment benefits, cost-of-living allowances in foreign areas, and regulations concerning marital status generally, and for other purposes." Public Law 92-187; 85 Stat. 644 (December 15, 1971).

In 1972, Congress adopted the Equal Employment Opportunity Act (Public Law 92-261; 86 Stat. 103), which amended the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C.

2000) to extend the scope of the Act's coverage and to strengthen the Civil Rights Commission. In the same term, Congress authorized funds for special assistance in higher education for those from low-income and otherwise deprived families and sought to enforce greater racial balance and opportunity in schools through granting and denial of assistance (Public Law 92-318; 86 Stat. 235, June 23, 1972). The Comprehensive Employment and Training Act of 1973 (PL 93-203, 87 Stat. 839, December 28, 1973) provided funds for programs for the unemployed and the underemployed. The Rehabilitation Act of 1973 (PL 93-112, 87 Stat. 355, September 26, 1973) provided for non-discrimination against the handicapped in any program using Federal funds. The handicapped had already been given certain protection in The Education of the Handicapped Act of 1970 (PL 91-230, 91st Congress, 2nd Session, 1970). The Act was extended in 1977 (PL 95-49, 91 Stat. 230, June 17, 1977) and by Executive Order 11914 of April 28, 1976 (41 F.R. 17871) on non-discrimination against handicapped persons in any program receiving Federal assistance.

Discrimination on any illicit basis--race, color, religion, national origin, age--were the targets of such legislation as the Fair Labor Standards Amendments of 1974 (PL 93-259, 88 Stat. 55, April 8, 1974) which sought to avoid discrimination on age and other bases and to further limit the use of child labor; the State and Local Fiscal Assistance (Revenue Sharing) Act of 1976 (PL 94-488, 94th Congress, 2nd Session, October 13, 1976) which denied Federal funds to any subsidiary unit which discriminated on any of these bases, and the Equal Credit Opportunity Act Amendments of 1976 (PL 94-239, 90 Stat. 251) which amended Title VII of the Consumer Credit Protection Act to include a bar on discrimination on all of these bases as well.

Sex Discrimination:

Special attention was given to the prevention and elimination of discrimination against women by such Federal actions as sections of the Energy Reorganization Act of 1974 (PL 93-438, 88 Stat. 1233, October 11, 1974) which expressly bars sex discrimination in carrying out the Act, the Equal Credit Opportunity Act part of the Depository Institutions-Insurance Act of 1974 (PL 93-495, 88 Stat. 1500, October 28, 1974) which barred discrimination based on sex or marital status in credit transactions, the

the Naval Sea Cadet Corps-Sex Discrimination Act (PL 93-504, 88 Stat. 1575, November 26, 1974) which opened the Corps to females; and, the Little League Baseball Sex Discrimination Act (PL 93-551, 88 Stat. 1744, December 26, 1974) which struck "boys" and "manhood" from the Act and opened Little League to girls. Executive Order 11832 of January 13, 1975 (40 F.R. 2415) established a National Commission on the Observance of International Women's Year--1975; the Trade Act of 1974 (PL 93-618, 88 Stat. 1978, January 3, 1975) introduced human rights concerns, including requiring non-discrimination of aid-receiving parties, into the aid-granting activity of the United States. Reasonably good human rights performance was to be sought from countries recipient of such assistance, so far as was possible.

During this period some of the more important Federal level court decisions came in the area of sex discrimination. For example, in Reed v. Reed, 404 U.S. 71 (1971), a state statute automatically preferring males over females of equal degree in selecting administrators for intestate estates, was barred by the equal protection clause. States have been held to have the right to forbid newspapers to carry sex-designated "ads" for "help wanted," Pittsburgh Press Co. v. Pittsburgh Human Relations Commission, 413 U.S. 376 (1973). Equal treatment for dependents of women and men serving in the Armed Forces was assured in Frontiero v. Richardson, 414 U.S. 677 (1973), and local regulations arbitrarily requiring pregnant females to take leaves a fixed number of months before term and to remain on leave for a fixed number of months after delivery were struck down in Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974).

The Court has also held that a woman's right to serve as a juror cannot be conditioned on her filing a written application requesting service when no application is required of males (Taylor v. Louisiana, 419 U.S. 522 (1975)); statutes may not require support for male children for longer periods than for females (Stanton v. Stanton, 421 U.S. 7 (1975)). In another decision the Court held that benefits paid under Social Security based on the earnings of a deceased spouse must be paid both to widows and widowers (Weinberger v. Wiesenfeld, 420 U.S. 636 (1975)), and widows and widowers were also held entitled to equal treatment in Califano v. Goldfarb, 430 U.S. 199 (1977). Moreover, where opportunities for promotion are fewer, the Court held that women may be constitutionally judged by a

more lenient standard than men (Schlesinger v. Ballard, 419 U.S. 498 (1975)). This form of "benign" discrimination, favoring those long economically disadvantaged in an effort to induce de facto equality was also approved in Califano v. Webster (430 U.S. 313 (1977)). Such discrimination survives the test of equal protection, however, only where it is substantially related to the achievement of important government objectives. In a number of cases, males, too, have been demanding equal treatment, such as the right of the father of an illegitimate child to be heard where the mother seeks to place it for adoption.

In one interesting instance where the Supreme Court found that certain activities were not impermissibly sex-biased, the Congress subsequently enacted remedial legislation in response to political dissatisfaction with the Court's decision. In this case (General Electric Co. v. Gilbert, 429 U.S. 125(1976)), an employer's medical benefits plan was not prohibited from excluding from coverage the "disability" of pregnancy. This legislative response occurred after the period covered by this report; it is mentioned here because it is a good example of "checks and balances" in the United States system. It is also evidence of the dynamic state of the U.S. law and legislation on discrimination.

Religion:

While numerous cases have dealt with separation of church and state, only a few have developed where interference with religious beliefs was alleged. In one, a relatively extreme and limited case, the Supreme Court held that the free exercise of religion clause permitted a small Amish community to keep their children out of school after the eighth grade even though no other formal education was provided, contrary to state law. The Amish argued successfully that the "worldly success" taught in public schools violated their religious precepts (Wisconsin v. Yoder, 406 U.S. 205 (1972)).

Age:

Age discrimination was dealt with in the Older American Amendments of 1975 (Age Discrimination Act of 1975) (PL 94-135, 89 Stat. 713), which barred discrimination based only on advanced age.

Race:

In this period, the Executive and the lower federal courts have continued to be active in following up on school and facility desegregation matters and, where necessary, in assuring fair voting arrangements. Only a relatively few cases on these matters have reached the Supreme Court in this period.

The Court has authorized the award of retroactive seniority status to black applicants who had unlawfully been denied employment (Franks v. Bowman Transportation Co., 424 U.S. 747 (1976)). It has also denied private schools the right to refuse to admit children on account of race (Runyon v. McCrary, 427 U.S. 160 (1976)).

In this period, the Court has also upheld the constitutionality of a Federal law which authorizes federal courts to award monetary damages and attorneys' fees in suits brought by state employees against a state where the object of the suit is to redress discrimination in emplov-ment based on race, color, religion, sex, or national origin (Fitzpatrick v. Bitzer, 427 U.S. 445 (1976)).

Illegitimate Children:

In this period, the claims and rights of illegitimate children have received far more attention than in past decades, with a strong movement towards legal equality now evident.

An unwed father can no longer be denied custody of his child without a hearing to determine his fitness (for example, Stanley v. Illinois, 405 U.S. 645 (1972)--until then, state law had conclusively presumed the fathersunfit and hence denied them due process of law). Nor can a state program of workman's compensation give lesser benefits to an illegitimate child than to others (Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972)).

A New Jersey statute discriminating in welfare payments to families with illegitimate children, in an illegal effort to cut down on such births, was struck down by the Court in New Jersey Welfare Rights Organizations v. Cahill, 411 U.S. 619 (1973).

A Texas law denying the right of illegitimates to support from their fathers while requiring support for

legitimates failed under the Equal Protection Clause (Gomez v. Perez, 409 U.S. 535 (1973)--State of Texas).

Thus, the status of illegitimate children in the United States has broadly improved in 1971-1977. The Supreme Court has struck down most discriminations against them with regard to state laws dealing with inheritance and support. See also, e.g., Jiminez v. Weinberger, 417 U.S. 628 (1974) (and compare Levy v. Louisiana, 391 U.S. 68 (1968)). See also Trimble v. Gordon, 430 U.S. 762 (1977), providing for equality of inheritance on intestate succession. Some discriminations persist, e.g., as in certain Social Security classifications for seeking benefits (Matthews v. Lucas, 427 U.S. 495 (1975)), but the status has improved dramatically.

Aliens:

While the category "aliens" is often omitted when considering human rights, the large number of aliens within the United States, both legally and illegally, requires some notice. All aliens have the full protection of criminal and civil laws. Moreover, lawfully admitted aliens are afforded economic protections; in some circumstances, for example, aliens cannot be barred from seeking and holding certain jobs. Finally, the Supreme Court has labeled laws seeming to discriminate against these aliens as "suspect" and has overturned state law and policy forbidding resident aliens to enter the Civil Service (Sugarman v. Dougall, 413 U.S. 634 (1973)--State of New York) or to practice law (in re Griffiths, 413 U.S. 717 (1973)--State of Connecticut).

3. Right to an effective remedy for acts violating the fundamental rights granted by the Constitution or law:

The courts of the United States and of the states are available to any person, individually or as representatives of an allegedly deprived class, where acts violative of rights are involved. In addition to the availability of the courts, they are required to function in accordance with procedural safeguards for the security of the individual. For example, evidence illegally seized may generally not be

used in a criminal proceeding. Illegally obtained confessions may not be used in criminal proceedings. The writ of habeas corpus requires authorities to produce before a court any person alleging that he or she is being detained illegally by authorities for a determination of the facts. This right may only be suspended "when in cases of rebellion or invasion the public safety may require it." (U.S. Constitution, Article I, S.9); etc. Such writs and similar rights to resort to courts are illustrated, for example, in O'Connor v. Donaldson (422 U.S. 563 (1975)) where the Court held that a non-dangerous, mentally ill person could not be confined by a public entity merely for custodial purposes, but only for treatment.

Access to full use of legal remedies being very costly, the importance of court and legislative decisions as to the financing of legal services for those individuals and groups which could otherwise not afford them has become another recurrent issue in civil rights cases and in environmental and other "public interest" cases. For example, in Alyeska Pipeline Service Co. v. The Wilderness Society (421 U.S. 240 (1975)), the Court acted to limit the ability of lawyers to receive an award of fees in cases seeking to enforce rights purportedly advancing the public interest, without a prior Congressional authorization. Subsequently, the Congress replied with legislation expanding its authorization in such cases. See Civil Rights Attorneys Fees Awards Act of 1976 (PL 94-559, 90 Stat. 2641, October 19, 1976). In general under the U.S. civil rights laws, lawyers are entitled to recover attorney's fees from employers, for example, in addition to the money damages they win for their clients. Conflict over how those fees should be set remains unresolved and is currently in the courts. (See Wall Street Journal "Labor Letter," January 9, 1979, p.1)

4. Presumption of innocence, right to a fair and public hearing by an independent and impartial tribunal; guarantees for defence:

The subjects are covered, inter alia, by the U.S. Constitution in the Fifth and Sixth Amendments, in particular, which are reprinted in full above in Parts A.1. and A.2. In all criminal cases, the defendant is presumed innocent and his guilt must be proven "beyond a reasonable doubt." A speedy trial is also required.

The Speedy Trial Act of 1974 (PL 93-619, Stat. 2076, January 3, 1974) requires the earliest possible arraignment for crime and a trial, again with all reasonable speed. If this does not occur, charges against an accused must be dropped. It was also held during this period by the Supreme Court that the right to a speedy trial does not cover pre-indictment delays; statutes of limitation were felt to be a sufficient assurance against prejudice to the rights of a prospective defendant.

Right to Counsel:

In 1971, the right to counsel was extended to require the provision of counsel in any case in which the defendant might be imprisoned if the defendant could not provide his own attorney. (Argersinger v. Hamlin, 407 U.S. 25 (1972)). Previously, the right had been limited to cases with a possible imprisonment of 6 months or longer. In 1972, the right to counsel even in misdemeanor trials was made retroactive. (Berry v. City of Cincinatti, Ohio, 414 U.S. 29 (1973)). In a related matter, in all felonies a right to trial by jury is extended by the Constitution as noted, and in this period, the right to jury trial was extended by the Supreme Court even to contempt proceedings where a sentence of six months or more might be imposed. Codispoti v. Penn., 418 U.S. 506 (1974).

The right to a public hearing prior to suspension from school was also affirmed in Goss v. Lopez, 419 U.S. 565 (1975), where it was said that the suspension involved the deprivation of a property right and of liberty under the concept of due process and that there is a right to maintain one's good name, honor and integrity free from governmental attack.

Prisoners:

In the 1970s, the Supreme Court added to the protection of those in prison in several decisions. For example, the Court held that censorship of prisoner mail was permissible only if it furthered a substantial government interest and was not unduly broad (Procunier v. Martinez, 416 U.S. 396 (1974)). In addition, it was held that an individual charged in disciplinary proceedings had a right to notice, to be heard, and to call witnesses (Wolff v. McDonnell, 418 U.S. 539 (1974)). In that case it was also held that prisoners had to be afforded a reasonable

opportunity to prepare habeas corpus and civil rights suits (ibid.). Moreover, by administrative action, starting July 1, 1976, reporters were given the right to interview all Federal prison inmates (Department of Justice, Federal Prison System, Policy Statement No. 1220.1B (7/1/76). Thus one important "open-system" strategy for limiting acts of oppression was applied to the Federal prison system.

Civil Trials:

The right to trial in civil cases generally is enforced by the Seventh Amendment (though less than a twelve person jury may be acceptable--Colgrove v. Battin, 413 U.S. 149 (1973)) and even tenants in a peremptory eviction suit were held to have the right to trial by jury in Pernell v. Southall Realty (416 U.S. 363 (1974)).

5. Non-retroactivity of criminal law:

The U.S. Constitution prohibits the Congress from making any "Bill of Attainder or ex post facto law..." (U.S. Constitution, Article I, S.9). The states are also so prohibited. There was no important practice under this well established principle in this period.

C. Freedom of Movement

1. Freedom to travel; freedom to choose a residence:

Persons are free to choose and change residences at will in the United States. Domestic travel is particularly protected from interference by Article IV of the Constitution which gives "The citizens of each state...all privileges and immunities of citizens in the several states" and by the Fourteenth Amendment, already noted, and by Court decisions prohibiting states from placing barriers on interstate travel. On occasion, the Department of State has declined to issue passports valid for travel in one or more specified countries which were deemed unsafe or inaccessible to U.S. national protection or assistance to U.S. persons traveling there. Court decisions have restricted even this right of the Executive. The present Administration has removed all travel control restrictions on the granting of passports.

2. Right to leave any country and to return to one's country:

Subject to certain restrictions noted above, and to the requisites for maintaining citizenship for certain classes of U.S. citizens living abroad, U.S. persons are free to leave at any time and to return at any time.

3. Right to seek and to enjoy asylum from persecution:

Given its history as a haven for migrants fleeing both persecution and deprivation from other countries, the U.S. tradition calls for the admission of victims of persecution. Even after "the closing of the frontier" in the 1890s was accompanied by a more controlled open frontier, the U.S. has consistently offered asylum to numerous refugees from persecution and currently participates importantly in UN and other multilateral efforts to sustain and resettle refugees.

D. Personal Status

1. Right to a nationality:

The Constitution confers citizenship automatically on all persons born within the United States, and subject to its jurisdiction. Congress has also granted nationality at birth to classes of persons born abroad to U.S. citizens and nationals and has established a system for naturalization of persons holding other nationalities. By statute and court decisions (from various periods prior to the period 1971-1977) a U.S. citizen or national can effectively lose U.S. nationality only by the effective acquisition of another nationality or the assertion of some "other" nationality if the individual has dual nationality. U.S. citizens retain a largely unrestrictive right of expatriation in all normal circumstances.

2. Right to marry and found a family; equal rights of spouses as to marriage and at its dissolution:

Rights of marriage, annulment and divorce in the United States are generally held to be matters within the powers of the states. The right to marry is, generally, limited in state law only by minimum age, ability to comprehend the legal act, the lack of an existing spouse, freedom from certain diseases and by certain degrees of consanguinity.

Within the marriage relationship, statutes and decisions have moved a very long way from the Common Law's

view that husband and wife were one, and he was the one. For some time, married women have been able to contract, own property, make wills. Over this past decade, many states have further modified their family law, in part in response to greatly changing de facto intrafamily relationships. In addition, divorce has generally been made easier to obtain. Either party may move for a divorce or annulment of the marriage.

Complaints of new inequities have arisen concerning a new group of disadvantaged individuals comprised mostly of mature females, who through widowhood, divorce or desertion have become "displaced homemakers." In general, such inequities as continue to exist derive largely from state laws, especially those which deal with the terms of the dissolution of marriage. Insofar as the new family law codes have tended to facilitate dissolution, but to retain traditional approaches to the calculation of and division of the assets of marriage, they may have contributed to the growth of this group.

In the case of spouses who both worked in the market, these traditions have failed to recognize or to compensate for the de facto greater home burdens and for the more limited career opportunities of married females, whose careers are rarely equally as remunerative as those of their husbands. The typically limited career opportunities awaiting the mature homemaker reentering the market in middle years for the first time, has also been disproportionately borne by the "displaced homemaker" group on dissolution of the marriage.

The net effects of all these social traditions and de facto economic constraints has been to disproportionately disadvantage the partner who assumed the primary burdens of producing non-paid services during the marriage (in the "non-market sector," the home). Following California's lead in 1975, 13 other states enacted legislation during 1976-1977, which authorized the establishment of centers to provide services specifically geared to the needs of displaced homemarkers--job counseling and placement, financial management, health, education, and legal referral.

There is some evidence of increased special consideration in court decisions for the needs of these

spouses. For example, in some cases they have been provided with special transitional financial support from their former spouses for re-education or retraining. The relevant practice, in general, was in the process of changing in the period reviewed, in response to changed social conditions. This is another contemporary example of the political dynamics in the United States by which negatively affected groups press their human rights claims legally and/or politically, as proves necessary.

In any case, United States courts are empowered, generally, to divide property and to award support to dependent spouses and children. Collection of the ordered support remains a problem in the federal United States which is only now beginning to focus attention on the question of enforcing such decrees. It can be expected that Equal Rights Amendments, now in force in several states will further formally equalize marriage relationships both during the duration of the marriage and in its dissolution. A federal Equal Rights Amendment to the Constitution lacks the acceptance of only three states to become the law of the land.

In the dissolution of a marriage, children are protected by the court. (Reportedly, in 90% of the cases in the United States, these matters are settled by agreement of the spouses.) In case of dispute, however, children now tend to be placed by the court, solely on the basis of "the best interests of the child." The courts have moved away from both the earlier generally followed conventional norms. The common law norms gave children to the father. The later "child of tender years" doctrine automatically placed young children with the mother and older children with the father in case of a dispute.

3. Protection of the family by society and the State; protection of the child:

In the United States federal system, family matters including protection of the child are normally within the purview of the states, not the Federal Government. State laws provide for compulsory support of children and spouses, but only infrequently for support of parents by children. Children may be removed by state action from homes in which they are battered or seriously mistreated by one or both parents.

At the federal level, large scale financial support is offered through federal and local anti-poverty, educational, health and other welfare programs. These tend to be designed to assure some comparability of at least the minimum standards such programs will satisfy within the many different jurisdictions affected.

The rights of children to parental financial support were enhanced by the Social Services Amendments of 1974 (PL 93-647, 88 Stat. 2337, January 4, 1975) which made grants to the states to assist children in need and also made provision for use of federal arrangements (e.g., Social Security) for enforcing child support obligations against a delinquent parent across state lines.

4. Right to own property:

The right to own property is possessed by all persons, natural and artificial, in the United States. Property can only be taken for governmental purposes on a showing of appropriate necessity and by payment of a just compensation (U.S. Constitution, Amendment V). State laws limiting ownership or use of property on the basis of race, ineligibility to citizenship, sex, etc., had either been changed or struck down by the courts well before the period being surveyed here.

E. Freedom of thought and expression; freedom of assembly and association:

1. Right to freedom of thought, conscience and religion:

The First Amendment to the Constitution of the United States offers protection from government interference with all the rights covered in Part E. Some of the cases which would fit well under these rubrics have already been noted above, for example, the case concerning certain claimed religious rights of the Amish.

The First Amendment provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

The cases are legion even for the period in question. However, few important cases came to the Supreme Court.

2. Right to freedom of opinion and expression:

For part of this period, the report submitted by the United States in 1975 in response to the call for the status of Freedom of Information offers much detail. Three areas of interest to the courts in this period are obscenity, the freedom of the press, and freedom of information.

Obscenity:

In 1966, the Supreme Court ruled that materials were not obscene if they had some "redeeming social value." Now the test, based on local standards, is whether or not the materials appeal to a "prurient" interest in sex, portray specifically defined sexual conduct in a patently offensive way and lack, as a whole, serious literary, artistic, political, or scientific value. Miller v. California, 413 U.S. 15 (1973). A broad prior restraint against the musical show "Hair" was held improper in Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975), and a broad ordinance barring the showing of films containing nudity at certain drive-in theaters was voided in Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975).

Freedom of the Press:

The Court has ruled favorably to broadcasters and the press in barring pretrial "gag" orders by courts unless very high standards of necessity could be demonstrated. See Nebraska Press Association v. Stuart, 427 U.S. 539 (1976). Freedom of reporting on political and governmental matters has been broadly protected also in such cases as New York Times v. Sullivan, 376 U.S. 254 (1964), and in this period, in, e.g., New York Times v. United States, 403 U.S. 713 (1971); Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94 (1973); Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974); Cox Broadcasting Company v. Cohn, 420 U.S. 469 (1975). Of great interest to the legal profession, too, was the Supreme Court's decision in Bates v. State Bar of Arizona, 433 U.S. 350 (1977), which prohibited a ban on advertising of rates, services, and professional standing, if truthful, by lawyers. In another vein, a right to carry "ads" concerning abortion opportunities was protected under the First Amendment in Bigelow v. Virginia, 421 U.S. 809 (1975).

Freedom of Information:

In 1974, the U.S. Congress vastly increased the ability of citizens to obtain Government records under the Freedom of Information Act of 1966 (see PL 93-502). This Act generally requires all agencies to disclose any "identifiable record," except for nine exempt categories. It narrows the grounds for withholding classified information and investigatory files. It requires that severable non-exempt portions of records containing exempt material be made available. Agencies are permitted to charge fees only equal to the direct cost of search and preparation of a document, and the agencies are to respond to a request, in general, within thirty days (88 Stat. 1561 (1974)). It should be noted that once again this legislation was in large part a response to an earlier Supreme Court decision (in Environmental Protection Agency v. Mink (410 U.S. 73 (1973)) which, it was widely felt, gave broad scope to the Act's national security exemption.

A major piece of legislation in 1976, the Sunshine Act (PL 94-409, 94th Congress, 2nd Session, September 13, 1976) granted the public the"fullest practicable information regarding the decision-making processes of the Federal Government," consonant with the Government's ability to function. It provides for open hearings, disclosures and the like.

3. Right to freedom of peaceful assembly:

This right is expressly protected by the First Amendment to the U.S. Constitution, set forth above. There have been many important Supreme Court cases in United States history under this rubric, but not in the period in question.

4. Right to freedom of association including the right to form and join trade unions:

Once again these rights are also constitutionally guaranteed; freedom to join trade unions is protected by statutes in force long before this period. In several states, there is also a right not to join a trade union.

F. Right to take part in the government of one's country, directly or through freely chosen representatives:

1. The right to vote and be elected in periodic and genuine elections:

Voting in the United States is protected by the Fifteenth, Nineteenth and Twenty-Fourth Amendments. Fifteen provides that: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude," while the Nineteenth adds "sex" to the list and the Twenty-Fourth bars the use of a "poll tax or other tax" as a bar to voting. As reported previously, on July 5, 1971, the Twenty-Sixth Amendment to the Constitution which allows 18-year olds to vote received the requisite number of state ratifications and came into force.

To assure opportunities to vote and to run for office in this period, the Court has held that the imposition of high filing fees, reaching as high as $8,900 on candidates running in primary elections unfairly discriminated against the candidacy of the poor (Bullock v. Carter, 405 U.S. 134 (1972) and Lubin v. Parrish, 415 U.S. 709 (1974)). In another case the Court held that the requirement of a three-month residency for voting in state and local elections was an unconstitutional burden on the right to vote (Dunn v. Blumstein, 405 U.S. 330 (1972)). It was suggested, however, that 30 days might be satisfactory, since some time was needed to create and keep records, etc.

In addition, in 1975, Congress enacted the Overseas Citizens Voting Rights Act of 1975 (PL 94-203, 89 Stat. 1142) which guaranteed the right to vote to citizens overseas and provided uniform procedures to facilitate the process. In addition, an Extension to the Voting Rights Act of 1965 (PL 94-73, 89 Stat. 400) was enacted. This extended the 1965 Act for ten years, made permanent the ban on literacy and similar tests which had earlier been used in several states to perpetuate racial discrimination in voting, extended the Act to language minority areas, and ensured a nationwide, not merely "Southern," application.

The "Federal Election Campaign Act of 1971," aimed at producing fairer campaign practices, sought to limit extravagant use of the media by candidates and thus to assure more equal treatment to all "legally qualified" candidates. Public Law 92-225, 86 Stat. 3 (February 7, 1972), amended (90 Stat. 475).

2. Right of equal access to public service in one's own country:

Bars to denial of equal access in general include prohibition of the denial of equal access to public service on the basis of race, sex, religion, national origin, and previous condition of servitude. These are barred by the Constitution and statutes of the United States and of the states. No cases of importance have been noted for this period.

G. Action with a view to ensuring that the rights and freedom mentioned above are enjoyed by increasing numbers of persons without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status:

In addition to legislation and Executive Orders in this period, reviewed hereafter, it should be noted that the Federal Government attempts to implement the human rights of its citizens through the activities of many Executive agencies. The Civil Rights Division of the Department of Justice conducts investigations and brings suits concerning civil rights.

In the field of employment, the Equal Employment Opportunity Commission and the Departments of Labor and Justice conduct relevant implementation activities in the courts at the agency level. The United States Commission on Civil Rights is an independent Federal level agency which is also very active in conducting studies and investigations, publishing their results and submitting recommendations to the President and Congress in support of equal protection of the law without discrimination. It can and does recommend corrections in the policy or conduct with respect to equal treatment of other governmental units. The Commission reports an excellent record of compliance with its recommendations.

It must also be emphasized that in the American constitutional system individual and non-governmental organization (NGO) action play vital roles in the process of defending the civil and political rights of Americans and of American minority groups, through the aggressive exercise of the rights of speech and assembly. Religious, cultural, trade, minority and other groups take public positions on innumerable issues affecting their own rights

or the rights of others. This includes advocacy and action both in the private sector and in the executive, legislative and judicial sectors of all the levels of U.S. Government: local, state, federal. These activities range from information gathering, analyzing and publicizing to organizing economic sanctions and other forms of pressures, to lobbying, to bringing matters before courts and administrative agencies themselves and/or supporting the actions of others(by supplying legal and other representation to civil rights efforts of individuals and groups across the U.S. political spectrum). The orders, decisions and legislation recorded in this text, with few exceptions, benefitted from the active participation of this class of concerned individuals and non-governmental organizations. They play a truly crucial role in the U.S. civil rights implementation processes.

Furthermore, U.S. individual and non-governmental groups, if anything, predominate in the "free" processes of value creation. They initiate and communicate changes in social values, and in the accepted norms and aspirations and expectations of the American people. They therefore help create the demand for improvements in the status of deprived groups; and they participate importantly in the effectuation processes which follow.

It would be difficult to understand the actual processes of implementation of the civil rights of Americans without taking into account the inter-play of these often competitive private actions in the private sector and in the public fora, on all important civil rights issues.

This serves to explain why an "open" society can count on always generating new human rights problems to resolve. An "open" society with free political institutions which had no human rights problems would be an anomaly. We go further; a nation which claims to have no human rights problems must surely be a "closed" society; and, probably, a tyranny, one whose repressed populations are not permitted to generate new aspirations or to challenge the perquisites of entrenched elites; nor to oppose their decisions.

Ironically, perhaps, closed societies which lack the open societies' information generating capacities and do not enjoy the same degree of freedom to correct imperfect private sector and governmental policies can be expected

to generate fewer human rights pressures domestically and therefore to have fewer problems (or activities of any kind) to report at the international level.

A final caveat. This highlights some of the difficulties a multilateral forum faces in intelligently reviewing the human rights achievements of different societies on the basis of reports which, perforce, tend to focus on the recorded changes in the formal legal or constitutional systems. These, it is clear, may poorly replicate the de facto conditions and achievements of the various societies.

The reductio ad absurdum of such comparisons is perhaps best exemplified by comparisons of the written constitutional guarantees of different nations, without examining the effectiveness of the institutionalized support for assuring that the rights in question are in fact implemented. International reviews are necessary and hopefully will be valuable. It is worth noting their possible sources of bias, as well. This should be a first step to improving the adequacy of the information sought in international reports and to improving the sophistication of the interpretation processes applied to examining the information which is collected.

The following acts have been noted in appropriate sections, but are relisted here in chronological order as an illustration of the large amount of legislative and highest Executive level activity in the United States. In addition, as noted, there is much Federal level activity through regulation (for example, in sex discrimination cases) and court suits and substantial state legislative, executive and judicial activity as well.

Important relevant laws of the United States in this period:

Equality of Treatment for Married Women Federal Employees. PL 92-187, 85 Stat. 644 (December 15, 1971).

Federal Election Campaign Act of 1971. PL 92-225, 86 Stat. 3 (February 7, 1972).

Equal Employment Opportunity Act. PL 92-261, 86 Stat. 103 (1972).

Assistance in Higher Education Act. PL 92-318, 86 Stat. 235 (June 23, 1972).

Rehabilitation Act of 1973, PL 93-112, 87 Stat. 355 (September 26, 1973).

Comprehensive Employment and Training Act of 1973, PL 93-203, 87 Stat. 839 (December 28, 1973).

Privacy Act of 1974. PL 93-579, 88 Stat. 1896 (December 31, 1974).

Speedy Trial Act of 1974. PL 93-619, 88 Stat. 2076 (January 3, 1975).

Social Services Amendments of 1974 (Child Support). PL 93-647, 88 Stat. 2337 (January 4, 1975).

Fair Labor Standards Amendments of 1974 (Discrimination). PL 93-259, 88 Stat. 55 (April 8, 1974).

Energy Reorganization Act of 1974 (Sex Discrimination Section). PL 93-438, 88 Stat. 1233 (October 11, 1974).

Depository Institutions--Insurance (Equal Credit Opportunity Act Section). PL 93-495, 88 Stat. 1500 (October 28, 1974).

Naval Sea Cadet Corps--Sex Discrimination. PL 93-504, 88 Stat. 1575 (November 26, 1974).

Little League Baseball--Sex Discrimination. PL 93-551, 88 Stat. 1744 (December 26, 1974).

(Note: The Trade Act of 1974, PL 93-618, 88 Stat. 1978 (January 3, 1975) contains restrictions on aid, etc., with countries ignoring the human rights of their own populations.)

Voting Rights Act of 1975. PL 94-73, 89 Stat. 400 (1975).

Older American Amendments of 1975 (Age Discrimination Act of 1975). PL 94-135, 89 Stat. 713 (1975).

Overseas Citizens Voting Rights Act of 1975. PL 94-203, 89 Stat. 1142 (1975).

The Government in the Sunshine Act. PL 94-409, (September 13, 1976).

State and Local Fiscal Assistance Act of 1976 (Revenue Sharing). PL 94-488 (October 13, 1976).

Crime Control Act of 1976. PL 94-503 (October 15, 1976).

Equal Credit Opportunity Act Amendments of 1976. PL 94-239, 90 Stat. 251 (1976).

Civil Rights Attorneys Fees Awards Act of 1976. PL 94-559, 90 Stat. 2641 (October 19, 1976).

Federal Election Campaign Act of 1971, Amendments of 1976. PL 94-283 , 90 Stat. 475 (1976).

Education of the Handicapped Act, Amendment. PL 95-49, 91 Stat. 230 (June 17, 1977).

Constitutional Amendments:

26th Amendment (July 5, 1971) guaranteeing the right of 18-year-olds to vote.

Executive Orders:

Coordination Under the Civil Rights Act of 1964. No. 11764, January 23, 1974, 39 Fed. Reg. 2572.

National Commission on the Observance of International Women's Year, 1975. No. 11832, January 13, 1975, 40 Fed. Reg. 2415.

Non-Discrimination Against the Handicapped. No. 11914, April 28, 1976, 41 Fed. Reg. 17871.

Even at the Federal level, much other legislation during this period had had some significant civil and political rights content. This includes, for example, legislation and special support for certain minorities, for example, for the Native Americans, as well as legislation providing special help for the aged and children.

H. Derogations in time of public emergencies which threaten the life of the Nation:

In the two hundred years of experience of the United States, major national crises, including actual or threatened invasion in time of war, have led to occasional interferences with the rights noted above. The period 1971-77 saw no such emergencies.

III. Significant developments concerning the right of self-determination during the period from 1 July 1971 to 30 June 1977

The United States reports annually to the United Nations Trusteeship Council about developments in the Trust Territory of the Pacific Islands (TTPI). A status agreement with TTPI is in process of negotiation. The goal of the agreement looks toward the termination of the Trusteeship by 1981. The United States also provides reports annually on Guam, the Virgin Islands and American Samoa to the General Assembly's Decolonization Committee (popularly known as the Committee of Twenty-Four). The United States also cooperates with the Committee's deliberations. During the period under review the United States Congress gave Guam and the Virgin Islands the authority to draw up their own constitutions. This they have since done. In 1976, for the first time, popular elections for the selection of the Governor, the highest local official, were held in American Samoa.

Final Comment:

This report has catalogued a very small portion of the individual efforts that have gone into the defense of the civil and political rights of the American people in the six years under review.

On December 6, 1978, the 30th anniversary of the Universal Declaration of Human Rights, President Carter pointed up the implied lesson and applied it to the achievement of the broader achievement of the Universal Declaration of Human Rights:

> "As a people, we come from every country and corner of the globe...What unites us--what makes us Americans--is a common belief in the idea of a

free society, and a common devotion to the liberties enshrined in our Constitution.

"The American Bill of Rights is 187 years old. And the struggle to make it a reality has occupied every one of those 187 years.

"One hundred eighty-seven years ago, as far as most Americans were concerned, the Bill of Rights was a bill of promises. There was no guarantee that those promises would be realized.

"We did not realize them by waiting for history to take its inevitable course. We realized them because many sacrificed. We realized them because we persevered.

"For millions around the world today, the Universal Declaration of Human Rights is still only a declaration of hope.

"Like all of you, I want that hope to be fulfilled. The struggle to fulfill it will last longer than the lifetimes of any of us; indeed, it will last as long as the lifetime of humanity itself."

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