ОРГАНИЗАЦИЯ ОБЪЕДИНЕННЫХ НАЦИЙ

ЭКОНОМИЧЕСКИЙ И СОЦИАЛЬНЫЙ СОВЕТ

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КОМИССИЯ ПО ПРАВАМ ЧЕЛОВЕКА
Тридцать первая сессия
КОМИССИЯ СОЦИАЛЬНОГО РАЗВИТИЯ
Двадцать четвертая сессия

ИССЛЕДОВАНИЕ ПО ВОПРОСУ О ДИСКРИМИНАЦИИ ПРОТИВ ЛИЦ, РОЖДЕННЫХ ВНЕ БРАКА

Записка Генерального секретаря

Добавление

СОДЕРЖАНИЕ

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* Вновь выпущен по техническим причинам.

1/ Из-за отсутствия времени у соответствующих служб ответы воспроизведены на языках оригинала только в тех случаях, когда эти языки являются рабочими языками Экономического и Социального Совета и его комиссий.

Приложение I

ПРОЕКТ ОБЩИХ ПРИНЦИПОВ РАВЕНСТВА И НЕДОПУСТИМОСТИ ДИСКРИМИНАЦИИ В ОТНОШЕНИИ ЛИЦ, РОЖДЕННЫХ ВНЕ БРАКА

Преамбула

Поскольку народы мира в Уставе Организации Объединенных Наций провозгласили свою решимость вновь утвердить веру в основные права человека, в достоинство и ценность человеческой личности, в равноправие мужчин и женщин и в равенство прав больших и малых наций и содействовать социальному прогрессу и улучшению условий жизни при большой свободе,

поскольку Устав устанавливает в качестве одной из целей Организации Объединенных Наций поощрение и развитие уважения к правам человека и основным свободам для всех без различия расы, пола, языка и религии,

поскольку Всеобщая декларация прав человека провозглашает, что все люди равны в их достоинстве и правах, и, разъясняя принцип недопустимости дискриминации, провозглашает далее, что каждый имеет право на все права и свободы, провозглашенные в ней, без какой бы то ни было дискриминации,

поскольку такой же принцип социальной защиты для всех детей, родившихся в браке или вне брака, был провозглашен в статье 25, пункт 2, Всеобщей декларации прав человека и подтвержден в статье 10, пункт 3, Пакта об экономических, социальных и культурных правах и в статье 24 Пакта о гражданских и политических правах,

поскольку значительная часть населения мира состоит из людей, родившихся вне брака, многие из которых в силу характера своего рождения являются жертвами правовой или социальной дискриминации в нарушение принципов равенства и недопустимости дискриминации, провозглашенных в Уставе Организации Объединенных Наций, во Всеобщей декларации прав человека, в Международной конвенции о ликвидации всех форм расовой дискриминации и Международных пактах о правах человека, и

поскольку необходимо прилагать усилия при помощи всех возможных средств для поднятия уважения к врожденному достоинству и ценности человеческой личности, с тем чтобы дать возможность всем членам общества, включая лиц, рожденных вне брака, пользоваться равными и неотъемлемыми правами, на которые они меют право,

поэтому сейчас в целях устранения этой формы дискриминации провозглашаются следующие общие принципы:

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Часть I

1. Каждое лицо, родившееся вне брака, имеет право на юридическое признание его материнского и отцовского родства насколько это совместимо с принципом защиты семьи.

2. Факт рождения ребенка сам по себе устанавливает материнское родство по линии той женщины, которая родила ребенка.

3. Установление родства по отцовской линии предусматривается законом при помощи различных способов, включая подтверждение, признание правовой презумпции и судебного решения. Судебное разбирательство с целью установления отцовства не подлежит ограничению никакими сроками.

4. Муж считается отцом детей, родившихся от его жены, если дети были зачаты или родились во время супружеской жизни. Эта презумция может быть изменена только судебным решением, вынесенным на основании доказательства, что муж не является отцом. Судебное разбирательство для установления этого должно быть начато в течение определенного ограниченного срока.

5. Каждый ребенок, родившийся от родителей, которые вступают в брак после рождения ребенка, считается рожденным от этого брака.

6. Каждое лицо, которое родилось в браке или, которое считается рожденным в браке в результате последующего вступления его родителей в брак, сохраняет за собой свой статус, несмотря на незаконность или недействительность брака.

Часть II

7. Каждое лицо, после установления его родства, имеет одинаковый правовой статус, что и лицо, рожденное в браке.

8. Каждое рожденное вне брака лицо, родство которого установлено в отношении обоих родителей, имеет право носить фамилию, как и в случае, лица рожденного в браке. Если его родство установлено только по отношению к матери, оно имеет право носить ее фамилию, измененную в случае необходимости, таким образом, чтобы не открывать факта рождения вне брака.

9. Права и обязанности, относящиеся к родительским правам, должны быть одинаковыми как в отношение детей, рожденных в браке, так и вне брака. За исключением тех случаев, когда суд выносит иное решение в интересах ребенка, рожденного вне брака, родительские права должны осуществляться в соответствии с теми же правилами, что и по отношению к ребенку, рожденному в браке, если его родство установлено по отношению к обоим родителям, или только его матерью, если не установлено его родство по отцовской линии.

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10. Местожительство любого родившегося вне брака ребенка, чье родство установлено в отношении обоих родителей, определяется в соответствии с теми же правилами, что и для ребенка, рожденного в браке.

Если родство установлено только по отношению к матери, то соответствующие правила должны в любом случае гарантировать ребенку местожительство.

11. Каждое лицо, рожденное вне брака, после установления его родства, имеет те же права на содержание, что и лицо, родившееся в браке. Рождение вне брака не влияет на порядок очередности получения содержания.

12. Каждое лицо, рожденное вне брака, после установления его родство, имеет те же наследственные права, что и лица, рожденные в браке. Правовое ограничение или сужение свободы завещателя распоряжаться своим имуществом должно предоставлять равную защиту лицам, имеющим право на наследство, независимо от того, рождены ли они в браке или вне брака.

13. Национальность или гражданство лица, рожденного вне брака, определяется теми же правилами, что и правила, распространяемые на лиц, рожденных в браке.

Лицам, рожденным вне брака, обеспечивается специальная защита от безгражданства. В частности, если установлено родство лица, рожденного вне брака только по материнской линии, его последствия будут таковыми же, как и в случае установления родства и по линии отца.

14. Политическими, социальными , экономическим и культурными правами должны пользоваться в равной мере все лица, рожденные в браке или вне брака, независимо от того, что в области социального обеспечения государством или обществом оказывается, если необходимо, особая забота детям, рожденным вне брака, и их матерям.

Часть III

15. Информация в метрических и других регистрационных книгах, содержащих персональные данные, которая может раскрыть факт рождения вне брака, должна быть доступна только лицам или органам, имеющим законный интерес в установлении родства.

При упоминании лиц, рожденных вне брака, любое указание, которое может носить пренебрежительный оттенок, не допускается.

16. Усыновление ребенка, рожденного вне брака, осуществляется согласно тем же правилам и положениям и имеет те же последствия, что и усыновление ребенка, рожденного в браке.

Ограничение права усыновления устанавливается только такими требованиями, которые необходимы для установления взаимоотношений между ребенком и родителями и для обеспечения высших интересов усыновляемого. В частности, не допускаются никакие ограничения только на основании различия расы, цвета кожи или национального происхождения.

Процедура усыновления должна осуществляться под наблюдением государства и/или компетентного учреждения по социальному попечению для обеспечения полной защиты ребенка и его благополучия.

Annex II

REPLIES RECEIVED BY THE SECRETARY-GENERAL

PART I

PART I (continued)

PART II

REPLIES RECEIVED FROM SPECIALIZED AGENCIES

PART III

REPLIES RECEIVED FROM REGIONAL INTERGOVERNMENTAL ORGANIZATIONS

PART IV

REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

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PART I

REPLIES RECEIVED FROM GOVERNMENTS

AFGHANISTAN

/19 December 1973/

In Afghanistan the subject of illegitimacy is governed exclusively by the Islamic Sharia. The Sharia contains many detailed provisions dealing with this subject matter along with many refinements distinguishing the variety of factual situations which may arise. The general principles set forth in the above-mentioned resolution are consistent with the general principles underlying the detailed provisions of the Sharia concerning this subject matter.

However we wish to make the following comments with respect to the draft general principles:

(a) Paragraph 10 refers to the concept of domicile. This concept has not been developed in Islamic doctrine. Its counterpart in Islamic law is the idea of the community of the person in which he lives. The rules governing the community of a child do not discriminate against illegitimate children.

(b) Paragraph 1, sentence 3, states that adoption procedure should be carried out under the supervision of the State and/or a social welfare agency. In Islam adoption is in the first instance a matter of private charity and obligation. Only in the event that private action is insufficient does the State, through the office of the Judges become involved. In such a case both the society and the State are dutybound to ensure full protection of the child and his well-being.

AUSTRIA

/16 January 1974/

Part I

Paragraph 1

Such a right is recognized under the Austrian law. The Austrian Government is opposed to the qualifying subordinate clause as being contradictory to fundamental rights.

Paragraph 2

This principle, too, is generally recognized under the Austrian law without being expressly provided in the statute.

Paragraph 3

The current Austrian law reflects these principles. Article 163, paragraph 1, of the General Civil Code lays down the presumption that a man who cohabited with the mother of a child within a period not less than 180 nor more than 302 days prior to her confinement begot the child. He can contest that presumption by an evidence of improbability of his paternity which, on assessment of all circumstances, tells against the presumption that he begot the child; furthermore by an evidence to the effect that his paternity is more unlikely than that of another man to whom the presumption applies likewise (art. 163, para. 2, General Civil Code).

Pursuant to article 163b of the General Civil Code, paternity of an illegitimate child is determined by judgement or recognition. The affiliation proceedings concerning an illegitimate child are not subject to a limit in time.

Paragraph 4

Article 138 of the General Civil Code lays down that presumption of legitimate birth prevails with respect to a child born by the wife after the celebration of the marriage and before the expiration of the three hundred and second day after the dissolution or annulment of the marriage. The mother's husband can contest the child's legitimacy within a year from the date when he acquires knowledge of circumstances suggesting the child's illegitimacy. Under the judicial proceedings to be instituted by an action brought by him, the husband has to prove the impossibility or improbability verging on certainty of his having begotten the child. After the lapse of one year after the birth, if the husband has not contested the legitimacy or if he has died or is of unknown abode, the public prosecutor has

the right - without being bound by a time-limit - to contest the child's legitimacy if he deems this to be necessary in the interest of the public or of the child or his descendants.

Paragraph 5

The Austrian law provides for legitimization through subsequent marriage: according to article 161 of the General Civil Code children born out of wedlock are considered as legally begotten through a marriage subsequently contracted by their parents.

Paragraph 6

This principle, too, is largely realized under the current Austrian law: pursuant to article 30 of the Marriage Act the children born of a marriage which has been annulled are generally considered as legally begotten. This benefit of the law is not allowed solely in respect of children originating from a marriage for sake of name or citizenship, i.e. a marriage declared null and void because it was exclusively or mainly contracted for the purpose of enabling the wife to bear her husband's name or to acquire her husband's nationality without the intention to establish a conjugal community. It is envisaged to eliminate this exception, which is, in fact, hardly of any significance - as the existence of children suggests that such marriage is not merely one for sake of name or citizenship. This change is envisaged under a Bill concerning a Reform of the Legal Status of Legitimate Children, which the Government has already submitted to Parliament (RV 144 Blg. Nr. 13.GP).

Part II

Paragraph 7

The Federal Act concerning a Reform of the Legal Status of Illegitimate Children of 30 October 1970, Fed. Law Gaz. No. 342, which entered into force on 1 July 1971, has generally provided a considerable improvement of the legal status of illegitimate children and eliminated in particular the sentence of the former article 155 of the General Civil Code reading "Illegitimate children do not enjoy the same rights as legitimate children". It has, indeed, not only systematically put illegitimate children on an equal footing with legitimate children but also adjusted their legal status to their special situation. For the living conditions under which legitimate and illegitimate children generally grow up are fundamentally different. Legitimate children normally grow up within a full family while most of the illegitimate children lack from the beginning the security offered by a community like that of a full family. The Federal Act concerning a Reform of the Legal Status of Illegitimate Children has allowed for this fundamental difference by a special regulation of the illegitimate children's legal status (for instance, the right of education belongs, in general, only to the mother but not to the father).

Besides, there are also numerous legitimate children who lack the security of a full family with mother and father and live under circumstances comparable with those of illegitimate children. They are the children living in families with disrupted relations or having become incomplete as a result of divorce, invalidation or nullification of the marriage. The need for better legal provision for such children has been met by the Government Bill referred to under item 6.

Paragraph 8

Pursuant to article 165 of the General Civil Code, the illegitimate child bears the mother's surname - as distinct from the child born in wedlock who derives his name from the father. This rule reflects the generally felt need for correspondence of the illegitmate child's name with that of the mother, with whom he lives as a rule. If, in exceptional cases, there is a need for correspondence of the child's name with that of the father or the mother's husband, these persons may, by a statement to the civil registrar, bestow upon the illegitimate child their surname (article 165a of the General Civil Code).

Paragraph 9

The afore-mentioned Federal Act on a Reform of the Legal Status of Illegitimate Children has largely adjusted the parental rights and obligations concerning children born out of wedlock to those concerning legitimate children. The right of an illegitimate child to demand nourishment and maintenance as well as care and education is the same as for a child born in wedlock (articles 166a and 170 of the General Civil Code). Moreover it is a generally recognized principle that parental action for legitimate as well as for illegitimate children shall be primarily governed by the consideration of promoting the child's welfare. This principle has been expressly laid down in the draft Federal Act on a Reform of the Legal Status of Legitimate Children.

As regards the question of who shall be responsible for the care and education and legal representation of a child the Austrian law makes allowance for the special situation of children born out of wedlock. As illegitimate children generally grow up in the household of their mother rather than in that of their father, the obligation of care and education devolves, on principle, on the mother. It falls upon the father whose paternity is established only if the mother is unable to fulfil this obligation or if she has been deprived by the court of the right thereto (article 170 of the General Civil Code). The illegitimate child's special need for protection is also met by the rule that the administrative district authority (youth office) competent for the place of birth of the child born out of wedlock becomes its guardian. However, if so requested by her, the mother has to be appointed guardian by the court if she is qualified and entitled to care for and educate the child. The same applies mutatis mutandis to the father whose paternal filiation is established if he has proved reliable in the education and care for the child (article 198, para. 2, General Civil Code).

Paragraph 10

According to the current conception the domicile is determined by that of the father for the child born in wedlock and by that of the mother for the illegitimate child.

The Government Bill RV 144 Blg. Nr. 13 GP suggests a new arrangement to adjust the legal status of the child born out of wedlock to that of the legitimate child. The minor child born in wedlock shall live with his parents at their common residence. If the father and the mother have no common residence the child shall live with that parent who has the right of care and education. If neither the father nor the mother has the right of care and education, the child's domicile is determined by that of his legal representative (article 140 of the General Civil Code as amended by the Government Bill). The domicile of a minor born out of wedlock shall be governed only by that of the parent who is entitled to care for and educate the child. If both parents cannot be considered for the education and care of the child, the Bill provides, just as for the legitimate child, that the child's domicile shall be derived from his legal representative (article 165d as amended by the Government Bill).

Paragraph 11

Pursuant to article 166a of the General Civil Code the illegitimate child's right to support is governed by the same rules as for a child born in wedlock. The sequence of persons bound to provide for the support of an illegitimate child is also the same as for the child born in wedlock. The obligation to provide for the support falls primarily upon the father, then upon the mother, thereafter upon the grandparents on the father's side and finally, if these too fail to provide maintenance, upon the grandparents on the mother's side (articles 143 and 166a, paragraph 2, General Civil Code).

The Government Bill RV 144 Blg. Nr. 13.GP, however, provides a modification in the sequence of the persons bound to provide for the support of children born in wedlock. The father and the mother are to be jointly liable to provide for the support of the legitimate child; if the support cannot be obtained from either the father or the mother, the grandparents are to be jointly liable (articles 142 and 142a, Civil Code, as amended by the Government Bill). The sequence of the persons liable to provide for the maintenance of the child born out of wedlock on the other hand, is not to be modified. This regulation is based on the consideration that the father should offset by payment of a higher sum the larger amount of work, duties, sacrifices and care generally falling upon the mother of an illegitimate child.

A child's illegitimacy is of no consequence for the order of precedence of his right to maintenance by the person liable as for instance, in the context of assessment of the amount of maintenance or under enforcement proceedings.

Paragraph 12

According to article 754 of the Civil Code illegitimate children have equal rights with legitimate children in regard to the intestate succession in the inheritable property of their mother and her relatives. The Federal Act on a Reform of the Legal Status of Illegitimate Children provides also for the illegitimate child the right to intestate succession in the inheritable property of the father whose paternal filiation has been established (paragraph 2 of article 754, General Civil Code) and consequently also a right to an intestate share; but legitimate descendants and adoptive children of the father exclude the right to intestate succession and an intestate share; if the father leaves a widow, her claims are assessed as if the illegitimate child did not exist (article 757, paragraph 2, General Civil Code). This rule is based on the consideration that the testator can create and hence, bequeath a property only because his family constitutes an economic community which together works, saves, creates and maintains property (family principle). The child born out of wedlock, as a rule, does not belong to such a family and frequently has no relations with the latter so that on the father's death the widow and the legitimate children would consider him an outsider and intruder.

Paragraph 13

It should be noted in general that illegitimacy does not entail any limitation of the enumerated rights. Such limitation would be incompatible with the principle of equality laid down under the Austrian Federal Constitution.

Part III

Paragraph 14

For adoption the same rules are applicable to children born in wedlock and out of wedlock. Adoption is accomplished by a written contract and subject to approval by the court, (article 179a, General Civil Code), which must be preceded by an examination of not only the formal fulfilment of the legal requirements but also the usefulness and justification of the adoption moved. The adoption of a minor must in any case promote his welfare. As a general rule, adoption should create a relationship similar to that of natural parents and children (article 180a, General Civil Code). This consideration is allowed for especially by fixing a minimum age for the adopting parents. The adopting father must have completed his thirtieth and the adopting mother her twenty-eighth year of age. Moreover, they must be at least 18 years older than the child to be adopted; a non-material deviation from this period may be ignored where relationships similar to the relations between natural parents and children have already existed between adopting party and child (article 180, General Civil Code).

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

[Original: Russian]
[25 January 1974]

In the Byelorussian SSR, motherhood is universally honoured and respected and enjoys special social protection.

In accordance with article 97 of the Constitution of the Byelorussian SSR, State protection of the interests of mothers and children is assured through State aid to mothers of large families and to unmarried mothers, the provision of a wide network of maternity homes, nurseries, kindergartens, boarding-schools and other children's institutions, the granting to women of paid maternity leave, the establishment of benefits for pregnant women and mothers, labour protection at places of work, and other measures of State and public assistance.

The legislation of the Byelorussian SSR (in particular, articles 49 and 57 of the Code on Marriage and the Family of the Byelorussian SSR) provides for the full equality of persons born in wedlock and those born out of wedlock.

Thus, one of the basic aims of legislation on marriage and the family in the Byelorussian SSR is to protect the interests of mothers and children in every way possible and to enable every child to have a happy childhood.

With regard to the draft general principles of equality and non-discrimination in respect of persons born out of wedlock, drawn up by the United Nations Secretariat, the Byelorussian SSR feels that it can agree to their general tenor.

As a positive feature of the draft general principles, mention should be made of the importance of the references to a number of international instruments - the Charter of the United Nations, the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Covenants on Economic and Social Rights and on Civil and Political Rights.

The Byelorussian SSR has no objections in principle with regard to parts I and III and most of the paragraphs in part II of the draft general principles.

One positive point is that the draft general principles duly reflect a provision regarding the establishment of the origin of children, according to which paternity is established by law through appropriate measures, including judicial decision.

On the other hand, some comments seem to be called for on part II of the draft general principles, in particular on paragraph 14.

In addition to the idea that the same political, social, economic and cultural rights should be enjoyed by all children, great emphasis should have been placed

in that paragraph on the need for a clear strengthening of the provision regarding the leading role of the State in creating the proper conditions for the protection of the interests of mothers and children.

Regarding motherhood as one of the most important social functions of women and bearing in mind the difficult situation in which an unmarried mother finds herself at times, the Byelorussian SSR considers it essential to recommend that the following additional provisions be included in the draft general principles:

To provide, through legislation, allowances for unmarried mothers for the maintenance and upbringing of their children;

To give an unmarried mother the right to place her child in a children's institution to be maintained and brought up entirely at the expense of the State, without derogating from her right at any time to take the child back;

To strengthen in law the right of an unmarried mother to have priority in placing her child in a children's institution; to provide a number of other benefits with a view to bringing unmarried mothers into the labour force.

In putting these observations forward for consideration, the Byelorussian SSR believes that, in drafting a new international instrument, it is important to take as a starting point not merely the proclamation of the equal rights of all children but the ensuring of those rights.

CYPRUS

[22 March 1974]

The draft general principles on equality and non-discrimination in respect of persons born out of wedlock, are acceptable to the Government of Cyprus who shall support same.

DENMARK

[26 November 1973]

General Observations

The draft general principles, as adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its nineteenth session are, with minor modifications, in consonance with Danish law. It should be noted in this connexion, that Danish social legislation makes no distinction between persons born in or out of wedlock.

Paragraph 4

It is suggested that the words in the first sentence "whether he is" be replaced by "whether the child is" or "if it is".

Paragraph 9

It seems inadvisable to institute a rule by which parental authority shall be exercised according to the same rules for children born out of wedlock as for children born in wedlock where paternal affiliation has been established. In Danish law, the parental authority over a child born out of wedlock is vested in the mother, whereas parental authority over a child born in wedlock is vested in both parents. If, however, the relevant draft principles are intended to cover only the rights and obligations pertaining to parental authority as such, they are not at variance with Danish law.

Paragraph 15

In Denmark, the fact that parental affiliation of a child born out of wedlock has not been established will appear only indirectly from entries in birth registers and certificates of baptism, inasmuch as such documents will bear only the mother's name.

Paragraph 16

In Danish law, the rules relating to adoption are not the same for children born out of wedlock as for children born in wedlock. If the parental authority over a child born in wedlock is vested jointly in the father and the mother, both parents shall give their consent to adoption. If the parental authority is vested in only one of the parents, the parent exercising parental authority shall consent to the adoption, while the other parent shall make a special declaration. In the case of a child born out of wedlock, the mother who will be the one exercising parental authority shall give her consent, while the father is required to make a declaration. If the mother of a child born out of wedlock wants to have the child adopted by any person other than her spouse, the father of the child may request that the right to exercise parental authority be transferred to him or to the guardian of the child. A similar rule does not apply to children born in wedlock.

ECUADOR

/17 August 1973/

El Gobierno ecuatoriano se permite formular las siguientes observaciones:

La primera observación que dice relación con el artículo 1), de la parte primera, que establece:

"El nacido fuera de matrimonio tendrá derecho al reconocimiento legal de su filiación materna y paterna en tanto que ello sea compatible con el principio de protección a la familia." Esta redacción parecería inducir a la creencia de que el hecho del reconocimiento legal de la filiación de una persona podría atentar contra la familia, siendo así que el espíritu de la disposición transcrita tiende justamente a ampliar esa protección. Por lo mismo, mi Gobierno es del parecer que el artículo en cuestión diga : "El nacido fuera de matrimonio tendrá derecho al reconocimiento legal de su filiación materna y paterna de conformidad con el principio de protección a la familia."

La otra observación se refiere al artículo 3 de la misma Parte que dispone: "El procedimiento judicial para determinar la filiación paterna no estará sujeto a ningún plazo." Aunque reconoce la bondad de esta disposición por estimar que acaso no procedería dejar que la acción judicial pertinente a este derecho pueda ejercitarse por tiempo ilimitado, el Gobierno del Ecuador se inclinaría por esta nueva formulación: "El procedimiento judicial para determinar la filiación paterna estará sujeto a lo que dispusiere la legislación interna de cada Estado."

EGYPT

/Original: Arabic/
/26 January 1973/

Part I

Paragraph 1

It is stipulated /in Egyptian law/ that, for the purposes of establishment of lineage and acknowledgement of filiation, the child concerned must not have been born as a result of fornication (i.e., out of wedlock). However, the assumption that any foundling (child of unknown parentage) is the issue of fornication is not permitted, and it must be assumed that he was born in wedlock so long as there is no irrefutable proof to the contrary. This is in order to protect the interests of the child, because it is not unusual for the case to arise where a child born in wedlock is abandoned because of poverty, the desertion or imprisonment of the husband or for other reasons.

Paragraph 2

A mother may recognize the maternal filiation of her child or relinquish the child and agree to its admission to one of the social establishments paid for by the State. This is usually what a mother does if she does not wish to reveal her identity, in view of the non-acceptance of illegitimacy by Egyptian society.

Paragraph 4

Paternal filiation is not established where a child is born less than six months after the contraction of a marriage, because the minimum legal gestation period is six months, although a husband may acknowledge paternal filiation of the child.

Paragraph 5

This is not legally admitted, because such a child is considered to be the issue of fornication.

Paragraph 6

Only the lineage of a child born in wedlock may be established, in cases of annulment and invalidity alike.

Part II

Paragraph 7

A child whose filiation has been established enjoys the same status as an ordinary child, always provided that such filiation is established on the basis of the child's legitimacy.

Paragraph 8

A child whose filiation is established in relation to both parents bears the surname of his father. However, if he is recognized only by his mother, he bears her surname or any other name which she may choose.

Paragraph 9

Where a child is born in wedlock or where his parentage is established, both parents have the normal legal rights and obligations towards the child.

Paragraph 10

The domicile of a child is not dependent on his legitimacy or illegitimacy.

Paragraphs 11 and 12

Where filiation has been acknowledged or established, a child becomes the legal issue of the acknowledging party and has, in so far as his father is concerned, the normal rights and obligations of a son, in respect of such matters as inheritance and entitlement to the various kinds of maintenance. Children born out of wedlock inherit only from their mothers, which provision is in accordance with the Islamic Sharia.

Paragraph 13

Any foundling discovered in the Arab Republic of Egypt is by law a Moslem and possesses Egyptian nationality, whatever the religion and nationality of the person finding him.

Paragraph 14

This is in accordance with our legislation, since there is no discrimination in treatment between persons born in wedlock and persons born out of wedlock.

Part III

Paragraph 15

This is in accordance with normal procedure in the Arab Republic of Egypt. The registers containing data relating to the birth of foundlings and illegitimate children are regarded as highly confidential and are available only to the responsible officials, in order to prevent any detriment to the interest of the child.

In Act No. 11 of 1965, the article relating to the registration of births stipulates that for a child in this category a tertiary name must be entered and a tertiary name for each parent, the details of their case to be entered in a special register, so that the birth certificate of such a child in no way differs from that of an ordinary child.

Paragraph 16

We have no adoption system, either for children born within wedlock or for children born out of wedlock; adoption would be contradictory to the Islamic Sharia. In our system, the closest thing to adoption is "acknowledgement of relationship". The procedure is for a person to claim parentage of a child of unknown filiation, where such a relationship is logically possible, by declaring the child to be his son. The child confirms this statement, if he is legally eligible to do so, and the parent establishes the relationship by his acknowledgement. Establishment of filiation is effected by a court order or by the obtaining of a birth certificate for the child, with the names of both parents - although this has less legal force - in accordance with the procedure for cases of non-registration.

FIJI

/24 September 1973/

To all intents and purposes the position of illegitimate children, in the laws of Fiji, is one of equal standard with that of legitimate children. The following examples show the protection afforded illegitimate persons by laws of Fiji. Also, their position is assimilated to that of legitimate persons so far as is possible.

(a) Under the Maintenance and Affiliation Act, No. 16 of 1971, a single woman who is pregnant or who has been delivered of a child may by taking court action require the father of the child to pay appropriate sums for its maintenance and education.

(b) Under the Inheritance (Family Provision) Ordinance, Cap. 49, any son or daughter of a person who dies leaving a will not making reasonable provision for their maintenance may apply to a court to require such reasonable provision regardless of whether the child is legitimate or not.

(c) Under the Succession, Probate and Administration Ordinance, No. 20 of 1970, with regard to distribution on intestacy the word "child" is specifically defined to include illegitimate children.

(d) With regard to adoption, no distinction is drawn between legitimate and illegitimate children under the Adoption of Infants Ordinance, Cap. 48.

(e) The provisions of the Constitution with regard to protection of civil rights e.g., right to life, personal liberty, protection from slavery and forced labour, protection from inhuman treatment, and protections relating to other matters such as freedom of conscience apply equally to legitimate and illegitimate children.

(f) The Constitution provides, with regard to citizenship, that every person born in Fiji after the date of Independence shall become a citizen of Fiji at the date of his birth regardless of whether he is legitimate or illegitimate.

(g) Provision is made in the Legitimacy Ordinance, Cap. 47 for the legitimation of an illegitimate person by the marriage of his parents.

FINLAND

/7 December 1973/

The Ministry of Justice takes a very positive view of the preparation of international general principles designed to eliminate discrimination against persons born out of wedlock and to make persons equal regardless of their parentage.

The Ministry of Justice is of the opinion that the most focal regulation of

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the general principles under preparation must be to secure for every child under law the same legal status, the same right and obligations and the same legal and social protection. This salient principle should be specifically expressed in the compilation of the general principles, both in the preamble and in the text of the recommendation or agreement itself.

As explained in the following, detailed observation of the above-mentioned principle should be recognizable both in formulating and in studying the wording and composition of the individual articles.

Some comments on points of detail

Part I

Paragraph 1 recognizes the right of every person born out of wedlock to acknowledgement under law of both his/her maternal and paternal filiation. However, this basic right should according to the same paragraph be limited in that acknowledgement of the existence of filiation might have to yield to the principle of protecting the family. This reservation must be regarded as completely obsolete today. If the principle of protecting the family were preserved in its present form in paragraph 1, it would mean that the paragraph confirms that discrimination against children born out of wedlock is justified in so far as discrimination could be motivated by protection of family relations. For instance, under the limitation written into the paragraph, an arrangement would be fully acceptable in which establishment of paternity of a child born out of wedlock could not come into question if the child is born of an adulterous liaison. In agreement with the aforementioned, the Ministry of Justice considers that the restriction based on the protection of family relations should be deleted from paragraph 1.

Under paragraph 2, the affiliation between a child and his mother would be decided directly on the basis of the child's birth. According to this principle, an arrangement by which the establishment of affiliation presupposes recognition of the mother would thus not be acceptable.

In the opinion of the Ministry of Justice the principle contained in the paragraph must be regarded as acceptable. There it would appear expressly from the paragraph that no additional condition (for instance the condition that the affiliation can originate from the legal point of view only on condition that the child is entered in the birth certificate or the population register as having been delivered by the mother) can be imposed on the origination of affiliation between the mother and child. This precise formulation could be realized if the wording of the paragraph stressed explicitly that the establishment of affiliation between child and mother must be based solely on the event of being born.

Paragraphs 4-6 contain regulations on the conditions under which the child can be regarded as a legitimate child, the conditions on which a child born out of wedlock gains through legitimation the status of a legitimate child and, finally, a regulation to the effect that the legitimate child maintains his legal position despite the dissolution of the marriage.

As these regulations do not actually concern the status of a child born out of wedlock it would be most meaningful to transfer them to the last part of the recommendations, for instance to Part III which contains regulations mainly of the character of "miscellaneous regulations".

The wording of paragraph 5 is not fortunate. The wording of the regulation should be revised to make it clear that a child born out of wedlock receives through the marriage of his parents the same status as a legitimate child.

Regarding the factual content of paragraph 5, it should be noted that the principle written into it is without significance in discrimination against children on the grounds of birth.

As the general principles apparently also have this object in view (see paragraph 7) it could be regarded as justified to omit in its entirety the principle of motivation in paragraph 5 from the recommendations concerning children born out of wedlock.

As regards paragraph 6, the concept of "invalidity of marriage" may be in some degree open to interpretation. To avoid ambiguities and difficulties of interpretation, it might perhaps be practical to omit from the article the reference to invalidity of marriage.

Part II

Paragraph 7 introduces the principle that each person for whom filiation has been established must have the same legal status as a person born in wedlock. The scope of the regulation has thus not been confined explicitly to persons born out of wedlock. The paragraph differs in this respect distinctly from the wording of paragraph 8.

The content of paragraph 7 is also further unclear in its present wording. The paragraph foresees only the establishment of affiliation as the condition for achievement of the legal status of a legitimate child. It does not appear from the paragraph whether the reference here is to paternal or maternal affiliation, or whether affiliation must be established in respect of each parent. If the wording of the paragraph were to be understood to mean that "establishment of affiliation" is accomplished already when the child's affiliation with the mother and maternal relations is established, the wording must be regarded as unsuccessful in the light of paragraph 2. If so, no reference to the establishment of affiliation is necessary in Article 7, but the Article could state briefly that every child born out of wedlock shall have the same status as a legitimate child. On the other hand, if Article 7 is to refer only to the establishment of paternal affiliation or foresees the establishment of affiliation vis-à-vis both parents, the regulation must be regarded as partly unsuccessful. Article 7 then leaves completely without protection the illegitimate children in the most difficult situation whose paternal affiliation it has not been possible to establish.

In the opinion of the Ministry of Justice, the principle aimed at in Article 7 is of the most focal importance for the elimination of discrimination against children born out of wedlock. The regulation under Article 7 should therefore be reformulated to reveal the general principle that the same legal status and the same rights should be ensured under law to every child regardless of birth. On the other hand, in expressing this principle it is probably not meaningful to refer to the legitimate child's legal status as achievement of the legal equality of children will presuppose by rule changes in the legal status of both a legitimate and an illegitimate child.

The general principles in Article 8 include certain recommendations concerning the surname of a child born out of wedlock. However, the regulations on surnames may differ greatly in individual countries. Surname and its use have not been regulated legally in the actual sense in some countries. The inclusion among the general principles of recommendations concerning surnames may be pointless for these reasons. The principle of the legal equality of the child can probably be drafted so broadly that it covers also equal treatment on matters relating to surname.

Article 9 contains certain regulations on the position of parents as supporters of their children. According to these principles, the care of children born out of wedlock will be determined in conformity with the regulations in force for the support of a legitimate child if the affiliation has been established vis-à-vis both parents. This principle probably cannot be regarded as entirely successful. The regulation might, for instance, be interpreted to mean that acknowledgement of an illegitimate child automatically places the child in the joint care of his parents unless expressly ruled otherwise by a court of law.

It has been sought in the regulations of Section II of the general principles to use even otherwise an arrangement by which it is recommended that the same rights and the same legal status that a legitimate child enjoys be transferred to children born out of wedlock. This form of writing is seen especially clearly in Articles 7-13. However, interpretation of general principles formulated in this way may meet with difficulties. This especially if the general principles are understood to mean that each State must strive to arrange that the legal status which under existing legislation in the State is enjoyed by a legitimate child be transferred as such also to illegitimate children. It follows from this, however, that on individual questions unpracticable solutions will often ensue which are not to the advantage either of the child born out of wedlock. As an example of the drawbacks of this interpretation may be mentioned the recommendation in paragraph 13. According to this paragraph, the nationality of an illegitimate child shall be decided in conformity with the same regulations as are applied to a legitimate child. If the above-mentioned principle of interpretation were adopted as the basis this recommendation would mean, for instance under the nationality law in force in Finland, that a child born out of wedlock should always assume his father's nationality.

On the other hand, the regulations of the general principles seem to permit interpretation also in that they recommend a procedure in which the concept of a legitimate or illegitimate child should not be used at all for individual questions when ruling on the legal status of the child. In so far as the general principles do aim at this, the paragraphs of Part II should be re-written to reveal clearly the principle expounded. If this form of writing is followed, paragraph 13, for instance, should be written to show that a person's nationality shall be decided in accordance with the same regulations, regardless of whether the person in question was born in or out of wedlock (see paragraph 14).

Part III

Part III of the general principles includes two paragraphs, one dealing with the confidentiality of delicate information, and the other the procedure to be followed in the adoption of an illegitimate child.

According to paragraph 15, the aim should be that the population register does not reveal the illegitimate birth of a person. The main purpose of the recommendation is probably the protection of delicate information from outsiders. However, the recommendation is unfortunately formulated. As the explicit object of the recommendation is that the illegitimate birth of a person born out of wedlock not be revealed, the recommendation at the same time acknowledges indirectly that a person born out of wedlock is in a socially prejudiced position in society because of his birth. To redress this, paragraph 15 (first subparagraph) should be revised to cover all persons regardless of birth and contain the principle that publication of filiation should be limited in the population register and corresponding registers.

It is probably not necessary to include at the end of the general principles relating to the status of children born out of wedlock paragraph 16 which deals with some aspects of adoption. These principles should be included only among recommendations and agreements that concern expressly adoption or the legal status of an adopted child.

FRANCE

[11 January 1974]

[Le projet de principes généraux] ne suscite pas d'objection de la part [du Gouvernement français].

C'est ainsi que la promulgation de la loi No 72-3 du 3 janvier 1972 sur la filiation correspond aux vues exprimées par M. Voitto Saario, Rapporteur spécial de la Sous-Commission, dans son étude des mesures discriminatoires à l'encontre de cette catégorie de personnes.

Il en est de même des nouvelles dispositions relatives à la nationalité française énoncées par la loi No 73-42 du 9 janvier 1973 qui modifie l'ordonnance du 19 octobre 1945; en particulier, le nouvel article 17 de cette ordonnance place l'enfant naturel dans la même situation que l'enfant légitime en ce qui concerne l'attribution de la nationalité française en raison de la filiation.

GERMAN DEMOCRATIC REPUBLIC

[8 November 1973]

In the German Democratic Republic the objective of the principles has been fully realized. This results from a purposeful and consistent policy of its Government, which starting with the foundation of the German Democratic Republic and based on social ownership of the means of production, implemented a policy of eliminating exploitation of man by man and overcoming social differences. Being an element of the socialist transformation of society, the emancipation of woman and its component part, i.e. equality of rights for children born out of wedlock, have been an important concern of the GDR's social policy.

Already with the adoption of the first Constitution of the German Democratic Republic on 7 October 1949 and the Law on the Protection of Mother and Child and the Rights of Woman of 27 September 1950 the constitutional and legal framework of this postulate and its implementation was set. Articles 20, 25 and 38 of the Constitution of 6 April 1968 and the Family Code of 20 December 1965 gave further constitutional and legal substance to this postulate to fully comply with the aims and purposes of the general principles of equality and non-discrimination in respect of persons born out of wedlock. Equality has the status of a constitutional right.

Therefore, the German Democratic Republic fully supports this draft.

With a view to achieving a still better final text which takes into account the different ethics and the legal systems of States which are determined by national legal traditions, some questions on certain articles of the draft are raised and improved versions proposed.

(a) It should be examined whether the last half of the sentence in paragraph 1 of the draft, "in so far as compatible with the principle of the protection of the family", can be worded more precisely. Applying more precise terms, particularly drawing a definite line beyond which the rights of persons born out of wedlock must not be restricted, also in the interest of protecting the family, could prevent that the implementation of the other provisions is impaired by invoking that clause.

(b) Concerning Part II the question is raised whether it would not be appropriate to use more precise terms in regard to the assimilation of the status of children born out of wedlock to that of children born in wedlock, and in the detailed provisions under paragraphs 7, 8, 9 and 10 to the status of children born in wedlock and whose parents are not divorced and not widowed. In life considerable differences in the status of children born in wedlock occur according to whether parents continue their marriage or get divorced. Frequently parents no longer bear the same surname after the divorce and children assume the surname of the parent to whom parental authority was assigned. Consequently they do not always bear the father's surname. According to many legal systems the rights and duties of education do not apply in the same manner as during marriage after divorce of the married couple. The rights of the parent with whom the child lives or to whom he was assigned are more extensive than those of the other parent. Therefore it is proposed to provide for persons born out of wedlock the same legal status as for children of divorced couples born in wedlock. This ensures their legal status in principle and simultaneously takes into account the differing living conditions.

GHANA

/18 January 1974/

The Ghanaian law on children born out of wedlock is very favourable to such children. Under our laws no child is illegitimate, in the sense that whether born

in or out of lawful wedlock the recognition or legitimacy of the child is determined by the acceptance or recognition or establishment of paternity; so that once paternity is established the child becomes legitimate. Even in the case where paternity cannot be established (which case is very rare) the child is deemed to belong to his mother's family.

In the case of children born by a woman lawfully married, the children are deemed to be the children of that marriage until the contrary is proved; then in this case the children will be the children of that other man who accepts paternity.

It appears, therefore, that "the provisions of the draft proposals are in fact very similar to the existing law in Ghana".

Even in the case of unmarried people it is often the case that whenever a woman is seen to be expecting a child her parents or guardians ask her of the putative father who is often confronted, and the matter is thrashed out at an arbitration. The issue of such a person is legitimate and the alleged father becomes responsible for it as soon as he accepts paternity. Where the matter cannot be thrashed out or the alleged father denies being the father, the Maintenance of Children Act, 1964 (Act 297) makes provison for such children. Provision is made whereby the mother can apply to the court for the court to determine the paternity of the child. When the man is adjudged to be the father, the court will declare him to be the father and order that he should be responsible for the upkeep and support of the child. Depending on the circumstance of each case, the court makes an order to the amount of money that should be paid by the father for the child's upkeep.

In the case of adopted children, there is an Act which provides for the procedure, etc., for adoption. The adopted child is however regarded as any child born in lawful wedlock.

Ghana suggests that provision be made specifically that a child born out of lawful wedlock is in no way different from a child born in lawful wedlock.

The provisions of the draft proposals very much answer the need to avoid or scrap discrimination in many countries against persons born out of lawful wedlock.

GUATEMALA

[9 October 1973]

El Articulo 43 de la Constitución de la República de Guatemala dice:

"En Guatemala todos los seres humanos son libres e iguales en dignidad y derechos. El Estado garantiza como derechos inherentes a la persona humana: la vida, la integridad corporal, la dignidad, la seguridad

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personal y la de sus bienes. Ninguna persona puede ser sometida a servidumbre ni a otra condición que menoscabe su dignidad y decoro. Se prohíbe cualquier discriminación por motivo de raza, color, sexo, religión, nacimiento, posición económica o social u opiniones políticas."

GUYANA

[23 October 1973]

The draft general principles on equality and non-discrimination in respect of persons born out of wedlock have been carefully examined and its provisions are considered not objectionable.

ITALY

[31 December 1973]

The principles on which resolution 1787 (LIV) of the Economic and Social Council is based, are contained in a draft for a law on family's rights, already approved by the Italian Chamber of Deputies and presently under examination by the Senate.

JAMAICA

[22 November 1973]

The Government of Jamaica is in support of the draft general principles on equality and non-discrimination in respect of persons born out of wedlock. It considers these principles ideal and is of the view that all countries, especially those like Jamaica, where the majority of the population is born out of wedlock, should work towards incorporating them in their legal systems. In fact, some of the principles are already recognized and are embodied in the laws of Jamaica.

In Jamaica, persons born out of wedlock suffer some legal disabilities, which are apparent in the laws of succession especially as regards intestate succession and in the laws relating to maintenance and custody of the illegitimate child. Certain disabilities also flow from the general principle that the illegitimate child in law is regarded as "the child of nobody" that is to say "the child of no known body except its mother". The Jamaican legal system also differentiates between legitimate and illegitimate children in relation to the derivation of nationality and domicile in so far as those are derived through the parents.

It should be observed that in Jamaica, while the illegitimate person suffers certain legal disabilities, he enjoys equal political, social, economic and cultural rights as the legitimate person.

As regards the adoption of children, there is no discrimination against the child born out of wedlock, who is subject to the same rules and provisions as the legitimate child. In Jamaica, the adoption procedure is carried out under the supervision of the Adoption Board, a Government Statutory body, which falls under the Ministry of Youth and Community Development.

Steps are now being taken to remove the legal disabilities already mentioned and to give the person born out of wedlock the same legal status and rights as the legitimate person.

LAOS

/14 September 1973/

La Gouvernement royal du Laos a étudié avec beaucoup d'intérêt le projet de principes généraux relatifs à l'égalité et à la non-discrimination à l'égard des personnes nées hors mariage.

A cet égard, le Gouvernement royal /donne/ son adhésion au projet en question.

LEBANON

/17 January 1974/

Le Liban figure au nombre des pays qui sont soumis, en matière de statut personnel, à une législation qui tire sa source du droit communautaire. Sa législation présente, à ce point de vue, des traits spécifiques : un grand nombre de législations à caractère communautaire, placées les unes par rapport aux autres sur un pied d'égalité, s'appliquent en effet sur son territoire.

Ce pluralisme des statuts est l'un des aspects du pluralisme communautaire. La famille s'insère dans la communauté avant de constituer la cellule de base de la nation. Elle y puise le droit qui régit sa formation et son organisation.

Cependant, l'évolution actuelle accentue les points de rapprochement entre familles de type différent et l'Etat cherche, aujourd'hui, à satisfaire directement les besoins nouveaux par la voie de la réglementation civile, indépendamment des droits communautaires.

Protéger l'enfance malheureuse sous ses multiples visages, réglementer les relations entre parents et enfants naturels sont des domaines où son action cherche à pénétrer; mais elle demeure souvent fragmentaire et limite ses effets aux non-musulmans. De plus, elle conduit à un partage complexe des institutions entre l'autorité civile et les autorités religieuses.

Ainsi, en ce qui concerne les communautés chrétiennes, si les modes d'établissement et les effets successoraux de la filiation naturelle dépendent du législateur civil depuis la loi du 23 juin 1959, ses autres conséquences demeurent tributaires des lois religieuses.

En ce qui concerne les communautés musulmanes, les lois religieuses sont seules appliquées en ce domaine.

Bien qu l'intervention du législateur civil ait été efficace pour clarifier très heureusement le statut de l'enfant naturel en assurant plus largement sa protection, la loi de 1959 continue, à l'instar des législations religieuses, à opérer une discrimination par rapport aux personnes nées hors mariage et, ceci, dans un but de protection de la famille-cellule sociale.

L'exposé des modes d'établissement de la filiation naturelle et du statut juridique qui en découle, dans chacune des lois en vigueur au Liban, servira à la mise en exergue des différences fondamentales de principes, entre ces législations et le projet de principes généraux relatif à l'égalité et à la non-discrimination à l'égard des personnes nées hors mariage.

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Première partie

Les modes d'établissement de la filiation naturelle

A. Les communautés non musulmanes

1. Le lien de filiation naturelle peut être établi par la reconnaissance volontaire ou résulter d'une demande en justice visant à le constater. Cette reconnaissance ne peut être faite après la majorité de l'enfant (loi de 1959, art. 24). Elle est susceptible d'être attaquée par toutes les personnes qui ont un intérêt pécuniaire ou moral à contester la filiation de l'enfant (loi de 1959, art. 30).

2. L'enfant naturel a la possibilité de faire établir par les tribunaux sa filiation, au moyen de l'action en recherche de maternité ou de paternité. La première s'appuiera sur la preuve de l'accouchement et de l'identité du demandeur avec l'enfant. Cette double preuve pourra résulter de témoignages s'il existe un commencement de preuve par écrit à se fonder sur des présomptions sûres et concordantes. L'action devra être présentée, au plus tard, dans les deux ans qui suivent la majorité de l'enfant (loi de 1959, art. 29).

3. L'action en recherche de paternité naturelle est ouverte dans les cas où la paternité apparaît vraisemblable : (enlèvement ou viol durant la conception, séduction dolosive, aveu non équivoque de paternité). Ces cas sont énumérés limitativement par la loi (art. 27).

Cette action est enfermée dans des délais très brefs (2 ans après l'accouchement si l'action est présentée par la mère, 2 ans après la majorité si elle est intentée par l'enfant (loi de 1959, art. 28).

4. Le père est celui que désigne un mariage légitime, à moins que le contraire ne soit établi par des preuves évidentes. L'enfant est présumé légitime s'il est né au moins 180 jours à compter du mariage ou dans les 300 jours de la cessation de la vie conjugale (art. 80, Loi sur le Statut personnel des communautés catholiques).

5. L'enfant naturel devient légitime par le mariage subséquent de ses père et mère (art. 91, Loi sur le Statut personnel des communautés orthodoxes), (art. 58, communautés évangéliques).

B. Les communautés musulmanes

1. Tout homme peut reconnaître comme étant son fils tout enfant, sans qu'il soit obligé cependant d'établir son mariage avec la mère de l'enfant reconnu. Cette reconnaissance produit les mêmes effets que la filiation naturelle (art. 350 du Statut personnel selon le rite hanafite.

2. La preuve de la maternité peut être faite d'une façon absolue et ne subit aucune sorte de restriction (art. 91 et 92 de la loi du 16 juillet 1962).

3. La filiation paternelle peut s'établir en voie principale seulement du vivant du père ou du fils, en personne ou représenté. En cas de prédécès de l'un de ces derniers, la paternité et la filiation ne peuvent s'établir qu'en voie incidente (art. 355 du Statut personnel selon le rite hanafite).

4. L'enfant né pendant le mariage valable, au terme de 6 mois au moins de sa célébration, appartient au mari (art. 333 du Statut personnel selon le rite hanafite). Cette présomption ne tombe que dans les limites strictes d'une voie de droit appelée le li'ane. Elle joue, non seulement dans toutes les hypothèses du mariage actuellement existant et valable, mais même dans des hypothèses où le mariage n'existe pas encore, n'existe plus, n'est pas valable (art. 341 à 343 du Statut personnel selon le rite hanafite).

5. Dans le cas de divorce révocable l'enfant, dont la femme accouchera avant ou après 2 ans de la dissolution du mariage, sera attribué au mari, sans que celui-ci puisse le désavouer.

Dans le cas de divorce irrévocable (baïn) comme dans le cas du prédécès du mari, la période n'est que de 2 ans (art. 344 du Statut personnel selon le rite hanafite).

6. Dans le cas du mariage nul, si la femme accouche, avant la séparation judiciaire ou volontaire, d'un enfant dans une période de 6 mois à compter de la consommation du mariage, la paternité est attribuée au mari (art. 341 du Statut personnel selon le rite hanafite).

C. Les communautés druzes

1. L'enfant conçu pendant le mariage a pour père le mari, s'il est né plus de 180 jours après la célébration du mariage. Cependant, il en est autrement et l'enfant ne sera plus réputé issu du père, s'il est constaté qu'il n'y a pas eu d'union entre les conjoints à partir du mariage (art. 144 de la loi du 24 février 1948 applicable aux druzes).

2. Le père peut désavouer l'enfant né 180 jours après le mariage, pourvu qu'il le fasse dans le délai d'un mois de la naissance, s'il était présent ou de sa connaisance de la naissance s'il était absent (art. 139 de la loi de 1948).

3. L'enfant né moins de 300 jours après la dissolution du mariage a pour père le mari, si ce dernier ou les héritiers avaient reconnu la grossesse ou si celle-ci était apparente (art. 143 de la loi de 1948).

4. La preuve de la maternité ou de l'identité de l'enfant, en cas de dénégation du mari, s'effectue par le témoignage de la sage-femme ou des femmes présentes au moment de la naissance (art. 142 de la loi de 1948).

5. Les règles du droit musulman, relatives aux liens illégitimes, s'appliquent aussi aux druzes.

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D. Les communautés israélites

1. Le silence de l'homme après l'accouchement vaut reconnaissance de l'enfant et met obstacle à tout désaveu ultérieur (art. 553 de la loi sur le Statut personnel de la communauté israélite).

2. Aucun texte du Statut personnel de la communauté israélite ne formule une réglementation concernant l'établissement de la filiation paternelle et maternelle et l'action en recherche de paternité.

Deuxième partie

Le Statut juridique des personnes nées hors mariage

A. Les communautés non musulmanes

1. L'enfant naturel porte le nom de celui qui l'a reconnu ou de celui contre qui la filiation a été établie en justice (art. 15 de la loi du 7 décembre 1951).

2. Les parents assument, à son égard, les charges d'entretien et d'éducation découlant de la puissance paternelle, telles que les précisent les différentes lois religieuses (art. 95, Code des communautés catholiques; art. 127, Code de la communauté arménienne orthodoxe; art. 67, 68, Code de la communauté évangélique).

3. Le domicile de l'enfant naturel est celui de sa mère (art. 22, Code des communautés catholiques).

4. L'enfant naturel, dont la filiation est établie pendant sa minorité, prendra la nationalité libanaise si celui de ses parents à l'égard duquel la preuve de sa filiation a été faite en premier lieu est lui-même libanais. Si cette preuve résulte pour le père et la mère du même acte ou du même jugement, l'enfant prendra la nationalité du père si ce dernier est libanais (art. 2 de l'Arrêté No 15/5 du 19 janvier 1925, modifié par la loi du 11 janvier 1960).

5. Les droits successoraux de l'enfant naturel sont limités au patrimoine de ses père et mère vis-à-vis desquels sa filiation est établie, judiciairement ou par une reconnaissance volontaire : l'enfant naturel ne peut prétendre à la succession des ascendants de ses père et mère, parce qui'il n'est pas intégré à la famille légitime.

Les parents naturels n'ont pas, d'autre part, de vocation à la succession de leur enfant. La quotité des droits successoraux de l'enfant naturel varie en fonction des héritiers légitimes avec lesquels il est en concours (art. 22 de la loi de 1959).

Lorsque l'un des époux reconnaît, au cours du mariage, un enfant naturel né, avant le mariage, d'un autre que de son conjoint, cet enfant ne portera pas préjudice aux droits du conjoint ou des descendants. Une telle reconnaissance produira, cependant, ses effets après la dissolution du mariage, en l'absence d'enfants (art. 26 de la loi de 1959).

Les enfants naturels peuvent être écartés de la succession par les enfants légitimes ou leurs descendants qui les désintéresseraient de leur part après une juste évaluation, soit en numéraire, soit en immeubles successoraux (art. 32, loi de 1959).

B. Les communautés musulmanes

1. La déclaration judiciaire de l'illégitimité de l'enfant entraîne son exclusion de tout droit héréditaire et la déchéance de ses droits à l'entretien. Les autres liens de parenté continueront à exister entre l'enfant et son père (art. 338 du Statut personnel selon le rite hanafite). Dans le cas de l'établissement de la paternité naturelle, aucun lien n'est créé entre père et fils.

2. Si un homme reconnaît un enfant pour son fils, l'enfant reconnu aura le droit de réclamer l'entretien et les soins paternels et de participer avec les héritiers à la succession du déclarant et à celle de son père (art. 350, Statut personnel selon le rite hanafite).

3. L'article 2 de l'Arrêté No 15/5 du 19 janvier 1925, modifié par la loi du 11 janvier 1960, relatif à la nationalité des enfants naturels, s'applique aux musulmans également.

C. Les communautés druzes

Les principles de la doctrine hanafite sont appliqués, mais seulement dans la mesure ou elle ne contredit par le Charei druze.

D. Les communautés israélites

1. Aucune distinction ne doit être faite entre l'enfant né hors mariage et l'enfant né d'une union légitime si les père et mère sont juifs (art. 563, Code de la Communauté israélite).

2. L'enfant illégitime ne peut épouser qu'une fille illégitime comme lui et du même rang (art. 574, Code de la communauté israélite).

3. L'aveu d'un homme qu'il est enfant illégitime s'étend à lui et à son enfant. S'il a des petits-enfants, l'aveu ne s'étend point à eux (art. 575, Code de la communauté israélite).

4. Si les 2 parties au mariage sont enfants illégitimes, mention doit en être faite à l'acte pour que les tiers en soient avertis (art. 576, Code de la communauté israélite).

5. Lorsque les 2 parties au contrat de mariage sont enfants illégitimes, tous leurs descendants sont illégitimes sans limitation de degré (art. 577, Code de la communauté israélite).

6. L'enfant né d'une femme non juive et d'un homme de naissance illégitime est rattaché à sa mère (art. 578, Code de la communauté israélite).

7. L'enfant né d'une fille illégitime et d'un homme non juif est illégitime, ainsi que tous ses descendants sans limitation de degré (art. 579, Code de la communauté israélite).

Troisième partie

Conclusion

L'étude comparée des trois législations exposées, d'une part la loi civile de 1959 applicable aux non musulmans, la doctrine hanafite applicable aux musulmans et en grande partie aux druzes, le code communautaire israélite et, d'autre part, du projet de principes généraux concernant l'égalité des personnes nées hors mariage et la non-discrimination à l'égard de ces personnes, nous montre que la base philosophique et sociale de ces deux types de législation diffère foncièrement quant à l'importance accordée à l'individu, personne humaine par rapport à la famille légitime noyau de la société.

Faisant nettement prévaloir l'intérêt social sur l'intérêt individuel des personnes, le premier groupe de législations tend à considérer l'enfant né hors mariage comme un relégué social et, mise de côté la loi civile de 1959 ne se préoccupe nullement de réglementer et de clarifier son statut juridique. Par contre, le législateur de 1959 a donné des effets relativement importants à la filiation naturelle, mais il est demeuré bien timide dans le domaine de son mode d'établissement.

Quant au projet de principes généraux concernant l'égalité des personnes nées hors mariage et la non-discrimination à l'égard de ces personnes, partant d'une vision laïque de la société et de la famille et par la considération de la valeur intrinsèque de la personne humaine et du respect de sa dignité, il donne aux enfants nés hors mariage une protection égale à celle accordée aux enfants légitimes. Droit à ce que leur filiation soit établie, statut juridique identique à celui de toute personne née dans le mariage et, en plus, ce projet leur accorde, dans sa troisième partie, une protection spéciale concernant les renseignements figurant dans les registres de naissance et autres registres contenant des données relatives à l'état des personnes.

Cette protection consistant à les couvrir aux yeux de la société qui pourrait continuer à les discriminer, le législateur civil de 1959 ne s'en est pas préoccupé, bien qu'elle aurait pu être efficace pour libérer ces personnes nées hors mariage de cette étiquette qui les diminue.

Il est à souhaiter que ce projet, envisageant de façon complète toutes les questions relatives à l'enfance naturelle et dont les dispositions sont d'une grande précision et clarté, puisse inspirer le législateur libanais ainsi que les législateurs étrangers, afin d'oeuvrer pour la réintégration des personnes nées hors mariage dans un cadre où elles pourraient jouir des mêmes droits égaux et inaliénables auxquels peuvent prétendre tous les membres de la société.

LIBERIA

/16 October 1973/

Part I

Title 31:460 of Volume III, L.C.L., states that the mother of an illegitimate child shall register the birth of such child; or, if the mother should be dead, the entry in the register may be made on the request of the person acknowledging himself to be the father, or in the absence of such a person, by any near relative of the mother.

However, it is generally accepted in Liberia that every person born out of wedlock is entitled to legal recognition of his paternal and maternal filiation in so far as compatible with the principle of the protection of the family, and the fact of birth of a child by itself establishes maternal filiation to the woman who gives birth to the child.

The establishment of paternal filiation is provided by law, as found in Sub Section 4.92 of the Domestic Relations Law which states that upon an application made to the probate court by the natural father of a child born out of wedlock, such child may be legitimated with respect to such applicant and shall become for all purposes the legitimate child of such applicant and entitled to all the rights of legitimacy as if born during the lawful wedlock of the applicant. Upon receipt of such an application, the court shall issue a citation to the natural mother of the child who shall be served therewith together with a copy of the petition. She may serve and file an objection to the proposed legitimation, limited to the sole ground that the applicant is not the natural father of the child. After the hearing, if an objection has been filed and overruled, or if no objection has been filed, upon the return day of the citation, the court shall order the clerk of court to record the application, its date, the name of the applicant and the name and date of birth of the child, which record shall be admissible as full and sufficient evidence of the legitimacy of the child with respect to the applicant. The clerk shall also prepare, sign and issue to the applicant a certified copy of such record.

In Liberia, the husband is presumed to be the father of any child born to his wife whether he is conceived or born during the marriage. The presumption may be overcome only by a judicial decision based upon evidence that the husband is not the father.

Any child born of parents who intermarry after the birth of that child shall be considered to be born of that marriage, as found in Sub Section 4.91 of the Domestic Relations Law which states that in any case where the natural parents of a child born out of wedlock shall lawfully intermarry, except where the parental rights of the mother were terminated prior thereto, such child shall thereby become legitimated and shall beocme for all purposes the legitimate child of both parents and entitled to all the rights and privileges of legitimacy as if born

during the wedlock of the parents; and this section shall be taken to apply to all cases prior to its effective date as well as these subsequent thereto, but an estate of interest vested or trust created before the marriage of the parents of such child shall not be divested or affected by reason of such child being legitimated.

In Sub Section 7.5 of the Domestic Relations Law, we find the provisions governing the effect of annulling a voidable marriage upon the legitimacy of the children of the parties, which are as follows:

(a) If a marriage be annulled on the ground that one or both of the parties had not obtained the consent required by section 2.2 (2), or if a marriage be annulled on the ground of the idiocy or the insanity or adjudged incompetency of one or both of the persons entering into the marriage, a child of the parties is the legitimate child of both parties.

(b) If a marriage be annulled on the ground of force, duress or fraud, a child of the parties is the legitimate child of both parents unless the court by the judgement decides other wise as to either or both parents.

(c) If a marriage be annulled for any cause or under any conditions other than those specified in subparagraphs (a) and (b), the court by the judgement may decide that a child of the parties is the legitimate child of either or both of its parents.

Part II

Every person, once his filiation has been established, shall have the same legal status as a person born in wedlock. This is found in section 3.5 of the Act Adopting a New Decedents Estates Law including a Probate Court Procedure Code, which states that an illegitimate child and his issue shall inherit under the provisions of section 3.2 from his mother and from her lineal and collateral relatives shall inherit from such child and his issue as if he were legitimate. An illegitimate child and his issue shall inherit under the provisions of section 3.2 from his father and from the lineal and collateral relatives of the father, and the father and his lineal and collateral relatives shall inherit from such child and his issue as if he were legitimate under any of the following conditions:

(a) If the child is adopted by his father; or

(b) If the father acknowledges his paternity in writing before a justice of the peace or notary public and such acknowledgement is probated and registered; or

(c) If the parents marry subsequent to the birth; or

(d) If the child has been legitimated under the provisions of the Domestic Relations Law; or

(e) If the paternity of the child has been adjudicated by a court of appropriate jurisdiction.

Such child shall be treated as if he were the legitimate child of his mother, and, if any of the conditions enumerated in this section is present, as the legitimate child of his father, for the purpose also of receiving benefits under sections 4.3 and 4.4.

Within this Republic, every person born out of wedlock whose filiation is established in relation to both parents shall have the right to bear a surname determined as in the case of a person born in wedlock. If his filiation is established in relation only to his mother he shall be entitled to bear her surname, or if the mother is married he shall be entitled to bear her surname before marriage, modified, if necessary, in such a manner as not to reveal the fact of birth out of wedlock.

It is also an accepted principal in Liberia that the rights and obligations pertaining to parental authority shall be the same whether the child is born in wedlock or out of wedlock. Unless otherwise decided by the court in the best interest of the child born out of wedlock, parental authority is exercised according to the same rules as for a child born in wedlock if his filiation is established in relation to both parents, or by the mother alone, if his paternal filiation is not established.

The domicile of any child born out of wedlock whose filiation is established in relation to both parents is determined according to the same rule as for children born in wedlock, and if the filiation is established in relation to the mother alone, appropriate rules ensure in any case that the child has a domicile.

With regard to maintenance rights of a person born out of wedlock, subsection 5.3 (b) of the New Domestic Relations Law states that a father is liable for the support of his child or children under twenty-one years of age but if any such child has been born out of wedlock and if the natural parents have not intermarried thereafter, the liability of the natural father shall not be enforceable unless he has adopted him, or has acknowledged or shall acknowledge paternity of such child in open court or by a writing acknowledged before a justice of the peace or notary public and filed with the Registrar of Deeds or he has been legitimated under the provisions of section 4.92, or the father has been adjudicated to be the father of such child by a court of appropriate jurisdiction including the court making the determination for support, and, if possessed of sufficient means or able to earn such means, may be required to pay for such support a fair and reasonable sum according to his means, as the court may determine.

Subsection 5.3 (c) of the same law states that the mother is liable for the support of her child under twenty-one years of age whenever the father of such child is dead, or cannot be found, or is incapable of supporting such child; and in the event that the father of such child can be found but does not possess

sufficient means to fully contribute a fair and reasonable sum for his support, the court may apportion the costs of such support between the parents according to their respective means and responsibilities.

Subsection 5.20 (e) of the Domestic Relations Law deals with the order of support of children born out of wedlock and states that in a support proceeding in which the court has made a determination of filiation and has directed a father possessed of sufficient means or able to earn such means to pay weekly or at other fixed periods a fair and reasonable sum for the support and education of the child involved, the order thereon may also direct such a father to pay for the support of the child prior to the making of the order determining filiation and shall direct him to pay for: (i) The funeral expenses, if the child has died; (ii) The necessary expenses incurred by or for the mother of the child in connexion with her confinement and recovery; and (iii) Such expenses in connexion with the pregnancy of the mother as the court may deem proper.

The above-mentioned laws apply to the maintenance rights for persons born out of wedlock which is slightly different from the rights of persons born in wedlock as found in subsection 4.1 of the Domestic Relations Law which states that a married woman is a joint natural guardian with her husband of the minor children of their marriage while they are living together and maintain one household. Each such parent shall be equally charged with their care, nurture, welfare and education. When such parents are living in a state of separation, the father shall be the custodian of the minor children of the marriage as against the claim of any person whomsoever; but if he is unable or morally unfit to perform his paternal, legal, moral and natural duties toward his children or for any other reasons he fails or neglects to perform such duties, upon petition to a circuit court for a writ of habeas corpus or other appropriate relief and a showing in the proceedings thereon of such inability, moral unfitness or failure on the part of the father, the minor children of the marriage shall be entrusted to themother or some other person who is capable of performing such duties. If the father is dead or absent, the mother shall have custody of the minor children of their marriage unless it is established that she is unable or unfit or failing to perform her duties toward them.

The inheritance rights of persons born out of wedlock is covered in section 3.5 of the Act Adopting a New Decedents Estates Law which states that an illegitimate child and his issue shall inherit under the provisions of section 3.2 from his mother and from her lineal and collateral relatives, and his mother and her lineal and collateral relatives shall inherit from such child and his issue as if he were legitimate. An illegitimate child and his issue shall inherit under the provisions of section 3.2 from his father and from the lineal and collateral relatives of the father, and the father and his lineal and collateral relatives shall inherit from such child and his issue as if he were legitimate under any of the following conditions:

(a) If the child is adopted by his father; or

(b) If the father acknowledges his paternity in writing before a justice of the peace or notary public and such acknowledgement is probated and registered; or

(c) If the parents marry subsequent to the birth; or

(d) If the child has been legitimated under the provisions of the Domestic Relations Law; or

(e) If the paternity of the child has been adjudicated by a court of appropriate jurisdiction.

Such child shall be treated as if he were the legitimate child of his mother, and, if any of the conditions enumerated in this section is present, as the legitimate child of his father, for the purpose also of receiving benefits under sections 4.3 and 4.4.

The inheritance rights of persons born in wedlock is different as can be found in section 3.2 (a and b) of the same Decedents Estates Law, which states respectively that the property of a decedent not disposed of by will or otherwise, after payment of administration and funeral expenses, debts and taxes, shall descend and be distributed thus: if the decedent leaves surviving a spouse and one or more lineal descendants, property to the value of $5,000 to the spouse outright and one-half the residue to the spouse for life with the remainder thereof to the children and to the issue of any deceased child in accordance with the provisions of section 3.4, and the remaining one-half of the residue outright to the said children and to the issue of any deceased child in accordance with the provisions of section 3.4 and if the decedent leaves surviving one or more lineal descendants but no spouse, the entire estate to the children and to the issue of any deceased child in accordance with the provisions of section 3.4.

However, legal limitations or restrictions on the freedom of a testator to dispose of his property affords equal protection to persons entitled to inheritance, whether they are born in wedlock or out of wedlock as found in section 2.1 Decedents Estates Law which states that every person 18 years of age or over, of sound mind and memory, may by will dispose of real and personal property and exercise a power to appoint such property.

The nationality or citizenship of a person born out of wedlock is determined by the same rules as those applicable to persons born in wedlock only if the person born out of wedlock has been legitimated by his father. This is due to the fact that Title 3:111 L.C.L. states that all children born out of the limits and jurisdiction of the Republic whose fathers were at the time of their birth citizens thereof are citizens of the Republic; but the rights of citizenship do not descend to children whose fathers never resided in the Republic. If such person is not legitimate, with regard to the father, the same rules that apply to persons born in wedlock do not apply to him.

Within the Republic of Liberia, political, social, economic and cultural rights are enjoyed equally by all persons, whether they are born in wedlock or out of wedlock, without prejudice, as regards social welfare services, to the special care which shall be provided to children born out of wedlock and their mothers, by the State or society, when necessary, in keeping with our constitution.

Part III

With regard to information in birth and other registers containing personal data which might disclose the fact of birth out of wedlock, Title 31:444 L.C.L., tells us that every registrar shall be provided with registers in the form of Forms A and B appended to this chapter. No register or index shall be taken out of any Registry Office or other place of deposit except by permission in writing of the Principal Registrar or under the order of a court; and any person violating this prohibition shall on conviction be liable to a fine not exceeding 10 dollars.

All registers, indexes, records, and other documents, relating to the registration of births, deaths, or burials which are in the custody and control of any Registrar shall, as they are no longer used, be deposited in the custody of the Principal Registrar either in his office or in such place as the Director General may direct.

Title 31:447 L.C.L., dealing with the inspection of registers and certified copies states that every person shall be entitled on payment of the prescribed fee to inspect any entry in a register or to search registers and indexes in any Registry Office and to search the registers and indexes deposited in any place in the custody of the Principal Registrar on any day except Sundays and holidays between the hours of 8 a.m. and 11 a.m. and on any day except Saturdays, Sundays, and holidays, between the hours of 2 p.m. and 4 p.m.

The following fees shall be paid to the Registrar by any person making an inspection or search of the registers and indexes above indicated:

For each inspection of any entry in any register, or for each search of registers and indexes in any Registry Office $1.00

For every general search in the indexes and registers in the custody of the Principal Registrar $5.00

For every particular search in the indexes and register in the custody of the Principal Registrar $2.50

For the purposes of this section "general search" means search during any number of successive hours without stating the object of the search, and "particular search" means a search of records for any given entry over any period not exceeding five years.

A certified copy of any entry in the registers in any Registry Office or in the registers deposited in any place in the custody of the Principal Registrar shall be issued to any person on request on payment of a fee of 50 cents. Every such certified copy shall be an exact copy of the entry in the register together with a certificate at the foot in the form of Form E appended to this Chapter and signature by the Registrar, or by the Principal Registrar in case the register is in his custody.

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A certified copy of any entry in any register shall be receivable in evidence in all legal proceedings as evidence of the facts purporting to be recorded therein.

The fees specified in this section shall be paid to the Registrars, who shall deposit them in the Bureau of Revenues as part of the general revenue of the Government.

The adoption of a child born out of wedlock is subject to the same rules and provisions and shall have the same consequences as the adoption of children born in wedlock. This is evidenced in subsection 4.61 of the Domestic Relations Law which states that any minor person present within the Republic at the time of the petition for adoption is filed, irrespective of place of birth or place of residence, may be adopted, and further emphasized by subsection 4.64 (b) which states that subject to the limitations hereinafter set forth, consent to adoption of a minor shall be required of the mother alone, of a child born out of wedlock.

Restrictions on the right to adopt is limited, in Liberia, to such requirements as are necessary to establish a parent-child relationship and to assure the best interests of the adoptee, as found in subsection 4.72 (2) of the Domestic Relations Law which states that after the making and entry of an order of adoption, the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child. From the date of the order of adoption, the adopted child shall be entitled to inherit real and personal property from and through the adoptive parents in accordance with the statutes of descent and distribution and the adoptive parents shall be entitled to inherit real and personal property from and through the adopted child in accordance with said statutes.

According to subsection 4.61 of the Domestic Relations Law, as quoted earlier, no restrictions based solely on a difference of race, colour or national origin is permitted.

Subsection 4.63 of the Domestic Relations Law states that proceedings for adoption shall be brought in the probate court in the county, territory or chartered district where the petitioners reside.

However, various social welfare agencies co-operate with the court in the execution of its function.

LUXEMBOURG

/21 September 1973/

Le projet de principes généraux concernant l'égalité des personnes nées hors mariaga et la non-discrimination à l'égard de ces personnes contient plusieurs principes qui sont en opposition avec la législation luxembourgeoise actuelle. Tel est le cas entre autres pour les points 1, 2, 7, 12 et 15. Il y a toutefois lieu de relever qu'un projet de modification des dispositions concernant la filiation naturelle a été élaboré relativement aux droits successoraux de ces enfants qui prévoit une large assimilation des enfants naturels aux enfants légitimes.

Le projet de réforme en préparation ira dans le sens de la non-discrimination des enfants nés hors mariage par rapport aux enfants légitimes. Tel est également le but d'une convention actuellement en voie d'élaboration au sein du Conseil de l'Europe.

MADAGASCAR

/17 October 1973/

Première partie

Paragraphe 3

Ne serait-il pas préférable de conférer un délai à l'exercice de l'action en recherche de paternité ; il semble en effet que des motifs d'ordre public découlant aussi bien de la paix et de l'honneur des familles que des difficultés de la preuve inciteraient à ne point laisser une telle procédure se prolonger indéfiniment dans le temps.

Il serait en outre opportun que ce délai de même que celui dont le principe a été retenu au paragraphe 4 revête un caractère préfixe dont l'expiration, pour les mêmes motifs que ci-dessus exposés, entraînerait une déchéance absolue, exclusive de toutes renonciations et de toute suspension.

Paragraphe 5

Si le caractère de la légitimation post nuptias est logique et excellent en soi, il n'en apparait pas moins envisagé de façon trop rigide. Quelle serait de ce fait la situation juridique de l'enfant né du commerce adultérin de la mère qui se marie avec son père s'il n'est pas désavoué par le premier mari de celle-ci ou ses héritiers? Sans nul doute celle de fils présumé de ce dernier. Il pourrait y avoir dès lors entrave à la liberté d'action de la mère, parfois préjudiciable à l'intérêt de l'enfant.

Ces considérations conduisent par suite à proposer que soit également définie la position de l'enfant adultérin qui a droit pour lui-même, autant que n'importe

quel autre, au respect de sa personne, et que le principe de la légitimation lui soit accordé, lorsqu'il est reconnu au moment de la célébration du mariage de ses parents, dans des hypothèses déterminées.

Par ailleurs, le projet de principe est muet sur le cas des enfants décédés en laissant des descendants. Pour ceux-ci la légitimation de leurs auteurs pourrait revêtir une importance majeure sur le terrain des discriminations sociales. La légitimation de leurs parents constituerait sans nul doute pour eux une sauvegarde si elle se trouvait expressément spécifiée dans les dispositions générales du projet.

Deuxième partie

Paragraphe 8

Ne vaudrait-il pas mieux, dans l'éventualité de la filiation a matre soit conserver le seul nom patronymique de la mère, soit prévoir directement le droit à modification - car en pratique, il s'avérera difficile d'obtenir une modification subséquente. Dès lors que le principe de ce nom patronymique est consacré, on n'en saisit pas clairement l'utilité - puisque le fait de la naissance hors mariage découle de ce principe. La rédaction suivante est proposée : "... elle a, le cas échéant, le droit d'obtenir la modification du nom patronymique de sa mère, de manière à ce que le fait de la naissance hors mariage ne soit pas révélé."

Paragraphe 10

On pourrait ajouter au deuxième alinéa de cet article après les expressions : "... en tout état de cause un domicile à l'enfant" le membre de phrase : "... qui pourra être notamment celui de la personne qui l'élève."

Paragraphe 11

En ce qui a trait aux aliments, pourquoi ne serait-il pas prévu une disposition consacrant au profit de l'enfant adultérin le bénéfice d'une pension alimentaire, quand bien même sa filiation ne serait pas établie ? Cette concession serait la suite normale des mesures préconisées au paragraphe 5 ci-dessus.

Paragraphe 12

Pour les droits successoraux la formule ne risque-t-elle pas, étant donné son caractère extensif, de susciter des difficultés lorsque les enfants nés hors mariage devront venir à la succession des ascendants de leur père ou de leur mère. Ne serait-ce pas plus positif de libeller ainsi le paragraphe :

"Toute personne née hors mariage a des droits successoraux vis-à-vis de celui de ses parents à l'égard duquel sa filiation est établie ..."

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Troisième partie

Paragraphe 16, deuxième alinéa

Cet alinéa gagnerait à être plus explicite. Quelle est exactement la portée des expressions : "... d'un rapport de parent à enfant ..."? - Il vaudrait mieux dire : "Le droit d'adoption est soumis aux restrictions nécessaires à la garantie des intérêts de l'adopté. En particulier, etc." - Car la prise en considération de ces intérêts implique par elle-même la nature du rapport dont il est fait état.

MALAWI

/20 September 1973/

The Government of Malawi supports the draft general principles of equality and non-discrimination in respect of persons born out of wedlock.

MEXICO

/14 November 1973/

El espiritu de la resolución coincide en lo esencial con las normas legales mexicanas aplicables a casos similares contempladas en el Código Civil vigente para el Distrito y Territorios Federales. Las discrepancias que pudieran existir se pueden considerar verdaderamente mínimas, sin que afecten al fondo al que se pretende llegar, como lo es el del establecimiento de una igualdad jurídica entre las personas, independientemente de cual sea su origen en orden al status civil de los progenitores.

En razón de lo anterior, se considera en general aceptable el contenido esencial del mencionado estudio, por la coincidencia en principios y en espíritu con el criterio predominante en nuestra legislación civil.

Observaciones

Atendiendo al orden establecido en el articulado del proyecto de principios, puede señalarse lo siguiente:

1a.-El articulo 1º del proyecto es compatible con el artículo 360 del Código Civil, con la única salvedad de que es más expreso nuestro dispositivo vigente por lo que se refiere a la filiación materna, que se establece por el solo hecho del nacimiento del sujeto, sin que se requiera un reconocimiento legal, que pueda implicar un acto formal en este campo particular. Por lo que se refiere a la filiación paterna, cuando el precepto del proyecto se refiere a reconocimiento legal, puede entenderse como coincidente con la conceptuación de nuestra Ley al

establecer dicha filiación por el reconocimiento voluntario o por la sentencia que declare la paternidad.

2a.- El artículo 2º es absolutamente coincidente con la parte ya mencionada del artículo 360 de nuestro Código Civil, ya que se establece la filiación materna de por sí en cuanto corresponde a la mujer que haya tenido el hijo.

3a.- El artículo 3º del proyecto coincide íntegramente en toda su primera parte con la Ley Mexicana. Sin embargo la parte final del mencionado artículo 3º establece que "el procedimiento judicial para determinar la filiación paterna no estará sujeto a ningún plazo" que es contrario al contenido del artículo 388 de nustro Código Civil, que sí limita el plazo para las acciones de investigación de paternidad o maternidad a la vida de los padres a quienes se impute la filiación. Por esta razón se cree que puede haber incompatibilidad entre este precepto del proyecto y nuestra Ley vigente.

4a.- El artículo 4º coincide en esencia con la presunción de legitimidad que contempla el artículo 324 de nuestro Código, siendo de observarse que es más amplio el contenido de nuestra ley positiva ya que en la fracción II del artículo 324 ya citado se considera como hijo nacido del matrimonio el que nazca dentro de los trescientos días siguientes a la disolución del matrimonio, por cualquier causa que ésta se produzca. Sería conveniente proponer una modificación a esta presunción a que se refiere el artículo 4º citado para hacerlo compatible con la realidad fáctica que sí ha considerado nuestra Ley.

5a.- El articulo 5º del proyecto es absolutamente coincidente con el principio de legitimación al que se refiere el artículo 354 de nuestro Código Civil, salvo que nuestra Ley establece en el artículo 355 requisitos especiales para que el hijo goce del derecho a la legitimación, consistente en el reconocimiento expreso de los padres antes o durante el acto de celebración del matrimonio, teniendo también que hacerse reconocimiento por ambos padres.

6a.- El artículo 6º coincide en esencia con el contenido de los artículos 255 y 256 del Código Civil, que establecen que no se afecta la filiación de los hijos considerados legalmente como nacidos de matrimonio, a pesar de la posterior declaración de invalidez o nulidad del propio matrimonio.

7a.- El artículo 7º del proyecto coincide con los principios de igualdad establecidos por nuestra Ley Civil aplicable.

8a.- El artículo 8º coincide con lo establecido por el artículo 389 de nuestro Código Civil en relación con el derecho a llevar un apellido.

9a.- El artículo 9º coincide plenamente con los derechos y obligaciones derivados de la patria potestad, conforme a lo que establecen los artículos 415, 380 y 381, todos ellos del Código Civil.

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10a.-Es compatible con la Ley Mexicana el principio al derecho de domicilio que establece el artículo 10º del proyecto.

11a.-Es también coincidente con la Ley Mexicana el derecho a alimentos sin atender al origen de la filiación del derechohabiente.

12a.-El artículo 12º es coincidente con el principio general establecido en el artículo 1607 del Código Civil, que no realiza discriminación alguna entre los hijos, para efectos de la sucesión legítima, por causa de la filiación, bastando la simple existencia de la prueba de la descendencia para conferir igualdad de derechos.

13a.-Nuestra Ley no prevee caso alguno de discriminación respecto de nacionalidad o ciudadanía atendiendo al origen del sujeto, o sea que hay compatibilidad a todos los niveles entre el artículo 13º del proyecto y nuestra Legislación vigente.

14a.-Ya se ha establecido anteriormente que la Ley Mexicana, a nivel Constitucional o local no hace discriminación por razón de la filiación, por lo cual puede considerarse compatible el artículo 14º del proyecto con las Leyes Mexicanas aplicables.

15a.-El artículo 15º del proyecto sí es contrario con la Ley Mexicana, ya que se limita en el proyecto la información de los requisitos de nacimiento o de otra índole a personas o autoridades que tengan interés legítimo en lo concerniente a la filiación y nuestro artículo 48 del Código Civil al regular lo relativo al Registro Civil, confiere el derecho a toda persona para pedir testimonio de las actas del Registro Civil, así como apuntes y documentos relacionados.

La parte segunda del mencionado artículo 15º puede considerarse coincidente con la Ley aplicable, por lo que se refiere a la no inclusión de connotaciones despectivas, pero no es posible omitir las circunstancias relativas al nacimiento de los hijos, porque las actas correspondientes se tienen que levantar satisfaciendo todos los requisitos contenidos en los artículos 54 a 83 del Código Civil, entre los cuales se establece la necesidad de precisar el origen del sujeto motivo de la inscripción.

16a.-El artículo 16º es absolutamente coincidente con las Leyes Mexicanas relativas a la adopción.

NETHERLANDS

/4 December 1973/

The Netherlands Government feels that the Study of Discrimination against Persons Born out of Wedlock, prepared by the Special Rapporteur in collaboration with the United Nations Secretariat and the Sub-Commission on Prevention of

Discrimination and Protection of Minorities, is of great value. The draft general principles on equality and non-discrimination in respect of persons born out of wedlock set a good standard for national legislators and therefore merit the close attention of the competent legislative bodies in the countries of the international community of nations.

The following observations in respect of the draft principles are made in the light of Netherlands law. By and large, Netherlands law is in conformity with the general principles embodied in the draft, and it differs slightly from them on only a few minor points.

Part I

Paragraphs 1, 2, 4 and 6. The principles enunciated are entirely in conformity with Netherlands law.

Paragraph 3. The Netherlands system only provides for voluntary acknowledgement by the father. A child born out of wedlock cannot make any claim on his putative father to establish paternal filiation. He has the right merely to claim maintenance.

Paragraph 5. Legitimation by marriage is conditional on the father's acknowledgement of the child.

Part II

Paragraphs 7, 10, 11, 13 and 14. The principles enunciated are entirely in conformity with Netherlands law.

Paragraph 8. A child born out of wedlock and not acknowledged by his father bears his mother's surname, unmodified.

Paragraph 9. A child born out of wedlock is not under parental authority but under guardianship. In principle, the authority of parents and guardians is the same.

Paragraph 12. Volume VI (Inheritance) of the New Civil Code, which has been passed by Parliament but has not yet come into force, provides that children born either in or out of wedlock shall have the same inheritance rights.

Part III

Paragraph 15. Netherlands law defers to this principle. In principle, information supplied may not disclose the names of the parents.

The names may only be given if the inquirer can prove that he has a justifiable, but not commercial, interest in obtaining the information and if the municipal authorities, having duly weighed the interests of all concerned, consider there is insufficient reason to withhold it.

Paragraph 16. This principle is entirely in conformity with Netherlands law.

NEW ZEALAND

/29 January 1974/

The New Zealand Government welcomes the draft general principles on equality and non-discrimination in respect of persons born out of wedlock and looks forward to further work being carried out with a view to the future incorporation of the draft principles in a Convention.

New Zealand law is in accord with these principles, as covered in the Status of Children Act 1969.

S.48 of the Domestic Proceedings 1968 provides that an application for a paternity order must be made within six years of a child's birth except where the defendant has contributed to or made provision for the maintenance of the child, or has since the birth of the child lived with the mother (in which case an application may be made at any time within two years of his having done any of those things) and where the defendant has admitted paternity expressly or by implication (in which case an application may be made at any time).

An application to the Supreme Court for a declaration of paternity under S.10 of the Status of Children Act 1969, however, is not subject to time-limits. New Zealand law is therefore in accord with principle 3.

Under S.5 of the Status of Children Act 1969, a child born to a woman during her marriage, or within 10 months after the marriage has been dissolved by death or otherwise, shall, in the absence of evidence to the contrary, be presumed to be the child of her husband or former husband. There are no special provisions written into New Zealand law to displace the presumption of paternity, although the question could conceivably arise in the context of certain proceedings, e.g. under S.10 of the Status of Children Act (mentioned above), or during proceedings against a husband for maintenance of a child, where it is relevant to decide the child's paternity. Should such an issue arise it would be determined by the Court on the evidence before it. There is no specific time-limit on proceedings which could have the effect of declaring the former husband not to be the father of the child.

The notion of the "legitimation" of a child by the subsequent marriage to each other of his parents has been displaced in New Zealand law by the principle embodied in the Status of Children Act, namely, that every child is the child of its natural parents, whether they are married to each other or not, and all other relationships are determined accordingly. Illegitimacy as a legal status has been abolished.

S.19A of the Births and Deaths Registration Act 1951 does, however, provide for the mandatory registration of a child's birth upon the subsequent marriage of its parents.

It is implicit in the Status of Children Act that all children have the same legal status.

Part II

Similarly, this principle is covered by the Status of Children Act, which is subtitled "An Act to remove the legal disabilities of children born out of wedlock".

The Births and Deaths Registration Act 1951 provides that a father's particulars may not be entered in the birth register unless he was married to the mother before the child's birth, or a declaration of paternity or a guardianship order has been made, or both the mother and the father request the entry. The absence of the father's particulars will therefore indicate the circumstances of the child's birth.

Under the Act, the child's Christian names are to be noted along with the names of the parents (or the mother, as the case may be) but there are no legal rules about surnames. The child of an unmarried mother would very often be given her surname, however.

S.6 of the Guardianship Act 1968 provides that the father and mother of a child shall each be a guardian of the child except where the mother is not married to the father and either has never been married to him or her marriage to him was dissolved before the child's conception, and she and the father are not living together at the time the child was born. In this event the mother is the sole guardian but the father may apply to the Court for an order appointing him a guardian of the child.

It should be noted, however, that the establishment of filiation by means of a paternity order or a declaration of paternity does not constitute the father a guardian of the child. In this regard therefore, New Zealand law is not in full compliance with principle 9.

Under the common law rules relating to domicile, a child born during the subsistence of a marriage takes the domicile of his father, while an ex-nuptial or posthumous child takes the domicile of his mother.

Establishment of filiation by means of a paternity order or a declaration of paternity would not affect these rules. It is not clear what the position is as regards the child's domicile where the father, although not married to the mother is a guardian of the child pursuant to S.6 of the Guardianship Act mentioned above. In this regard, New Zealand law does not accord with principle 10.

New Zealand law is in accord with this principle. Both parents are under an obligation to maintain their children and no question of "priority of claimants" arises.

One of the aims of the Status of Children Act was to eliminate discrimination

in matters of inheritance against persons born outside marriage, subject of course to filiation being established.

With one or two minor exceptions not relevant to the point under consideration, all children born in New Zealand acquire New Zealand citizenship by birth.

Acquisition of New Zealand citizenship by descent, however, depends on whether the child is born within or outside marriage. In the former case, New Zealand citizenship is acquired through the father. In the latter case, it is acquired through the mother, subject to the provision that if the child's parents subsequently marry each other, the child's citizenship is to be determined as if his parents had been married to each other at the time of his birth, i.e. the father's citizenship becomes the governing factor.

There is no discrimination exercised against children born out of wedlock under the social welfare services that are available in New Zealand. Indeed, the rights of such children are specifically safeguarded in the social security legislation and the Status of Children Act. There is, however, no legislation which requires a special benefit be given to unmarried mothers and their children.

Part III

The shortened form of birth certificate provided for under the Births and Deaths Registration Act 1951 discloses no information about a person's antecedents. The entry in the register itself and a certified copy of such an entry will do so, however, although the Registrar must omit from a certified copy the word "illegitimate", if the word ever appeared in the Register.

The Act provides that any person may, upon request, inspect any entry in the birth register and have a certified copy of the entry in the prescribed form. New Zealand law accordingly does not comply with the first limb of principle 15.

New Zealand law relating to the adoption of children born out of wedlock is substantially the same as that relating to children born in wedlock, although most cases will not require the father's consent where the child was born outside marriage. New Zealand law is broadly in accord with principle 16.

NORWAY

[7 December 1973]

The Norwegian Government agrees with the principle in the present proposal that children born out of wedlock shall receive the same treatment as children born in wedlock, and that there must be no discrimination against children born out of wedlock.

According to Norwegian law, the basic premise is that the legal relationship

between parents and children born out of wedlock shall be the same as that between parents and children born in wedlock. In cases where Norwegain legislation continues to have different rules in respect of the two categories of children, the difference is made chiefly for practical reasons.

Thus in all main respects Norwegian law is already in accordance with the views expressed in the draft. Our comments will therefore be restricted to those points on which Norwegian law is not in accordance with the principle expressed.

Paragraph 1

It is not clear how extensive the reservations made here are in regard to the recognition of a child born out of wedlock. It is to be noted that, under Norwegian law, it is the duty of the authorities to endeavour to establish the paternal filiation of a child born out of wedlock. In this particular connexion, no importance is attached to the consideration of the protection of the family. However, Norwegian law also to some extent makes it possible to leave the paternity unestablished, if, for example, neither regard for the mother and child nor consideration of the common good appear to necessitate its establishment.

Paragraph 4

A child born to a married woman acquires the status of legitimacy, in that the mother's husband is presumed to be the father, provided that there has been no court judgement ascribing paternity to some person other than the husband. Both the husband and the child are entitled to institute judicial proceedings to establish paternal filiation. In respect of the child, no time-limit applies to the right to institute such proceedings.

Paragraph 8

A child born out of wedlock acquires at birth the surname of the mother, but can acquire, by official authorization, the right to bear the name of the father.

Paragraph 9

According to Norwegian law, the parental authority in respect of a child born in wedlock shall be exercised by both parents jointly, while the mother shall exercise the parental authority in the case of a child born out of wedlock, regardless of whether or not his paternal filiation has been established. Norwegian law contains rules by which the parental authority may be transferred from the mother to the father.

The automatic right of the mother to exercise the parental authority can present problems if there is an increase in the percentage of "undocumented" marriages, in which children "born out of wedlock" in reality grow up in the joint

care of both parents. Any revision of the provision concerning parental authority, if it is not to seem unreasonable, would therefore have to tend towards the principle of equal status between the parents, as outlined in this item.

Paragraph 10

According to Norwegian law each person has his own domicile. A child's domicile is therefore determined by his actual place of residence and accordingly does not derive from the domicile of the parents.

Paragraph 12

A child born out of wedlock has, under Norwegian law, the same inheritance rights as a child born in wedlock. We have an exception to this principle in Norwegian allodial law ("Odelsloven"), in that a child born out of wedlock does not necessarily have allodial rights in the father's estate. The father must first give his consent thereto. Norwegian allodial law is now being revised, and according to the draft proposal a child born out of wedlock shall have the same legal status as a child born in wedlock, also in this respect.

Paragraph 13

According to Norwegian law a child born in wedlock acquires Norwegian nationality at birth, if the father is a Norwegian subject. A child born out of wedlock acquires Norwegian nationality, if the mother is a Norwegian subject. In regard to the acquisition of Norwegian nationality otherwise, the same rules are applicable to children born in wedlock as to children born out of wedlock.

The distinction thus made between children born in and those born out of wedlock, in so far as the acquisition of Norwegian nationality is concerned, is based on practical considerations. As a rule it is the mother who exercises the parental authority in respect of a child born out of wedlock, and it is considered that the needs of the situation are best met by the child having her nationality. Moreover, in many instances the identity of the father is not known at the time of the child's birth.

Norway declares herself to be in agreement with the policy of equality of status contained in the draft general principles. Such differences as are evidenced above between these general principles on the one hand and Norwegian law on the other will not result in Norway endeavouring to have the draft principles amended on these points.

OMAN

[19 February 1974]

Both temporally and spiritually there is no discrimination against persons born out of wedlock in the Islamic Law which Oman observes.

PANAMA

/6 August 1973/

La Constitución de 1972, vigente establece:

"Articulo 55. Los padres tienen para con sus hijos habidos fuera del matrimonio los mismos deberes que respecto de los nacidos en él. Todos los hijos son iguales ante la Ley y tienen el mismo derecho hereditario en las sucesiones intestadas. La Ley reconocerá los derechos de los hijos menores o inválidos y de los padres desvalidos en las sucesiones testadas.

"Articulo 56. La Ley regulará la investigación de la paternidad. Queda abolida toda calificación sobre la naturaleza de la filiación. No se consignará declaración alguna que establezca diferencia en los nacimentos o sobre el estado civil de los padres en las actas de inscripción de aquéllos, ni en ningún atestado, partida de bautismo o certificado referente a la filiación.

Se concede facultad al padre del hijo nacido con anterioridad a la vigencia de esta Constitución para ampararlo con lo dispuesto en este Artículo, mediante la rectificación de cualquier acta o atestado en los cuales se halle establecida clasificación alguna con respecto a dicho hijo. No se requiere para esto el consentimiento de la madre. Si el hijo es mayor de edad, éste debe otorgar su consentimiento.

En los actos de simulación de paternidad, podrá objetar esta medida quien se encuentre legalmente afectado por el acto.

La Ley señalará el procedimiento."

POLAND

/Original: Russian/
/13 November 1973/

1. The possibility provided for in paragraph 3 of establishing paternal filiation by means of "recognition of legal presumptions" gives rise to objections. Under Polish law, for example, paternal filiation is established by means of acknowledgement or as the result of a judicial decision. It is doubtful whether any other means of establishing paternal filiation can be regarded as acceptable.

In the light of the foregoing, it is proposed that the possibility of establishing paternal filiation by means of "recognition of legal presumptions" should be deleted from the provision in question.

2. In paragraph 4, the grounds for overcoming the presumption that the husband of the mother is the father of the child are dealt with too broadly. The draft

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provides that the husband of the mother is the father of the child if the child is born during the marriage, unless it is proved in the course of judicial proceedings that the husband is not the father. In practice, the only possible evidence that a certain man is not the father of a child is based on the results of a blood-group test. We consider that to limit the possibility of refuting paternal filiation to these cases only would be unrealistic and incorrect.

We propose that the provision in question should contain more flexible conditions for refuting paternal filiation, such as those set out in articles 67 and 68 of the Family and Guardianship Code of the Polish People's Republic (see annex).

3. We consider that the principle proposed in paragraph 5 is too far-reaching. Moreover, the fact that the provision does not mention any time-limits makes it even less realistic in the light of actual experience. It is therefore proposed that this principle be amended in such a way as to simplify the possibility of establishing the paternal filiation of a child born before the marriage of the parents.

In such situations, a statement by the parents upon their marriage that the child has been born of their union might be permitted.

Annex

FAMILY AND GUARDIANSHIP CODE OF THE POLISH PEOPLE'S REPUBLIC

Article 67. If a child is born after the expiry of the 180th day following the date of the marriage, but before the expiry of the 300th day following the date of the dissolution or annulment of the marriage, presumption of paternal filiation may be overcome only through evidence of the improbability of the husband being the father of the child.

Article 68. 1. If a child is born before the expiry of the 180th day following the date of the marriage, it shall suffice, in order to overcome presumption of paternal filiation, for the husband to declare in the proceedings for refutation of paternal filiation that he is not the father of the child.

2. If, however, the husband had intercourse with the mother not earlier than the 300th and not later than the 181st day before the birth of the child, or if he contracted marriage knowing that the wife was pregnant, presumption of paternal filiation may be overcome only through evidence of the improbability of the husband being the father of the child.

ROMANIA

/21 September 1973/

Le projet de principes généraux relatifs à l'égalité et à la non-discrimination à l'égard des personnes nées hors mariage répond, d'une façon générale, à l'objet et au but qui ont été fixés.

L'un des problèmes dont l'étude devrait être continuée est la disposition contenue au point 3 de la première partie du projet, selon laquelle "l'exercice d'une action en recherche de paternité n'est soumis à aucun délai". A cet égard il est à noter qu'il y a de nombreuses législations, y compris celle de la Roumanie, où il est fixé un délai dans lequel l'action en recherche de paternité doit être exercée. Il serait peut-être préférable de n'inclure, dans le projet de principes, aucune disposition relative à la prescription du droit d'action et de laisser ainsi aux Etats toute latitude de résoudre cette question dans leurs législations nationales.

SWEDEN

/23 January 1974/

The draft general principles on equality and non-discrimination in respect of persons born out of wedlock represent an important step forward in the further development of international rules in the field of human rights. The Swedish Government would like to pay a tribute to the Sub-Commission on Prevention of Discrimination and Protection of Minorities for the important results achieved by it in the course of its study of discrimination against persons born out of wedlock. Subject to the observations made below the draft principles are acceptable to the Swedish Government and should in its opinion form the basis for future work in this area.

Part I

Paragraph 1 lays down the main principle that every person born out of wedlock shall be entitled to legal recognition of his maternal and paternal filiation. However, the reservation is made that this principle shall apply only "in so far as compatible with the principle of the protection of the family". It is the firm opinion of the Swedish Government that this latter part of paragraph 1 should be deleted. If retained and interpreted in a broad sense, it would in fact render the provisions of Part II redundant in all cases where, due to the interest of protecting the family of the mother or the father, the maternal or paternal filiation cannot be established. In order to afford persons born out of wedlock a legal status equal to that of persons born in wedlock it is necessary to let the principle of protecting the family yield to the more important principle that children born out of wedlock shall not be made subject to discriminatory legal treatment.

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Part II

Paragraph 9, second sentence provides inter alia that, where a child's filiation has been established in relation to both parents, parental authority shall be exercised according to the same rules as for a child born in wedlock, unless the court decides otherwise in the best interest of the child. This phrase might be interpreted in the sense that the rules applicable to children born in wedlock whose parents are married should apply. According to Swedish law such an interpretation would mean that both parents shall have parental authority over the child. It is submitted, however, that instead the same principles that apply in cases where the parents are separated or divorced should be applicable, where the filiation of a child born out of wedlock has been established in relation to both parents. For these reasons it is suggested that the aforementioned part of the second sentence should be deleted as superfluous, since the first sentence lays down the principle of equal treatment, as far as parental authority is concerned, of children born out of wedlock and children born in wedlock. Alternatively, it is proposed to substitute the word "principles" for "rules".

It should be mentioned in this context that under Swedish law both parents of a child born in wedlock have parental authority over the child. On separation or divorce it is up to the court to decide which of the parents shall have the custody and thereby the guardianship of the child. The decision shall be made exclusively with regard to what is best for the child. With regard to a child born out of wedlock the mother automatically has the parental authority of the child. The court may, however, transfer the parental authority to the father, provided this is considered to be in the best interest of the child.

Paragraph 13. According to the Swedish Citizenship Act of 22 June 1950, the nationality of a person born out of wedlock is not determined by the same rules as those applicable to a person born in wedlock. Under the Swedish law a child automatically obtains Swedish citizenship by birth, provided he is born in wedlock and his father is Swedish or provided he is born out of wedlock and his mother is Swedish (maternal filiation of a person born out of wedlock is always established in Sweden, since the fact of birth of a child by itself establishes maternal filiation to the woman who gives birth to the child).

For countries where the nationality of a child born in wedlock is based on the nationality of the father, the provision of paragraph 13 disregards the reality that a child born out of wedlock usually has a close filiation with the mother but not always with the father. It is submitted, therefore, that the principle that children born out of wedlock shall be afforded a status equal to that of children born in wedlock should not entail the consequence that the same rules shall apply as far as nationality is concerned. Taking into account the different rules relating to nationality presently in force in the countries Members of the United Nations, it seems doubtful whether a uniform solution to the problem of nationality of persons born out of wedlock is possible to achieve. It is suggested, therefore, that the first subparagraph should be deleted, retaining, however, the second subparagraph aiming at the protection of persons born out of wedlock against statelessness.

Part III

Paragraph 15 embodies the principle that facts of birth out of wedlock contained in birth or other registers should be disclosed only to persons or authorities having a legitimate interest in obtaining such information. This provision gives rise to certain hesitations since it is contrary to the principle that it should not be considered derogatory to be born out of wedlock. The Swedish Government considers that it should be left to the national law of each State to determine whether disclosure of such information shall be limited as suggested.

SWITZERLAND

/6 December 1973/

Remarque préliminaire

Les dispositions sur la filiation illégitime sont contenues dans le Code civil suisse (CCS) du 10 décembre 1907, entré en vigueur le 1er janvier 1912. Cette loi a maintenu la différence traditionnelle entre la filiation légitime et illégitime : elle règle de façon différente la naissance et les effets des relations de l'enfant illégitime avec le père et avec la mère. Depuis l'adoption du CCS toutefois de profondes transformations d'ordre social et moral sont apparues, de sorte que les dispositions sur la filiation illégitime se sont avérées dépassées et qu'une révision s'est imposée. C'est pourquoi le Département fédéral de justice et police a entrepris de réviser le droit de la filiation en général (légitime et illégitime). Une commission d'experts vient de déposer un avant-projet accompagné de son rapport final et le Gouvernement suisse soumettra au Parlement son projet, probablement au début de 1974. Cet avant-projet écarte toute discrimination à l'égard de l'enfant né hors mariage et va ainsi dans le sens de la résolution 1787.

Les autorités suisses se réfèrent ci-après à l'avant-projet établi par la commission d'experts pour un nouveau droit de la filiation. Il y a lieu de relever à ce propos que les propositions de la commission ne lient en aucune façon le Gouvernement et le Parlement et ne préjugent en rien leurs décisions.

Première partie

Paragraphe 1. D'après le droit suisse actuel, la filiation légale résulte, à l'égard de la mère, du seul fait de la naissance. Les effets d'état civil à l'égard du père ne sont pas ouverts à tous les enfants nés hors mariage. Le législateur de 1907 n'a voulu admettre un lien de droit de la famille qu'en cas de paternité certaine. Aux yeux du législateur, il y a certitude si l'enfant est reconnu volontairement et - en cas de jugement - lorsque, en plus des conditions nécessaires pour prononcer la déclaration de paternité, il y a eu promesse de mariage de la part du défendeur ou lorsque la cohabitation a été un acte criminel ou un abus d'autorité (art. 303 et 323 CCS). En outre, pour protéger la famille, le législateur a décidé d'exclure les effets d'état civil pour les enfants nés d'un commerce adultérin ou incestueux. Ainsi de nombreux enfants nés hors mariage ne remplissent pas les conditions restrictives pour l'admission des effets d'état civil. Toutefois la loi reconnaît à l'enfant un droit à des contributions d'entretien de la part du père (ce qu'on a appelé la "paternité alimentaire", art. 309 CCS).

L'avant-projet de la commission d'experts écarte complètement cette différence entre les effets d'état civil et la paternité alimentaire. Si la paternité est

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reconnue la filiation légale, à l'égard du père, de l'enfant né hors mariage sera toujours établie. L'action en paternité est admise de façon générale.

Conclusion. L'avant-projet correspondrait au /paragraphe 1 des projets de principes/.

Paragraphe 2. Pas d'observations (voir sous 1).

Paragraphe 3. L'article 308 CCS prévoit que l'action en paternité doit être intentée au plus tard un an après la naissance. Lorsque la mère était mariée à l'époque de la conception, une action en paternité ne peut être intentée qu'après que la filiation illégitime de l'enfant a été déclarée par le juge. Dans ce cas, le délai pour intenter l'action court à partir du jour où l'enfant a été déclaré illégitime (art. 316 CCS). Il est actuellement reconnu de façon unanime que la durée de ce délai est trop courte. L'avant-projet de la commission d'experts prévoit que l'enfant pourra en principe intenter l'action au plus tard une année après avoir atteint la majorité (c'est-à-dire jusqu'à 21 ans révolus). Après l'écoulement de ce délai, une action ne pourra être intentée que si le retard est justifié par des raisions suffisantes. Cette prolongation des délais tend à établir un équilibre entre les intérêts de l'enfant d'une part, et ceux du père et de sa famille d'autre part.

Conclusion. La solution prévue par l'article 3 de la résolution de ne soumettre l'action en recherche de paternité à aucun délai n'entrerait probablement pas en considération pour la Suisse.

Paragraphe 4. D'après le droit suisse, la présomption de légitimité est en principe détruite par la preuve que le mari n'est pas le père de l'enfant (art. 254 CCS). Cette présomption s'appuie cependant sur la présomption de fait de la cohabitation des époux vivant en ménage commun. Cette base fait défaut lorsque l'enfant a été conçu avant le mariage ou pendant la séparation. La loi facilite dans ces cas la contestation de la légitimité. Elle cherche à tenir compte des circonstances de fait en inversant le fardeau de la preuve : le mari n'a pas à prouver d'autre fait pour désavouer l'enfant lorsque l'enfant est né moins de cent quatre-vingts jours après la célébration du mariage ou lorsqu'au moment de la conception les époux étaient séparés de corps. Toutefois la présomption que l'enfant est légitime renaît dès qu'il paraît établi que le mari a cohabité avec sa femme à l'époque de la conception (art. 255 CCS).

L'avant-projet de la commission d'experts prévoit que le mari n'a pas à prouver d'autre fait à l'appui de l'action lorsque l'enfant a été conçu avant la célébration du mariage ou lorsqu'au moment de la conception la vie commune était suspendue. Toutefois, dans ce cas également, la paternité du mari est présumée dès qu'il paraît établi qu'il a cohabité avec sa femme à l'époque de la conception.

Conclusion. De l'avis des autorités suisses, la présomption facilitée de la légitimité de l'enfant, selon le droit actuel et futur, irait plus loin que le paragraphe 4.

Paragraphe 5. Pas d'observations. La disposition correspond à l'article 258 CCS.

Paragraphe 6. Pas d'observations. La disposition correspond à l'article 133, alinéa premier CCS.

Deuxième partie

Paragraphe 7. Selon le droit actuel l'enfant né hors mariage a toujours le même statut juridique que l'enfant né dans le mariage, en ce qui concerne la filiation maternelle; quant à la filiation paternelle, par contre, le statut est le même uniquement lorsque celle-ci a été admise avec effets d'état civil (on trouve une exception dans le cadre du droit des successions). Si l'enfant ne suit pas la condition du père, la parenté légale n'est pas établie non plus. L'avant-projet de la commission d'experts écarte cette paternité sans parenté légale et reconnaît à l'enfant né hors mariage, dès que la paternité a été établie, le même statut qu'à l'enfant né dans le mariage.

Conclusion. L'avant-projet serait conforme à l'article 7 de la résolution.

Paragraphes 8 et 13. Le droit suisse admet le principe de l'unité de la famille, c'est-à-dire un nom, un domicile, un droit de cité. Le nom du mari est le nom de la famille, (toutefois dans le cadre de la révision du droit du mariage, étape ultérieure de la révision du droit de la famille, cette prescription est examinée sous l'angle de l'égalité entre les époux). En vertu du droit actuel les enfants nés dans le mariage portent le nom du père. Cette règle vaut aussi pour les enfants nés hors mariage qui suivent la condition du père. Dans les autres cas l'enfant né hors mariage porte le nom et acquiert le droit de cité de sa mère.

L'avant-projet de la commission d'experts part de l'idée que l'intérêt de l'enfant né hors mariage consiste principalement à porter le même nom et à acquérir le même droit de cité que le parent auprès duquel il grandit. En règle générale ce sera la mère. La situation sociale de cette dernière serait compromise si l'enfant portait le nom et acquérait le droit de cité du père. C'est pourquoi l'enfant né hors mariage portera désormais le nom de la mère et acquerra le droit de cité de celle-ci, de par la loi. Cependant, si l'enfant vit de façon durable auprès du père, ce qui devrait être une exception, le nom et le droit de cité du père devraient passer à l'enfant. Les enfants nés dans le contre porteront le nom et acquerront le droit de cité commun. La réglementation valable pour l'enfant né dans le mariage ne peut s'appliquer à l'enfant né hors mariage car les parents n'ont plus de nom ni de droit de cité communs.

Conclusion. L'avant-projet ne serait pas conforme aux articles 8 et 13 de la résolution.

Paragraphe 9. En vertu du droit actuel les parents, donc le père et la mère, exercent ensemble, de par la loi, la puissance paternelle sur l'enfant né dans le

mariage. En cas de mort de l'un des époux la puissance paternelle appartient au survivant et, dans le cas de divorce, à celui auquel les enfants ont été attribués (art. 274 CCS). La puissance paternelle n'appartient pas par contre, de par la loi, aux époux non mariés. L'enfant est pourvu d'un curateur qui doit régler la paternité. L'autorité tutélaire peut ensuite nommer un tuteur ou mettre l'enfant sous la puissance paternelle de la mère ou du père, s'il existe un lien de filiation légale.

En ce qui concerne l'enfant né dans le mariage la réglementation de l'autorité parentale ne subira pas de grande modification dans le cadre de la révision. L'avant-projet prévoit par contre que l'autorité parentale appartient, de par la loi, à la mère non mariée. En cas de violation de ses devoirs elle pourra toutefois lui être retirée et transférée au père.

La priorité accordée à la mère semble justifiée par le fait que le lien de filiation à l'égard de celle-ci résulte du seul fait de la naissance et que l'enfant grandit la plupart du temps auprès d'elle. L'exercice en commun de l'autorité parentale par des parents non mariés est exclue dans le cadre de l'avant-projet. La situation sociale de l'enfant né hors mariage est comparable à celle de l'enfant de parents divorcés. Dans les deux cas l'enfant vit auprès d'un parent qui exerce seul l'autorité parentale.

Conclusion. L'avant-projet ne serait pas conforme à l'article 9 de la résolution.

Paragraphe 10. Pas d'observations (cf. art. 25 CCS).

Paragraphe 11. Pas d'observations. La disposition correspond au droit actuel et futur.

Paragraphe 12. En droit des successions les enfants consanguins nés hors mariage sont traités actuellement de la même façon que ceux nés dans le mariage, en ce qui concerne la parenté maternelle. Dans le cadre de la parenté paternelle un droit successoral n'est prévu que si l'enfant né hors mariage suit la condition du père en vertu d'une reconnaissance ou d'une déclaration de paternité. Lorsque l'enfant né hors mariage est en concours avec des descendants légitimes, son droit est réduit à la moitié de la part afférente à un enfant légitime ou à ses descendants (art. 461 CCS). Cette restriction du droit successoral dans la famille paternelle tombera avec la révision du droit de la filiation illégitime. Désormais l'enfant né hors mariage, dès que la paternité aura été établie, aura les mêmes droits successoraux à l'égard du père et de la mère que l'enfant né dans le mariage.

Conclusion. L'avant-projet serait conforme à l'article 12 de la résolution.

Paragraphe 14. Pas d'observations.

Troisième partie

Paragraphe 15. Pas d'observations.

Paragraphe 16. Pas d'observations.

SYRIAN ARAB REPUBLIC

/7 September 1973/
/7 February 1974/

In accordance with the Syrian laws, a child born out of wedlock is not treated equal to a legitimate child, as far as heritage and carrying the father's family name are concerned. However, if the child is able to prove his or her identity or is recognized by his or her father, the child in these two cases is treated an equal to any legitimate child.

1. The phenomenon of persons born out of wedlock has not constituted a social problem in the Syrian Arab Republic simply because the number of persons born out of wedlock every year does not exceed 25.

2. Civil legislation in the Syrian Arab Republic does not distinguish or differentiate between legally born children and those who are born out of wedlock, and all enjoy the same political, social, economic and cultural rights without discrimination.

3. Legislative decree No. 107 of 1970 concerning the care of children born out of wedlock stipulates that the Ministry of Social Affairs and Labor should take care of, support and educate them, so that they will be able to depend on themselves and earn their livings. It also stipulates that special homes should be established and attached to the Ministry for the benefit of these children.

4. The previous legislative decree certified that a child born out of wedlock was permitted to be assigned to an alternative family but had to comply with specified conditions. There is also a draft resolution to amend decree No. 107 by adding a special item by which it is stipulated that children born out of wedlock are allowed to be taken care of by other families if the specialized court issues its approval. In this case, a child may carry the new family name and be entitled to all of a legal child's rights except that of heritage. This right is to be replaced by providing the child with an amount of money that would be sufficient for his or her living.

5. The Syrian civil legislation does not consider adoption but allows persons to claim kinship before the specialized court according to specified procedures.

6. All principles included in the draft general principles of equality and non-discrimination in regard to children born out of wedlock are being implemented in the State with only one exception, that is, the first item of the draft concerning adoption of children born out of wedlock.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/14 February 1974/

Preambular paragraph 6

This paragraph is inconsistent with the remaining preambular paragraphs and the United Kingdom Government suggest its deletion.

Part I

Paragraph 1

The meaning of this paragraph is unclear. If the words "... entitled to legal recognition ... in so far as compatible with the principle of the protection of the family" are intended to mean the ability to establish legally the parent-child link, then the United Kingdom Government would support it.

The United Kingdom Government would, however, recommend clarification of this paragraph. As drafted at present, it appears that "legal recognition" is additional to the establishment of paternal filiation but the right to "legal recognition" is limited by the words "in so far as compatible with the principle of the protection of the family". The latter principle is capable of a construction which could rob the right to legal recognition of almost all meaning. In addition, to entitle a child to paternal affiliation is to override the wishes and judgement of the mother on whom the onus of bringing up the child is likely to fall. The granting of full paternal rights to the putative father confers power to interfere with the upbringing of the child and does not seem to be balanced by any effective increase in his duties. This could be contrary to the interests of the child. This comment (which does not apply to Scotland) also applies to paragraph 9.

Paragraph 3

In England, under section 2 of the Affiliation Proceedings (Amendment) Act 1972, a time-limit of three years is imposed on judicial proceedings to establish paternal filiation. This is to prevent paternal affiliation being established on the strength of stale evidence.

Paragraph 4

Where a child is born during the subsistence of a marriage the presumption of legitimacy is strong but it can, nevertheless, be rebutted without a judicial decision where evidence to the contrary is produced and it is clear that the husband was not the father of the child; and in certain circumstances the presumption does not arise in the first place. The United Kingdom Government would not therefore support the proposal that a judicial decision is needed to overturn the

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presumption. There is no time limit in United Kingdom law for judicial proceedings to rebut the presumption of legitimacy and the United Kingdom Government would be unable to support any fixed time limit for proceedings of this nature.

Paragraph 5

This paragraph accords with United Kingdom law in all cases where the father was domiciled in the United Kingdom at the date of the marriage. Where he was not so domiciled the child will be regarded as legitimated in the United Kingdom if he was legitimated under the law of the country in which the father was domiciled.

Paragraph 6

In the United Kingdom a legitimate child of a voidable marriage retains his legitimacy if the marriage is annulled but a child of a void marriage will be treated as legitimate only if the father was domiciled in that country at the date of the birth and both or either of the parties reasonably believed that the marriage was valid at the time of intercourse resulting in the birth or at the time of the marriage if later. But a void marriage contracted after the birth of a child does not legitimate the child and thus this paragraph would be acceptable to the United Kingdom Government only if the words "or considered to be born in wedlock as a result of the subsequent marriage of his parents" were omitted.

Part II

Paragraph 7

The United Kingdom Government are uncertain of the meaning of the words "affiliation" and "status" in the context of this paragraph. They would suggest that this paragraph could be clarified to remove the implication that once an illegitimate child proves legally who his parents are he shall be in the same legal position as a legitimate child: United Kingdom law does not extend this far.

Paragraph 8

In the United Kingdom, whether filiation is established or not, an illegitimate child may be given the father's surname, the mother's surname, a combination of the two surnames or some other surname altogether. In Scotland a subsequent change of surname may be recorded officially by the Registrar General.

Paragraph 9

This paragraph does not accord with the law in the United Kingdom. The effect of this paragraph in some countries would be to confer on the putative father of an illegitimate child parental authority to the exclusion of the mother which would be unacceptable.

In Scotland, the rights relating to custody and guardianship are different, for legitimate and illegitimate children and an illegitimate child does not have the same obligations to his parents.

Paragraph 10

This paragraph does not accord with the law in the United Kingdom. The general position under United Kingdom law is that a legitimate child takes his father's domicile at the date of birth and an illegitimate child his mother's whether or not paternal affiliation has been established. The Domicile and Matrimonial Proceedings Act 1973 created one minor exception, namely that if the parents were separated before the child was born a legitimate child will probably take his mother's domicile as his domicile of origin.

Under United Kingdom law, every person has a domicile.

Paragraph 11

The United Kingdom Government are uncertain of the meaning of the words "maintenance rights". If they mean the right to be supported by the parents then the United Kingdom Government can support them. The provisions of the Matrimonial Proceedings and Property Act 1970 gives the English Courts wide powers to order maintenance in respect of both legitimate and those children who have been accepted as "children of the family" even though illegitimate. However, even though both a legitimate and an illegitimate child are entitled to maintenance, the maintenance rights of an illegitimate child are not necessarily the same. In Scotland, for example, the obligations of the father and mother of an illegitimate child to maintain it are different, inter se, to what they are if the child is legitimate: in Northern Ireland the putative father of an illegitimate child may commute his payments under an affiliation order by the payment of a lump sum. This is not possible in the case of a legitimate child.

Paragraph 12

The Family Law Reform Act 1969 (Part II) (and the comparable Scots law) does not fully accord with the first part of the paragraph. Illegitimate children can now inherit from their parents, but wider inheritance rights are broken if the relationship is required to be traced through an illegitimate link. The rights of succession in the United Kingdom do not extend to claims by illegitimate children on estates other than their parents' own estates, nor can they succeed to titles of honour and dignities. Section 18 of the 1969 Act provides that illegitimate children are to be treated for the purposes of the Inheritance (Family Provision) legislation as "dependent" and therefore entitled to claim provision out of deceased parents' estates.

Paragraph 13

As regards the first part of this paragraph a child born in the United Kingdom is a citizen of the United Kingdom and Colonies automatically whether he is legitimate or not and whatever the nationality of his parents may be. However, citizenship, by descent can only be transmitted by legitimate descent in the male line and United Kingdom nationality law does not therefore accord with this paragraph. The United Kingdom Government believe that it would be impracticable to extend descent through the male line to illegitimate children because of the difficulties of establishing paternity. To permit transmission of nationality through the female line would result in a great increase in the number of persons holding dual nationality with all the attendant problems.

As to the second part of the paragraph, section 1 of the British Nationality (No. 2) Act 1964 gives an entitlement to registration to a child whether legitimate or illegitimate born to a mother who is a citizen of the United Kingdom and Colonies, if the child would otherwise be stateless. It does not however confer citizenship automatically in these circumstances and would not therefore fully conform to this paragraph. Accordingly the United Kingdom Government would suggest the deletion of the first part of this paragraph, and the replacement of the second part of this paragraph with the words "special protection against statelessness should be provided for persons born out of wedlock, in particular where only the maternal filiation of a person born out of wedlock is established".

Part III

Paragraph 15

In the United Kingdom the entry in the register of births discloses the fact of illegitimacy and a certified copy of any entry in the birth register is obtainable on payment of the statutory fee by any person who has sufficient information to identify the entry in the indexes. Short certificates of birth which do not disclose legitimacy or illegitimacy are similarly available at a lower fee. The short certificate is widely used by persons of both legitimate and illegitimate birth. It is acceptable for practically all everyday purposes and, to increase its popularity still further, a short certificate has been issued free at the registration of every birth since January 1966 in Scotland and since October 1968 in England and Wales.

The United Kingdom Government do not, however, think it would be practicable to abolish the right to have a full birth certificate (i.e., a certified copy of the entry) or the right to demand one when evidence of birth or parentage is required. In some cases it is essential, for example, for employers and public authorities to have evidence of parentage as well as age and, of course, a short certificate may not always sufficiently establish the identity of the child to whose birth it is alleged to relate. In addition, to restrict the availability of full certified copies would prejudice medical and social research.

Paragraph 16

The rules of the United Kingdom governing the adoption of children born in and out of wedlock differ in detail with this paragraph although in general they accord with it. Under United Kingdom law, for instance, the consent of a putative father to adoption is not required whereas the consent of the father of a child born in wedlock is. The United Kingdom Government would suggest therefore the substitution of the word "procedures" for "rules and provisions" and in line 2 "a child" for "children".

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[16 January 1974]

The legal status of children born out of wedlock is an important aspect of the problem of human rights. The principle of non-discrimination in respect of persons born out of wedlock is reflected in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Soviet Union has ratified both of these international covenants.

However, as the research conducted by the United Nations shows, discrimination in respect of persons born out of wedlock still exists in the legislation and practice of a number of States. It is therefore appropriate that draft general principles on equality and non-discrimination in respect of persons born out of wedlock should be prepared within the framework of the United Nations Economic and Social Council.

The legislation of the Union of Soviet Socialist Republics and the Union Republics includes no provisions discriminating against persons born out of wedlock. In law and in fact, persons born out of wedlock enjoy in the Soviet Union equal rights with persons born in wedlock in every field. The principle of the equality of rights of persons born in wedlock and persons born out of wedlock is confirmed, in particular, in such instruments as the Principles of Legislation of the Union of Soviet Socialist Republics and the Union Republics on Marriage and the Family, adopted in 1968, the Codes on Marriage and the Family of the Union Republics, and instructions and rules concerning the procedure for making entries in the civil register.

The establishment of the maternal filiation of a child born out of wedlock by virtue of the fact of birth itself is provided for in Part 2, article 17, of the Principles of Legislation. The Principles provide for the possibility of establishing paternal filiation of the child through recognition of presumption that he is the child of persons who are married to each other and judicial decision establishing paternal filiation. A child born to persons who are married to each other is considered to be born in wedlock, regardless of the interval which elapsed between the registration of the marriage and the birth of the child (art. 16).

In accordance with article 50 of the Code on Marriage and the Family of the RSFSR and the analogous provisions of the Codes on Marriage and the Family of the other Union Republics, once paternal filiation has been established, children have the same rights and obligations in respect of their parents and their parents' relatives as do children born to persons who are married to each other. Children born out of wedlock have equal rights in respect of surname, domicile, upbringing ("parental authority"), maintenance and inheritance.

Equality of political, social, economic and cultural rights of all citizens, regardless of their parentage, is a constitutional principle of the USSR.

The nationality and citizenship of children born out of wedlock is determined in the USSR in the same way as that of children born in wedlock. If the mother of a child born out of wedlock is a stateless person, once it has been established that his father is a Soviet citizen the child is recognized as a citizen of the USSR.

In accordance with article 17 of the Principles of Legislation of the Union of Soviet Socialist Republics and the Union Republics on Marriage and the Family, birth certificates are drawn up in such a way as not to disclose that a child is born out of wedlock. Copies of entries of births in the civil register may be issued only at the request of State organs: procurator, court or notary's office.

The principle of equality and non-discrimination in respect of persons born out of wedlock is in its essence a progressive one. In the opinion of the competent Soviet organizations, in the formulation of principles on equality and non-discrimination in respect of persons born out of wedlock provision should be made for the granting of material and other assistance by the State to children born out of wedlock and to their mothers.

PART II

REPLIES RECEIVED FROM SPECIALIZED AGENCIES

INTERNATIONAL LABOUR ORGANISATION

[23 November 1973]

Social security legislation, which constitutes an important part of the social rights to which paragraph 14 of the draft general principles applies, varies considerably from country to country, but tends either to reflect the status of persons born out of wedlock in family law or, in a number of cases, to correct or mitigate, to the extent compatible with family law, the social hardships which may derive from the legal status of such persons, according to the policies and social climate in the countries concerned. Thus the achievement of the purposes of the draft seems to rest on the modification, where necessary, of national family law, which raises a host of problems outside the competence of the International Labour Organisation.

WORLD HEALTH ORGANIZATION

[14 November 1973]

In its preamble the World Health Organization's Constitution states that:

> "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."

Article 2 (1) of the Constitution states that in order to achieve its objective, one of the functions of the Organization shall be:

> "to promote maternal and child health and welfare and to foster the ability to live harmoniously in a changing total environment".

It is clear that these basic principles, which govern WHO policies and activities, are in line with the views of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, particularly with regard to discrimination against persons born out of wedlock.

The draft general principles are mostly of a legal character, and WHO has no comments to make in this respect. However, we noted that article 14 is now worded differently from article 13 of the General Principles and Proposals for Action, United Nations Publication E.68.XIV.3, and although the meaning is clearer we would like to suggest a further modification as follows:

Page 68

"Political, social, economic and cultural rights shall be enjoyed equally by all persons, whether they are born in wedlock or out of wedlock, without prejudice, as regards social welfare services provided to children and their mothers by the State or society when necessary."

Although it may be true that in practice children born out of wedlock will need special social services more often than children born in wedlock, we think it would be better to avoid making a special case of the former. Moreover, although possibly fewer in number, some children born in wedlock do need special care and should not be implicitly excluded. It is felt, therefore, that the simpler wording suggested above would cover all situations and avoid discrimination.

PART III

REPLIES RECEIVED FROM REGIONAL INTERGOVERNMENTAL ORGANIZATIONS

COUNCIL OF EUROPE a/

/21 November 1973/

The following observations are divided into comments that can be made arising out of the fundamental principles of the Council of Europe and those that arise from particular activities of the Council in related fields.

Comments from first principles

1. The Council clearly gives total support to the aim of ending discrimination against persons born out of wedlock as a violation of fundamental human rights (Articles 1 (b) and 3 of the Statute; Preamble to the Convention on Human Rights), and it has indeed done work with the same end in mind. The Council is also in favour of the pursuit of this aim through the attempt to reach agreement on draft general principles on the treatment of persons born out of wedlock - subject to the inherent limitations of this approach (see below, paragraphs 8 and 9).

2. The Council also strongly supports United Nations draft principle /DP/ 14 ('Political, social, economic and cultural rights shall be enjoyed equally'..) This clause is of such importance that it should, perhaps, form a separate Part. In this connexion, it might be useful to point out that Article 14 of the European Convention on Human Rights, which was concluded within the framework of the Council of Europe in 1950, expressly prohibits discrimination on grounds of (inter alia) birth for the extensive rights guaranteed by the other Articles. As this right is enforceable through the Convention's supervision machinery, the provision concerned is of particular importance for the countries which have accepted individual access to the Commission set up under Article 19 of the Convention. It must, however, be noted that the European Social Charter, which was concluded within the Council of Europe in 1961 and which covers both social and economic rights, does not have a similar general interdiction of discrimination on grounds of birth (unless 'social

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a/ In transmitting the observations and comments indicated below, the Secretariat of the Council of Europe stated that "the Directorate of Legal Affairs of the Council of Europe /has drawn up/ a draft Convention on the legal status of persons born out of wedlock, which is in the final stage of preparation within this organization. In parallel, the Council of Europe Social Division has also been looking at the question and the observations /below/ prepared by this department are /transmitted/ not as the official views of the Council, but rather as a supplementary contribution to an important debate from which the Council and its member States hope to profit... However /it should be underlined/ that the Council of Europe, by its very raison d'être wholeheartedly supports the efforts of the United Nations to combat discrimination against persons born out of wedlock".

origin' in the Preamble (paragraph 4) includes it), but Article 17 in Part I reads: "Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection". Article 17 of Part II (the operative part) requires the Contracting Parties to take "all appropriate and necessary measures to that end". This instrument too has compulsory international supervision and the Committee of Independent Experts - the first organ of control - has made a point in its biennial conclusions of investigating the position of persons born out of wedlock in connexion with this Article and has recommended reforms to several governments.

Particular comments arising out of current activities in the area

3. The relevant activities are: elaboration and conclusion of the European Convention on the Adoption of Children; drafting and publication of the report "The Social and Legal Protection of Unmarried Mothers and their Children", 1970, written by a Study Group under the Programme of Co-ordinated Social Research Fellowships; adoption of Resolution (70) 15 of the Committee of Ministers on the social protection aspects, arising from this report; and finally the elaboration of the Draft Convention on the Legal Status of Children born out of Wedlock by the Committee of Legal Experts to which the legal protection aspects of the problem were referred.

European Convention on the Adoption of Children

4. The Convention, opened for signature in 1967, broadly speaking attempts to put flesh on to the aims expressed in the second and fourth sentences of DP16. See in particular Article 8 (1): "The competent authority shall not grant an adoption unless it is satisfied that the adoption will be in the interest of the child". A number of the most important limitations on the freedom to adopt are prohibited. Article 12 excludes both limitations in the number of children who may be adopted by one person and prohibitions on adoption based on existing or hypothetical legitimate children; Article 7 limits the minimum age for an adopter to a maximum of 35 years. There is no specific interdiction of discrimination on adoption on grounds of difference of race, colour or national origin. The Convention, however, includes a provision, Article 10 (1), assimilating the reciprocal rights and duties of the adopted person and the adopter to those of a legitimate child and his father or mother. This amounts to preventing discrimination between legitimate children and adopted children as such; the latter are, of course, very often born out of wedlock. This indirect discrimination is perhaps more significant in the field of adoption than direct discrimination between adopted persons born in and those born out of wedlock. The United Nations might well consider inserting a sentence concerning the assimilation of adopted children to those born in wedlock. It might also be suggested that the first sentence of DP 16 should extend to adults as well as children.

5. The Convention, however, contains one Article that establishes, at any rate, permissively, a distinction between children born in and out of wedlock, in that Article 5 (1) (a) requires before an adoption can be granted "the consent of the

mother and, where the child is legitimate, the father..." Some such discrimination is clearly necessary: on the one hand the married father cannot be deprived of a veto, on the other, to require the consent of all fathers would make, in many cases, adoption conditional on the resolution of a lengthy paternity suit. (On the general question of the rights of fathers of children born out of wedlock see below, paragraphs 13-17). In general, good adoption procedure may well be different in the two cases, so that "the same rules and provisions" will not be appropriate. It is felt that the principle to retain should be that the adoption of a child born out of wedlock should be no more restricted than that of a child born in wedlock.

6. Taking these points together, DP 16 might be redrafted along the following lines:

"(16) The adoption of children or adults born out of wedlock shall not be subject to any additional restrictions beyond those applicable to the adoption of children or adults born in wedlock. Adoption shall have the same consequences in both cases.

" The rules and procedures concerning the adoption of children shall have as their principal object the protection of the child's well-being through his or her integration into the adoptive family. Restrictions on the right to adopt a child, and any differences between the reciprocal obligations of an adopted child and his or her adoptive parents and those of a child born in wedlock and his or her parents, shall be limited to those necessary to assure the best interests of the adoptee.

" The procedure for the adoption of children shall be carried out under the supervision of the State and/or a competent social welfare agency."

Resolution (70) 15 of the Committee of Ministers

7. This resolution commends to governments a large number of measures for the social protection of unmarried mothers and their children; as it were, an expression of the second part of DP 14. Most of the specific measures (concerning social welfare services, medical care, accommodation, employment, nurseries, etc.), fall outside the scope of the draft principles. However, two points can be singled out: the first is Section II 8: "The Committee of Ministers ... recommends the Governments of the member States ... to bring about the use of non-discrimination terminology with regard to the mothers and children in question", which implies support for the second part of DP 15, though it is wider as it recommends an educational activity on the part of governments beyond the mere avoidance of derogatory terms in official documents.

8. The other point is a matter of general principle. Resolution (70) 15 emphasizes the social aspects of the problem partly out of a self-imposed division of labour, but also partly because the difficulties facing unmarried mothers and

their children in most of the member States of the Council are not for the most part problems of legal status or even social discrimination, but day-to-day difficulties in maintaining a home. The child is disadvantaged not because of any stigma but because of his mother's economic insecurity and her difficulties arising from combining motherhood and employment: fatigue, loneliness, etc. Even his chances of surviving infancy are significantly lower (See statistical appendix to "Single Parents with Dependent Children", report submitted to the 12th Conference of European Ministers responsible for Family Affairs, 1971). The focus of the Resolution was on this isolated mother-and-child family: in the Preamble the Ministers declared themselves "convinced that the health, the satisfactory bringing-up and the future of every child are functions of the possibilities given to his mother to provide him with a welcoming home and of the social and psychological situation created by society". This vital principle has implications for the particular question raised below (paragraph 13). Meanwhile, the particular consequences drawn from it by the Ministers are noteworthy: the first is their belief that "in order to avoid any segregation appropriate social work must not be exclusively provided for unmarried mothers and their children"; i.e. rather in the context of all single-parent families facing much the same practical difficulties. The second is the great emphasis they placed on educational action, ranging from specific advisory services for pregnant women, to encouraging ventilation of the problems of unmarried mothers and their children in the media, to the inclusion in school curricula of "preparation for family life and instruction relating to male and female responsibilities, particularly so far as procreation is concerned," i.e. sex and birth control questions.

9. It follows from this approach that in the Council's view reforms ending legal discrimination against persons born out of wedlock must be completed by an educational activity to end social discrimination against them, and a network of social provisions to aid the single mother against the practical difficulties that otherwise will hamper her child's development. The United Nations could either press ahead with the draft principles while recognizing the inherent limitations of a purely legal approach, or could expand Clause 14 to give more substance to the rather vague phrase "special protection", perhaps along the following lines:

/Re-number 15 and 16 as 14 and 15/

Part IV

"16 Political, social, economic and cultural rights shall be enjoyed equally by all persons, whether they are born in wedlock or out of wedlock.

"17 The State or society shall provide such special care for children born out of wedlock and their mothers as is necessary to ensure their well-being and equal chances for personal development, for example through expert advice, medical care, social work, direct and indirect financial assistance, special accommodation, protection of employment, vocational training, help in establishing paternity and obtaining payment of maintenance, and domiciliary assistance for the mother; and medical care, supervision, and educational and recreational facilities for the child.

"18 The State shall seek, while fostering the values of family life, to obtain a greater comprehension by society of the problems of persons born out of wedlock and their parents with a view to doing away with prejudice against them, for example through social research, the stimulation of mass communication media to make the public aware of the problems, and the inclusion in school curricula of preparation for sexual maturity and parenthood."

Report by a Study Group under the Co-ordinated Social Research Fellowships Programme 1/, and the Draft Convention on the Legal Status of Children born out of Wedlock 2/

10. The social protection aspects of this report formed the basis of Resolution (70) 15 of the Committee of Ministers, already discussed. The Study Group's views on the legal aspects have been taken into account by the Committee of Experts on the Legal Status of Children born out of Wedlock, responsible for drafting the proposed European Convention on the subject. This last document will not be discussed systematically, since the technical, legal and political aspects fall outside the present province. Its underlying principles are clearly relevant, but as they correspond broadly to those expressed by the Study Group only occasional reference to the Draft Convention will be necessary.

The Study Group's recommendations closely parallel the United Nations draft principles 2, 3 (first part), 11, 12 and 13 (second part); that is to say, on the methods for establishment of filiation and its consequences for the subject's financial rights and nationality. The draft Convention is also broadly in harmony on the question of maintenance (Articles 9 and 14) and inheritance (Articles 12 and 15). On the establishment of filiation, the guiding principles of Articles 4, 5, 7 and 8 are also similar to the draft principles; the exceptions being the exemptions allowed by Articles 4 (2) and 5 (2) - reflecting the practical limitations on forward progress rather than differences as to its direction - and the absence of any mention in Article 5 (1) of legal presumption as a means of establishing filiation outside birth in wedlock (e.g. in the case of simple but permanent cohabitation), but this is quite consistent with the draft principles and with good sense.

Neither the Study Group's report nor the draft Convention contain recommendations in the fields of draft principles 3 (second part), 4, 5, 6 and 10, which do not seem to call for comment here. There remain three areas where the draft principles differ from those suggested by the Study Group or underlying the draft Convention, in one case very considerably.

11. On the right to recognition of one's filiation, the Study Group's recommendations corresponding to United Nations draft principle 1 (II 2, 5) did not include any escape clause corresponding to "in so far as compatible with the principle of the protection of the family". This clause appears from Mr. Saario's report to cover the cases of persons born as a result of adultery or incest. The

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1/ "The Social and Legal Protection of Unmarried Mothers and their Children", Strasbourg 1970.

2/ Unpublished internal documents of the Council of Europe, 1973.

Articles of the Draft Convention, while not very radical, have the merit of tackling the problems directly (Article 5 (2) in the case of adultery; 6 and 17 in the case of incest). The exemptions permitted under 5 (2) (and for that matter 4 (2)), as suggested above, do not reflect a difference of principle on goals, and need not be considered here. The view of the Council of Europe is that adultery should not be a bar to affiliation; in the case of incest, it is difficult to justify a proposition either way given the rapid contemporary evolution of attitudes and in the absence of solid research, available to us at any rate, of the psychological effects of learning one's parentage is incestuous. This being non-recognition of paternal affiliation in the case of incest, but at the same time to insist that incest should be narrowly defined (as in Article 17 of the draft Convention) and that the prohibition should be founded on the interests of the personal development of the subject and of his relatives in childhood. A revision along the following lines is suggested; the particular formulation may not have great merit, but a tightening up of the clause is, we feel, very necessary, as efforts to raise the quality of the rights obtained through filiation are of no value at all to a person prohibited from establishing it:

> "1. Every person born out of wedlock shall be entitled to legal recognition of his maternal filiation. Every person born out of wedlock shall be entitled to legal recognition of his paternal filiation unless this would, through revealing his parentage as incestuous in a narrowly defined sense, injure his or his relatives' chances of personal development."

12. The second area of difference is that of birth registers and certificates (first part of draft principle 15). The Study Group's recommendation here was narrow: "avoiding in birth certificates any statement concerning the fact that the child is born out of wedlock", against "information ... containing personal data which might disclose the fact of birth out of wedlock shall be available only to persons or authorities having a legitimate interest with respect to filiation". The Draft Convention is also very restrictive though more precise: "Reproductions from public records which are available for current use shall not indicate the name of the father or mother or the affiliation of the person concerned" (Article 16). It is difficult to regard any of these formulations as completely satisfactory; they all rest on the negative assumption that the person born out of wedlock should be helped to conceal his parentage in the face of prejudice, rather than on a positive hope that prejudice can be blown away in the fresh air of openness.

More specifically, the formulations of both the draft principles and the draft Convention would lead, if accepted, to abandoning the principle adopted in several member States of the Council of Europe of free public access to birth registers, a valuable defence against both official abuse and private misrepresentation. In passing, it can be observed that the phrase "might disclose" in the draft principles would tend to create a very wide official discretion to refuse information. If it

is necessary to have a draft principle on this subject, its scope should be limited, perhaps along the following lines:

> "15. Birth and other official registers should be kept in such a way that the fact of birth out of wedlock is not expressly mentioned. Every person shall be entitled to obtain a form of birth certificate that does not disclose the fact of birth in or out of wedlock.
>
> "Official documents referring to persons born out of wedlock shall avoid any designation carrying a derogatory connotation."

13. The principal difference between the views of the Study Group and the principle underlying the draft Convention, on the one hand, and the content of the draft principles on the other, lies, however, in the treatment of paternal rights and duties in other than financial questions (draft principles 7, 8, 9 and 13, first part). There is no dispute that the rights and duties of the mother should be at least as great vis-à-vis the child born out of wedlock as in the case of the child born in it. The Study Group ("The Social and Legal Protection of Unmarried Mothers and their Children", p. 71) on the unexceptionable premise that the vital factor in a child's development is its early upbringing, normally by the mother, made a number of recommendations that would tilt the scales against the father and in favour of the mother, compared with the situation of parents in wedlock, to which the draft principles aim to assimilate the position of unwed parents:

> "The child should be given the name of the mother, but should also have the right to the father's name. Whether the child should actually bear the father's name should be decided with due consideration for the child's best interests. In this respect when the mother marries another man than the child's father the child should receive the husband's name.
>
> "The mother should, following the birth of the child, be given parental authority automatically. The mother should in all cases be given priority in the situation of full rights for the child's care and education.
>
> "The child should have the right to the mother's nationality in all circumstances."

The draft Convention contains narrower but equally clear provisions in the same direction:

> "Article 10 (1): Where the affiliation of a child born out of wedlock has been established in respect of both parents, parental authority shall not be attributed automatically to the father alone.
>
> "Article 10 (2): Where the parental authority over a child born out of wedlock is conferred on only one of the parents, that authority may be transferred to the other parent in appropriate circumstances."

These are fundamental questions, more important in most of the member States of the Council of Europe, with generally advanced social services, than questions of maintenance and inheritance.

14. A look at some of the statistical evidence is useful. According to the statistical tables in the report "Single Parents with Dependent Children", q.v. tables 3 and 4, the number of single mothers and single fathers with dependent children (for the reason of "no marriage") were in a number of member States of the Council of Europe as follows:

Country	1. Single unmarried mothers with dependent children	2. Single unmarried fathers with dependent children	3. Total	4. 2 as a percentage of 3
Belgium (1961)	17,742	2,076	19,818	10.5
Federal Republic of Germany (1969). .	86,000	2,000	88,000	2.3
Luxembourg (1966) .	196	403	591	67.3
Sweden (1965) . . .	40,189	460	40,649	1.1
United Kingdom . . . (1968)	100,000	10,000	110,000	9.1
Italy (1961)	67,457	20,266	87,723	23.1
Totals (Note: periods not comparable, for general guidance only)	311,584	35,205	346,789	10.2

Although the single unmarried fathers with dependent children are surprisingly numerous, and risk being neglected by a mother-centred approach in social policy, they are still a small proportion of the corresponding unmarried mothers. The table also leaves out enormous classes of initially unmarried mothers who have subsequently married either the father or another man. There is some evidence ("Social and Legal Protection of Unmarried Mothers and their Children", p. 57) that in at least two member countries of the Council of Europe about one third to one half of the mothers subsequently marry the father and that about one fifth marry another man, a figure of the same order of magnitude as the number of those that both remain single and look after the child. In terms of the problem of the relative rights of the unwed fathers and mothers, the group who subsequently marry do not pose a problem. The remaining statistics very strongly argue for the Study Group's view that the scales should be tilted in the mother's favour, and in particular that the generally absent unmarried father should have inferior rights to the mother and to a married father in relation to the upbringing, surname and nationality of his child.

15. This principle works unfairly in two cases. First, the father bringing up his child alone. However, this case will, it is felt, arise mainly either when the mother abandons the child to the father, or in the break-up through death or separation of an established irregular union. The question of conflict with the mother is then likely to be uncommon, and can be catered for through a legal channel for the father to rebut a presumption of prior maternal rights as is provided for under Article 10 (2) of the draft Convention. The second case is that of the father who lives in an established irregular union with the mother (for example, because of difficulties in obtaining a divorce).

However, this father is not greatly disadvantaged through being in a somewhat inferior legal position vis-à-vis his children than the mother. With enlightened divorce legislation, he will usually eventually be able to marry her and remove this disability. Again he should have legal ways open to acquire full parental rights in the child's interest and to give his name, and in some cases nationality, to the child. We must set this slight handicap against the position of the single mother who, if the law conformed to the draft principles, might be obliged to see her child given the name and nationality of the father, whom she is ex hypothesi not living with and who is not contributing to the provision of a home for the child, and have her decisions on the child's upbringing subject to his remote approval. One should also take into account the interests of the many stepfathers who do become emotional fathers to their wives' children born out of wedlock, who should be able to acquire through judicial channels full paternal rights at the expense of the biological father.

16. Finally, one may question the need for a principle devoted to the domicile of persons born out of wedlock, seeing that Mr. Saario's report, p. 102, finds that no country discriminates in this respect between persons born in and out of wedlock. If any mention is necessary, this can be done in the article dealing in the same way with nationality and citizenship.

17. The above observations might perhaps justify a revision of several of the principles concerned on the following lines:

"7. Every person, once his filiation has been established, shall have in principle the same legal status as a person born in wedlock. Exceptions to this principle shall be grounded only on the interests of the person born out of wedlock.

"8. Every person born out of wedlock shall be immediately entitled to bear his mother's surname, modified if necessary in such a manner as not to reveal the fact of birth out of wedlock. Provisions shall exist for him to acquire, in his best interests, the name of his father or of the mother's husband.

"9. The rights and obligations pertaining to parental authority shall differ in the cases of children born in and out of wedlock only to the extent necessary to help the child to enjoy a secure upbringing. The rights and obligations of the mother shall be no less towards a child born out of wedlock than towards a child born in wedlock. The rights and obligations of the father towards a child born out of wedlock may be reduced only to the extent they are transferred to the mother. Provisions shall exist for the father or the mother's husband to acquire, in the child's best interests, the same paternal rights and obligations as towards a child born in wedlock.

"13. The rules determining the nationality or citizenship or domicile of a person born out of wedlock shall only differ from those applicable to persons born in wedlock to the extent necessary to facilitate the former's acquisition of the nationality, citizenship or domicile of the parent or other person providing him with a home."

PART IV

REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

FRIENDS WORLD COMMITTEE FOR CONSULTATION

/13 November 1973/

1. (Part I, No. 4) In English Divorce law we cover the problem of an illegitimate child later adopted by calling the child a "child of the family" rather than a child of the marriage and I would have thought that this was a good term to be used for any child born to a woman during the period of a marriage whether or not the husband specifically rejects the child as a child of the family and does this by proving that he is not the father of the child.

2. Again looking at No. 5 it might be better to use the words "shall be considered to be born of the family". The reason I say this is because there are many ways in which a child can become a child of the family when it is not a child of the marriage. This would cover children born out of wedlock but also adopted children from within the marriage or outside it, and would be a further way for less discrimination.

3. (Part III, No. 15) I do not know whether everyone could be convinced of it but I am convinced that one of the easiest changes that could be made would be to have a shorter birth certificate. In this country this is already available and I would advocate it not as an alternative but as the only birth certificate. I see no reason why all the husband's details need to be on the birth certificate and I advocate that the birth certificate need only state date of birth, full names of child, exact place of birth, name of the mother.

4. Finally, looking at it from the point of view of inheritance, I would want to make one point in respect of Part II, No. 12; I do not like the words "once his filiation has been established" and therefore I think I would want to say "once a person is established as a child of the family it shall have full inheritance rights".

INTERNATIONAL CATHOLIC CHILD BUREAU

The International Catholic Child Bureau transmitted observations and comments made by two of its affiliates:

I. Observations and comments made by the Fédération (Belgique) des Institutions Specialisées d'Aide à la Jeunesse

/13 November 1973/

Dispositions legales - Mère célibataire et enfant

Législation civile

I. L'annoymat de la mère célibataire qui ne reconnaît pas son enfant et qui désire y renoncer en vue d'une adoption, n'est pas garanti dans notre pays. Le nom de la mère naturelle doit toujours être porté sur l'acte de

naissance. (Code civil 55-56-57; Code pénal 361; Jurisprud. cassation 14.11.1853, pas. 1854 I 10 - id, 10.7.1855, Pas. I, 303).
Cas d'espèce

1. Les mères célibataires désireuses d'échapper à cette réglementation vont accoucher en France (frais élevés). Dans ce cas, l'acte de naissance mentionne uniquement le nom de l'enfant. Celui-ci recoit un prénom comme nom de famille.

2. On constate souvent des indiscrétions au moment de l'inscription à l'état civil lorsque la naissance a lieu en Belgique. Il arrive en pratique que cette inscription soit parfois enregistrée par des personnes non compétentes chargées des déclarations de naissance. Des fonctionnaires réagissent parfois de manière peu délicate.

3. L'enfant reçoit alors le nom de la mère et celui-ci est noté sur l'acte de naissance.

4. L'indication du nom de la mère donne lieu plus tard à la reconnaissance et aux confrontations pénibles, à l'occasion d'un appel devant le Juge des enfants en cas de décès des parents adoptifs d'un mineur d'âge par exemple; la prise en charge de tutelle étant alors proposée par priorité à la mère naturelle.

II. La mère célibataire qui reconnaît son enfant est tenue de le formuler d'une manière expresse

Au cas où l'homme reconnaît l'enfant le premier, il est considéré comme étant le père naturel et donne à l'enfant son nom, par priorité à celui de la mère La question relative à la reconnaisance est posée à la mère naturelle dans le mois qui suit la naissance étant donné que durant cette période, le juge de paix devra convoquer le conseil de tutelle. Il est possible à la mère naturelle de reconnaître l'enfant plus tard également, si elle n'y a pas renoncé à la suite d'une adoption.

Cas d'espèce

1. Il arrive que certaines indiscrétions aient lieu de la part de fonctionnaires lors d'une demande de reconnaissance à la mère.

2. La reconnaissance de paternité ne se présente que dans des cas exceptionnels. La plupart du temps cette reconnaissance n'est pas souhaitée dans la perspective d'un mariage de la mère naturelle avec un autre homme. La mère naturelle n'est pas à même de s'opposer aux droits de paternité d'un homme sur son enfant (même si celui-ci n'est pas le père), si elle ne le désire pas (possibilité d'opposition de la mère admise par la législation néerlandaise - voir proposition d'une question au Parlement : Groupe de travail).

/...

3. Possibilités très limitées prévues dans notre législation en vue d'enquetes sur la paternité.

III. La mère célibataire qui a reconnu son enfant et qui, par un acte officiel veut lui léguer la totalité de ses biens, est tenue d'adopter l'enfant

Elle peut adopter son enfant si elle est majeure.

Elle ne peut pas légitimer son enfant par adoption. Seule une adoption normale est autorisée.

Elle peut uniquement légitimer son enfant par le mariage.

Cas d'espèce

1. Etant donné la situation illégale de la mère et de l'enfant, trop de mariages sont encore imposés aux parents naturels afin de pouvoir légaliser la situation.

2. Il arrive, par suite de droits à l'héritage limités d'un enfant naturel, que la mère célibataire adopte son enfant.

3. Malgré l'adoption par la mère célibataire, l'enfant ne peut pas hériter de la famille de sa mère. Juridiquement l'enfant reste illégitime et ne possède pas de grands-parents.

4. La légitimation par adoption d'un enfant naturel est uniquement possible par un couple. Dans ce cas, la mère doit d'abord renoncer à l'enfant.

   La période transitoire à cette adoption provoque souvent une influence néfaste sur la mère célibataire et également sur l'enfant et les parents adoptifs :

   - Un délai de 3 mois au moins est imposé avant que la procédure d'adoption puisse être entamée;

   - Six mois au moins s'écoulent avant que l'homologation de l'acte d'adoption par le Juge des enfants soit possible;

   - La période d'incertitude s'étend donc sur au moins neuf mois après la naissance, tandis que dans certains de ces cas, la mère célibataire s'est trouvée en situation conflictuelle durant tant de mois déjà avant la naissance.

Lois sociales

Se référer au préalable à la note du Groupe de travail du 4 mars 72 : "Aspects de la Sécurité sociale".

I. La mère célibataire désirant conserver l'anonymat perd souvent les avantages et indemnités prévus par la législation sociale

- Protections de l'engagement et du contrat de travail durant la période de grossesse;

- Droit à la revendication salariale hebdomadaire et mensuelle;

- Droit à la revendication d'indemnités de la caisse-maladie, allocations familiales et de chômage.

Cas d'espèce

En cas d'accouchement anonyme en France, aucun remboursement de ces frais n'est possible par la caisse-maladie.

II. Néanmoins, si la mère célibataire ayant droit à des indemnités sociales désire les obtenir, elle recontrera beaucoup d'indiscrétion lors de l'establissement des formalités administratives

Cas d'espèce

1. La mère célibataire "employée"

- Dans beaucoup de cas, afin de garder secret son état de grossesse dans son milieu de travail, la mère célibataire résilie délibérément le contrat d'emploi.

  Elle en cherche parfois un autre mais n'en trouve généralement pas durant cette période. De ce fait, elle perd ses droits comme "employée".

- Si elle reste au travail, elle conserve ses droits directs aux remboursements de la sécurité sociale. Le droit aux allocations de chômage est également important : congé de grossesse.

- Contestation existe au sujet de l'allocation d'une prime avant la naissance, au cas où il serait renoncé à l'enfant au moment de la naissance. (voir texte art. 73 bis - proposition du Groupe de travail - une allocation partielle uniquement de la prime avant la naissance - dont le remboursement n'est jamais réclamé.)

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2. La mère célibataire "non employée"

Ella a droit aux allocations de la caisse-maladie et aux allocations familiales au cas où elle est à charge d'un assuré, que ce soit "employé" ou "indépendant" (père, mère, etc.).

Contestation

a) Allocation d'une prime de naissance en cas de renoncement (voir point 1).

b) Remboursements par la caisse-maladie des frais médicaux pour l'enfant de la mère célibataire. L'enfant n'a juridiquement pas de grands-parents et se trouve essentiellement à charge de sa mère. Dans la pratique, la demande de remboursement n'est pas refusée et l'enfant sera tout de même considéré à charge d'un grand-père (peut être refusé).

- Si la mère n'est pas à charge d'un "employé" ou d'un "indépendant", elle peut bénéficier de :

a) Une allocation familiale garantie, accordée par le service national des allocations familiales.

b) Le remboursement des soins de santé à condition qu'elle soit affiliée à une caisse-maladie comme "personne non protégée" et qu'elle ait payé les cotisations mensuelles.

II. Observations of the International Catholic Child Bureau's affiliate in the Federal Republic of Germany.

/11 January 1974/

Part I

Paragraph 5. We propose the following additions:

"... shall be considered to be born of that marriage with retroactive effect."

Part II

Paragraph 8. A child born out of wedlock should, in principle, bear the surname of the mother as at the time of the child's birth. The same should apply in the case of a child born out of wedlock to a divorced woman, provided that her divorced husband lodges no objection. The conditions under which the husband may object should be precisely laid down.

Paragraph 9. The first sentence meets with our approval. There should also, however, be a related provision whereby a child born out of wedlock would be legally bound primarily to the mother: a mother of full legal age should have full parental authority (parental care) over the child born out of wedlock, even when paternal

filiation is acknowledged. The question that arises is whether, as a matter of principle, the child should in addition have a guardian (Pfleger) to whom specific duties are assigned by law, such as that of establishing paternal filiation. A child born out of wedlock to a mother who is a minor should always have a guardian (Vormund), since the mother cannot exercise parental authority (parental care).

Paragraph 11. The first sentence meets with our approval. It must, however, be made clear whether, as a corollary, the child born out of wedlock is responsible for the maintenance of his father and mother and also their relatives. If so, provision should be made for allowing judicial decisions to the contrary in the interest of the child in order to avoid the kind of gross injustice that would occur if, for example, the father or the mother had continually neglected their responsibility for the child's maintenance and the child was later required to come to their aid. This case occurs fairly frequently.

Paragraph 12. We propose that the child should be given, not full inheritance rights, but rather a so-called Erbersatzanspruch (right to compensation in lieu of an inheritance). This should, of course, correspond to the amount of the hereditary share. However, it should, like the legal share, extend only to a purely monetary claim.

We consider it very important to convene a meeting of experts who would deal in depth with the whole complex of issues, including regulation of the father's personal right of access to a child born out of wedlock.

INTERNATIONAL COUNCIL ON SOCIAL WELFARE

/29 October 1973/

The Sub-Commission on Prevention of Discrimination and Protection of Minorities (of the Economic and Social Council of the United Nations) should be commended for the principles it has developed. In these principles, the Sub-Commission has met the goal of proclaiming its determination to reaffirm faith in the dignity and worth of the human person, and has portrayed a sensitivity toward the rights of men and women of all nations. The principles do indeed conform to the purposes of the United Nations Charter and reflect the true meaning of the Charter.

Specific comments on parts I, II and III follow.

Part I

Paragraphs 1 and 2 reflect an inalienable right of every person. In paragraph 1, the words, "in so far as compatible with the principle of the protection of the family," are an important part of this principle, since there can be situations where paternal filiation would cause unhappiness to a child.

Paragraph 3. It is well to establish paternity in any one of the procedures that are set forth. There is some question about not having any time-limits in

respect to establishment of paternal filiation in judicial proceedings. It would be necessary to qualify this statement. If there should be an intervening legal cause that would terminate the rights of the unwed father, the question of time-limits is irrelevant. Termination of parental rights would preclude subsequent proceedings in which paternity should be established. This word of caution is necessary, particularly in respect to cases where children are placed for adoption.

Paragraph 4. In this paragraph, there should definitely be a limited period of time in which proceedings to overcome the presumption that the husband is not the father may be initiated.

Paragraphs 5 and 6. Both paragraphs underwrite the principle that children shall have the status of legitimacy wherever possible.

Part II

Paragraph 7. The paragraph rightly includes the requirement that filiation must have been established.

Paragraph 8. It could be added that the birth certificate could carry information about the fact of birth out of wedlock provided it would be entered in the confidential section of the birth certificate, together with the medical information.

Paragraph 9. The first sentence is not accurate, but could be validated if the words, "provided filiation had been established" were added at the end of the sentence.

Paragraphs 10 and 11. The principles in these paragraphs are sound, in relation to the principle of equality.

Paragraph 12. The principle in this paragraph needs some qualification. It would be important that filiation had been established prior to the death of the party from whom the person born out of wedlock could inherit.

Paragraph 13. The first subparagraph is clear and valid. The second subparagraph is not clear, particularly since in the United States it would be difficult, if not impossible, for a person to acquire statelessness. It is agreed that in a case where maternal filiation of a child born out of wedlock has been established, the result would be the same as in a situation where paternal filiation would be established.

Paragraph 14. The principle in this paragraph is sound but the wording could be stated more clearly.

Part III

Paragraph 15. It would be important that specific regulations be set up so that birth certificates would not be available to the general public and available

only to persons having a legitimate interest. In most cases, access to birth records should require a court order. To protect confidentiality, the birth certificate should include an item on legitimacy only in the confidential section.

Paragraph 16. The principle seems to say that a child has a right to be adopted whether or not he has been born in wedlock or out of wedlock. This concept is commendable.

The meaning of the second subparagraph is not clear. It is uncertain as to whether the reference is to persons who wish to adopt or to the child who is to be adopted. It is true that there should not be restrictions that would prohibit adoption for a child on the basis of race, colour or national origin.

It is important that the adoption procedure should be carried out under the supervision of the State and/or a competent social welfare agency. However, it should be specifically stated that placement of a child for adoption also should be carried out under such supervision. Placements made by unauthorized individuals will not ensure full protection to the child or other parties in adoption.

SALVATION ARMY

[28 November 1973]

The draft principles have been carefully studied by the members of our Central Social Service Council. They are happy to state that they have no objections to the principles as outlined, and we therefore confirm the support of the Salvation Army on this issue.

WORLD UNION OF ORGANIZATIONS FOR THE SAFEGUARD OF YOUTH

[25 October 1973]

Première partie

1. L'article 2 écarte toute discrimination entre l'enfant légitime et l'enfant né hors mariage quant à l'établissement de la filiation maternelle qui résulterait du seul fait de la naissance.

Si la règle est admise par un certain nombre de législations, elle n'est pas sans soulever des objections qui expliquent la réticence d'autres législations, notamment du droit français.

En effet les enfants nés hors mariage sont exposés plus que d'autres au risque d'un abandon et la satisfaction de leurs intérêts est alors dans la recherche d'une adoption. Mais celle-ci est contrariée si la seule indication du nom de la mère dans leur acte de naissance suffit à établir la filiation maternelle et il paraît

souhaitable de subordonner cette preuve à une manifestation plus affirmée d'une volonté d'accueil résultant d'une reconnaissance volontaire ou de la possession d'état. La non-discrimination peut se retourner contre ceux qui seraient amenés à souffrir d'une discrimination lorsqu'elle les prive des mesures de protection que cette dernière aurait permises.

2. La règle que l'exercice d'une action en recherche de paternité n'est soumise à aucun délai (art. 3) peut paraître excessive. Lorsque l'enfant a atteint un certain âge une telle recherche est assez inutile, elle devient difficile à raison du dépérissement des preuves et elle risque d'être surtout l'occasion de scandales sans intérêt pour l'enfant.

3. La présomption qui attribue au mari la paternité des enfants de sa femme peut dans certains cas être une gêne plus qu'un avantage. Il en est ainsi lorsqu'elle couvre une filiation mensongère et risque de faire obstacle à l'établissement de la véritable filiation et ce d'autant plus que celle-ci verrait reconnaître les mêmes effets quoiqu'elle résulte de relations hors mariage. La disposition de l'article 4 peut donc paraître trop absolue et elle pourrait être atténuée pour permettre d'écarter la présomption de paternité dans des cas où celle-ci est particulièrement fragile, notamment lorsque l'acte de naissance ne mentionne pas le nom du mari et que l'enfant n'a pas la possession d'état à son égard (art. 313-I du Code civil français).

Deuxième partie

L'article 12 applique le principe de non-discrimination aux droits successoraux. On peut se demander si ce principe sans nuances est compatible avec celui de la protection de la famille que est énoncé par l'article 1. Ce dernier risque d'être contredit si des enfants nés de l'adultère viennent limiter les droits successoraux des enfants légitimes ou ceux du conjoint. Il est difficile d'admettre sur ce point une égalité parfaite.

WORLD YOUNG WOMEN'S CHRISTIAN ASSOCIATION

/27 November 1973/

Our organization welcomes any effort aimed at eliminating discrimination against persons born out of wedlock, and particularly the elaboration of the draft general principles.

Along that line, the YWCA of Korea writes that in their country a number of laws are being drafted to attempt to make the legal and social status of persons born out of wedlock equal with the status of those born in wedlock, and that a mother and child welfare law is being made.

The YWCA of Australia would have liked to see a statement of principles which applied to all persons, whether born out of or in wedlock. Every endeavour should be made to have the rights and responsibilities of the two parents the same, whatever the circumstances.

But it is interesting to note at the same time a concern for the protection of the family, the value of which should not be weakened by improving the status of persons born out of wedlock.

The criteria for any legislation and, perhaps still more, any interpretation of the law, should be the well-being and happiness of the child. This should also be true for the implementation of the draft principles.

As underlined by a national YWCA, it is doubtful if the law can remove entirely the disadvantage of a child who lacks a stable parental relationship whether this is due to being born out of wedlock or not. It is therefore essential that such general principles be accompanied by concrete social and educational measures toward giving to each child as much security and personal care as possible.

In spite of the general trend toward a recognition of all rights of persons born out of wedlock, there still exists, in many places, prejudices and discrimination both toward the illegitimate child and the unwed mother. There is often a discrepancy between the law and the situation in fact.

The YWCA of Colombia shows how such prejudices and discrimination find their origin in the time of colonialism. It was then felt that family, tied up with a notion of social class, way of life and moral values, had to be protected in its integrity against illegitimate children of mixed blood. The European kept his superiority in having few legitimate children, but it was his male pride to have illegitimate children from native women. Those of mixed blood were born with their mother's position and no educational opportunity. This historical background has left deep traces in today's society. In spite of the legislation, the illegitimate child suffers from discrimination and rejection, because the unwed mother is not really accepted; most often both become marginal. Up to recently, illegitimate children were not accepted in educational centres, often run by religious

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communities. In fact, for moral reasons the Church did not support children born out of wedlock and unwed mothers. According to the YWCA of Colombia, there is a great need for better education of young people, especially for sex and family education.

COMMENTS ON SPECIFIC DRAFT PRINCIPLES

Before making some observations on a few draft principles, we would like to point out that the formulation used in this document always refers to the person born out of wedlock in the masculine: "his" filiation, "his" parents, etc. To avoid what a national YWCA calls the "general sexist spirit in the way the principles are stated", a few small amendments are proposed on the enclosed copy of the draft principles.

Part I

Principle 3

The YWCA of Colombia underlines the role of medical services in the early pregnancy of an unwed mother, especially with regard to establishing paternal filiation.

The YWCA of the Netherlands notes that in their country the establishment of paternal filiation is provided for by the law, but depends on the father's voluntary act of recognition and on the mother's consent.

For the YWCA of Great Britain, it is preferable that paternity should be established within a restricted period. Comparatively few affiliation orders are applied for by the mothers to prove paternity. Unless she can gain financial advantage she has no motive to do so.

The YWCA of the United States of America also questions not having time limits with regard to establishment of paternal filiation in judicial proceedings; in particular this may be important for cases where children are placed for adoption.

Principle 4

The wording of the last sentence is rather vague. What is meant by "a limited period of time"?

Principle 6

Like principle 5, this principle rightly aims at giving the status of legitimacy wherever possible. The YWCA of Great Britain notes that the proviso just stated ought not to exist, the child not being responsible for the good faith of the parents.

Part II

Principle 8

Comment of the YWCA of Great Britain: Under English law an adult can adopt any surname he or she chooses. Legitimate children while under age normally take their father's surname, illegitimate children their mother's. Recent court decisions suggest that a mother should not change the surname of legitimate children whose father is alive without his consent. Applied to this draft principle, this could mean that the father of an illegitimate child could insist on it taking his surname. An additional comment is that it ought to be necessary for a man to give consent to the use of his name under these circumstances, otherwise his name might be used in revenge.

In the United Kingdom, in practice if not in law, the children are generally known by the surname of the person with whom they live; this even applies to foster children in many cases.

Principle 9

The child's best interests should be the main consideration.

In many countries the custody legislation and usual patterns are discriminatory toward women.

This may be the place to note that the United States Supreme Court recently expanded the rights of unwed fathers. This has implications for custody and adoption.

Principle 10

It is noted that the concept of domicile varies between different legal systems.

In the Netherlands, as well as in other countries, the child born out of wedlock is ensured automatically of the mother's domicile.

Principle 12

This principle is commented by a few national YWCAs. For instance, it is important that filiation be established before the death of the person from whom the person born out of wedlock inherits. Under the English Matrimonial Proceedings Act 1960, any child can be accepted as a "child of the family" and thus be afforded equal protection under inheritance laws.

Principle 13

It is agreed that no one should face the problem of statelessness.

Principle 14

This principle is important and should be strongly supported. In practice, it is recognized that some discrimination still exists. In the Netherlands, for example, until recently a person born out of wedlock could not be appointed to a high civil service post.

As said above, in the YWCA of Colombia's comments, persons born out of wedlock may still suffer from marginality. On the other hand, the illegitimate child is sometimes more likely to receive State help, i.e., is given priority in day nurseries (for instance in the United Kingdom).

Part III

Principle 15

In the Netherlands, information in birth and other registers containing personal data is available to everybody. Although any derogatory connotation is avoided, the simple fact of not mentioning the name of the father makes it clear that it is a birth out of wedlock.

To avoid this situation, one could encourage the use of a short form of birth certificate - as in the United Kingdom - or have a confidential section of the birth certificate, where details on birth and medical information could be put together.

Principle 16

We commend this principle which gives the same right of being adopted to all children, whether born in or out of wedlock. In particular it is important that the adoption procedure be carried out under supervision of the State and/or a competent social welfare agency to ensure full protection of the child.

In several countries, the Netherlands for instance, the demand for adoption is much larger than the supply. As a result many adoptees come from abroad. Along the same line, but seen from the other side, the YWCA of Colombia points out to the great number of children who are exported to be adopted by foreign families, most often without adequate study of the socio-cultural conditions of the new home.

The YWCA of Great Britain requests a safeguard to avoid the heartbreak which can occur to the adoptees if a child is claimed back. They write that adoption practice in their country tends more and more to consulting the putative father, even though his consent is not legally required at present. But to make paternal consent obligatory would make many of the children who most need adoption, unadoptable.

Appendix

INDEX OF REPLIES IN WHICH COMMENTS AND OBSERVATIONS ON SPECIFIC PARAGRAPHS OF THE DRAFT GENERAL PRINCIPLES MAY BE FOUND

Preamble

See replies received from: United Kingdom and Council of Europe.

Paragraph 1

See replies received from: Austria, Ecuador, Egypt, Finland, German Democratic Republic, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Sweden, Switzerland, United Kingdom, Council of Europe and International Council on Social Welfare.

Paragraph 2

See replies received from: Austria, Egypt, Finland, Luxembourg, Mexico, Netherlands, New Zealand, Council of Europe, International Council on Social Welfare and World Union of Organizations for the Safeguard of Youth.

Paragraph 3

See replies received from: Austria, Ecuador, German Democratic Republic, Madagascar, Mexico, Netherlands, New Zealand, Poland, Romania, Switzerland, United Kingdom, Council of Europe, International Council on Social Welfare, World Union of Organizations for the Safeguard of Youth and World Young Women's Christian Association.

Paragraph 4

See replies received from: Austria, Denmark, Egypt, Finland, Madagascar, Mexico, Netherlands, New Zealand, Norway, Poland, Switzerland, United Kingdom, Council of Europe, Friends World Committee for Consultation, International Catholic Child Bureau, International Council on Social Welfare, Union of Organizations for the Safeguard of Youth and World Young Women's Christian Association.

Paragraph 5

See replies received from: Austria, Egypt, Finland, Madagascar, Mexico, Netherlands, New Zealand, Poland, United Kingdom, Council of Europe, Friends World Committee for Consultation, International Catholic Child Bureau and International Council on Social Welfare.

Paragraph 6

See replies received from: Austria, Egypt, Finland, Mexico, Netherlands, New Zealand, United Kingdom, Council of Europe, International Council on Social Welfare and World Young Women's Christian Association.

Paragraph 7

See replies received from: Austria, Egypt, Finland, German Democratic Republic, Luxembourg, Mexico, Netherlands, New Zealand, Switzerland, United Kingdom and International Council on Social Welfare.

Paragraph 8

See replies received from: Austria, Egypt, German Democratic Republic, Finland, Madagascar, Mexico, Netherlands, New Zealand, Norway, Switzerland, United Kingdom, Council of Europe, International Catholic Child Bureau, International Council on Social Welfare and World Young Women's Christian Association.

Paragraph 9

See replies received from: Austria, Denmark, Egypt, Finland, German Democratic Republic, Mexico, Netherlands, New Zealand, Norway, Sweden, Switzerland, United Kingdom, Council of Europe, International Catholic Child Bureau, International Council on Social Welfare and World Young Women's Christian Association.

Paragraph 10

See replies received from: Afghanistan, Austria, Egypt, Finland, German Democratic Republic, Madagascar, Mexico, Netherlands, New Zealand, Norway, Switzerland, United Kingdom, Council of Europe, International Council on Social Welfare and World Young Women's Christian Association.

Paragraph 11

See replies received from: Austria, Egypt, Finland, Madagascar, Mexico, Netherlands, New Zealand, United Kingdom, Council of Europe, International Catholic Child Bureau and International Council on Social Welfare.

Paragraph 12

See replies received from: Austria, Egypt, Finland, Luxembourg, Madagascar, Mexico, Netherlands, New Zealand, Norway, Switzerland, United Kingdom, Council of Europe, Friends World Committee for Consultation, International Catholic Child Bureau, World Union of Organizations for the Safeguard of Youth, and World Young Women's Christian Association.

Paragraph 13

See replies received from: Austria, Egypt, Finland, France, Mexico, Netherlands, New Zealand, Norway, Sweden, Switzerland, United Kingdom, Council of Europe, International Council on Social Welfare and World Young Women's Christian Association.

Paragraph 14

See replies received from: Austria, Byelorussian Soviet Socialist Republic, Egypt, Finland, Mexico, Netherlands, New Zealand, International Labour Organisation, World Health Organization, Council of Europe, International Council on Social Welfare and World Young Women's Christian Association.

Paragraph 15

See replies received from: Denmark, Egypt, Finland, Luxembourg, Mexico, Netherlands, New Zealand, Sweden, United Kingdom, Council of Europe, Friends World Committee for Consultation, International Council on Social Welfare and World Young Women's Christian Association.

Paragraph 16

See replies received from: Afghanistan, Austria, Denmark, Egypt, Finland, Madagascar, Mexico, Netherlands, New Zealand, Syrian Arab Republic, United Kingdom, Council of Europe, International Council on Social Welfare and World Young Women's Christian Association.