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VOLUME I

NATIONAL REPORTS

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DEMOCRATIC REPUBLIC OF VIET-NAM
DENMARK / DOMINICAN REPUBLIC

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Dahomey

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The Republic of Dahomey (*République du Dahomey*) is a unitary state and its official language is French. During the colonial period, Dahomey was part of French West Africa. The basic law (*loi-cadre*) of 23 June 1956 created a Council of Government entrusted with the administration of the territory. Following the referendum of 1958

the territory of Dahomey became a member state of the French Community and on 1 Aug. 1960 it became an independent and sovereign republic. The Constitution of 1964 (JO 12 Jan. 1964) has been superseded by that of 1968 (JO 15 April 1968) and the latter by the Charter of the Presidential Council of 7 May 1970 (JO 1 July 1970).

I. CONSTITUTIONAL SYSTEM

1. Nationality

The Law of 23 June 1965 (JO 1 Aug. 1965) promulgated a Code of Nationality which is based with some variations on French law. The acquisition of nationality is governed by a combination of *jus sanguinis* and *jus soli*. But the law does not distinguish between legitimate and illegitimate descent; there is a presumption that conditions for acquisition *jure soli* are fulfilled by a person who habitually resides in Dahomey and enjoys the status of a Dahomeian; finally nationality is conferred by law on any person born in Dahomey who cannot avail himself of any other nationality of origin. Marriage has the same effects on the wife's nationality as in French law. Nationality may be acquired by adoption, reinstatement and naturalization. The latter is subject to certain conditions, that is to say a probationary period fixed at three years and conditions of health and assimilation, and it also involves some temporary incapacities for the naturalized person. Nationality may be lost as a result of the voluntary or *ex officio* acquisition of a foreign nationality, of conduct like that of a national of a foreign country or of employment in a foreign public service. Nationality may be pronounced forfeited within ten years of its acquisition for those offences specified by law (as incurring that penalty).

2. Territorial Division

The territory of Dahomey is divided into six principal administrative areas (*départements*) and into six sub-prefectures or local communities (*sous-*

préfectures or *communes*). Within the sub-prefecture the basic administrative unit is the village and several villages may be grouped into districts (*arrondissements*).

3. State Organs

In the 1964 constitutional system the executive power was split between the President of the Republic who was the Head of State and the Vice-President, the Head of the Government. The Constitution of 1968 had instituted a presidential régime in which the President was both Head of State and Head of the Government. The Charter of the Presidential Council of 7 May 1970, at present the basic law of the country, provides for a collective presidium that holds all power.

a. The *Presidential Council* is the highest state organ. It consists of three members. One of the members is President of the Presidential Council and exercises as such the functions of Head of State and of Head of the Government. The presidency changes every two years. Decisions of the council are taken by unanimous vote. If, however, one member refuses three times to agree to a specific measure, he can be outvoted by the two other members. The Presidential Council appoints and discharges the members of the government. The Presidential Council appoints the senior civil servants and negotiates and ratifies international agreements.

The President of the Presidential Council is supreme commander of the armed forces and is responsible for maintaining order and security. He

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accredits the ambassadors of the country, and the foreign ambassadors are accredited to him.

b. The *government* is headed by the President of the Presidential Council. In the reunions of the council of ministers, who are appointed by the Presidential Council, the other members of this latter Council have consultative rights.

c. *Parliament* has been abolished until general elections and the re-establishment of a constitutional system. In its stead the Charter provides for a National Consultative Assembly consisting of an economic, a social and a political section.

d. On the *local level* the public authorities are represented in each area following an administrative hierarchy: by the Prefect in a department, the Sub-prefect in the sub-prefectures, by the District Headman in the district (see *supra* I 2). These officials are appointed by decree. The Village Headman is elected by the village inhabitants and is the person in the village responsible for its administration. The position is the same in the local communities (*communes*) with the Mayor who is elected by the Municipal Council. In accordance with the system of decentralization the department is a territorial unit endowed with legal personality (*personnalité morale*) and autonomy in the management of its own affairs. It is administered by an elected General Council whose executive organ is the Prefect (Law of 11 Aug. 1964, JO 17 Aug. 1964). Places possessing more than 8000 inhabitants may be raised to the status of local communities (*communes*). These are territorial units which rank as sub-prefectures and which have a Municipal Council whose deliberations are put into effect by the Mayor (Law of 11 Aug. 1964, JO 17 Aug. 1964, as amended by the Law of 31 Dec. 1964 and the Law of 7 Jan. 1965, JO 1 Feb. 1965).

Decentralized local authorities (*autorités décentralisées*) are under the direction of the state government, while local authorities with self-government (*autorités décentralisées*) work under its guidance. In addition, the state has supervisory powers through the inspectorate general of administrative affairs and the financial inspectorate. The former carries out all those tasks involving supervision, verification and inquiry which are entrusted to it by the Head of the Government (Regulation (*décret*) of 11 Aug. 1964, JO 15 Sept. 1964). The latter assists the Minister of Finance in his duty of permanent control of the state's finances, of those of public bodies and institutions and those of organizations of any kind aided by public bodies (Regulation (*décret*) of 3 May 1963).

4. Judiciary

The judicial organization is fixed by the Law of 9 Dec. 1964 (JO 1 Jan. 1965). This law set up a single system of judicial authorities to which it entrusted the application of both modern and traditional law without affecting the distinction between them.

a. *The judicial machinery* is made up from bottom to top of Tribunals of Conciliation, Tribunals of First Instance, a Court of Appeal, a Court of Assize with criminal jurisdiction and a Supreme Court. The latter was set up by the Law of 7 Oct. 1965 (JO 30 Oct. 1965) and by the Regulation (*ordonnance*) of 26 April 1966 (JO 1 June 1966).

The role of the *Tribunals of Conciliation* is clear from their name. They are to be found throughout the country and have jurisdiction in matters of traditional law. A copy of the written record of a conciliation is enforceable. In the event of non-conciliation the case is transferred into the law courts applying general law.

The eight *Tribunals of First Instance* have jurisdiction in all subject matters. In labour disputes the President of the Tribunal is assisted by two assessors chosen from the employers and employees.

The *Court of Appeal* sits at Cotonou and covers the whole country. Where traditional law is involved the Tribunal of First Instance and the Court of Appeal include two lay assessors acting in a consultative capacity.

The *Court of Assize* has jurisdiction over crimes. It may sit elsewhere than Cotonou and is made up of three judges and of four assessors who are chosen by lot.

The *Supreme Court* consists of four chambers, the Constitutional, Judicial for ordinary matters and Administrative Chambers and the Chamber of Accounts. The first of these deals with the constitutionality of laws and international engagements. In addition it ensures the regularity of the referendum procedure and the elections of the President of the Republic; it also settles conflicts that arise if Parliament legislates on topics reserved for the regulatory power of the government. – The Judicial Chamber hears final appeals against any decision in the field of private law rendered in the last instance by an ordinary court. After a successful appeal the case is sent back to the court which made the decision in the first place but with different judges sitting. The judgment (*arrêt*) of the Judicial Chamber is binding on the inferior court upon the first reversal. – Administrative actions whether fully contentious cases or actions for abuse of power are heard by

the Administrative Chamber in the first and last instance. Unity of jurisdictions in the legal and administrative fields is thus finally achieved at the top of the judicial hierarchy, the Supreme Court. The Chamber of Accounts has judicial authority over the accounts of public funds and supervisory powers over the administration of public bodies, public institutions, and state-owned or mixed companies. The government is obliged to consult the Supreme Court on all draft laws, regulations (*ordonnances*) and legislative regulations (*actes réglementaires*) and in this respect the Supreme Court fills the role of legal advisor to the government. But although consultation with the Supreme Court is obligatory, its opinions are not binding on the government.

b. *Criminal prosecutions* are normally pursued by the Public Prosecutor's Office, which is represented in the Tribunals of First Instance by the Public Prosecutor or his substitutes, and in the Court of Appeal and the Court of Assize by an Attorney General. Members of the Public Prosecutor's Office are the representatives of the government and can be instructed to petition in writing in a certain sense. Although it is possible to remove from office agents of the Public Prosecutor's Office their disciplinary responsibility can only be put into issue before the Commission of Discipline of Public Prosecutors (*magistrats de parquet*) which is presided over by the Attorney General of the Supreme Court.

II./III. SOURCES OF LAW AND ITS EVOLUTION

Diplomatic treaties constitute the principal international source of law. During the colonial period these were negotiated and ratified by the colonial power and put into effect according to the legislative procedure appropriate to overseas territories. The present rules of ratification and publication stem from post-independence constitutional provisions.

Excluding the Constitution which sets out the organization of the public authorities, internal sources of law are divided into two categories.

1. *Modern law* attaches primary importance to written sources. A number of enactments date from the colonial epoch and are the result of French legislation as applied before independence and which have since remained in force by virtue especially of art. 76 of the Constitution of 26 Nov. 1960 (JO spécial 26 Nov. 1960). The same is true of a number of French codes of which certain provisions have from time to time been adopted: the Civil Code, Commercial Code, Penal Code and the Code of Criminal Procedure. The Overseas French Labour Code of 15 Dec. 1952 was very largely based on French law. Legislative provisions adopted since independence are published in the Journal Officiel de la République du Dahomey which appears every fortnight and which is cited in abbreviation thus: JO. Contrary to other African states, Dahomey has only made use of codification in a few subjects (the Code of Nationality was mentioned before, *supra* I 1); but studies are in progress to produce new codes which will apply to the whole population. There are reports of decisions for the Supreme Court (Receuil d'arrêts

pour la Cour Suprême) and another for the Court of Appeal and tribunals. However, these judicial decisions, even the judgments of the Supreme Court, do not have the force of binding precedent.

2. *Traditional law* consists of unwritten customs which express a practice that is uninterruptedly observed by a social group. These customs are very largely permeated with animist beliefs. Some of these customs have changed by reason of economic transformations or the religious conversion of a section of the population. Similarly various measures were taken during the colonial period to modify certain institutions of customary law. Thus certain rules of marriage were affected by the Regulation (*décret*) of 15 June 1939 or customary law dowries by the Regulation (*décret*) of 14 Sept. 1951. In reality these reforms received very little application. In other cases the colonial legislator, in order to avoid a direct conflict with customary law, especially in real property, set up an alternative system which might be used. Thus the Regulation (*décret*) of 8 Oct. 1925 instituted a procedure for ascertaining customary real property rights and the Regulation (*décret*) of 26 July 1932 in principle provided for the registration of immovable property on an optional basis. Generally speaking it may be said, that through legislation an option may be exercised in favour of modern law. Moreover, the latter replaces traditional law where custom is silent.

3. Corresponding to this duality in the sources of law there was, during the colonial period, a sharp

duality in the private law status of persons which came in for a great deal of criticism. Modern law applied only to those people possessing citizenship, later on (in the terminology in use at the end of the colonial period) to people of French civil status. Traditional law remained the rule for the remainder of the population. An extreme, though not necessary consequence of this duality of legal status was the existence of two systems of courts, that of modern law and that of local law. The judicial organization which followed independence set up a single order of judicial authorities (*supra* I 4a), but the distinction between modern and traditional law is preserved, at least for the time being pending the promulgation of a unified body of law. It is undoubtedly for this reason that

the dividing line between the two bodies of law remains legally ill-defined. A conflict of the personal laws, in the absence of any provision to the contrary, seems to be resolved as before, that is to say in favour of modern law, which is considered as the law of general application. A conflict between customs within the body of customary law remains governed by the Regulation (*décret*) of 3 Dec. 1931 which dealt with the organization of justice in French West Africa. By virtue of art. 6 of this enactment the wife's customary law is applied in matters of marriage and divorce; that of the deceased in matters of succession; that of the donor in cases of gifts; that of the place of contracting in contract matters; in other cases the defendant's customary law is applied.

IV. PRIVATE (CIVIL) LAW

1. In the majority of civil law matters customary law differs profoundly, if not fundamentally, from modern law. The latter is analogous to French law, but customary law, on the other hand, admits in family matters the dowry as a condition of the validity of marriage; it does not prohibit polygamy and allows dissolution of marriage to take place by the unilateral repudiation of the wife by the husband. In customary law no clear distinction is drawn between natural and legitimate descent. In matters of succession, marriage tends to make a wife lose her rights in her own family without letting her acquire any rights to succeed to her husband's property. The traditional law of real property consists for a large part of collective

rights of exploitation and these rights are much less extensive than ownership in the western system. Efforts were made by colonial legislation to encourage the adoption of modern property law by means of the registration procedure (*supra* II 2), but these met with hardly any success except in the urban centres.

2. However, certain other matters are in fact dependent on modern law alone because of the silence of custom in that respect or through the exercise of the option to legislate. Within this category are the usual contract, torts and the transfer of rights in movable property.

V. COMMERCIAL LAW

The commercial law applicable in Dahomey remains on the whole the law laid down in the French Commercial Code and the enactments annexed to it concerning commercial companies

(Law of 24 July 1867) and negotiable instruments (Legislative Regulation (*décret-loi*) of 30 Oct. 1935) as they were put into force before independence.

VI. ECONOMIC PLANNING AND DEVELOPMENT

Even during the colonial period, economic planning had emerged as an imperative necessity. A Law of 30 April 1946 instituted a ten year plan of modernization and equipment. Investments,

which were almost totally public, were financed by Metropolitan France through credits put at the disposal of the Economic and Social Development Fund (*Fonds d'investissement pour le développe-*

ment économique et social – FIDES –) and of the Central Bank of Overseas France (*Caisse centrale de la France d'outre-mer*). Loans from public funds to private business enterprises ensured effective co-operation at executive level between the public and private sectors.

After independence the first four-year plan of 1962–1965 created by Laws no. 61–54 of 31 Dec. 1961 (JO 15 Jan. 1962) did not reach its objectives by reason of its being rather more ambitious than realistic; the financial arrangements on which it was based were insufficiently assured. The second four-year plan of 1966–1970 created by the Regulation (*ordonnance*) of 6 Jan. 1966 (JO 1 May 1966) is more modest and aims basically at an increase in the amount of rural produce and of the industries processing these products. The total amount of investment is calculated at 35 000 000 000 francs CFA (US \$ 144 600 000). Each year a law

sets out what actions are to be taken as well as how available credit is to be allocated. In particular the plan foresees an increase of 17 000 hectares of selected date palms to be added over a period of five years to the present 8 700 hectares, the renovation of the coconut plantations which cover 9 000 hectares and the development of cotton growing which should increase from 7 000 to 14 000 tons.

The economic structure matches the administrative one. An Office of the Planning Commissioner (*Haut Commissariat au Plan*) is responsible at national level for its preparation and for promoting and supervising its execution. There are regional committees at departmental level and a local committee in each sub-prefecture or local community and these are responsible for the co-ordination of development activities.

VII. INDUSTRIAL AND PROPERTY RIGHTS AND COPYRIGHT

Dahomey has preserved the French law introduced under the colonial regime dealing with copyright,

industrial patents, industrial designs and utility models and trademarks.

VIII. THE PRINCIPLES OF JUDICIAL PROCEDURE IN CIVIL AND COMMERCIAL CASES

Until the codes currently in the course of preparation are promulgated, civil and commercial procedure will remain governed by the enactments in force during the colonial period and, as the expression of written reason by the French Code of Civil Procedure in the form in which it was in force before independence. The Regulation (*dé-*

cret) of 3 Dec. 1931 regulating the jurisdictions under local law will continue to receive application in customary matters in so far as its provisions are compatible with the setting up of a single judicial system for both modern and traditional law.

IX. PRIVATE INTERNATIONAL LAW

In the absence of any new provisions governing private international relations those of the French Civil Code are applied in this matter including the interpretation put on them by case-law. Thus, in accordance with the wide interpretation put on art. 11 foreigners enjoy in Dahomey all those rights which are not refused them by any express legal provision. Similarly Dahomey follows the system

of conflict of law as it has been elaborated on the basis of art. 3. Finally the legal privileges enjoyed by nationals according to art. 14 and 15 have effect before the courts of Dahomey. In the remaining cases jurisdiction over private relations of an international character is determined according to the ordinary internal rules regulating the venue of the courts.

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Chapter VII: Manual Industrial Property I [Dahomey] (Completed in December 1970)

Democratic People's Republic of Korea

Jaroslav Bařinka*

North Korea – official title: Democratic People's Republic of Korea (*Choson minjujuewi inmin konghwaguk*) – is a unitarian state. After the capitulation of Japan on 15 Aug. 1945, the northern part of Korea was under the rule of Soviet military authorities and the provisional Korean institutions: the North Korean Provisional People's Committee, established on 8 Feb. 1946, and

the North Korean People's Assembly, elected in November 1946. After a preparatory period, the first session of the People's Supreme Assembly, elected in general elections on 25 Aug. 1948, adopted the Constitution and the following day, on 9 Sept. 1948, declared the Democratic People's Republic of Korea.

I. CONSTITUTIONAL SYSTEM

All state power in the Democratic People's Republic of Korea belongs to the people who exercise it through representative bodies elected by and answerable to the people (Const. s. 2–4). The economy of the country is based on the social ownership of the means of production (Const. s. 10).

The Workers' Party of Korea is the leading force in the state (as the Communist Party in the Soviet Union; see report on the Soviet Union) "The Workers' Party of Korea is the leading and guiding force of the people... the State power organs serve as the faithful executors of the general line of the Party... and are the indispensable means of effecting its policy" (cf. Democratic People's Republic of Korea p. 146).

As in other socialist countries, there is a broad political organization in the Democratic People's Republic of Korea which associates political parties and social organizations under the leadership of the Workers' Party of Korea. The organization is called the United Democratic Fatherland Front.

1. Nationality

According to the Act on Nationality of the Democratic People's Republic of Korea (adopted by Decree of the Presidium of the Supreme People's Assembly on 9 Oct. 1963) nationality is acquired by children born of Korean parents, children of mixed marriage if the parents live in the territory of the Democratic People's Republic of Korea and children found in the territory of the Democratic People's Republic of Korea. Any foreigner,

irrespective of his nationality and race, may acquire the nationality of the Democratic People's Republic of Korea if he applies for it. Children under 14 years of age change their nationality if the nationality of both parents is changed. Release from nationality is granted by the Presidium of the Supreme People's Assembly on application by the person concerned.

2. Territorial Division of the State

The territory of the Democratic People's Republic of Korea is divided into administrative units of three levels, namely: (1) provinces (*to*) or cities under direct administration of the government (*chikhalsi*); (2) counties (*kun*), cities (*si*), city districts (*kuyok*); (3) communities (villages, *ri*), towns (*eup*), workers settlements (*nodongjagu*), wards (*tong*).

3. Bodies of State Power and Administration

The organs of the state power in the Democratic People's Republic of Korea are representative assemblies of the people (Const. s. 2 and 3). The organs of state administration are answerable for their activities to the representative assemblies.

a. *Supreme organ of state power.* – The supreme organ of state power and at the same time the supreme legislative body (Const. s. 33) is the Supreme People's Assembly consisting of one House, elected for a period of four years. The Supreme People's Assembly exercises state power through

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local people's assemblies at all levels (Const. s. 2 and 32).

In the periods when the Supreme People's Assembly is not in session, the highest body of state power is the Presidium of the Supreme People's Assembly which is elected by the former Assembly and is answerable to it.

The Presidium of the Supreme People's Assembly consists of the Chairman of the Presidium, Vice-Chairman, Secretary and other members (Const. s. 48).

The Presidium of the Supreme People's Assembly has its own powers, which it exercises irrespective of whether the Assembly is in session or not (these are authorizations usually incumbent on the Head of State), and between sessions of the Supreme People's Assembly it exercises most of the Assembly's powers.

In the legislative field, the Presidium of the Supreme People's Assembly (Const. s. 49 no. 2) is authorized to supervise the implementation of the Constitution and laws, to give interpretations of the laws in force (meaning no doubt binding interpretations) and to issue decrees. Only the most important (*i.e.*, not all) decrees (Const. s. 37 no. 5) are subject to subsequent approbation by the Supreme People's Assembly.

b. *Head of State.* – In the Democratic People's Republic of Korea no single individual holds the powers of Head of State. The powers usually incumbent on the Head of State are exercised by the Presidium of the Supreme People's Assembly (see *supra* a).

c. *Cabinet of Ministers.* – The Cabinet of Ministers is the supreme executive body of state power. It consists of the Prime Minister, Deputy Prime Ministers, ministers and chairmen of committees. The Cabinet of Ministers is appointed by the Supreme People's Assembly and is answerable to it (and/or to its Presidium, whenever the Assembly is not in session). The Cabinet of Ministers (Const. s. 58) may establish its own secretariat (*samuguk*) and other central authorities: committees (*wiwonhoe*) and departments (*kuk*).

d. *Local bodies of state power and administration.* – The local bodies of state power in provinces, towns, districts, sections and communities are the *people's assemblies*, *i.e.*, representative bodies consisting of deputies elected by the people and answerable to the people (Const. s. 68 and 69, as revised by the amendment of 30 Oct. 1954 and the Act on the composition of local bodies of power of the Democratic People's Republic of Korea of the same day).

People's assemblies may in accordance with the Constitution, laws, decrees, government decisions and orders, adopt resolutions and instructions which are binding in the area of their jurisdiction. People's assemblies elect and dismiss as their executive organs appropriate people's committees consisting of a chairman, vice-chairman, secretary and two to nine members (depending on the committees level). People's committees execute all state administrative work, in the sphere of their competence, upon instructions from the relevant people's assemblies and bodies superior to them and to which they are answerable. People's assemblies are subject to a uniform guidance from the Cabinet of Ministers, and people's committees of lower levels are subject to those of higher levels.

Provincial, county, city district people's committees establish as their specialized administrative offices the departments led by heads of department who are appointed by the people's committees. Heads of department are subordinate to the assembly and the people's committee at their own level and to heads of equivalent departments of higher people's committees and competent ministers (Const. s. 79 and 80).

4. Judiciary and Prosecution

a. *Judiciary.* – There are city and county courts, provincial courts and the Supreme Court (Const. s. 82).

In addition to this system of regular courts there are also special courts established by special laws. People's courts in cities and counties are tribunals of original jurisdiction over some crimes determined by the law and, in civil matters, over disputes concerning property law, labour law (up to a certain amount in controversy), divorces and other family matters, inheritance and other cases being within their jurisdiction according to the law. Provincial courts are tribunals of medium level dealing with appeals against decisions of people's courts; they have original jurisdiction in cases which fall outside the competence of people's courts and in disputes between the nationals of the Democratic People's Republic of Korea and foreign nationals.

Provincial courts are divided into two departments (civil and criminal – *minsabu*, *hyongsabu*).

The Supreme Court as the highest judicial instance supervises the judicial activities of all courts¹ and has a broad jurisdiction over appeals. The Supreme Court has three divisions, each consisting of one judge and two people's lay assistant judges. In cases decided by a division appeals may be filed to a plenary session consisting of judges of the three divisions, the President of the

Supreme Court and the Procurator-General.

Special courts are mainly military courts established in divisional corps and army headquarters.

The judges of people's courts are elected by local people's assemblies for a period of two years, provincial judges are elected by people's assemblies of the province and the judges of the Supreme Court are elected by the Supreme People's Assembly for three years. Any citizen having the right to vote (with the exception of persons who held the office of judge during the Japanese rule) may become a judge. Under the Constitution, judicial proceedings in the first instance are held with the participation of lay assessors who have the same rights as judges (Law Governing the Organization of the Courts, s. 17, 15). Lay assessors are also elected by direct suffrage.

In accordance with the Constitution judges are independent and subject only to the law (Const. s. 88). Legal theory disapproves any interpretation of the independency of the judges which is not founded on the recognized political and class viewpoints, cf. *Kim Il-song*, Selected Works V; see also *Ch'oe Chin-sok*, Kongschwaguk.

b. *Prosecution.* — Provisions concerning Prosecution are contained mainly in the Constitution (s. 90-94). The Decree on the Organs of Prosecution in the Democratic People's Republic of Korea of 8 Oct. 1954 was replaced by the Decree adopting the Provision on the Organs of the Prosecution in the Democratic People's Republic of Korea of 23 Aug. 1961. The Provision emphasizes the role of the Procurator in safeguarding a consistent application of the policy of the Workers Party of Korea (s. 1), publicity for that policy, strengthening of the ideological system and conscious implementation of Party policies (s. 2 par. 1, 3).

There is the Office of the Regional (*chigu*), Procurator Office of the City and County (District) Procurators, Office of the Provincial Procurator and in the cities of P'yongyang, Kaesong, Hamheung, Ch'ongjin there is the Office of the Procurator-General and the Office of the Military Procurator.

The Head of Prosecution is the Procurator-General who is appointed by and answerable to the Supreme People's Assembly; the other procurators are appointed by the Procurator-General.

II./III. SOURCES OF LAW AND A BRIEF HISTORY OF LAW

1. Before its liberation Korea was a Japanese colony and its territory was governed by Japanese law. According to Decree (*p'ogo*) no. 2 of 16 Nov. 1945 on laws becoming operative in North Korea Japanese laws remained in force pending new legislation, with the exception of laws which were "contrary to the building of the new State and the feelings of the people". Again in March 1946, the provisional validity of Japanese laws was confirmed by the Basic Principles of the composition and obligations of the Department of Justice of the North Korean Provisional People's Committee, of the Courts and Prosecution. However, the new political and economic situation in Korea called for new law. The replacement of Japanese laws by new ones was one of the demands approved by the Congress of Representatives of People's Committees which was held in September 1945 in Seoul.

New Korean law began to be established by laws adopted by the North Korean Provisional People's Committee (land reform, emancipation of women, nationalization of industry) in 1946 and specific limited norms were gradually supplemented.

The Government Decision no. 16 of 1 Feb. 1958

provided instructions for the preparation of the draft Civil Code (*minpop*) and the Civil Procedure Act (*minsa sosongpop*); according to the information that is available neither the new Civil Code nor the Civil Procedure Act have been enacted so far.

In the field of labour law, legislation was considerable. Its main source (still in force) is the Labour Law Concerning Workers and Employees in North Korea adopted by the North Korean Provisional People's Committee on 24 June 1946.

2. The basic law of the Democratic People's Republic of Korea is the Constitution of 8 September 1948. Later, some articles were changed and amended (particularly as a result of the Laws of 23 April 1954, 30 Oct. 1954, and 11 March 1955, respectively). On 11 June 1958, the Supreme People's Assembly decided to establish a committee responsible for the preparations of the draft Act on the revision of and amendments to the Constitution. No information is available on subsequent developments in constitutional changes.

Statutes (*pomnyong*) adopted by the Supreme People's Assembly, decisions (*kyolchong*) of this Assembly or its Presidium and decrees (*chongnyong*)

adopted by the Presidium are published in the Bulletin of the Supreme People's Assembly of the Democratic People's Republic of Korea (Choson minjujuewi inmin konghwaguk ch'oego inmin hoeui kongbo) and/or in the Collection of Acts of the Democratic People's Republic of Korea and Decrees of the Presidium of the Supreme People's Assembly (Choson minjujuewi inmin konghwaguk pomnyong mit ch'oego inmin hoeui sang'im wiwonhoe chongngongjip).

Government decisions approved by the Cabinet of Ministers (Cabinet decisions, *naegak kyolchong*), directions (*naegak chisi*) and orders (*naegak myongnyong*) (later referred to only as Cabinet decisions) are published in the Bulletin of the Cabinet of Ministers of the Democratic People's Republic of Korea (Choson minjujuewi inmin konghwaguk naegak kongbo).

Ministries publish ordinances (*yong, songnyong*), regulations (*kyuch'ik*), orders (*chisi*), sometimes provisions or instructions (*kyujong*) that are usually subject to confirmation (ratification, *pijun*) by the Prime Minister.

The Democratic People's Republic of Korea

has a Penal Code (*Choson minjujuewi inmin konghwaguk hyongpop*) and the Criminal Procedure Code (*hyongsa sosongpop*), both approved on 5 March 1950. A collection of labour laws is in existence: Nodong popkyujip IV (1954/1955).

In accordance with the ideology and policies of the Workers' Party of Korea, the interpretation and practical application of legal norms is supplemented by the general concept of necessity (*opinio necessitatis*) which to a certain but minimal extent is seen to include some traditional concepts. The practice so determined and controlled by the Prosecution in this context is becoming law-making. Under s. 59 of the Law Governing the Organization of the Courts, the plenary of the Supreme Court has the right – on the basis of the decisions taken in cases already acted upon – to give lower courts binding instructions and regulations in respect of decisions.

The most important court decisions are published in Leading Cases Collection of the Supreme Court of the Democratic People's Republic of Korea (Choson minjujuewi inmin konghwaguk ch'oego chaep'anso p'anjongnyejiip).

IV. CIVIL AND FAMILY LAW

As a Civil Code does not yet exist and the former Japanese civil law cannot be followed, the Constitution and some specific laws constitute the fundamental sources of civil law.

1. As in every socialist country, the basis of the civil law of the Democratic People's Republic of Korea is the law of property. Its regulation, stipulated in s. 5–8 of the Constitution of the Democratic People's Republic of Korea, rests on Marxist-Leninist theoretical foundations and has been inspired by the legal system of ownership in the Soviet Union. There are, however, some distinctive features in the system of ownership in the Democratic People's Republic of Korea (particularly concerning private property).

The Constitution of the Democratic People's Republic of Korea (s. 5) recognizes state property, co-operative property and private property.

Some objects (specified in Const. s. 5) may be state property only.

Land may be the subject of any type of ownership, i.e., state, co-operative or private. Private ownership of land was of some significance until the accomplishment of the collectivization of agriculture in 1958. It was regulated by order of the Provisional North Korean Provisional People's

Committee on the Land Reform in North Korea of 5 March 1946 and later by the Constitution (s. 6) under which only farmers were allowed to own land, while the maximum acreage of the landed property was 5 to 20 *chongbo* (1 *chongbo* app. equivalent to a hectare). It is forbidden to sell, buy or mortgage allotted land.

Objects of private ownership are the means of production (particularly land) and of personal and/or family consumption. The term of private property under the Constitution includes not only private property *stricto sensu* but also such property termed personal property in European socialist countries, where it is strictly separated from private property (see the report on the Soviet Union). The concept of private property in the Constitution of the Democratic People's Republic of Korea is similar to the concept of private property in the former Civil Code of the Russian Soviet Federative Socialist Republic of 1922).

Under s. 8 of the Constitution, are objects of private ownership: land of the maximum acreage stipulated by law (see above), draught cattle, agricultural tools and other means of production, small and medium-size industrial and trade enterprises, manufactured goods, dwelling houses and adjacent buildings, home furnishings, incomes

and savings. S. 8 par. 1 of the Constitution guarantees the protection of private property and par. 2 guarantees the right of inheritance in respect thereof.

Co-operative property has been recently viewed as undesirable for the future. It had owed its existence "to the backwardness of the countryside" (see statement of *Kim Il-song*, published in *Pyongyang Times* on 12 Sept. 1968). It is no longer regarded as an organic part of socialist property. In the social sphere, prominence was given to the slogan "to working-classize" the whole society and in this connection the set objective was to strengthen decisively the leading role of public property in relation to co-operative property (cf. *Kim Il-song*, *Selected Works IV* (1968) Korean edition p. 34); this new situation has affected also the legal status of co-operatives.

2. *Family law* was much influenced (particularly in the nineteenfifties) by the Soviet family law. The protection of motherhood and infants, stipulated by the Constitution, was made more specific by Government Ordinance no. 158 of 14

Sept. 1953 Concerning the Extension and Promotion of the Protection of Motherhood and Infants and has found reflection in some social measures in the field of labour law (Statute of the Ministry of Health).

Illegitimate children have been declared to have equal rights in public life and in the family (parents having equal duties to illegitimate and to legitimate children) (Const. s. 23 par. 2).

Under the Constitution marriage and the family are under the protection of the state. Divorce, which is very rare in the Democratic People's Republic of Korea, is the subject of a Decree of the Presidium of the Supreme People's Assembly of 21 March 1962 which lays down the rules for divorce proceedings; it is provided that a divorce suit cannot be filed against soldiers and non-commissioned officers and usually neither against pregnant women nor women during the first year after delivery. The necessity and inevitability of divorce are subject to very strict considerations. Since 1956 all divorces must be taken before court and a settlement out of court has been eliminated.

V./VI. ECONOMIC LAW AND STATE MANAGEMENT OF THE NATIONAL ECONOMY

The national economy in the Democratic People's Republic of Korea is planned. The central planning body is the State Planning Commission the President of which is a member of the Cabinet of Ministers.

The basic economic units are state enterprises; their legal status was regulated by the Order of the Cabinet of Ministers of 21 May 1955 concerning State Enterprises. State enterprises are independent legal entities and their legal status in fundamental matters is similar to that of state enterprises in the Soviet Union (see the report on the Soviet Union).

Deliveries of products between individual state enterprises (or, as the case may be, some other socialist organizations) are governed by delivery contracts, regulated by the Order of the Cabinet of Ministers of 6 Dec. 1962 concerning Delivery Contracts on Products.

Under s. 5 par. 3 of the Constitution, foreign trade is conducted and controlled by the state.

Foreign trade is regulated by separate ordinances; e.g., Provisions Concerning the Organs of Foreign Trade, published in the Bulletin of the Cabinet of Ministers, 1958 no. 4, and Provisions

concerning Export and Import, Bulletin of the Cabinet of Ministers, 1959 no. 1; Provisions concerning Export and Import Tariffs of 1959, etc. The competent body in this field is the Ministry of Foreign Trade. The Secretariat of Economic Relations with Foreign Countries was established in February 1964 and was later renamed Committee for Economic Relations with Foreign Countries. It is an important body having wide powers, concentrating on the import and export of plants and some engineering equipment, on economic, scientific and technical assistance and co-operation.

In addition to the above regulations concerning tariffs other instructions and orders were issued, including those in connection with the renewed operation of Korean trade ports after 1957. They are, e.g.: Statute on the Collection of Port Charges no. 710 of 16 July 1957 (approved by the Prime Minister); Statute on Port Inspection of 16 July 1957; Provisions concerning Ship Agents of 16 July 1957; Provisions on the Tonnage Tax, approved by Government Decision no. 229 of 20 Nov. 1957.

VII. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT

Having regard to economic relations with other countries and the necessity for just assessment and remuneration and/or protection of the contribution made by some workers in perfecting technological procedures, steps were taken to formulate rules in the field of Industrial Property Rights. Noteworthy is especially the Provision Concerning Inventions approved by the Government Decision no. 19 of 28 Jan. 1961. In ch. 3 it

contains the rules on patent law and the rights of the inventor. This government decision also approved the Provision concerning Remuneration for Inventions.

There are no sources available as to the law of copyright. The Democratic People's Republic of Korea is not a contracting party to any international convention on this subject.

VIII. JUDICIAL PROCEDURE

1. The basic principles of judicial procedure are embodied in the Constitution (s. 86 and 87). They are as follows: (1) the public are to have access to proceedings and may be excluded only for reasons stipulated by law; (2) proceedings are to be conducted in the Korean language (persons not knowing the language have the right to an interpreter).

In criminal offences the accused has the right to have a defence counsel, as guaranteed by the Constitution.

Other rules concerning judicial procedure are contained in the Act Concerning the Organization of the Courts of 1 March 1950.

2. Disputes between state enterprises and/or other socialist organizations are, as in the Soviet Union, exempt from the jurisdiction of the ordinary courts and are settled by arbitration courts which are organs *sui generis* (see the report on the Soviet Union).

Government Decision no. 151 of 27 Dec. 1954 approved the Provision on the Organs of State Arbitration according to which the Democratic People's Republic of Korea established the State Arbitration Court (*chungjaewon*), provincial arbitration courts and the arbitration court of the city

of P'yongyang.

The President of the State Arbitration Court is appointed by the government; he was formerly subordinate to the Minister of Justice, but after the latter's abolition he has been placed under the Supreme Court since 1959. The Vice-President of the State Arbitration Court is appointed by the Prime Minister.

Arbitration courts decide whether contracts are in accordance with the laws and regulations in force, they settle precontractual and property disputes between socialist enterprises and organizations; they do not, however, deal with disputes in which one of the parties involved is the Central Bank or disputes which arise in maritime, railway or air transport (except for charges and freight), disputes between agricultural co-operative farms and disputes connected with the collection of taxes and fines, which are settled in administrative procedure.

The rules of arbitration procedure are contained in the Provision Concerning the Investigation and Settlement of Arbitration Cases before State Arbitration Organs (Decree of the Ministry of Justice no. 5 of 25 May 1955, approved by the Prime Minister under no. 250).

IX. PRIVATE INTERNATIONAL LAW AND INTERNATIONAL LAW OF PROCEDURE

Some provisions of private international law or international law of procedure are contained in s. 31 of the Law Concerning the Organization of the Courts which determines the competence of the Provincial Courts. (The said courts are, regardless of their general competence, tribunals of the first

instance for disputes between citizens of the Democratic People's Republic of Korea and foreigners). International treaties are an important source of private international law in the Democratic People's Republic of Korea, particularly the Treaty Concerning Legal Assistance and the

Consular Treaty, both concluded with the Soviet Union on 16 Dec. 1957 (301 UNTS 301 and 292 UNTS 121).

Special provisions of private international law

are contained in various other legal regulations, e.g., in the Order of the Cabinet of Ministers of the Democratic People's Republic of Korea of 2 Feb. 1957 on International Social Insurance.

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Minju sabop.

(Completed in February 1970)

Democratic Republic of Viet-Nam

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North Viet-Nam – official title: Democratic Republic of Viet-Nam (*Viet-Nam Dan-Chu Cong-Hoa*) – is a people's democratic republic. It was established as a unified country consisting of the entirety of Viet-Nam after the struggle of the Vietnamese people against both the French colonial domination and the Japanese occupation was brought to an end. The establishment of Viet-Nam was solemnly declared in the Declaration of Independence in Hanoi on 2 Sept. 1945.

During the war for reconquest of Viet-Nam (1945–1954) the government of the so-called State of Viet-Nam (*Quoc Gia Viet-Nam*), created in 1948, resided in the French occupied territory. On 21 July 1954 the Geneva Agreements on the Restoration of Peace in Indochina (161 BFSP 359) expressly recognized the independence, sovereignty, unity and territorial integrity of Viet-Nam. After a re-grouping of the forces at war, Viet-Nam was *de facto* divided at the 17th parallel into two parts; the northern part consisted of the Democratic

Republic of Viet-Nam (*Viet-Nam Dan-Chu Cong-Hoa*), the southern part became, in 1955, Republic of Viet-Nam (*Viet-Nam Cong-Hoa*), i.e., successor of the State of Viet-Nam. Under the Geneva Agreements, the military line of demarcation between the two parts of Viet-Nam is stated as “provisional and cannot be considered as a political or territorial delimitation” (art. 6 of the Final Declaration of the Geneva Conference on Indochina). According to the Constitution of the Democratic Republic of Viet-Nam, Viet-Nam is a united and indivisible whole consisting of two parts – the northern and the southern (art. 1).

The Democratic Republic of Viet-Nam is a unitary state. It has two national autonomous regions. One is the North-West Autonomous Region of *Tay-bac*, established on 7 May 1955, originally entitled Autonomous Region of *Thai-Meo*, and the second region is the Autonomous Region of *Viet-bac*, established on 19 Aug. 1956.

I. CONSTITUTIONAL SYSTEM

1. Nationality

a. *Acquisition.* – According to the government Decrees on Vietnamese Nationality of 20 Oct. 1945 and 25 Feb. 1946, nationality is acquired by persons born of Vietnamese parents, or by persons born of a Vietnamese mother and a father of unknown nationality, or by persons born in Viet-Nam of parents with unknown nationality.

An alien female who marries a Vietnamese national does not automatically acquire nationality but must apply for such at the time of marriage.

b. *Loss.* – A citizen of the Democratic Republic of Viet-Nam loses his nationality if he accepts another nationality. He will also lose his nationality if he in holding an office abroad acts contrary to an order of the Democratic Republic of Viet-Nam that such office must be relinquished. Loss of nationality will also result if a citizen perpetrates an act which jeopardizes the republic's independence or the people's democratic system.

The decision to remove nationality is made on an individual basis by the government (Decree of 20 Oct. 1945). A female citizen who marries a person of foreign nationality maintains her nationality. A woman desiring to acquire the nationality of her husband must apply to the government for approval (Decree of 14 Dec. 1959 on the Annulment of Articles 5 and 6 of the Decree of 20 Oct. 1945 and amendments to the Decree of 25 Feb. 1946 on Vietnamese Nationality, Cong Bao 1951 no. 51).

c. *Protection of the rights of emigrants.* – Under art. 36 of the Constitution the state defends the legitimate rights and interests of the Vietnamese settled abroad. Most Vietnamese emigrants live in France and Thailand. Repatriation of a large number of Vietnamese from Thailand to the Democratic Republic of Viet-Nam took place on the basis of the agreements concluded between the governments of the Democratic Republic of Viet-Nam and Thailand in 1959 and 1962.

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