

STATEMENT OF FACTS

The country of Polkaine, a landlocked nation through which run the rugged Benzemis mountains, is one which is bitterly cold and inhospitable in winter. In summers, however, its quaint cities, with their cobblestones, spires and gothic arches, and their open spaces turning myriad shades of green, become packed with backpackers and tourists. Its capital, Torresnik, which is located near a system of lakes dotting the foothills of the Benzemis mountains, has also become one of the most popular party spots for global jetsetters and A-list celebrities. With the proliferation of clubs and full-moon parties, however, the Government has had to deal with an escalating drug problem, cracking down on trafficking, manufacture, sale, possession and use of narcotics and hallucinogens.

Polkaine is bordered by other small nations which, like Polkaine, seceded in 2005 from the country of Gortatovich with the intervention of the United Nations, due to ethnic tensions in undivided Gortatovich. It has, however, been the only "breakaway" country which has successfully established rule of law and public order and, in a departure from its neighbours, has decided to adopt the common law system as a judicial model within its constitutional democracy.

Despite the fact that drugs manufactured in neighboring countries were, at one time, flowing in freely across the border, originating in Polkaine's more lawless neighbors, it can be said that drug trafficking in Polkaine has been successfully stymied by the Government and by vigilant law enforcement authorities. The authorities, however, are now having to deal with indigenous production and supply.

Polkaine's true source of pride, however, is not its sudden emergence on the tourist map, but lies, in fact, in the leading scientists it has produced over the years. Be it in particle physics, organic chemistry or genetics, the daughters and sons of Polkaine have led from the front in every scientific field. Each year, at least one Nobel Prize is received by a citizen of Polkaine. One such luminary is Dr. Ibrahimovic, a chemist of repute who has not only developed new organic compounds to combat ailments affecting the sinuses, nasal passage and respiratory system, but has developed novel methods for mass-producing generic drugs. His patents have made him a wealthy man, over the years, and he is well known among the informed citizenry of Polkaine. The only black mark in this illustrious career has been an internal inquiry conducted in 2009 by Breathewell, the company which funds his

research and provides him with laboratory space, in respect of allegations regarding use and possession of marijuana in the workplace. The inquiry, however, proved inconclusive.

Dr. Ibrahimovic had, however, fallen out of favour with a section of the political elite, after he began developing a close relationship with the Mr. Stojakovic, the Leader of the Opposition in the Polkranian Parliament. The leading English daily, *Polkranian Times*, frequently contained articles and cartoons wherein thinly veiled references were made calling into question, and often ridiculing, this budding friendship. On 2nd January, 2012, for instance, the newspaper carried a cartoon of Ibrahimovic and Stojakovic kissing at midnight to bring in the new year, after the paparazzi noted that they travelled in the same limousine to a New Year Party hosted by a well-known Polkranian liquor barren.

The *Polkranian Times* is a newspaper which is 90% state owned. It had developed a reputation for being the mouthpiece of the ruling "Polkranian Peoples' Party". Its pages often ran critical pieces targeting those who opposed the ruling party, and its "Gossip" columns were notorious for making wild allegations against the opposition's well-wishers and financiers. Polkranian Times Inc., which was the entity controlling the Polkranian Times, also owned a news channel by the name of *Torresnik Today*. On 19th January, 2012, this news channel undertook what it later referred to as a "pathbreaking sting operation", purportedly to reveal the underbelly of the drug trade in Polkraine.

Polkranian Independence Day was celebrated on 20th January each year and, on the night of 19th January, 2012, Dr. Ibrahimovic threw a lavish party at his suburban villa on the outskirts of Torresnik. The "swish set" of Torresnik, from industrialists to entertainers to politicians, were all invited to this event. Unknown to Ibrahimovic, however, an undercover journalist from *Torresnik Today* had slipped into the party, armed with a hidden camera concealed in the button of his blazer. In the course of the evening, this journalist happened to engage Dr. Ibrahimovic in conversation. Other guests noticed a man unknown to them having a forty-five minute conversation with Dr. Ibrahimovic at a secluded spot near the swimming pool.

The next day, i.e. 20.01.2012, was a public holiday, and was relatively uneventful. On 21st January 2012, however, at 10:30 AM, the police raided Dr. Ibrahimovic's laboratory at Breathewell's premises. The police personnel were accompanied by a video journalist from *Torresnik Today*, and a chemicals expert attached to the police department. They found Ibrahimovic at his workbench, where he seemed to be working with red phosphorus. In addition, they found that a nearby vat contained the ingredients for the production of

pseudoephedrine, through yeast fermentation of dextrose in the presence of benzaldehyde. The chemicals expert concluded that the process had been initiated half an hour earlier. Dr. Ibrahimovic was arrested by the police on the spot. When he asked the officer conducting the investigation as to why he had been arrested, he was told that the CEO of Polkranian Times Inc. had informed them the previous day that Dr. Ibrahimovic was involved in the manufacture and sale of methamphetamine in its crystalline form ("crystal meth"), a prohibited substance, and had sent the police video clips of alleged conversations which demonstrated this. They also stated that they had been constrained to arrest him as he had been found with ingredients used in the production of crystal meth, clearly demonstrating that he was going to synthesize the controlled substance in question.

The evening news on *Torresnik Today* contained the "video clips" that the police had referred to. In an explosive news segment titled "Ibrahimovic: Meth Man", the channel showed grainy footage pieced together in sequence. It began with a shot of what appeared to be Dr. Ibrahimovic's villa, decked with lights. The next clip was of a well-known fashion model, nasally inhaling cocaine from a 100\$ currency note while sitting on the bonnet of a car in the driveway. The following clip was of a party with loud music, with Mr. Ibrahimovic socializing with guests. The final clip, which was about 28 minutes long, was clearly an isolated conversation between two individuals, one of whom was the bearer of the camera. The face of the second intermittently came into the frame, and was identifiable as the face of Dr. Ibrahimovic. Fifteen minutes of the conversation was idle banter about the political climate of Polkraine, after which the conversation took a different turn. The relevant portion is transcribed below:-

Journalist – "So... that inquiry. Did you really smoke grass in office?"

Ibrahimovic – "Haha.. No. Someone just saw it lying in my drawer. Obviously, I cleaned everything out when stuff hit the fan."

Journalist – "I'm really more of a meth man myself."

Ibrahimovic – "Yeah? I haven't tried it."

Journalist – "NO WAY!! I don't believe you."

Ibrahimovic – "I'm not lying."

Journalist – "But are you telling me that you've never come in contact with the stuff? You've never been tempted?"

Ibrahimovic – "No, I've never been tempted... [AUDIO IS UNCLEAR FOR 30 SECONDS] ... know where you can get some."

Journalist – “Could you get me some? I’m willing to pay good money. I mean a LOT! Because my friends do it as well.”

Ibrahimovic – “Let me see and get back to you.”

The news channel stated that this footage was taken by an undercover journalist planted at Dr. Ibrahimovic’s Independence Eve party, which had taken place on the night of 19th January, 2012 and had stretched into the early morning hours of 20th January, 2012. The news channel also claimed that the police had been informed of this “sting operation” in advance. Thereafter, information, along with video footage, had been passed on to the police through “proper channels”.

In his statement to the police made during custodial interrogation, and on being shown the “video clips”, Dr. Ibrahimovic admitted to the fact that he was, in fact, the second person whose face intermittently came into focus. He also admitted that it was, in fact, his voice which could be heard, answering the questions of the journalist. He claimed, however, that this footage has been cobbled together and distorted to give an incomplete picture, and to portray him as a drug peddler. He also stated that it was entirely normal for a chemist like him to have been handling substances like red phosphorus and pseudoephedrine in his laboratory.

Dr. Ibrahimovic was indicted and tried for attempt to manufacture and sell a controlled substance, i.e. methamphetamine. His trial began on 10th February, 2012. The judge deemed it fit to conduct this trial from day to day on successive working days, and devised a timetable by which the trial could not proceed beyond 29th February, 2012.

When the journalist was called to the witness box, he recounted the entire chain of events that transpired on the night intervening 19.01.2012 and 20.01.2012. He stated, in addition, that the channel had decided to conduct this sting operation for the reason that Dr. Ibrahimovic had been seen at other parties, both using and distributing hallucinogens and psychotropic substances. When cross-examined, he had no explanation for why the concerned journalists and their superiors had not reported the matter to the police earlier, if they knew Ibrahimovic was involved with drugs. When asked, in addition, as to why, at the very least, his news channel or even *Polkrainian Times* had not run a story on Dr. Ibrahimovic’s alleged illegal activities, the journalists answer was - “I don’t know. Probably so that the sting operation would come as a surprise and we would catch Ibrahimovic red-handed.”

On 16th February, 2012, the recording of oral evidence was completed. On 17th February 2012, counsel for the Prosecution began her arguments, and, using, primarily, the videographic evidence, the testimony of the journalist and the report drawn up by the police at the time of Dr. Ibrahimovic's arrest, showed how Dr. Ibrahimovic had attempted to manufacture and sell methamphetamine in contravention of Polkranian law. On 18th February, 2012, which was a working day, the counsel for the Accused began his arguments. He focused on three fundamental aspects. First, he argued that the evidence was insufficient to prove that Dr. Ibrahimovic was guilty of attempting to manufacture and sell a controlled substance. Second, he argued that the prosecution's case, at best, showed that Dr. Ibrahimovic had reached the stage of "preparation" but his actions could not, in any manner, be said to constitute an "attempt". Third, he argued (in the alternative) that the journalist had acted as an "agent provocateur", and stated that his client could not be convicted as he had been entrapped. In essence, he invoked the "entrapment defence", utilized in a number of common law jurisdictions. After the counsel for the Accused concluded on 21st February 2012, the prosecutor presented her rejoinder. With specific reference to the entrapment defence, she argued that a private party, unconnected with law enforcement, had initiated the sting operation, and such private incitement could not be considered to be an "abuse of process" and, therefore, had no bearing on the case. While the prosecutor was arguing, many felt that the trial judge was asking her questions which suggested that he was skeptical of the prosecution's case.

Meanwhile, *Torresnik Today* and *Polkrainian Times* continued to report this explosive story. On 17th February, 2012, when the arguments began, the coverage was stepped up, especially on *Torresnik Today*. A two hour talk show was conducted in the studio on the theme "Is Ibrahimovic Guilty?". Two hour "specials" on the Ibrahimovic case became a daily affair on the news channel, and the footage from the sting operation was repeated in every newscast. In one of the two hour "specials", journalists actually went to Polkkraine's major cities and towns and asked people their opinion on Ibrahimovic's's guilt in a show called "The Citizen's Verdict", where most people interviewed lambasted Dr. Ibrahimovic. On the morning of 22nd February, 2012, the *Polkrainian Times* ran a short editorial on the progress of the case. The last line read – "Will the judge continue to question the prosecutor, or will he do what his conscience tells him to do?"

Inexplicably, on 22nd February, 2012, the presiding trial judge abruptly recused himself from the case, without giving reasons, only stating that it would be inappropriate for him to deliver judgment as he had been "compromised". He stated that, as seven designated days

remained for trial, and as the evidence had been recorded, the arguments could be heard afresh by another judge, who would then proceed to deliver a verdict.

A new judge proceeded to hear the case of *The Republic v. Dr. Ibrahimovic* from the morning of 23rd February, 2012. As proceedings commenced, the counsel for the Accused moved an application for initiating contempt of court proceedings against Polkrainian Times Inc., its CEO, and the Managing Editors of *Polkrainian Times* and *Torresnik Today*, for journalism and reportage which amount to criminal contempt of court. He also sought leave to argue an additional issue on the ground that the trial had been prejudiced by the media coverage of Polkrainian Times Inc. (through its newspaper and newschannel) who was none other than the informant in the case, and such prejudice would entitle the Accused to an acquittal.

The new trial judge heard the counsel for the accused patiently on both counts. He first reheard the entire case, requesting the counsel for the accused to argue on the new issue of "prejudice" along with the rest of his defence. After hearing the arguments on the main trial, he then heard arguments on the contempt application. In the middle of the hearing, however, the judge adjourned proceedings for a period of 15 days as he fell violently ill. The proceedings concluded on 15.03.2012.

The trial judge took two weeks after reserving judgment, and ultimately delivered his verdict on 29th March, 2012. He convicted the accused of attempt to manufacture and sell a controlled substance, and sentenced him to 9 years imprisonment. In addition, a fine of forty thousand Polkrainian dollars was imposed on Dr. Ibrahimovic. He also dismissed the application for initiating contempt of court proceedings against the Polkrainian Times Inc. as being "without basis or substance".

Dr. Ibrahimovic has moved two separate appeals before the Court of Appeals. The first is an appeal against his conviction and sentence, entitled *Dr. Ibrahimovic v. The Republic*. The second is an appeal challenging the dismissal of the aforementioned application for initiating contempt of court proceedings, entitled *Dr. Ibrahimovic v. Polkrainian Times & Others*. These appeals are currently pending adjudication. The scope of appeal, as per the Polkrainian Code of Criminal Procedure, allows the Court of Appeal to enter into questions of fact as also questions of law.

At the preliminary hearing of the appeals, the counsel instructed on behalf of the Republic to appear in the appeal from conviction and sentence, sought permission from the Judge to represent the Respondents in the second appeal, i.e. *Dr. Ibrahimovic v. Polkrainian Times & Others.*, as well. This was because the State owned company wanted to be represented by a State lawyer. The judge inquired from the Appellant's counsel as to whether there were any objection. The Appellant's counsel magnanimously agreed to allow the counsel to represent both Respondents, and went on to state, on record, that this would not affect the merits of the case, and no argument would be advanced on behalf of the Appellant using this fact to conflate the identities of the prosecution and the informant, although other facts may be utilized to this effect.

Both Appeals have been consolidated and shall now be heard together.

NOTE:

1. Teams are to argue either for the Appellant (namely *Dr. Ibrahimovic*) or the Respondents (*The Republic AND Polkrainian Times & Others*).
2. Trials in Polkraine are conducted by a magistrate without the aid of a jury.
3. The onus of proof, as per Polkrainian law, is on the prosecution to demonstrate the guilt of the accused beyond reasonable doubt.
4. Polkraine's criminal jurisprudence is at a nascent stage of development. There is no binding precedent in Polkraine regarding the issues which arise in the above fact situation. Decisions rendered in ALL common law jurisdictions, however, may be persuasive. Participants are expected to apply common law principles, interpret the statutes appended to this problem (if found relevant), and apply them to the facts of the case, while convincing the judges regarding the applicability of precedent cited. Participants are, in a nutshell, expected to apply principles of criminal law prevalent in common law jurisdictions and demonstrate the rationale and desirability of applying the same in a cogent manner.
5. There is no statute codifying evidentiary principles in Polkraine. Participants are encouraged to refer to established common law principles on evidence for the purpose of argument, with reference to universally recognized treatises like "Wigmore on Evidence".
6. The Polkrainian Criminal Procedure Code, 2006, and other relevant statutes are annexed. However, there is no statute in Polkraine codifying principles on contempt of court. Polkrainian courts, all of which are courts of record, apply common law principles while punishing contempt in keeping with their inherent powers.

7. The maintainability of the appeals is NOT in issue in these proceedings. Participants must proceed on the basis that the criminal appeals mentioned are maintainable in law.

ANNEXURE A

THE POLKRAINIAN CRIMINAL PROCEDURE, 2006
(relevant extracts)

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385 Determination of appeals in ordinary cases

(1AA) This subsection applies to any criminal appeal to the Supreme Court or the Court of Appeal, including appeals in contempt cases.

On any appeal as mentioned in subsection (1AA) applies, the Court of Appeal or the Supreme Court must allow the appeal if it is of opinion—

- (a) that the verdict of the Trial Court should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or
- (b) that the judgment of the court before which the appellant was convicted or acquitted should be set aside on the ground of a wrong decision on any question of law; or
- (c) that on any ground there was a miscarriage of justice; or
- (d) that the trial was a nullity—

and in any other case shall dismiss the appeal:

provided that the Court of Appeal or the Supreme Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

Subject to the special provisions of this Part, the Court of Appeal or the Supreme Court must, if it allows any appeal to which subsection (1AA) applies, quash the conviction or acquittal and in its discretion direct a judgment and verdict of acquittal or conviction, as it deems fit, to be entered, or direct a new trial, or make such other order as justice requires.

(2A) This subsection applies to an appeal to the Supreme Court or the Court of Appeal against sentence.

On any appeal to which subsection (2A) applies, the Court of Appeal or the Supreme Court must—

- (a) dismiss the appeal; or
- (b) if it thinks that a different sentence should have been passed,—
 - (i) quash the sentence and replace it with another sentence warranted in law (whether more or less severe) that the court thinks ought to have been passed; or
 - (ii) vary, within the limits warranted in law, the sentence or any part of it or any condition imposed in it; or
- (c) remit the case to the court that imposed the sentence with a direction that such court take an action of the kind described in paragraph (b)(i) or (ii) in accordance with any directions given by the Court of Appeal or the Supreme Court as the case may be.

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ANNEXURE B

THE CONSTITUTION OF POLKRAINE
(relevant extracts)

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CHAPTER IV - BILL OF RIGHTS

7. Rights

1. This Bill of Rights is a cornerstone of democracy in Polkraise. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
2. The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
3. The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

8. Application

1. The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
2. A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
3. When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court
 - a. In order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
 - b. may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).
4. A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

9. Equality

1. Everyone is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
3. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
4. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

5. Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

10. Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

11. Life

Everyone has the right to life.

12. Freedom and security of the person

1. Everyone has the right to freedom and security of the person, which includes the right
 - a. not to be deprived of freedom arbitrarily or without just cause;
 - b. not to be detained without trial;
 - c. to be free from all forms of violence from either public or private sources;
 - d. not to be tortured in any way; and
 - e. not to be treated or punished in a cruel, inhuman or degrading way.
2. Everyone has the right to bodily and psychological integrity, which includes the right
 - a. to make decisions concerning reproduction;
 - b. to security in and control over their body; and
 - c. not to be subjected to medical or scientific experiments without their informed consent.

13. Slavery, servitude and forced labour

No one may be subjected to slavery, servitude or forced labour.

14. Privacy

Everyone has the right to privacy, which includes the right not to have

- a. their person or home searched;
- b. their property searched;
- c. their possessions seized; or
- d. the privacy of their communications infringed.

15. Freedom of religion, belief and opinion

1. Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
2. Religious observances may be conducted at state or state-aided institutions, provided that
 - a. those observances follow rules made by the appropriate public authorities;
 - b. they are conducted on an equitable basis; and
 - c. attendance at them is free and voluntary.
3.
 - a. This section does not prevent legislation recognising
 - i. marriages concluded under any tradition, or a system of religious, personal or family law; or

- ii. systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
- b. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

16. Freedom of expression

1. Everyone has the right to freedom of expression, which includes
 - a. freedom of the press and other media;
 - b. freedom to receive or impart information or ideas;
 - c. freedom of artistic creativity; and
 - d. academic freedom and freedom of scientific research.
2. The right in subsection (1) does not extend to
 - a. propaganda for war;
 - b. incitement of imminent violence; or
 - c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

17. Assembly, demonstration, picket and petition

Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

18. Freedom of association

Everyone has the right to freedom of association.

19. Political rights

1. Every citizen is free to make political choices, which includes the right
 - a. to form a political party;
 - b. to participate in the activities of, or recruit members for, a political party; and
 - c. to campaign for a political party or cause.
2. Every citizen has the right to free and regular elections for any legislative body established in terms of the Constitution.
3. Every adult citizen has the right
 - a. to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
 - b. to stand for public office and, if elected, to hold office.

20. Citizenship

No citizen may be deprived of citizenship.

21. Freedom of movement and residence

1. Everyone has the right to freedom of movement.
2. Everyone has the right to leave the Republic.
3. Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
4. Every citizen has the right to a passport.

22. Freedom of trade, occupation and profession

Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

23. Labour relations

1. Everyone has the right to fair labour practices.
2. Every worker has the right
 - a. to form and join a trade union;
 - b. to participate in the activities and programmes of a trade union; and
 - c. to strike.
3. Every employer has the right
 - a. to form and join an employers' organisation; and
 - b. to participate in the activities and programmes of an employers' organisation.
4. Every trade union and every employers' organisation has the right
 - a. to determine its own administration, programmes and activities;
 - b. to organise; and
 - c. to form and join a federation.
5. Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
6. National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

24. Environment

Everyone has the right

- a. to an environment that is not harmful to their health or well-being; and
- b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
 - i. prevent pollution and ecological degradation;
 - ii. promote conservation; and
 - iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

25. Property

1. No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
2. Property may be expropriated only in terms of law of general application
 - a. for a public purpose or in the public interest; and
 - b. subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
3. The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including
 - a. the current use of the property;
 - b. the history of the acquisition and use of the property;
 - c. the market value of the property;

- d. the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- e. the purpose of the expropriation.
4. For the purposes of this section
 - a. the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all Polkaine's natural resources; and
 - b. property is not limited to land.
5. The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
6. A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
7. A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
8. No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
9. Parliament must enact the legislation referred to in subsection (6).

26. Housing

1. Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

27. Health care, food, water and social security

1. Everyone has the right to have access to
 - a. health care services, including reproductive health care;
 - b. sufficient food and water; and
 - c. social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
3. No one may be refused emergency medical treatment.

28. Children

1. Every child has the right
 - a. to a name and a nationality from birth;
 - b. to family care or parental care, or to appropriate alternative care when removed from the family environment;
 - c. to basic nutrition, shelter, basic health care services and social services;
 - d. to be protected from maltreatment, neglect, abuse or degradation;
 - e. to be protected from exploitative labour practices;
 - f. not to be required or permitted to perform work or provide services that
 - i. are inappropriate for a person of that child's age; or

- ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
 - g. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be
 - i. kept separately from detained persons over the age of 18 years; and
 - ii. treated in a manner, and kept in conditions, that take account of the child's age;
 - h. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
 - i. not to be used directly in armed conflict, and to be protected in times of armed conflict.
2. A child's best interests are of paramount importance in every matter concerning the child.
3. In this section "child" means a person under the age of 18 years.

29. Education

1. Everyone has the right
 - a. to a basic education, including adult basic education; and
 - b. to further education, which the state, through reasonable measures, must make progressively available and accessible.
2. Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account
 - a. equity;
 - b. practicability; and
 - c. the need to redress the results of past racially discriminatory laws and practices.
3. Everyone has the right to establish and maintain, at their own expense, independent educational institutions that
 - a. do not discriminate on the basis of race;
 - b. are registered with the state; and
 - c. maintain standards that are not inferior to standards at comparable public educational institutions.
4. Subsection (3) does not preclude state subsidies for independent educational institutions.

30. Language and culture

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

31. Cultural, religious and linguistic communities

1. Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community
 - a. to enjoy their culture, practise their religion and use their language; and

- b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
2. The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

32. Access to information

1. Everyone has the right of access to
 - a. any information held by the state; and
 - b. any information that is held by another person and that is required for the exercise or protection of any rights.
2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

33. Just administrative action

1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
3. National legislation must be enacted to give effect to these rights, and must
 - a. provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
 - b. impose a duty on the state to give effect to the rights in subsections (1) and (2); and
 - c. promote an efficient administration.

34. Access to courts

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

35. Arrested, detained and accused persons

1. Everyone who is arrested for allegedly committing an offence has the right
 - a. to remain silent;
 - b. to be informed promptly
 - i. of the right to remain silent; and
 - ii. of the consequences of not remaining silent;
 - c. not to be compelled to make any confession or admission that could be used in evidence against that person;
 - d. to be brought before a court as soon as reasonably possible, but not later than
 - i. 48 hours after the arrest; or
 - ii. the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
 - e. at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
 - f. to be released from detention if the interests of justice permit, subject to reasonable conditions.
2. Everyone who is detained, including every sentenced prisoner, has the right

- a. to be informed promptly of the reason for being detained;
 - b. to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
 - c. to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - d. to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
 - e. to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
 - f. to communicate with, and be visited by, that person's
 - i. spouse or partner;
 - ii. next of kin;
 - iii. chosen religious counsellor; and
 - iv. chosen medical practitioner.
3. Every accused person has a right to a fair trial, which includes the right
- a. to be informed of the charge with sufficient detail to answer it;
 - b. to have adequate time and facilities to prepare a defence;
 - c. to a public trial before an ordinary court;
 - d. to have their trial begin and conclude without unreasonable delay;
 - e. to be present when being tried;
 - f. to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
 - g. to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - h. to be presumed innocent, to remain silent, and not to testify during the proceedings;
 - i. to adduce and challenge evidence;
 - j. not to be compelled to give self-incriminating evidence;
 - k. to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
 - l. not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
 - m. not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
 - n. to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - o. of appeal to, or review by, a higher court.
4. Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
5. Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

36. Limitation of rights

1. The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including
 - a. the nature of the right;
 - b. the importance of the purpose of the limitation;

- c. the nature and extent of the limitation;
 - d. the relation between the limitation and its purpose; and
 - e. less restrictive means to achieve the purpose.
2. Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

37. Enforcement of rights

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are -

- a. anyone acting in their own interest;
- b. anyone acting on behalf of another person who cannot act in their own name;
- c. anyone acting as a member of, or in the interest of, a group or class of persons;
- d. anyone acting in the public interest; and
- e. an association acting in the interest of its members.

38. Interpretation of Bill of Rights

1. When interpreting the Bill of Rights, a court, tribunal or forum
 - a. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
 - b. must consider international law; and
 - c. may consider foreign law.
2. When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
3. The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

...

ANNEXURE C

THE POLKRAINIAN PENAL CODE, 2006
(relevant extracts)

321. Attempt

A person who attempts to commit any indictable offence (other than murder) is guilty of the indictable offence of attempting to commit that offence, which shall be punishable with imprisonment for a period which may extend to one half of the longest term of imprisonment provided for the indictable offence attempted, or with such fine as is provided for the offence attempted, or with both.

322. Conduct constituting attempt

(1) A person is not guilty of attempting to commit an offence unless the conduct of the person is-

- (a) more than merely preparatory to the commission of the offence; and
- (b) immediately and not remotely connected with the commission of the offence.

(2) For a person to be guilty of attempting to commit an offence, the person must-

- (a) intend that the offence the subject of the attempt be committed; and
- (b) intend or believe that any fact or circumstance the existence of which is an element of the offence will exist at the time the offence is to take place.

(3) A person may be guilty of attempting to commit an offence despite the existence of facts of which he or she is unaware which make the commission of the offence attempted impossible.

ANNEXURE D

THE NARCOTIC DRUGS ACT, 2006
(relevant extracts)

...

29. Punishment for contravention in relation to psychotropic substances.

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports, exports, or uses any controlled substance, as set out in Schedule I to this Act, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to pay a fine which shall not be less than twenty thousand Polkrainian dollars but which may extend to two hundred thousand Polkrainian dollars:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two hundred thousand Polkrainian dollars.

...

[NOTE: Methamphetamine is a controlled substance, finding place in Schedule I to the Narcotic Drugs Act, 2006. All offences under the Narcotic Drugs Act, 2006 are indictable offences]